

## ADVISORY NO. 228

---

**TOPIC: RESUBMISSION AND REAUDITING OF HOSPITAL BILLS;  
RESPONSES TO HOSPITAL REQUESTS FOR MEDICAL  
DISPUTE RESOLUTION**

Two important items have come to our attention in preparing responses to requests for medical dispute resolution filed by hospitals on bills covered by the invalidated 1992 Acute Care Inpatient Hospital Fee Guideline.

First, although most carriers have followed our advice and are refusing requests for the reimbursement of any outstanding balances previously paid under the 1992 guideline, some auditing companies have not been doing this and are instead recommending payment of the bill in full or at a percentage, such as 85% or 90%, often based on the old health facility ratios in effect prior to the adoption of the 1992 Guideline. It is our opinion that paying a straight percentage of the bill may not satisfy the requirement of a “fair and reasonable” reimbursement in the face of a hospital assertion that the bill should be paid in full. **Any carrier who is paying resubmitted bills on hospital fee case based on a straight percentage of the total bill should consult with its auditing company concerning the advisability of continuing this practice.** We would recommend that carriers continue to use the 1992 guideline as a fair and reasonable standard until directed otherwise.

Second, in a number of cases we have noticed that many resubmission audit reports state a total amount of payment due based on the fee guideline, but fail to note a prior payment made when the bill was initially submitted. Sometimes in these cases the carrier pays the amount noted on the resubmission audit without taking a credit for any payments previously made. This is most likely to happen when a different adjuster is now handling the file who is unaware of the prior payment. In these cases we have discovered the overpayment and have requested a refund from the provider, but it is obviously easier to not make the mistaken overpayment in the first case. **In any claim where you are considering making an additional payment to a hospital based upon a resubmission audit, make sure to check to see if there was a prior payment and that you are taking a credit for it before issuing the check for additional reimbursement.**

Sources inside of the TWCC Medical Review Division (MRD) indicate that to date they have received over 10,000 requests for medical dispute resolution from hospitals involving reimbursement under the 1992 fee guideline and are having to hire temporary staff to help handle this volume. Their conservative estimate is that 75,000 such disputes will have to be processed eventually. Hundreds of millions of dollars in hospital fees are involved. In the cases where FOL has filed responses the average amount in dispute exceeds \$5,000 per hospitalization.

Because of the volume, and also because no final decision on how to rule on these disputes is likely to come until a new Executive Director is named, it is unlikely that MRD will start issuing findings on the hospital fee cases for several months. However, under new procedures for these disputes, MRD is sending 10-day letters on all of these disputes as soon as they are received from the hospitals and logged in. FOL recommends all carriers timely respond to these 10-day letters when received, and likewise recommends that carriers respond to any TWCC-60s received from hospitals within the 30 day period provided for in the TWCC rules.

**FOL provides the service of preparing and filing responses to requests for medical dispute resolution, including those involving hospital fee resubmissions, for a nominal fee. Since the evidentiary record in any subsequent hearing at SOAH is almost always limited to documentation provided to the MRD at the time of its initial consideration of the dispute, responses to TWCC-60s and MRD 10 day letters are crucial. Failure to raise all factual and legal issues in these responses to MRD can be fatal to an otherwise valid denial of payment of excessive fees.**

**Given the hospitals' history over the past decade of fighting every TWCC attempt at fee regulation, we can presume that every fee dispute decided by MRD will be appealed to SOAH by the hospitals if they don't get every penny of their bill ordered paid. If MRD orders payments exceeding the guideline, carriers will want to appeal to SOAH. The SOAH hearing held in Austin is much more formal than contested case hearings held in field offices: the rules of evidence apply so documents and testimony can be excluded if objections are made on the basis of inadmissible hearsay, lack of authentication, witness competency, etc. Also, under the current status of the law there is *no appeal from a SOAH determination in a medical dispute case*. This makes the response filed with MRD even more important since it will be the basis of the evidentiary record in the *only* hearing that will ever be held on the disputed bill.**

In preparing responses in hospital cases we need you to *answer fully the six questions on the information sheet* faxed to you with the 10-day letter and return it to us with:

- (1) a copy of the *TWCC-60* if you received one from the provider;
- (2) copies of the *bill* as *originally submitted* and as *resubmitted*; and
- (3) copies of the Explanation of *Benefits (EOBs) / TWCC-62s* prepared both when the bill was *originally submitted* and when it was reaudited *after resubmission*.

Other documents regarding the auditing and payment of the bill in dispute, such as copies of checks or computer printouts of payments, may also be helpful in preparing a response, particularly if you do not have copies of the bills or EOBs for some reason. In other cases you may want other evidence submitted to MRD such as medical records (if the billed services do not match what services are shown through the medical records) depending on the specific facts.

**If you have any questions regarding FOL preparation of your responses to requests for medical dispute resolution, please call Connie Nolan (direct line 512/435-2266) or John Gillespie (512/435-2173).**