ADVISORY NO. 326
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TOPIC: COURT OF APPEALS INVALIDATES ON-SITE MEDICAL AUDITS

On April 25, 2002, the Austin Court of Appeals deemed the "Commission's delegation of sweeping auditing powers to private insurance carriers" to be invalid. *Patient Advocates of Texas and Allen J. Meril v. TWCC*, No. 03-01-00215-CV. The Court acknowledged that the Legislature required the Commission to provide for the "review and audit" of medical payments. TEX.LAB.CODE §413.015(b). However, the Court narrowly construed this authority to mean a TWCC audit of an insurance carrier's payment to a provider. The Court then analyzes whether this statute permits delegation of this "public function" [TWCC's authority to audit carriers] to an insurance carrier's audit of medical providers.

PAT characterized the insurance carriers' auditing powers under Commission rules as "unfettered." The Court of Appeals was troubled that, during an on-site audit, the healthcare provider "*must provide*" the carrier with documentation relating to the claim identified. Although the healthcare provider may have a representative present at the audit, the Court noted that the provider's representative "has no authority to challenge the scope of the audit." Because of this, the Court concluded that the entire audit process "seems to grant all of the power to one of the parties involved, specifically, the insurance carrier." The Court further believed the insurance carrier's goal is to minimize the amount it pays to providers, and that this conflicts with the "public function" of an audit program. Again, because the statute does not specifically permit an insurance carrier to audit a healthcare provider's bill, the Court presumed that authority does not exist and that the only right to audit is the right of the Commission to audit the carrier's payment to the provider.

For this reason, the Court concluded that the Commission has delegated public audit powers to private insurance carriers without providing sufficient standards to guide carriers in the performance of their delegated "public function." The fact that dispute resolution is afforded and the Commission resolves disputes about the amounts tendered, did not cure the Court's objections to this process. The Court characterized the audit function as granting "sweeping power to insurance carriers and has provided only illusory representation to healthcare providers" and concluded:

> Accordingly, we hold that the provision of the Dispute and Audit Rules delegating auditing powers to private insurance carriers are invalid.

The opinion does not cite the specific "Dispute and Audit Rules" deemed to be invalid. The Court does not address how carriers should determine amounts owed under *The Medical Fee*

Guideline absent an audit. Although the opinion discusses the potential for abuse during on site audits, the opinion is not expressly limited to on-site audits. Accordingly, the scope of the opinion is unclear. Because desk audits involve nothing more than an audit of materials voluntarily submitted by health care providers, desk audits should be permitted, and should continue unaffected subject to further clarification from TWCC. However, the right of carriers to conduct on-site audits is certainly compromised. Until the Commission announces a policy or a new Rule, we strongly recommend that you obtain the healthcare provider's written consent to conduct an on-site audit.

The primary subject of the Court's opinion has to do with the validity of the *1996 Medical Fee Guideline.* The Court overruled procedural and substantive challenges to the guideline. The Court overruled the plaintiffs' argument that the failure to republish a guideline every two years rendered the guideline void. The *Medical Fee Guideline* is valid and enforceable.

Additionally, the plaintiffs challenged the one-year rule that bars the presentment of a medical bill for dispute resolution more than one year after the date of service, and bars the carrier's presentation of a claim for refund more than one year after receiving the bill. Referring to this as a "statute of limitations," the Court affirmed the validity of the rule in order "to prevent fraudulent and stale claims from springing up at great distances of time and surprising the other party." Because the Commission's one-year rule was consistent with the general purposes of the statute of limitations, the Court held that the rule is valid and applicable.