

ADVISORY NO. 343

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**TOPIC: RESPONDING TO MEDICAL BILLS AS FIRST WRITTEN
 NOTICE OF INJURY**

The TWCC has issued the attached Advisory 2002-16. It confirms what has been TWCC policy for quite some time. While it is entitled: "Processing of Medical Bills When There Has Been Other Report of Injury," the subject is the effect of a completed medical bill as first written notice of injury when there has **NOT** been other prior notice of injury.

Any such completed bill (or other written notice of injury) triggers the carrier's obligations under Rule 124.3 and TEX.LAB.CODE §409.021. A properly completed HCFA-1500 has all of the information necessary to trigger all *Downs* duties. That means that the failure to investigate and begin the payment of benefits and or deny the claim may result in a waiver or forfeiture of a carrier's defenses to the payment of benefits other than the defenses of no injury and no coverage. Even no injury and no coverage defenses should be filed with TWCC pursuant to Rule 124.2(d) even though the failure to file should not result in waiver.

The Advisory also serves as a reminder that the 45-day timetable to respond to a completed medical bill is not delayed by the absence of an employer's first report or other notice, as the bill itself acts as such notice.

FLAHIVE, OGDEN & LATSON

TWCC ADVISORY 2002-16

SUBJECT: Processing of Medical Bills When There Has Been Other Report of Injury

Per Commission Rule 124.1,

“(a) Written notice of injury, as used in the Texas Workers' Compensation Act, §409.021, consists of the insurance carrier's earliest receipt of:

- (1) the Employer's First Report of Injury as described in §120.2 of this title (relating to Employer's First Report of Injury);
- (2) the notification provided by the Commission under subsection (c) of this section; or
- (3) if no Employer's First Report of Injury has been filed, any other communication regardless of source, which fairly informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related.”

Further, subsection (d) of the rule provides that:

“If a carrier is notified of an injury for which it has not received an Employer’s First Report of Injury, from the employer, the carrier shall contact the employer regarding the injury within seven days of notification.”

All properly completed medical bills should contain the name of the employee, the name of the employer and the approximate date of injury. Further, the bill should contain information that asserts that the bill is related to a work-related injury. Box 10 of the HCFA 1500 provides a space to identify the injury as work-related and Box 32 provides a similar space on the UB-92 (such as by putting in code 04 to signify “accident, employment related”).

Therefore, if a carrier receives a medical bill and has not yet received a written notice of injury from another source, the medical bill serves as the carrier’s first written notice of the injury. The preamble to the adoption of Rule 124.1 explained that this was the explicit intent of modifying 124.1(a) to read as it does.

However, the Commission has received reports and found evidence that some carriers and their agents are not treating medical bills as first written notice of the injury. In many cases, they are returning the medical bills to the provider stating “We are unable to establish the existence of a claim . . . Please assist us by providing a first report of injury” or “There was not a claim set up for this injury. Please check with the employer.”

As a medical bill can be First Written Notice of an Injury, it triggers the carrier’s duty to initiate an investigation of an injury under Rule 124.3 and to initiate benefits or file a notice of refusal under Texas Labor Code §409.021. As such, the carrier’s duty under Texas Labor Code §408.027 to pay or dispute the bill within 45 days of receipt of the bill is not predicated on receipt of the Employer’s First Report of

Injury.

The Commission has and will continue to take enforcement action in instances where carriers or their agents fail to treat a medical bill as first written notice in accordance with Rule 124.1.

Signed on this 23rd day of September, 2002

A handwritten signature in black ink, appearing to read "R. F. Reynolds". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Richard F. Reynolds, Executive Director

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