ADVISORY NO. 349
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TOPIC: PROSPECTIVE DENIAL OF SERVICES NOT COVERED BY PREAUTHORIZATION

Except for preauthorization services, TWCC has clearly prohibited the practice of denial of future medical treatment on the basis that the treatment is not medically necessary. This policy is stated by TWCC Advisory No. 98-06. It is also clearly stated in Rule 124.2(j)(6): "Carriers shall not provide notices to the Commission that explain that future medical benefits are disputed (notices of which shall not be provided to *anyone* in the system."

In *Gregson v. Zurich*, Opinion No. 02-20169, the 5th Circuit Court of Appeals reversed a trial court's dismissal of a bad faith claim in which the plaintiff alleged that the carrier admitted compensability in the case, but prospectively denied approval of a pharmacy prescription which did not require preauthorization. [There was a question about the appropriateness of the drug for treatment of the claimant's condition.] We recommend that post treatment denials be supported by medical evidence. That question was not reached in the *Gregson*.

The 5th Circuit relied upon the TWCC Advisory 98-06. In that advisory, when considering requests for pre-approval of medical treatment, the Commission recommended one of the two following statements:

1. The insurance carrier will pay for the reasonable and necessary medical treatment if it is related to the compensable injury; or
2. A workers' compensation policy was/was not in effect for the date of the injury.

We recommend that carriers utilize one statement or the other. Simply confirm coverage and don't predict what you may do about payment of the bill.

Do not file Notices of Refusal denying future medical care. Even though you may have a peer review documenting that no further care is necessary, you must confirm that you will pay for medically necessary care, and then file a dispute when appropriate after the treatment is rendered and the documentation provided.

Note that the Advisory was issued by the TWCC Executive Director prior to HB 2600 which now provides for voluntary certification of medical treatment not requiring preauthorization. See Rule 134.600(j). You may approve or refuse to approve a treatment plan. You should not state that treatment not approved is denied. For example, when responding to a proposed physical therapy treatment plan of 10 weeks, you may agree to voluntarily certify the first 8 weeks only. You should not state that you refuse payment for the other two weeks. You

should state only:

Your request for voluntary certification of 10 weeks of physical therapy is certified for 8 weeks only. We decline to voluntarily certify other services at this time. For treatment after that date, the carrier will pay for reasonable and necessary medical treatment if it is related to the compensable injury.