

ADVISORY NO. 355
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TOPIC: DECLARATORY JUDGMENT IN ASC CASE

Attached is a faxed copy of a Declaratory Judgment issued by Travis County Judge Darlene Byrne. The judgment concludes that TWCC Rule 133.304(i) (requiring carriers to adopt a uniform methodology for services not covered by a *Medical Fee Guideline*) is “invalid as applied because the rule . . . interferes with and impairs the legal right and privilege of Plaintiffs to have a fee guideline established by rule by the Texas Workers’ Compensation Commission and not by the insurance carriers paying the Ambulatory Surgical Center bills.”

The court specifically declared that Rule 133.304 “is invalid as applied to Ambulatory Surgical Centers.” The judgment grants a permanent injunction against TWCC and SOAH from “using Rule 133.304” in “setting fees for Ambulatory Surgical Center Services.” By the express terms of the order, it applies only to TWCC and to SOAH. The order does not reference any insurance carrier by name, nor does it purport to apply directly to carriers.

Note also that the decision does not purport to invalidate the statute or any other TWCC rule. The statute requires that the guidelines be fair and reasonable and designed to ensure the quality of medical care *and to achieve effective medical cost control*. TEX.LAB.CODE §413.011(d). Rule 134.1(c) mandates that reimbursement for services not identified in an established fee guidelines be reimbursed at a fair and reasonable rate as described in the Texas Workers’ Compensation Act §413.011 until such period that a specific fee guideline is established by the Commission.

Until Rule 134.1(c) is declared invalid, carriers have a duty to reimburse medical services at rates consistent with the rules and the statute. The rules require that we apply the statutory standards and the statutory standards require that the reimbursement “achieve effective medical cost control.” Accordingly, if you are satisfied that your reimbursement methodology complies with the elements of the statutory standards, and until we are instructed otherwise by TWCC or the court, you should continue to apply a consistent methodology that fairly and reasonably reimburses physicians, that is in a sufficient amount to ensure employee access to quality medical care, and is a rate that will achieve effective medical cost control. This may be a reimbursement standard based upon Medicare rates and guidelines with a conversion factor, or it may be any other reasonable methodology adopted by your company and applied uniformly.

The decision of the trial court will almost certainly be appealed. We will continue to

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update you as further information becomes available.