

ADVISORY NO. 357

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TOPIC: FAIR AND REASONABLE REIMBURSEMENT

The TWCC has issued the attached Advisory 2003-09 regarding its response to the recent Travis County District Court judgment prohibiting the TWCC and SOAH from applying Rule 133.401(i) in setting fees for ambulatory surgical centers. That rule simply requires a carrier to develop, document and consistently apply a methodology for determining fair and reasonable reimbursement in the absence of a TWCC established maximum allowable reimbursement. In light of the statutory and regulatory requirement of fair and reasonable reimbursement under TEX. LABOR CODE Section 413.011 and Rule 134.1, the real effect of the judgment is still in debate. However, Rule 133.401(i) remains in effect even as to ambulatory surgical services, pending the appeal to the Austin Court of Appeals. Accordingly, Carriers should still further develop, fine tune, document and apply their own methodologies for auditing ASC bills.

In the meantime, the attached Advisory indicates how the TWCC will treat EOBs showing payment by various carriers offered by the ASCs as evidence of fair and reasonable rates. SOAH cases are mixed on whether and to what degree such cherry-picked EOBs constitute evidence in support of the ASCs reimbursement request. Because such evidence might be considered by the TWCC and/or SOAH, it is important for Carriers to not only audit such bills but also document the instances when ASCs have accepted the Carrier's methodology. As SOAH places the burden of proof on the losing party at the MRD level, it is also crucial that Carriers respond fully at the MRD level to any medical dispute request from ASCs.

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