ADVISORY NO. 377
###

TOPIC: PROPOSED NEW CHANGES TO ASC RULE

Ambulatory Surgical Centers (ASCs) received a substantial boost in their fees when TWCC adopted its current rate of reimbursement established at 213.3% of Medicare (many workers' compensation carriers were reimbursing 125% of Medicare prior to the implementation date of the rule.)

The ASCs have continued to complain about allegedly inadequate reimbursement. They have proposed changes to the rule which have been proposed by the Texas Workers' Compensation Commission. It enlarges the number of procedures that can be performed by ASCs and it unbundles and allows duplicate billing of procedures that Medicare does not permit to be unbundled. Both proposed changes violation House Bill 2600, now codified as TEX.LAB.CODE §413.011(a) which provides that "the Commission shall adopt the most current reimbursement methodologies, models and values or wages used by [Medicare]. With respect to these changes, TWCC is abandoning the Medicare payment model.

The most clearly indefensible aspect of the proposed rule change is the unbundling of bundled services. Medicare only allows for reimbursement for a limited number of implantables, such as pacemakers, spinal cord stimulators, prosthetics, etc. The implantables that are permitted to be billed are identified in the Medicare Payment policies. It is limited to approximately 40 codes. For the balance of the codes, Medicare made a decision to not separately permit reimbursement. The fact that they identified some items to be reimbursed and other items are to not be reimbursed suggests that Medicare made a considered decision. So, with respect to an item that includes any kind of implantable not identified by Medicare, Medicare has established a rate of reimbursement, *including the implantable*. TWCC has decided that particular service shall be reimbursed by workers' compensation carriers at 213.3% of the bundled service identified by Medicare. Now, in addition to more than doubling the Medicare reimbursement rate, TWCC has proposed to add yet more costs by allowing the ASC to unbundle the implantable and separately charge for it. This proposal should not simply be resisted – it should be vigorously opposed.

TWCC has also proposed to broaden the procedures that may be performed in an ASC. At least in the proposal stage, TWCC seems to be in agreement with the proposal that an excision of an ingrown toenail should be performed in a facility. Medicare has made an obvious decision that this is a procedure that can be performed in the office of a doctor or a podiatrist. There is simply no explanation as to why a workers' compensation carrier should be required to

reimburse an ASC for a procedure like this, and to further reimburse it at an amount at more than twice the amount that an ASC would be paid. Why should the repair to a nail bed on a finger, or a trigger point injection be performed in a facility and not performed in a doctor's office?

On the other end of the spectrum, the ASCs are proposing to perform hema-laminectomies in an ASC context. Medicare presumably made a decision that these procedures are too complex to perform within an ASC. It is certainly reasonable to believe that Medicare has determined the procedure to have potential complications and for that reason, Medicare has determined it should be performed in a hospital environment where backup services are immediately available. Clearly this should be carefully considered by anyone proposing to direct that more complicated procedures be performed in an ASC than Medicare currently permits.

Lastly, one of the recommended codes for fluoroscopy is not allowed by Medicare inasmuch as it is an unbundled procedure. The cost of fluoroscopy is generally included as a part of other charges.

The large and overriding point is that these rules depart from the Legislative mandate to follow Medicare payment policies. TWCC is proposing to depart from Medicare policies inconsistently with the statutory requirements that were negotiated among all stakeholders during the House Bill 2600 process in 2001.