



ADVISORY NO. 457

TOPIC: DIVISION CLARIFIES RECENT WARNING LETTER PROCEDURES

Recently, the Division of Workers' Compensation Enforcement staff distributed a series of warning letters to carriers who were alleged to have inappropriately paid health care providers. The letters contended that such carriers had reimbursed such providers even though they had been denied admission to the agency's approved doctor list. The statute prohibits a carrier from providing direct or indirect reimbursement in cases where providers have been so denied or removed, and where the providers were not reinstated to the list before September 1, 2007.

We met with Division of Workers' Compensation and Department of Insurance staff to raise concerns regarding how carriers can identify health care providers who should not be reimbursed pursuant to TEXAS LAB. CODE ANN. §408.023 and 28 TEX. ADMIN. CODE §180.20. See FO&L Advisory No. 456 dated May 6, 2010. On May 14, 2010, Agency staff provided some helpful clarification in this regard. Section 408.023 expressly prohibits a carrier from directly or indirectly reimbursing prohibited providers. We called to the Division's attention the difficulty in identifying such providers because of the varied ways in which a carrier can be presented with such a bill.

For example, we observed that a carrier might receive a bill that identifies a prohibited doctor in Box Number 31 of CMS-1500, but that does not identify the prohibited doctor in Box Number 33. Instead, Box Number 33 may identify another entity in which the prohibited doctor may have a financial interest. Under such circumstances, a carrier who pays such a bill may be providing an indirect remuneration to a prohibited doctor, thereby violating TEXAS LAB. CODE ANN. §408.023.

Recognizing the difficulties that carriers can face in preventing indirect remuneration to prohibited doctors, and that there is no fail proof method for resolving such issues, the Division has, nevertheless, offered the following guidance:

1. If a prohibited doctor's name is listed on the bill in Box Number 31 and/or Box Number 33, the carrier is prohibited from paying the bill as this would be a direct remuneration to a prohibited doctor.
2. If a carrier suspects, but cannot verify, that by paying the bill a prohibited doctor would be receiving indirect remuneration, the carrier should pay the bill and then report the

instance to the Division as a complaint. The Division will then investigate the complaint and determine if a violation has occurred and if sanctions are appropriate.

3. If a carrier has knowledge that a prohibited doctor would be receiving indirect remuneration if the carrier pays the bill, the carrier should verify this knowledge with any relevant evidence (e.g. financial disclosures of the prohibited doctor) and deny payment accordingly.

The Division has acknowledged that there may be other variations of how prohibited doctors may receive indirect remuneration. The agency encourages carriers to follow the general guidance outlined above in their efforts to prevent such occurrences.

We recommend that this guidance be shared with your medical bill processing vendors.

If you have questions concerning this Advisory, please contact James Sheffield, Steve Tipton or Bobby Stokes in our office.