



## ADVISORY NO. 471

**TOPIC: CARRIER WINS MOVE ASC AND OUTPATIENT DISPUTES  
CLOSER TO FINAL RESOLUTION**

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Prior to the May 9, 2004 effective date of Rule 134.402 (Ambulatory Surgical Fee Guideline) and the March 1, 2008 effective date of Rule 134.403 (Outpatient Hospital Facility Fee Guideline), thousands of fee disputes arose out of substantial overcharges by many such facilities.

While many of these disputes remain at the Medical Review Division, many also made their way into Travis County District Courts. After repeated defeats, Vista Healthcare, Inc. brought a constitutional challenge to the methods used by the Division and carriers in determining fair and reasonable reimbursement. As a result, the disputes still pending at MRD and the cases pending in Travis County District Court have remained on hold pending final resolution of the legal/constitutional challenges by the facilities.

The District Court, the Court of Appeals and the Texas Supreme Court have now denied the facilities' challenges. For those cases pending at the District Court, we have now forced Vista to trial under the substantial evidence review standard. These should be concluded by the end of the year. Any cases pending at the District Court that were "direct appeals" from MRD during the two-year period the statute did not allow an evidentiary hearing at the Division or SOAH may be remanded back to MRD for assignment.

The DWC has already started issuing decisions in the disputes it had placed on hold. This explains why you may have recently received decisions on old, often long-forgotten disputes. But be aware that Vista is appealing all these to SOAH. We have already met with the SOAH judges who will be handling these claims to work out streamlined, summary procedures for hearing them.

So far, carriers have successfully fended off Vista's demands in these cases for additional reimbursement totaling over \$20,000,000 industry-wide. We are now approaching the final administrative resolution of these claims on their merits. We will keep you posted on their progress through the administrative review process.

FLAHIVE, OGDEN & LATSON