



ADVISORY NO. 473

TOPIC: OUTPATIENT CASES PENDING AT MEDICAL REVIEW DIVISION

There has been a very recent adverse development in several thousand Outpatient cases still pending at the Medical Review Division. Until recently, these cases were abated pending outcome of some unsuccessful court challenges to the medical fee rules by the hospitals. Consistent with prior precedent, the Division had, in thousands of cases, been issuing decisions awarding no additional payment.

However, the Renaissance group of hospitals, including Houston Community Hospital, only recently requested the Division consider carrier payment data as evidence of what is “fair and reasonable”. Even though substantially the same argument had been rejected thousands of times by MRD and by SOAH judges, MRD has done a complete turn-around on the issue. The result now, in Renaissance cases, is usually an order to pay additional amounts ranging generally between \$1,500 and \$3,500. The bankruptcy Trustee for Renaissance hopes the amounts are small enough that carriers will not appeal.

We have been filing Supplemental position statements in these Renaissance outpatient cases upon receiving notice of this very recent complete reversal of positions by MRD. It remains to be seen whether MRD will recognize its error and revert back to long-standing precedent.

While we understand there are financial decisions to be made in each case, we strongly believe these orders are incorrect and contrary to long-standing MRD and SOAH precedent. These new decisions also imply the carrier/self-insured has a burden of proof in the “fair and reasonable” determination. This also is contrary to prior MRD and SOAH opinion. And there are likely thousands of these new MRD decisions coming.

Upon receipt of any adverse decisions in the Renaissance cases, we are asking if you wish FOL to appeal the decision on your behalf. We believe it important that you have the full picture before making the decision to pay the additional amount awarded or to request appeal. Please contact Steve Tipton at smt1@fol.com or (512) 435-2162 if you wish to discuss these issues further.

FLAHIVE, OGDEN & LATSON