



## ADVISORY NO. 511

### TOPIC: SOAH ISSUES ITS JOINT DECISION IN 532 STOP LOSS DISPUTES

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The disputes regarding application of the DWC’s 1997 Inpatient Acute Care Hospital Fee Guideline have been hotly pursued since 2001. The hospitals (mostly the Vista hospitals) argued entitlement to 75% of billed charges under the stop loss exception to the general default “per diem plus carve-outs” methodology of reimbursement. Involving several hundred of those disputes, protracted litigation over the interpretation of that rule ended in 2010 when the Third Court of Appeals agreed with the carriers that in addition to showing audited charges exceeded \$40,000, the hospitals had to show the admission was “unusually costly and unusually extensive.” As the carriers in those cases had all been ordered to pay 75% of audited charges, those disputes were all remanded back to SOAH. That docket remains to be set for contested case hearing. The carriers will be seeking findings that the stop loss exception does not apply to each admission, then seek a refund of the overpayments made under those now-reversed SOAH Orders.

In the meantime, numerous other stop loss disputes were piling up at SOAH and placed in multi-case dockets. Those dockets were heard in 2014, 2015 and 2016. The ALJs ordered that a single decision would be issued for all those dockets. That decision in 532 disputes was finally signed June 24, 2019.

In 518 disputes, SOAH found the stop loss exception did NOT apply. In 57 of those disputes, the ALJs found that additional payment was due under the per diem plus carve-outs rule. Most of those additional payment orders come from evidence presented by the hospitals at SOAH related to implants, high cost drugs and radiology that were still unpaid under the per diem rule.

Stop loss reimbursement has been ordered in only 14 of the 532 disputes on these dockets. Ten other cases were identified as trauma or inpatient rehabilitation admissions, which constitute “fair and reasonable” disputes, and will be set on a

separate docket in the future.

One reason the “remand” docket has never been set was to have the decision in these dockets as guidance for the parties and the ALJs. However, this decision is so vague as to the criteria the ALJs used to make a determination an admission qualifies for stop loss as to have little value in the future. For the remaining “remand” disputes, we will carefully study the handful of disputes where stop loss was awarded to get a better idea of what circumstances in the eyes of the ALJs satisfied the “unusually costly and unusually extensive” criteria.

We are first culling through the cases one-by-one to study the few orders where some additional payment has been ordered, to determine the accuracy of the payment ordered, to calculate the interest owed, and to evaluate whether the order should be appealed. Please be patient. Very shortly we will notify all others where no payment has been ordered...at long last.

It remains to be seen if any of the hospitals will appeal any of the 518 disputes found unqualified for stop loss.