



Texas Ambulatory
Surgery Center Society

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The United Voice of the Texas ASC Industry

July 10, 2008

Albert Betts
Commissioner of Workers' Compensation
Texas Department of Insurance – Division of Workers' Compensation
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1609

RE: Proposed Rule Amendments – §134.402. Ambulatory Surgical Center Fee Guidelines

Dear Commissioner Betts:

On behalf of the Texas Ambulatory Surgery Center Society (“TASCS”) and its more than 160 physician led member ambulatory surgery centers (“ASCs”), we appreciate the opportunity to provide comments on the proposed ASC fee guidelines. We commend you, Commissioner Betts for allowing all the stakeholders to be involved in the rule-making process and for taking the time to look at the “big picture” in order to ensure the best possible outcome for Texas employees and employers.

ASCs are patient friendly, cost efficient providers of quality healthcare to the citizens of Texas. Nevertheless, our industry is cognizant of the continuing rise in the cost of healthcare. We are pleased to support refinements to ASC reimbursement for Workers' Compensation that improve and contribute to an affordable, accessible, and sustainable system. We commend the commissioner and division for recognizing the importance of ASCs and understanding where they fit into the delivery of healthcare for injured workers, employers, insurance carriers, and other providers.

We are pleased with the decision to follow the same basic structure as the hospital outpatient departments (“HOPD”) Workers' Compensation fee guidelines which allow for separate reimbursement for implants, thereby, recognizing the importance of insulating facilities from providing high cost surgical implants which will help ensure injured employees access to the procedures requiring these devices. Further, we understand and appreciate the reasoning behind section 134.402 (f)(2)(A) of the proposed rule. We also commend you for recognizing the unusual nature of Medicare's four year budget neutral phase-in by utilizing the fully implemented rates as well as eliminating the geographically wage adjustments.

We still strongly believe, however, that there should be parity in reimbursement between ASCs and hospital outpatient departments (“HOPD”) when performing the same procedures on injured workers, as do the states of California and Tennessee. We also continue to be concerned with the statutory requirement that DWC use Medicare fees and methodology in developing fee guidelines for injured workers in Texas. We know workers' compensation patients are much different than Medicare eligible patients and result in ASCs having much similar costs to HOPD.

However, as the proposed rules are currently written, the ASC reimbursement rate is 76% of HOPD. We respectfully request the rules be amended to increase reimbursement to 246% for non device intensive procedures and 160% for device intensive procedures equating to **80%** of the HOPD which will help discontinue and discourage the utilization of higher cost settings based on economic factors rather than the best interests of the injured workers.

As we have seen in the past, there is no guarantee that Medicare reimbursement rates will increase in future years. We are concerned the proposed rules do not address the potential of Medicare keeping reimbursement rates frozen. We request the addition of a Consumer Price Index for all Urban Consumers (CPI-U) adjustment should Medicare choose to remain frozen in any outlying year. We recommend the CPI-U adjustment be accomplished in a manner similar to the current Physician Medical Fee Schedule, by DWC developing their own conversion factor each year.

We are also concerned with the amount of information that may or may not be published in the Federal Register in outlying years which could cause ambiguity in the reimbursement rates, specifically related the “fully” implemented rates. We respectfully request that the rules be reviewed in CY 2010 and CY 2011 to ensure the intent of these changes is still clearly outlined. This concern could also be eliminated by using a conversion factor methodology in the final rule, in lieu of a Medicare %. In addition, we strongly recommend DWC adopt an additional provision that establishes specific reimbursement, such as 60% of billed charges, in situations when no contracted fee schedule exists that complies with the Labor Code §413.011.

We are also deeply concerned with the invoice requirement and respectfully request that the requirement be removed. As stated above, we believe parity between the HOPDs and ASCs is needed. The proposed rules seem to support this view in all other areas except this one. The adopted rules for HOPDs do not require the submission of an invoice instead they allow for a billing certification. The proposed ASCs rules require an invoice and billing certification. This requirement is redundant and could hamper timely claims submission and payment, and we do not believe there is any policy or factual justification for a difference in the HOPD and ASC fee guidelines on this issue

We believe our recommendations are fair and reasonable, and designed to ensure quality medical care and effective medical cost control. Adopting these health care reimbursement policies and guidelines will reflect the standardized reimbursement structures found in other health care delivery systems. These recommendations will prevent payment of a fee in excess of the fee charged for similar treatment of an injured individual with an equivalent standard of living paid by that individual or by someone acting on that individual's behalf.

Lastly, our Texas ASCs want to continue to be a safe, cost effective site for surgical procedures for the injured workers of Texas, and continue to return these workers to their jobs as quickly as medicine and technology will allow. Our recommendations will assure that many ASCs will continue to choose to participate in the workers' compensation system and achieve your goal of keeping an adequate number of quality providers in the system.

We believe our recommendations will meet the mutual goals of assuring quality care in workers' compensation cases and much needed access for the injured workers, while controlling prices and system costs.

Sincerely,

Joe Zasa
President