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## **M E M B E R S H I P   A L E R T**

April 19, 2004

**TO:           CAA MEMBERS**

**FROM:       David A. Nevins, President**

**RE:           WORKERS' COMPENSATION EMERGENCY REGULATIONS PERTAINING  
              TO PAYMENTS FOR AMBULANCE SERVICES**

Effective January 2, 2004 for dates of services January 1, 2004, the Division of Workers' Compensation issued **emergency** regulation under "Title 8 California Code of Regulations, Chapter 4.5 Division of Worker's Compensation, Subchapter 1, Article 5.3, Section 9789.70. Ambulance Services. This regulation places a maximum reimbursement on ambulance regulations of no greater than 120% of the 2006 Medicare Ambulance Fee Schedule. These emergency regulations were promulgated through legislation SB 228 and AB 227 passed by the legislature on September 30, 2003 and filed with the Secretary of State October 30, 2003. The final language in both bills was not in print prior to passage. While ambulance services are not specifically identified in either bill, both bills authorize the Division of Workers' Compensation to set rates for providers based on the Medicare Fee Schedule for 2006.

It is important to note that the Division of Workers' Compensation did not send out notice of the emergency regulations and are not required to under California law. However there is a 90 day comment period for the regulation before it goes to the Office of Administrative Law. The 90 day comment period ends May 2, 2004 and the Office of Administrative Law has 30 days to approve or modify the regulations before they become permanent.

The CAA has petition the Division of Workers' Compensation to repeal Section 9789.70 for Ambulance Services as there is no published 2006 fee schedule for ambulance services at this time and therefore the regulation is legally unenforceable. (See attached petition letter). The Division of Workers' Compensation has 20 days to respond to our appeal and the regulation will go to the Office of Administrative Law May 2, 2004 before it can be implemented as a permanent regulation. We will also petition the Office of Administrative Law once they receive the regulations.

In the interim, we know most providers are receiving significantly reduced reimbursements from Workers' Compensation carriers citing the above emergency regulation. The CAA recommends that you consider the following action regarding claims for dates of services on or after January 1, 2004:

1. Accept the payment as payment in full; or
2. Accept the payment as partial payment and bill for the remaining balance; or
3. Return the payment and resubmit the claim for total payment; or
4. Return the payment and bill the employer.

If you appeal the payment, you should demand the carrier provide you with the specific law, regulation or federal document that identifies the 2006 Medicare Ambulance Fee Schedule and the formula the carrier used in determining 120% of the fee schedule for your reimbursement.

When the Regulation was being drafted, ambulance services were reimbursed according to a fee schedule methodology established under the Balanced Budget Act of 1997. However, because that methodology provided inadequate reimbursement to providers in California and certain other states, Congress subsequently changed it by enacting Section 414 of the Medicare Prescription Drug Improvement, and Modernization Act of 2003 "Payment for Rural and Urban Ambulance Services". That provision requires the Secretary of Health & Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) to develop a regional fee schedule for payment of ambulance services, to be effective no later than July 1, 2004 for each level of ground service furnished in a year. CMS has not yet developed this fee schedule. The regional fee schedule will be used in determining the rate payable to providers from July 1 of this year until the year 2009.

Because the Secretary or CMS has yet to establish this fee schedule, as of the date of this petition, no carrier or provider can comply with the Regulation because the standard does not yet exist. Compounding this problem, the Regulation inaccurately states that the Ambulance Fee Schedule can be found at the CMS Internet Website (<http://cms.hhs.gov/paymentsystems>) and is incorporated by reference and will be made available on the Division of Workers' Compensation's Internet Website ... The referenced website **does not** contain the specified information and, consequently, does not provide insurance carriers or ambulance services with information related to the Medicare Fee Schedule for Ambulance Payment for year 2006.

Because of the reasons noted above, the CAA believes we have an excellent chance of repealing the emergency regulation. We will keep you updated as needed.

## **KEEP INFORMED ON THIS AND OTHER ISSUES BY ATTENDING CAA SEMINARS**

### **“MASTERING THE WORKERS’ COMPENSATION REVENUE AND APPEAL PROCESS SEMINAR”**

**Wednesday, May 12<sup>th</sup> 1:00PM – 5:00PM & Thursday, May 13<sup>th</sup> 8:00AM – 12:00PM  
Embassy Suites Hotel, Sacramento, CA**

This training program is designed to help you master complete domination of workers' compensation including managed care organizations unfair claim settlement practices that will help your business office-- **improve the speed of cash flow from problematic payers, and resolve payment disputes outside of the overextended WCAB adjudication process.** A common emphasis on *statutory and case law* will be an integral part of this program as participants learn to address issues and situations that affect a provider's ability to render medically appropriate health care to injured workers.

#### **In This Session You Will Learn:**

- A basic understanding and application of new California reform laws and how some interpretations may pose real dangers to a provider and their practice, autonomy and financial well being.
- Worker's compensation reimbursement statutory codes and how they affect the delivery process.
- When to take aggressive action--How to discover non-compliance of statutory codes and identify insurers engaging in unfair claims-settlement practices.
- Denial Notice Requirements in California.
- Silent PPO Legislation and Oversight.
- How to get paid with PPO Contracts.
- When you are exempt from accepting the maximum reasonable fee set forth in CCR Title 8.
- How to detect and respond to an E.O.B. or denial that does not comply with State regulations, statutes and/or case law.
- Combat techniques on how to address common denials such as: *above usual and customary, not medically necessary, self-procured treatment, pre-existing, global reductions,* and **MUCH MORE!**