

and where not appropriate, may use other state or federal fee schedules. The opinion of the Director that a charge by a medical care provider disputed under the provisions of section 702.414 exceeds the charge which prevails in the community in which said medical care provider is located shall constitute sufficient evidence to warrant further proceedings pursuant to section 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

[60 FR 51348, Oct. 2, 1995]

**§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.**

(a) The Director may, upon written complaint of an interested party, or upon the Director's own initiative, investigate any medical care provider or any fee for medical treatment, services, or supplies that appears to exceed prevailing community charges for similar treatment, services or supplies or the provider's customary charges. The OWCP medical fee schedule (see section 702.413) shall be used by the Director, where appropriate, to determine the prevailing community charges for a medical procedure by a physician or hospital (to the extent such procedure is covered by the OWCP fee schedule). The Director's investigation may initially be conducted informally through contact of the medical care provider by the district director. If this informal investigation is unsuccessful further proceedings may be undertaken. These proceedings may include, but not be limited to: an informal conference involving all interested parties; agency interrogatories to the pertinent medical care provider; and issuance of subpoenas duces tecum for documents having a bearing on the dispute.

(1) A claim by the provider that the OWCP fee schedule does not represent the prevailing community rate will be considered only where the following circumstances are presented:

(i) where the actual procedure performed was incorrectly identified by medical procedure code;

(ii) that the presence of a severe or concomitant medical condition made treatment especially difficult;

(iii) the provider possessed unusual qualifications (board certification in a specialty is not sufficient evidence in itself of unusual qualifications); or

(iv) the provider or service is not one covered by the OWCP fee schedule as described by 20 CFR 10.411(d)(1).

(2) The circumstances listed in paragraph (a)(1) of this section are the only ones which will justify reevaluation of the amount calculated under the OWCP fee schedule.

(b) The failure of any medical care provider to present any evidence required by the Director pursuant to this section without good cause shall not prevent the Director from making findings of fact.

(c) After any proceeding under this section the Director shall make specific findings on whether the fee exceeded the prevailing community charges (as established by the OWCP fee schedule, where appropriate) or the provider's customary charges and provide notice of these findings to the affected parties.

(d) The Director may suspend any such proceedings if after receipt of the written complaint the affected parties agree to withdraw the controversy from agency consideration on the basis that such controversy has been resolved by the affected parties. Such suspension, however, shall be at the discretion of the Director.

[51 FR 4286, Feb. 3, 1986, as amended at 60 FR 51348, Oct. 2, 1995]

**§ 702.415 Fees for medical services; unresolved disputes on charges; procedure.**

After issuance of specific findings of fact and proposed action by the Director as provided in § 702.414 any affected provider employer or other interested party has the right to seek a hearing pursuant to section 556 of title 5, United States Code. Upon written request for such a hearing, the matter shall be referred by the District Director to the OALJ for formal hearing in accordance with the procedures in subpart C of this part. If no such request for a hearing is filed with the district director within thirty (30) days the findings issued pursuant to § 702.414 shall be final.

[51 FR 4286, Feb. 3, 1986]