Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 06/19/01?

   b. The request was received on 03/11/02.

II. EXHIBITS

1. Requestor, Exhibit 1:

   a. TWCC 60 and Letter Requesting Dispute Resolution dated 12/26/01
   b. HCFA's/UB-92 1450
   c. EOB
   d. EOBs from other carriers
   e. Medical Records
   f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit 2:

   a. TWCC 60 and/or Response to a Request for Dispute Resolution 03/26/02
   b. HCFA's UB-92 1450s
   c. Audit summaries/EOB
   d. Medical Records
   e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 03/13/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 03/14/02. The response from the insurance carrier was received in the Division on 03/26/02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:

   a. "The Provider is not in receipt of complete payment for the bill for ambulatory surgery facility charges referenced above. The bill in dispute is for outpatient ambulatory surgery services rendered to the above-referenced patient on the above-referenced date. The carrier is obligated to pay for these services at a fair and reasonable rate of reimbursement in accordance with TWCC Rule § 13.1, as the TWCC has not established a maximum allowable reimbursement for ambulatory surgery services." The provider is seeking additional reimbursement in the amount of $5,452.93 for the date of service 06/19/02.

2. Respondent:

   a. "THE CARRIER, IN DETERMINING WHAT CONSTITUTES A 'FAIR AND REASONABLE' DID CONSIDER THE MEDICARE, PPO AND HMO PAYMENTS, AND REVIEWED THE COMMISSION'S OWN GUIDELINES FOR ACUTE CARE. ACUTE GUIDELINES STATE THAT $1118.00 IS A VALID REIMBURSEMENT FOR A FULL DAY OF INPATIENT CARE, OR APPROXIMATELY 24 HOURS. BY DEFINITION, OUTPATIENT OR AMBULATORY SURGICAL SERVICES ARE THOSE THAT REQUIRE LESS THAN 90 MINUTES ANESTHESIA TIME AND LESS THAT FOUR HOURS OF RECOVERY. THIS MEANS THE PATIENT RECEIVES CARE FROM THE FACILITY FOR 1/4TH OF THE TIME OF BEING IN AN INPATIENT SETTING FOR A FULL DAY, AND THE FACILITY IS PAID AT THE EQUIVALENT OF A ONE DAY INPATIENT STAY. THE ACUTE CARE FEE GUIDELINES WERE USED AS A CONSIDERATION IN DETERMINING REIMBURSEMENT-HOWEVER, THIS DOES NOT MEAN THAT INPATIENT GUIDELINES WERE APPLIED TO THIS SERVICE. THE CARRIER HAS CONSISTENTLY APPLIED THIS REIMBURSEMENT RATIONALE FOR ALL A.S.C. SERVICES PROVIDED IN 2001." The carrier has denied additional reimbursement for the date of service 06/19/01 as M-"IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE.

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 06/19/01.

2. The Provider billed $6,570.93 for the date of service 06/19/01.

3. The Carrier paid $1,118.00 for the date of service 06/19/01.

4. The amount in dispute is $5,452.93 for the date of service 06/19/01.

V. RATIONALE

Medical Review Division's rationale:

The carrier's denial code on their EOB is M-"IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE." Upon review of the Requestor's dispute packet, there is ample medical documentation of the services provided. The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states, "Ambulatory/outpatient surgical care is not covered by this guideline and shall be reimbursed at a fair and reasonable rate until the issuance of a fee guideline addressing these specific types of reimbursement."

Section 413.011 (d) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. It requires the carrier to explain how they arrived at what they consider fair and reasonable reimbursement. The Requestor's dispute packet contains the carrier's methodology and though, the entire methodology may not necessarily be concurred in by the Medical Review Division, the requirements of the referenced Rule have been met.

However, the additional information provided by the Requestor should not be overlooked. The Requestor has provided a chart that indicates what all the other workers' compensation carriers in Texas pay on an average. In a comparison of the three charts titled "List of Percentage Payments by Texas WC Insurances" and separated by years(1998-1999, 1999, and 2000), it was noted that there has been a consistent payment policy of many of the carriers to pay approximately 85% of the billed charges. There are carriers who have paid less and some that have paid more. There has also been a decline in the number of carriers who pay at 100% or above from 1998 to 2000. In 1998-99, 28% of the carriers paid at or above 100% and in 2000 only 13% paid at this rate. Also, the rate of payment below 85% for these same years has ranged from 28% to 31%. The figure for the carriers who paid between 86% to 100% for 1998-99 is 16% and for 1999 and 2000, it is 13% each. As the provider has supplied this information in his packet to prove his fees are fair and reasonable, then it will be accepted as an accurate reflection of the payment policies of carriers in the Texas Workers' Compensation system for this particular clinic.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine based on the parties' submission of information, which party has provided the more persuasive evidence. Both parties to the dispute have submitted documentation in support of their position. However, the carrier's documentation is more persuasive and meets the requirement of

Sec. 413.011(d) of the Texas Labor Code, "to achieve effective medical cost control." Therefore, **no** additional reimbursement is recommended.

The above Findings and Decision are hereby issued this 16th day of May, 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.