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 04/10/01?
   b. The request was received on 03/13/02.

II. EXHIBITS

1. Requestor, Exhibit 1:
   a. TWCC-60 and Letter Requesting Dispute Resolution dated 04/23/02
   b. HCFA-1450s
   c. EOBs
   d. Reimbursement data
   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 Response to a Request for Dispute Resolution dated 05/21/02
   b. HCFA-1450s
   c. Audit summaries/EOB
   d. Reimbursement data
   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 05/03/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 05/08/02. The response from the insurance carrier was received in the Division on 05/21/02. 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: letter dated 04/23/02
   "We feel that 19% paid on a right shoulder arthroscopy and bursectomy is not fair or reasonable. We feel that (Carrier) should reimburse us more appropriately as $1,118.00 does not cover our cost to perform this procedure."

2. Respondent: letter dated 05/31/02

"THE CARRIER, IN DETERMINING WHAT CONSTITUTES A 'FAIR AND REASONABLE RATE' DID CONSIDER THE MEDICARE, PPO AND HMO PAYMENTS, AND REVIEWED THE COMMISSION'S OWN GUIDELINES FOR ACUTE CARE."

IV. FINDINGS

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 04/10/01.

2. The provider, an ambulatory surgery center, billed a total of $5,933.89 on the DOS in dispute.

3. The carrier reimbursed $1,118.00 for the DOS in dispute and their EOB has the denial "M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE."

4. The amount in dispute is $4,815.89, the difference between the billed amount and the amount reimbursed.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate…"

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."

The carrier has submitted sufficient documentation of its methodology and therefore, meets the requirements of Commission Rule 133.304 (i).

The provider has submitted reimbursement data. The provider has submitted EOBs from various carriers that have the same ICD-9 code as the date of service in dispute. These EOBs indicate that the provider has received reimbursement from 85% to 100% of the billed amount.

Regardless of the carrier's methodology or response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The provider has submitted EOBs in an effort to substantiate that the amount requested is fair and reasonable. However, an analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code.

Therefore, based on the documentation available for review, the Requestor has not established entitlement to additional reimbursement.

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

Larry Beckham
Medical Dispute Resolution Officer
Medical Review Division

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.