



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)
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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

HCA CLEAR LAKE REGIONAL MEDICAL CENTER

Respondent Name

ILLINOIS NATIONAL INSURANCE CO

MFDR Tracking Number

M4-03-1294

Carrier's Austin Representative

Box Number 19

MFDR Date Received

OCTOBER 23, 2002

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "per stop-loss threshold as total charges exceeds \$40,000.00. Calculation of stop-loss reimbursement is \$76,426.79 (total billed) X 75% = \$57,320.09 total allowable."

Amount in Dispute: \$15,454.97

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "These audits were conducted and payments made in compliance with the Act, TWCC Rules/Guidelines and the applicable SOAH decisions."

Respondent's Supplemental Position Summary Dated April 26, 2017: Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and under the Division's obligation to adjudicate the payment, under the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception. The Division must conclude that payment should be awarded under the general per diem payment under 28 TEX. ADMIN. CODE §134.401 (repealed). Otherwise, the Division should determine the proper audited charges under Division audit obligations and rules."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Table with 4 columns: Disputed Dates, Disputed Services, Amount In Dispute, Amount Due. Row 1: January 29, 2002 through February 1, 2002; Inpatient Hospital Services; \$15,454.97; \$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 Texas Register 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
3. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.”
4. The services in dispute were reduced / denied by the respondent with the following reason codes:
 - Explanation of Benefits
 - F, Z695-The charges for this hospitalization have been reduced based on the fee schedule allowance.
 - N-Please submit an invoice of supplies used and a report of time spent to construct the orthotic/prosthetic device.
 - Z560-The charge for this procedure exceeds the fee schedule or usual and customary allowance.
 - I003-Payment reflects results of on-site audit. Itemization has been sent under separate cover.
 - This bill was reviewed in accordance with your contract with First Health.
 - F, Z585-The charge for this procedure exceeds fair and reasonable.
5. Dispute M4-03-1294 History
 - The division originally issued a decision on March 21, 2005.
 - The dispute decision was appealed to the District Court.
 - The 250th Judicial District remanded the dispute to the division pursuant to an agreed order of remand D-1-GN-07-004310 dated November 29, 2016.
 - As a result of the remand order, the dispute was re-docketed at the division's medical fee dispute resolution section.
 - M4-03-1294-02 is hereby reviewed.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the Division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c) (6) (A) (i) states “to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “Audited charges are those charges which remain after a bill review by the insurance carrier has been performed.” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c) (6) (A) (v); therefore the audited charges equal \$76,426.79. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c) (6).
4. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that “The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
 - (i) a rate for workers’ compensation cases pre-negotiated between the carrier and the hospital;
 - (ii) the hospital’s usual and customary charges; and
 - (iii) reimbursement as set out in subsection (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation “This bill was reviewed in accordance with your contract with First Health.” No documentation was provided to support that a reimbursement rate was negotiated between the workers’ compensation insurance carrier Illinois National Insurance Co. and HCA Clear Lake Regional Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital’s usual and customary charges in this case, review of the medical bill finds that the health care provider’s usual and customary charges equal \$76,426.79.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c) (4) apply only to bills that do not reach the stop-loss threshold described in subsection (c) (6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c) (3) (ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission.” The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of three days results in an allowable amount of \$3,354.00.
- 28 Texas Administrative Code §134.401(c) (4) (A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Code	Itemized Statement Description	No. of Units	UNITS / Cost Per Unit	Total Cost	Cost + 10%
278	Simulator EBI 10-1385M	1	\$8,980.00	\$8,980.00	\$9,878.00
278	Bone Wax Ethicon W31	2	The requestor submitted invoices; however, they were not legible. The division finds no support for cost.	\$0.00	\$0.00
278	Encore Rod M/S 124	12		\$0.00	\$0.00
278	Encore M/S 106C	6		\$0.00	\$0.00
TOTAL ALLOWABLE				\$9,878.00	

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$640.00 for revenue code 390-Blood/Storage Processing. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 390 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.

The total reimbursement set out in the applicable portions of (c) results in a total of \$13,232.00.

Reimbursement for the services in dispute is therefore determined by the lesser of:

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	\$76,426.79
(iii)	\$13,232.00

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c) (1) and (4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$41,865.12. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor’s Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

Date

05/18/2017

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.