



TEXAS DEPARTMENT OF INSURANCE

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

GENERAL INFORMATION

Requestor Name

VISTA HOSPITAL OF DALLAS

Respondent Name

NATIONAL SURETY CORP

MFDR Tracking Number

M4-05-4716

Carrier's Austin Representative

Box Number 19

MFDR Date Received

FEBRUARY 24, 2005

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "...if the total audited charges for the entire admission are at or above \$40,000, the Carrier shall reimburse using the 'Stop-Loss Reimbursement Factor' (SLRF). The SLRF of 75% is applied to the 'entire admission'."

Amount in Dispute: \$40,801.77

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary : "The Requestor asserts it is entitled to reimbursement in the amount of \$44,155.77, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Table with 4 columns: Disputed Dates, Disputed Services, Amount In Dispute, Amount Due. Row 1: April 28, 2004 through May 3, 2004; Inpatient Hospital Services; \$40,801.77; \$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, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.304(c), 17 *Texas Register* 1105, effective February 20, 1992, sets out the provisions for insurance carrier's to dispute and audit medical bills.
3. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6246, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
4. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable Division fee guideline.
5. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - 480-Reimbursement based on the acute care inpatient hospital fee guideline per diem rate allowances.
 - 397-Allowance is based on utilization review pre-authorization.
 - A, 217-The value of this procedure is included in the value of another procedure performed on this date.
 - 249-Preauthorization not obtained.
 - Payment based on the TWCC per diem allowance for inpatient hospital stay, as documentation does not indicate any services that are unusually or costly. Pre auth obtained for a 3 day inpatient hospital confinement only.
 - F-Fee guideline MAR reduction.
 - 270-No allowance has been recommended for this procedure/service/supply please see special 'NOTE' below.
 - U-Unnecessary treatment(w/o peer review).
7. Dispute M4-05-4716 History
 - Dispute was originally decided on May 19, 2005.
 - The original dispute decision was appealed to District Court.
 - The 345th Judicial District remanded the dispute to the Division pursuant to an agreed order of remand dated July 10, 2015.
 - As a result of the remand order, the dispute was re-docketed at the Division's medical fee dispute resolution section.
 - M4-05-4716-02 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. Does a medical necessity issue exist in this dispute?
5. 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.” Neither the requestor nor the respondent in this dispute supplemented the original MDR submissions after the 3rd Court of Appeals Decision. Documentation filed by the requestor and respondent to date is 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...” In that same opinion, the Third Court of Appeals states that the stop loss exception “...was meant to apply on a case-by-case basis in relatively few cases.” 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, 28 Texas Administrative Code §134.401(c)(6)(A)(v) states that “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 respondent finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$62,963.53. The Division concludes that the total audited charges exceed \$40,000.00.
2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states 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” and further states that “independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” In its position, the requestor states, “the treatment rendered was reasonable and necessary in accordance with the usual and customary standards of the medical community for the treatment of the compensable work-related injury and under the appropriate Treatment Guidelines.”

Review of the available information and documentation finds that the requestor failed to articulate, discuss or demonstrate how the treatment rendered in this case may be considered unusually extensive when compared to similar spinal surgeries, services, or admissions. For that reason, the Division finds that the requestor did not meet the requirements of 28 Texas Administrative Code § 134.401(c)(6)(A)(ii).

3. In regards to whether the services were unusually costly, 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. 28 Texas Administrative Code §134.401(c)(6) 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’s position statement asserts that, “if the total audited charges *for the entire admission* are at or above \$40,000, the Carrier shall reimburse using the ‘Stop-Loss Reimbursement Factor’ (SLRF). The SLRF of 75% is applied to the ‘entire admission’.”

The requestor asserts that because the **billed charges** exceed the stop-loss threshold, the admission in this case is unusually costly. The Division notes that audited charges are addressed as a separate and distinct factor described in 28 Texas Administrative Code §134.401(c)(6)(A)(i). Billed charges for services do not represent the cost of providing those services, and no such relation has been established in the instant case. The requestor fails to demonstrate that the **costs** associated with the services in dispute are unusual when compared to similar spinal surgery services or admissions. For that reason, the Division rejects the requestor’s position that the admission is unusually costly based on the mere fact that the billed or audited charges “substantially” exceed \$40,000. Therefore, the requestor fails to demonstrate that the resources

used in this particular admission are unusually costly when compared to similar spinal surgery services or admissions.

4. According to the original explanation of benefits, the respondent denied reimbursement for the disputed services based upon reason code "U-Unnecessary treatment (w/o peer review)." Upon reconsideration, the respondent did not maintain the denial based upon medical necessity, but denied payment for the last two days of the stay based upon a lack of preauthorization.

28 Texas Administrative Code §134.600(h)(1) states, "The non-emergency health care requiring preauthorization includes: inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay."

28 Texas Administrative Code §133.301(a) states in part, "The insurance carrier shall not retrospectively review the medical necessity of a medical bill for treatment(s) and/or service(s) for which the health care provider has obtained preauthorization under Chapter 134 of this title."

The requestor submitted copies of preauthorization reports that support preauthorization was obtained for a three day inpatient hospitalization. Therefore, the respondent's denial based upon medical necessity is not in accordance with 28 Texas Administrative Code §133.301(a) for three of the inpatient hospital days. The remaining two days are subject to 28 Texas Administrative Code §134.600 and §133.308.

5. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) subtitled *Standard Per Diem Amount* and §134.401(c)(4) subtitled *Additional Reimbursements*. 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.

- 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 five days; however, documentation supports that the Carrier pre-authorized a length of stay of three days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$1,118.00 multiplied by 3 days result in a total allowable amount of \$3,354.00.
- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$425.00/unit for Morphine Sulfate PCA: 30mg/30ml. The requestor did not submit documentation to support what the cost to the hospital was for this pharmaceutical. For that reason, additional reimbursement for this item cannot be recommended.

The Division concludes that the total allowable for this admission is \$3,354.00. The respondent issued payment in the amount of \$3,354.00. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

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

01/14/2016
Date

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 MFDR 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 this *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.