Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

PART I: GENERAL INFORMATION

Requestor Name and Address:	MFDR Tracking #: M4-05-5091-01
PARK CENTRAL SURGICAL CENTER 12200 PARK CENTRAL DRIVE 300 DALLAS TX 75251	DWC Claim #:
	Injured Employee:
Respondent Name and Box #:	Date of Injury:
CITY OF DALLAS Box #: 42	Employer Name:
	Insurance Carrier #:

PART II: REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Requesting Party billed its usual and customary charges of $46,203.20 for these services…" "Carrier reimbursed Requesting Party $5,540.26 for these medical services as more particularly described in its EOB…" "All parties agree that since there is was no fee guideline for these medical services, Carrier is required to reimburse Requesting Party at a 'fair and reasonable rate'." "Requesting Party has contractual agreements with a network association for various carriers and employers (the 'Contract') other than Carrier and under the terms of the Contract Requesting Party is reimbursed at 57% of Requesting Party's usual and customary charges for medical services provided to claimants whose medical treatment is subject to the Texas Workers Compensation Act (the 'Act')." "There is no better evidence of 'fair and reasonable' reimbursement rates for Act covered medical services of Requesting Party than such rates that a third party has negotiated to pay Requesting Party as evidenced by the Contract." "Requesting Party believes that the appropriate 'fair and reasonable' reimbursement rate that Carrier should pay the Requesting Party for its services to Claimant in this matter is this negotiated rate under the Contract or 57% (minus, of course, the prior payments by Carrier in this matter)."

Amount in Dispute: $20,795.56

PART III: RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Regarding the dates-of-service complained of by the Requestor, Respondent asserts it paid a fair and reasonable rate to the Requestor for all services rendered to the Claimant, per Tex. Labor Code §413.011(b). The Requestor has not met its burden to prove its bills were within the parameters contemplated by the Act, and thus merits no further reimbursement."

PART IV: SUMMARY OF FINDINGS

Date(s) of Service	Denial Code(s)	Disputed Service	Amount in Dispute	Amount Due
3/16/2004	M, 426	ASC services for 29806-LT	$3427.61	$0.00
	M, 426	ASC services for 29807-LT-59	$3156.36	$0.00
	M, 426	ASC services for 29827-LT-59	$3223.16	$0.00
	M, 426	ASC services for 29824-LT-59	$3205.68	$0.00
	M, 426	ASC services for 29823-LT-59	$3267.10	$0.00
	M, 426	ASC services for 29826-LT-59	$3173.84	$0.00
	M, 426	99070	$1341.81	$0.00
			Total Due:	$0.00

PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION

Texas Labor Code §413.011(a-d), titled *Reimbursement Policies and Guidelines*, and Division rule at 28 Texas Administrative Code §134.1, titled *Use of the Fee Guidelines*, effective May 16, 2002 set out the reimbursement guidelines.

This request for medical fee dispute resolution was received by the Division on March 11, 2005. Pursuant to Division rule at 28 TAC §133.307(g)(3), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on March 21, 2005 to send additional documentation relevant to the fee dispute as set forth in the rule.

1. For the services involved in this dispute, the respondent reduced or denied payment with reason code:
   - M-Reduced to fair and reasonable.
   - 426-Reimbursed to fair and reasonable.
   - Reimbursement for facility fees (ambulatory surgical facility) are not addressed in the current Texas Official Medical Fee Schedule. Our recommendations for this specific type of service/procedure are based on our data bank. This data-bank is made up of copies of charges for the same services from other ASC providers within the State of Texas. The recommended allowance is a 'reasonable' average of these compiled charges. Our recommendation represents reimbursement for all routine supplies, medications, operating room and anesthesia time, pre-intra and post-op nursing care as well as all patient safety monitoring equipment. Based on the submitted records, our recommended allowance appears reasonable. Therefore, no additional allowance is recommended.

2. Division rule at 28 TAC §134.401(a)(4), effective August 1, 1997, 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 reimbursements."

3. This dispute relates to ambulatory surgical care services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 TAC §134.1, effective May 16, 2002, 27 TexReg 4047, which requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."

4. Texas Labor Code §413.011(d) requires that fee guidelines 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 fee 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. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

5. Division rule at 28 TAC §133.307(g)(3)(C)(iv), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including a statement of the disputed issue(s) that shall include "how the submitted documentation supports the requestor position for each disputed fee issue." Review of the submitted documentation finds that the requestor did not state how the submitted documentation supports the requestor's position for each disputed fee issue. The Division concludes that the requestor has not met the requirements of Division rule at 28 TAC §133.307(g)(3)(C)(iv).

6. Division rule at 28 TAC §133.307(g)(3)(D), effective January 1, 2003, 27 TexReg 12282, applicable to disputes filed on or after January 1, 2003, 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's position summary states that "Requesting Party believes that the appropriate 'fair and reasonable' reimbursement rate that Carrier should pay the Requesting Party for its services to Claimant in this matter is this negotiated rate under the Contract or 57% (minus, of course, the prior payments by Carrier in this matter)."
   - The requestor does not have a contractual agreement with the respondent.
   - The requestor alleges that "Requesting Party has contractual agreements with a network association for various carriers and employers (the 'Contract') other than Carrier and under the terms of the Contract Requesting Party is reimbursed at 57% of Requesting Party's usual and customary charges for medical services provided to claimants whose medical treatment is subject to the Texas Workers Compensation Act (the 'Act')." However, Texas Government Code § 2001.081 states that "The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case…" According to the Texas Rules of Evidence, Rule 1002 "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required except as otherwise provided in these rules or by law." Review of the requestor's documentation finds that the requestor did not submit a copy of the alleged contract for consideration, nor did the requestor demonstrate that any exception to this requirement applies to the documentation in this dispute.
   - In support of the requested reimbursement, the requestor submitted a redacted EOB for ASC services for knee surgery. The services in dispute are ASC services for shoulder surgery. The reimbursement methodology is not described on the EOBs. The requestor did not provide documentation to support whether such payment, as reflected in the sample EOB, was typical for the services in dispute.
   - The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement.

- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of Division rule at 28 TAC §134.1.
- The Division has previously found that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:

  "A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources."

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

7. The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307(g)(3)(C), and §133.307(g)(3)(D). The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is $0.00.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code § 413.011(a-d), § 413.031 and § 413.0311
28 Texas Administrative Code §133.1, §133.307, §134.1, §134.401
Texas Government Code, Chapter 2001, Subchapter G

PART VII: DIVISION DECISION

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 not entitled to additional reimbursement for the services involved in this dispute.

DECISION:

		11/9/2010
Authorized Signature	Medical Fee Dispute Resolution Officer	Date
		11/9/2010
Authorized Signature	Medical Fee Dispute Resolution Manager	Date

PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (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. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division rule at 28 TAC §148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed $2,000. If the total amount sought exceeds $2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

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