



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 and Address

KINDRED HOSPITAL HOUSTON NORTHWEST
11297 FALLBROOK DRIVE
HOUSTON TX 77065

Carrier's Austin Representative Box
21

Respondent Name

HARRIS COUNTY

MFDR Date Received

APRIL 4, 2006

MFDR Tracking Number

M4-06-4937-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated March 1, 2006: "Facts: a) Patient...was admitted & treated for a Closed Head Injury and Septicemia, not Rehabilitation. b) Kindred Hospital is a licensed as an 'acute care facility', not a long term care facility. c) Texas Workers Compensation guidelines is not \$750 per day."

Requestor's Supplemental Position Summary Dated June 8, 2006: "The charges for the above account are according to our standard chargemaster, as it would be illegal to bill different payors different amounts for the same services, thus, these are clearly our 'usual and customary charges'...the patient was admitted for rehabilitation, status post 'motor vehicle accident'. However, once admitted...it was necessary to transfer [Claimant] to the ICU...for a period of 8 days, and he also was receiving 24 hour oxygen for a period of 7 days. These are not usual occurrences for a patient admitted for rehabilitation, however, the medical field is not always predictable, and patient do, in fact, take a turn for the worst when admitted for something as simple as rehabilitation."

Amount in Dispute: \$16,397.25

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated April 14, 2006: "Harris & Harris represents Harris County in this matter."

Response Submitted by: Harris & Harris

Respondent's Supplemental Position Summary Dated June 2, 2006: "Division Rule 134.401(b)(2)(A) requires a hospital to bill its usual and customary charges for the services provided. The Requestor failed to supply documentation supporting that its charges were, in fact, its usual and customary amount. Also, as the Requestor has failed to document exactly how or why the services it provided were unusually extensive or costly, it is due no further reimbursement."

Response Submitted by: Harris & Harris

Respondent's Supplemental Position Summary Dated April 15, 2013: "Requestor has invoked the Stop-Loss Exception contained within now repealed, Division Rule 134.401, though no surgical procedure appears to have

been performed from review of the medical records. The patient appears to have received inpatient rehabilitative services...As evidenced by the EOBs, the Respondent reimbursed the Requestor according to applicable fee schedule allowance. The applicable fee schedule allowance is a fair and reasonable assessment of a \$750.00 a day per diem amount for the length of the hospital stay...In the instant case, the patient was preauthorized for ten days of inpatient rehabilitation. The patient received twenty-five days of rehabilitation. The provider does not explain in their response how the treatment rendered in the hospital during recovery was unusually costly for the provider. The Requestor has provided no justification how the *admission involved unusually costly or extensive services*. The medical records submitted show routine and expected treatment rendered, the costs of which are provided for in the Texas Per Diem amount.”

Response Submitted by: Thornton, Biechlin, Segrato, Reynolds & Guerra, L.C.

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
May 16, 2005 through June 10, 2005	Inpatient Hospital Services	\$16,397.25	\$8,520.00

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 §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 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.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- W10-No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- W4G-No additional reimbursement allowed after review of appeal/reconsideration. Medical records were not submitted with reconsideration request.

Issues

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

Findings

This dispute relates to inpatient 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 division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. 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. The respondent raises the issue of preauthorization in the position summary stating “In the instant case, the patient was preauthorized for ten days of inpatient rehabilitation. The patient received twenty-five days of rehabilitation”. A review of the submitted explanation of benefits finds that the respondent did not deny or reduce payment for the disputed services based upon a lack of preauthorization. 28 Texas Administrative Code §133.307(j)(2) states “The response shall address only those denial reasons presented to the requestor prior to the date the request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of a request. Any new denial reasons or defenses raised shall not be considered in the review.” Therefore, a preauthorization issue does not exist in this dispute.
2. 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 \$78,105.00. The Division concludes that the total audited charges exceed \$40,000.
3. 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).
4. 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).
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) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *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...” Review of the submitted documentation finds that the length of stay for this admission was 17 medical days and 8 ICU/CCU; therefore the standard per diem amounts of \$870.00 and \$1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of \$27,270.00.

The division concludes that the total allowable for this admission is \$27,270.00. The respondent issued

payment in the amount of \$18,750.00. Based upon the documentation submitted, additional reimbursement in the amount of \$8,520.00 is 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 additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$8,520.00 plus applicable accrued interest per 28 Texas Administrative Code §134.803, due within 30 days of receipt of this Order.

Authorized Signature

_____	_____	02/13/2014
Signature	Medical Fee Dispute Resolution Officer	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 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.