Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TWELVE OAKS MEDICAL CENTER
C/o FRANCIS, ORR & TOTUSEK LLP
103 EAST VIRGINIA SUITE 203
MCKINNEY TX 75069

Carrier's Austin Representative Box
21

MFDR Date Received
July 17, 2006

Respondent Name
NATIONAL UNION FIRE INSURANCE CO

MFDR Tracking Number
M4-06-7092-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary dated July 14, 2006: "…The total sum billed was $81,906.96…There was no on-site audit performed by the insurance carrier…Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of $40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Broadspire Services, Inc. do not conform to the reimbursement section of Rule 134.401…In closing, it is the position of Twelve oaks Medical Center that all charges relating to the admission of [iw] are due and payable…"

Requestor's Supplemental Position Summary dated June 22, 2007: "NOTICE OF SUBSTITUTION OF COUNSEL…TOMC has also requested that Francis, Orr & Totusek, L.L.P. and the undersigned be substituted in as counsel in place of Daniel T. Hollaway and the firm of Hollaway & Gumbert, P.C. in this matter…"

Amount in Dispute: $48,418.19

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "It is the carrier's position that the hospital admission was not 'unusually costly' or unusually extensive' and therefore does not trigger the stop loss methodology…"

Response submitted by: Broadspire on behalf of National Union Fire Insurance

Respondent's Supplemental Response dated April 15, 2013: "…The Requestor billed $81,906.96 for facility fees incident to an inpatient surgical procedure; the dates of service are July 22, 2013 [sic] through July 26, 2005. Respondent reimbursed $13,007.83. ..In the instant case, the patient underwent a lumbar surgery, which the surgeon indicated in his operative report was well tolerated…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…The Requestor has not justified its entitlement to further reimbursement, and is therefore not due any further funds. Thornton, Biechlin, Segrato, Reynolds and Guerra, L.C., represents National Union Fire Insurance in this matter…"

Response Submitted by: Thornton, Biechlin, Segrato, Reynolds & Guerra, LC

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
July 22 through 26, 2005	Inpatient Hospital Services	$48,418.19	$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 307 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, set out the procedures for resolving medical fee disputes.

2. 28 Texas Administrative Code §134.401, 22 Texas Register 6264 effective August 1, 1997, applicable to the disputed date of admission sets out the fee guidelines for inpatient services rendered in an acute care hospital.
   - Effective July 13, 2008, the Division's rule at former 28 Tex. Admin. Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 TexReg 5319, 5220 (July 4, 2008).
   - Former 28 Tex. Admin. Code § 134.401(a) (1) specified, in pertinent part: "This guideline shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 TexReg 6264, 6306 (July 4, 1997).

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

   Explanation of Benefits
   - W1- workers compensation state fee schedule adjustment
   - W1 – WC state fee sched adjust. Submitted services are considered inclusive under the state per diem guidelines
   - 62(910-049) – payment denied/reduced for absence of, or exceeded, pre-certification/authorization
   - 5 – the procedure code/bill is inconsistent with the place of service
   - 080-001 – review of this bill has resulted in an adjusted reimbursement for the entire bill of $0.00
   - 97 – the benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated
   - 45 – charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement
   - 112-002 – the provider has been selected for contracting purposes using standard Focus logic
   - Note: paid in accordance with PPO contract: First health network owned/accessed

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 medical dispute resolution (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 $81,906.96. The division concludes that the total audited charges exceed $40,000.

2. The requestor in its position statement asserts that "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of $40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%". The requestor 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 constitute 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 section (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 "45 – charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement" and "112-002 – the provider has been selected for contracting purposes using standard Focus logic" and "paid in accordance with PPO contract: First health network owned/accessed". Coventry Health Care submitted a copy of a contract between Focus Healthcare Management and Twelve Oaks Medical Center; however, no documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier National Union Fire Insurance Company and Twelve Oaks 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 $81,906.96.

   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 four days per the UB-92. The surgical per diem rate of $1,118.00 multiplied by the length of stay of four days results in an allowable amount of $4,472.00.

- 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 $329.00/unit for Vancomycin 1gm and $272.00/unit for Gelfoam 100. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, reimbursement for these items cannot be recommended.

- 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):

Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
81389991	Locking caps	SR90D locking cap, single	1@ $169.92	$169.92	$186.91
	50mm hex rod	SR90D 5.5x50mm spinal rod	1 @ $200.16	$200.16	$220.18
	6.75x35mm scrw	SR90D multiAngleScrew 6.75x3	1 @ $799.92	$799.92	$879.91
	6.75x40mm scrw	SR90D multiAngleScrew 6.75x4	1 @ $799.92	$799.92	$879.91
	7.75x35mm scrw	SR90D multiAngleScrew 7.75x3	1 @ $799.92	$799.92	$879.91
81312878	Bn grft bmp lg	Infuse bone graft large	1 @ $4990.00	$4990.00	$5489.00
			TOTAL ALLOWABLE	$8535.82	

The total reimbursement set out in the applicable portions of (c) results in $4,472 + $8535.82 for a total of $13,007.82.

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

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	$81,906.96
(iii)	$13,007.82

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c) (4) represents the lesser of the three considerations. The respondent issued payment of $13,007.83. 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

		April , 2013
Signature	Medical Fee Dispute Resolution	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.