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

RENAISSANCE HOSPITAL
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Respondent Name
GRAY INSURANCE COMPANY

Carrier's Austin Representative Box
Box Number 19

MFDR Tracking Number
M4-08-0339-01

MFDR Date Received
September 13, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "…the fair and reasonable reimbursement amount for this hospital outpatient admission should be commensurate with the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as this admission for those admissions involving the same Principal Diagnosis Code and Principal Procedure Code."

Amount in Dispute: $5,545.74

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The billing in dispute has been paid at a fair and reasonable rate in accordance with TWCC guidelines, policies and rules, and the Texas Labor Code. Carrier has determined that $2,544.96 represents an amount greater than or equal to the fair and reasonable reimbursement for this service. The provider must therefore prove that the reimbursement received is not fair and reasonable… Because Requestor has failed to prove that the reimbursement received is not fair and reasonable, Requestor is not entitled to further reimbursement."

Response Submitted by: Flahive, Ogden & Latson, 504 Lavaca, Suite 1000, Austin, Texas 78701

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 22, 2006	Outpatient Services	$5,545.74	$1,568.61

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 §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1, effective May 2, 2006, 31 *Texas Register* 3561, requires that, in the

absence of an applicable fee guideline, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection §134.1(d) which states that "Fair and reasonable reimbursement: (1) is consistent with the criteria of Labor Code §413.011; (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available."

3. 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.
4. U.S. Bankruptcy Judge Michael Lynn issued a "STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS," dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers' compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor's estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer's behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.
5. By letter dated August 2, 2011, the attorney for the requestor provided *REQUESTOR'S AMENDED POSITION STATEMENT (RENAISSANCE HOSPITAL – GROVES)* that specified, in pertinent parts, an "Additional Reimbursement Amount Owed" of $1,568.61 and an "alternative" "Additional Reimbursement Amount Owed" of $2,408.26. The Division notes that the amount in dispute of $5,545.74 specified above is the original amount in dispute as indicated in the requestor's *TABLE OF DISPUTED SERVICES* submitted prior to the *REQUESTOR'S AMENDED POSITION STATEMENT*.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
   - w4 – Additional payment made on appeal/reconsideration
   - w3 – No additional reimbursement allowed after review of appeal/reconsideration.
   - B15 – Included in the ASC Group Rate.
   - W10 – No maximum allowable defined by fee guideline. Reimbursement based on insurance carrier fair and reasonable reimbursement methodology.
   - W1 – Payment based on Medicare's ASC reimbursement amount multipled by 213.3% per DWC Rule 134.402 effective for DOS on or after 9/1/04.

Findings

1. The respondent's supplemental response asserts that "Requestor's attempt to raise an entirely new rationale and new claim for a 'fair and reasonable' allowance for outpatient services must be denied." In support of this assertion, the respondent states "The time for staking out a position is during the informal initial bill submission and reconsideration process." No documentation was found to support the respondent's assertion that the requestor is limited to arguing at Medical Fee Dispute Resolution only those positions presented to the carrier during the bill submission and reconsideration process. The Division notes that while 28 Texas Administrative Code §133.307(d)(2)(B), 31 *Texas Register* 10314, prohibits the respondent from raising new denial reasons or defenses that were not presented to the requestor prior to the filing of the request for dispute resolution, no similar bar is set against the requestor. The respondent further states that "This unsolicited document does not qualify as a supplemental statement under Division rules… upon filing of its request for dispute resolution, Requestor was then required to provide a position statement which included Requestor's reasoning as to why its disputed fee should be paid in the amount claimed, how the Labor Code, Division rules and fee guidelines impact their claim and how the submitted documentation supported their position. Requestor did these things but not for these newly created positions… Certainly, any requestor or respondent should be able to timely provide any supplemental responses and evidence to support its stated position. But, there is no rule which allows such a belated and complete change of position… Requestor's entirely new claim found within its recent 'Amended' statement of position… is tardy by years and should not be considered." No documentation was found to support the respondent's assertion that the submitted information was untimely. While Division rules set timely filing limits for the initial request and response, there is no time limitation as to the submission of supplemental information. The Division notes that the medical fee dispute process has allowed, for many years, both parties to a dispute to submit additional information until

the assigned medical dispute resolution officer begins adjudication of the dispute. The Division has previously stated in the adoption preamble to 28 Texas Administrative Code §133.307, 31 *Texas Register* 10314, that "The Division must be able to obtain relevant and necessary information in order to determine fundamental issues regarding fee disputes." The supplemental filings in the present dispute are directly related to the "fair and reasonable" fee reimbursement methodology at issue. Moreover, the requestor noted in its amended position statement that "it is necessary and proper to update the file because the Requestor has a new attorney of record after the health care provider was placed in bankruptcy." The respondent has had notice and opportunity to respond to all of the requestor's filings in this dispute, and has availed itself of the opportunity to do so. Therefore the submitted information will be considered in this review.

2. 28 Texas Administrative Code §133.307(c)(2)(G), effective December 31, 2006, 31 *Texas Register* 10314, applicable to disputes filed on or after January 15, 2007, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable." Review of the submitted documentation finds that:
   - The requestor's amended position statement asserts that "the fair and reasonable reimbursement amount for this hospital outpatient admission should at least be commensurate with the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as this admission for those admissions involving the same Principal Diagnosis Code and Principal Procedure Code."
   - In support of the requested reimbursement methodology the requestor states that "Ordering additional reimbursement based on the average amount paid system-wide in Texas achieves effective medical cost control because it prevents overpayment... creates an expectation of fair reimbursement; and… encourages health care providers to continue to offer quality medical care to injured employees… Ordering additional reimbursement for at least the average amount paid for a hospital outpatient admission during the same year of service and involving the same Principal Diagnosis Code and Principal Procedure Code ensures that similar procedures provided in similar circumstances receive similar reimbursement… The average amount paid for similar admissions as put forward by the Requestor is based on a study of data maintained by the Division."
   - The Division notes that it has utilized similar data to determine "fair and reasonable" fee guidelines. See, for example, the adoption preamble to the *Hospital Facility Fee Guideline—Outpatient* at 28 Texas Administrative Code §134.403, 33 *Texas Register* 400-407, which specified, in pertinent parts, that "In maintaining a medical billing database, the Division requires carriers to submit billing and reimbursement information to the Division on a regular basis… The Division provided Milliman with the 837 data set for CY 2005, which included information on approximately 12,000 inpatient billing lines and 166,000 hospital outpatient billing lines… Milliman estimated that CY 2005 Texas workers' compensation outpatient facility reimbursement represented approximately 186 percent of Medicare allowable levels for outpatient services… The Division considered the issues of medical cost containment as prescribed by Labor Code §413.011… Research conducted by the Workers' Compensation Research Institute concludes that... hospital outpatient payments per claim in Texas were lower than the 13-state median studied… Based on all of these factors… The Division adopts PAFs of 200 percent and 130 percent of Medicare reimbursement for use in determining Texas workers' compensation outpatient facility service reimbursement."
   - The requestor submitted documentation to support the state-wide, annual, average reimbursement in Texas for the principal diagnosis code and principal procedure code of the disputed services during the year that the services were rendered.
   - The requestor has explained and supported that the requested reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.

   The request for additional reimbursement is supported. Thorough review of the submitted documentation finds that the requestor has discussed, demonstrated, and justified that the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as the disputed admission for those admissions involving the same principal diagnosis code and principal procedure code is a fair and reasonable rate of reimbursement for the services in dispute.

3. In the alternative, the requestor proposes that "it is justifiable to order additional reimbursement under the Hospital Facility Fee Guidelines – Outpatient because the Division's new fee guidelines, while not in effect at the time, are presumptively fair and reasonable reimbursement under the law and data from the Medicare Outpatient Prospective Payment System for this date of service is available for calculating the amount due." Review of the submitted documentation finds that:
   - In support of the alternative requested reimbursement methodology the requestor states that "The data necessary to calculate the Maximum Allowable Reimbursement is readily available from the Medicare Outpatient Prospective Payment System. Therefore, the new fee guidelines as adopted in 28 TEX. ADMIN. CODE § 134.403 provide a presumptive measure for the fair and reasonable reimbursement amount."

- The requestor did not submit documentation to support the Medicare payment calculation for the services in dispute.
- The fee guidelines as adopted in 28 Texas Administrative Code §134.403 were not in effect during the time period when the disputed services were rendered.
- The Division disagrees that the fee guidelines as set forth in §134.403 are "presumptively fair and reasonable reimbursement under the law" for dates of service prior to the date the rule became effective. No documentation was found to support such a presumption under law.
- While the Division has previously found that Medicare patients are of an equivalent standard of living to workers' compensation patients (22 *Texas Register* 6284), Texas Labor Code §413.011(b) requires that "In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d)… This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services."
- The requestor did not discuss or present documentation to support how applying the proposed payment adjustment factors as adopted in 28 Texas Administrative Code §134.403, effective for dates of service on or after March 1st, 2008, would provide fair and reasonable reimbursement for the disputed services during the time period that treatment was rendered to the injured worker.
- The requestor did not submit nationally recognized published studies, published Division medical dispute decisions, or documentation of values assigned for services involving similar work and resource commitments to support the alternative requested reimbursement.
- The requestor did not support that the requested alternative reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for the alternative additional amount of $2,408.26 is not supported. The requestor has not demonstrated or presented sufficient documentation to support that the alternative additional amount requested would provide a fair and reasonable rate of reimbursement for the services in dispute.

4. The respondent's supplemental response asserts that "A carrier/self-insured has no burden of proof in this proceeding." However, in the preamble to the adoption of 28 Texas Administrative Code §133.307, 31 *Texas Register* 10314, the Division addressed a commenter that opposed §133.307(d)(2)(A)(iv)(V) expressing a concern that the rule shifts the burden of proving fair and reasonable reimbursement from the health care provider to the carrier. The Division responded that "The Division disagrees this provision places the burden of proving fair and reasonable reimbursement on the carrier only. Section 133.307 requires the provider and carrier to submit documentation that discusses, demonstrates, and justifies that the payment amount being sought by the provider and reimbursed by the carrier is a fair and reasonable rate. Further, the requirement that carriers provide documentation supporting a fair and reasonable reimbursement is consistent with the requirements of 28 TAC §134.1 and Labor Code §413.011." In the present dispute, the requestor has discussed, demonstrated and justified that the amount being sought is a fair and reasonable rate. This dispute involves health care for which the Division has not established a MAR; therefore, per §133.307(d)(2)(A)(iv)(V) the respondent is similarly required to discuss, demonstrate and justify that the amount paid is a fair and reasonable rate of reimbursement for the services in dispute.
5. 28 Texas Administrative Code §133.307(d)(2)(A)(iv)(V), effective December 31, 2006, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, requires the respondent to provide "documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable reimbursement in accordance with Labor Code §413.011 and §134.1 of this title if the dispute involves health care for which the Division has not established a MAR, as applicable." Review of the submitted documentation finds that:
   - The respondent's position statement does not articulate a methodology under which fair and reasonable reimbursement should be calculated.
   - The respondent did not explain the methodology used to calculate the reimbursement amount for the services in dispute.
   - The respondent did not submit documentation to support the reimbursement calculations.
   - The respondent did not submit information to support that the reimbursement methodology used to calculate the reimbursement provides for a fair and reasonable reimbursement for the services in dispute.
   - The respondent's position statement asserts that "By definition, ambulatory surgery is appropriate in medical situations requiring treatment that is less intensive than inpatient surgery… Medicare sets rates for ambulatory surgery generally lower than the acute care inpatient hospital per diems. In SOAH Docket Nos. 453-01-1179.M4 & 453-01-1263.M4, a payment methodology for ASC services based upon Medicare-approved reimbursement rates was found to constitute fair and reasonable reimbursement."
   - The Division notes that the disputed services were performed in a facility licensed as an acute care hospital,

not in an ambulatory surgical center.

- The respondent did not explain or submit documentation to support how the services in dispute are comparable to services performed in an ambulatory surgical center.
- The respondent did not discuss or explain how the amount paid represents a fair and reasonable reimbursement for the services in dispute.
- The respondent did not submit documentation to support that the amount paid is a fair and reasonable rate of reimbursement for the disputed services.
- The respondent did not submit nationally recognized published studies, published Division medical dispute decisions, or documentation of values assigned for services involving similar work and resource commitments to support that the amount paid is a fair and reasonable reimbursement for the services in dispute.
- The respondent did not explain how the amount paid satisfies the requirements of 28 Texas Administrative Code §134.1.

6. The respondent's position is not supported. Thorough review of the submitted documentation finds that the respondent has not demonstrated or justified that the amount paid is a fair and reasonable rate of reimbursement for the services in dispute. The Division concludes that the respondent has not met the requirements of 28 Texas Administrative Code §133.307(d)(2)(A)(iv)(V).
7. The Division finds that the documentation submitted in support of the fair and reasonable methodology proposed by the requestor based on the average amount paid by all insurance carriers in the same year for admissions involving the same principal diagnosis code and principal procedure code as the services in dispute is the best evidence in this dispute of an amount that will achieve a fair and reasonable reimbursement for the services in this dispute. Reimbursement will therefore be calculated as follows. Review of the medical bill finds that the principal diagnosis code for the disputed services is 836.0. The principal procedure code is 81.47. The requestor submitted documentation to support that the average, state-wide reimbursement for this diagnosis code and procedure code performed in 2006 was $4,113.57. This amount less the amount previously paid by the respondent of $2,544.96 leaves an amount due to the requestor of $1,568.61. This amount is recommended.

Conclusion

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 requestor has established that additional reimbursement is due. The Division concludes that the carrier's response was not submitted in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the respondent failed to support that the amount paid by the insurance carrier is a fair and reasonable reimbursement in accordance with Division rule at 28 Texas Administrative Code §134.1. As a result, the amount ordered is $1,568.61.

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 $1,568.61 plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

Authorized Signature

	Grayson Richardson	August 14, 2012
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.