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

AMENDED MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address
TWELVE OAKS MEDICAL CENTER
C/O FRANCIS, ORR & TOTUSEK, LLP
500 N AKARD ST STE 2550
DALLAS TX 75201

Carrier's Austin Representative Box
#47

Respondent Name
CONTINENTAL CASUALTY CO

MFDR Date Received
FEBRUARY 11, 2008

MFDR Tracking Number
M4-08-3658-02 (formerly M4-08-3658-01)

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated February 8, 2008: "Twelve Oaks Medical Center billed its usual and customary charges for its services. The total sum billed was $107,967.14…Hartford acknowledged receiving the Hospital's claim on April 2, 2007, and the claim was audited and processed on or about April 10, 2007. On or about April 16, 2007, the Hospital received an Explanation of Reimbursement ('EOR') from the Hartford and a payment $9,937.38. Hartford's EOR does not indicate an audit of any type. The EOR states that many charges were 'considered inclusive under the state per diem guidelines' The EOR further cites charges as 'reduced to fair and reasonable in addition to the normal per diem reimbursement'. In addition, the bill was allegedly reviewed in accordance with the Hospital's contract with First Health…This bill is in excess of the $40,000 stop-loss threshold, even excluding implant fees…ACIHFG defines fair and reasonable payment as calculated at 75% for the entire admission or $80,975.35 ($107,967.14 x 75%). This amount, less an additional 8% discount under the First Health contract, less Hartford's payment of $9,937.38, leaves a remaining balance due of $64,559.95 due under DWC Stop-loss guidelines and the First Health agreement."

Amount in Dispute: $64,559.95

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated February 28, 2008: "The hospital fee guideline proves two criteria that must be met for a bill to be reimbursed under this section: (i.) the total audited charge for a hospital admission must exceed $40,000 AND (ii.) the admission must be one that required 'unusually extensive services.' The stop-loss method should not apply to patients that did not require unusually costly or extensive services, even if the total audited charges exceed $40,000…Also, all methods of determining reimbursement must meet the statutory requirement set forth in the Texas Labor Code Sec. 413.011 (d) '***Guidelines for medical service fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control***.' It is Carrier's position they have correctly reimbursed the provider using the per diem methodology and no additional reimbursement should be made."

Response Submitted by: The Hartford

Respondent's Supplemental Position Summary Dated June 27, 2012: "There is no evidence that Twelve Oaks Medical Center (requestor) provided unusually extensive and costly services in this case that would not normally be provided for someone receiving this type of surgery. There were no co-morbidities, complications, infections, medical errors, or unplanned events that required requestor to provide unusually costly and extensive services. The records show that the surgery went as planned with no complications and that the claimant did quite well. Requestor has not identified the unusually extensive services it allegedly provided and the unusual

cost of those services. The services requestor rendered to the claimant were not unusually extensive in comparison to the services normally rendered by hospitals to patients having the same type of surgery…The requestor seeks additional reimbursement of $64,559.95 under the stop-loss exception to the 1997 Inpatient Hospital Fee Guideline. The claimant was admitted to requestor's facility on February 16, 2007 for a lumbar spinal fusion surgery. The claimant was discharged on February 20, 2007, four days later…Respondent reimbursed requestor a total of $9,937.38 under the standard per diem plus carve outs reimbursement method…The inpatient hospital facility services provided by requestor were not unusually extensive and costly. Therefore, requestor is not entitled to reimbursement under the stop-loss exception but should instead be reimbursed under the standard per diem reimbursement method."

Response Submitted by: Stone, Loughlin & Swanson, LLP

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
February 16, 2007 through February 20, 2007	Inpatient Hospital Services	$64,559.95	$0.00

FINDINGS AND DECISION

This **amended** findings and decision supersedes all previous decisions rendered in this medical payment dispute involving the above requestor and respondent.

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, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, 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 for the date of admission in dispute.
    - Effective July 13, 2008, the Division's rule at former 28 Texas Administrative 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 Texas Register 5319, 5220 (July 4, 2008).
    - Former 28 Texas Administrative Code § 134.401(a)(1) specified, in pertinent part: "This guidelines 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 Texas Register 6264, 6306 (July 4, 1997).
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, 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

- W1 – WORKERS COMP STATE FEE SCHED ADJUST. SUBMITTED SERVICES WERE REPRICED IN ACCORDANCE WITH STATE PER DIEM GUIDELINES.
- W1 – WC STATE FEE SCHED ADJUST. SUBMITTED SERVICES ARE CONSIDERED INCLUSIVE UNDER THE STATE PER DIEM GUIDELINES.
- Paid in accordance with: FIRST HEALTH OWNED/ACCESSED CONTRACT.
- W1 – WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT. WHEN MEDICALLY NECESSARY, IMPLANTABLES & ORTHOTICS AND PROSTHETICS ARE REIMBURSED AT COST TO THE HOSPITAL PLUS 10% PER THE TEXAS ACUTE CARE INPATIENT HOSPITAL FEE GUIDELINE.
- W1 – WRKS COMP STATE FEE SCHEDULE ADJUSTMENT. REDUCED TO FAIR AND REASONABLE IN ADDITION TO THE NORMAL PER DIEM REIMBURSEMENT ACCORDING TO RULE 134.401(C)(4)(B).
- 45 – CHARGES EXCEED YOUR CONTRACTED/LEGISLATED FEE ARRANGEMENT. THE CHARGES

HAVE BEEN PRICED IN ACCORDANCE TO YOUR FEE FOR SERVICE CONTRACT WITH FIRST HEALTH. IF YOU HAVE ANY QUESTIONS, PLEASE VISIT WWW.FIRSTHEALTH.COM OR CALL 800-937-6824.

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 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. 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 $107,967.14. The division concludes that the total audited charges exceed $40,000.

2. 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).

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 constitutes 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 "Paid in accordance with: FIRST HEALTH OWNED/ACCESSED CONTRACT." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier Continental Casualty Co. 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 $107,967.14.

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.

- 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 three surgical days and one ICU/CCU; therefore the standard per diem amounts of $1,118.00 and $1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of $4,914.00.
- 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)."
- A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at $34,352.69.
- Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399)." A review of the submitted hospital bill finds that the requestor billed $480.00 for revenue code 390-Blood Processing and $1,210.00 for revenue code 391-Blood Administration. 28 Texas Administrative Code §133.307(g)(3)(D), 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 does not demonstrate or justify that the amount sought for revenue codes 390 and 391 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 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 $272.00/unit for Gelfoam 100. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals. For that reason, additional reimbursement for these items cannot be recommended

The total reimbursement set out in the applicable portions of (c) results a total of $4,914.00.

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

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	$107,967.14
(iii)	$4,914.00

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 in the amount of $9,937.38. 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.

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 additional reimbursement for the services in dispute.

Authorized Signature

		05/22/2013
Signature	Medical Fee Dispute Resolution Officer	Date
		05/22/2013
Signature	Medical Fee Dispute Resolution Manager	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.