



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 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

KINDRED HOSPITAL DALLAS

Respondent Name

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

MFDR Tracking Number

M4-16-1925-01

Carrier's Austin Representative

Box Number 15

MFDR Date Received

March 7, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Kindred is a participating provider through its contract with CorVel and, as such, expected to receive payment for its care and treatment of the Patient at the CorVel contract rate of 75% of billed charges. . . . Kindred is a long-term acute care hospital, and therefore the Medicare-based fee schedule . . . applying 143% of the Medicare fee guideline, is inapplicable. . . . Here, the fair and reasonable rate was reflected in the rate set forth in the CorVel contract, providing for 75% of billed charges."

Amount in Dispute: \$35,532.87

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The request for medical dispute resolution is not timely. A provider must request medical dispute resolution on a fee issue . . . within one year of the date of service. . . . This claim is not subject to a Certified Workers' Compensation Healthcare Network. . . . Requestor incorrectly asserts that it should be reimbursed based on a contract between itself and CorVel. This assertion is incorrect for a number of reasons . . . CorVel only role in the claim was to service as a utilization review agent. Its independent contract with health care providers have no applicability to this claim. This carrier is not a party to that contract . . . The contract relied upon by Requestor, if applicable, would be an 'informal or voluntary network' contract. 'Informal or voluntary networks' were barred from Texas workers' compensation claims after January 1, 2011."

Response Submitted by: Flahive, Ogden & Latson, Attorneys At Law, P.C.

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: January 23, 2015 to March 6, 2015, Inpatient Hospital Services, \$32,532.87, \$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable 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 §102.3 sets out general rules regarding computation of time.
3. 28 Texas Administrative Code §102.5 sets out general rules regarding Division communications.
4. 28 Texas Administrative Code §134.1 sets out general provisions regarding medical reimbursement.
5. Texas Labor Code §413.011 sets forth general provisions regarding reimbursement policies and guidelines.
6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - P12 – Workers' compensation jurisdictional fee schedule adjustment
  - P13 – Payment reduced or denied based on workers compensation jurisdictional guidelines or payment policies.
  - W3 – REQUEST FOR ADDITIONAL ALLOWANCE WAS DENIED.

## **Issues**

1. Did the requestor timely file the request for medical fee dispute resolution?
2. Are the disputed services subject to a contractual agreement between the parties to this dispute?
3. What is the applicable rule for determining reimbursement for the disputed services?
4. Is the requestor entitled to additional reimbursement?

## **Findings**

1. 28 Texas Administrative Code §133.307(c)(1) states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

Per 28 Texas Administrative Code §102.3(a)(3), if the last day of any period is not a working day, the period is extended to include the next day that is a working day.

Per 28 Texas Administrative Code §102.5(f)(1), unless the great weight of evidence indicates otherwise, written communications received by the Commission shall be deemed to have been sent on the date received if sent by fax, personal delivery or electronic transmission or the date postmarked if sent by United States Postal Service regular mail.

The date of the services in dispute is January 23, 2015 through March 6, 2015. The request for medical fee dispute resolution was received by courier service delivery in the Medical Fee Dispute Resolution (MFDR) Section on March 7, 2016. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MFDR Section; consequently, the requestor has waived the right to medical fee dispute resolution for disputed dates of service January 23, 2015 through March 4, 2015.

However, March 5, 2016 and March 6, 2016 were not working days. Therefore, pursuant to Rule §102.3(a)(3), the filing deadline for service dates March 5 and March 6, 2015 was extended to March 7, 2016. Accordingly, the request for medical fee dispute resolution for these two dates was timely received by the Division and will be reviewed per applicable Division rules and fee guidelines.

2. The requestor states, "Kindred is a participating provider through its contract with CorVel and, as such, expected to receive payment for its care and treatment of the Patient at the CorVel contract rate of 75% of billed charges."

The respondent states:

This claim is not subject to a Certified Workers' Compensation Healthcare Network. . . . Requestor incorrectly asserts that it should be reimbursed based on a contract between itself and CorVel. This

assertion is incorrect for a number of reasons . . . CorVel only role in the claim was to service as a utilization review agent. Its independent contract with health care providers have no applicability to this claim. This carrier is not a party to that contract . . . The contract relied upon by Requestor, if applicable, would be an 'informal or voluntary network' contract. 'Informal or voluntary networks' were barred from Texas workers' compensation claims after January 1, 2011.

The requestor submitted a copy of a contract between CorVel Corporation and Kindred Healthcare Hospital Division to support its assertion of an applicable contracted fee arrangement at 75% of billed charges. Review of the submitted documentation finds no information to support that the insurance carrier, Indemnity Insurance Company of North America, was a party to the alleged contract.

The provisions relating to informal and involuntary workers compensation network contracts found in Labor Code §413.011(d) expired on January 1, 2011. No documentation was presented to support that the alleged contract was in force after December 31, 2010.

Based on the submitted documentation, the Division concludes that the disputed services were not subject to a contracted rate between the parties to this dispute.

3. This dispute regards the facility medical services of a long-term acute care hospital for which the Division has not established a medical fee guideline. Accordingly, reimbursement for the disputed services is subject to the general reimbursement provisions of 28 Texas Administrative Code §134.1, which requires that in the absence of an applicable fee guideline or a negotiated contract, medical reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with a fair and reasonable reimbursement amount as specified in §134.1(f).

28 Texas Administrative Code §134.1(f) requires that:

Fair and reasonable reimbursement shall:

- (1) be consistent with the criteria of Labor Code §413.011;
- (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and
- (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available.

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. The commissioner shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.

The Texas Supreme Court has summarized the statutory standards and criteria applicable to "fair and reasonable" fee determinations as requiring "methodologies that determine fair and reasonable medical fees, ensure quality medical care to injured workers, and achieve effective cost control." *Texas Workers' Compensation Commission v. Patient Advocates of Texas*, 136 South Western Reporter Third 656 (Texas 2004).

Additionally, the Third Court of Appeals has held, in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 South Western Reporter Third 104 (Texas Appeals – Austin 2003, petition for review denied), that "each . . . reimbursement should be evaluated according to [Texas Labor Code] section 413.011(d)'s definition of 'fair and reasonable' fee guidelines as implemented by Rule 134.1 for case-by-case determinations."

4. 28 Texas Administrative Code §133.307(c)(2)(O), 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 in accordance with §134.1 . . . when the dispute involves health care for which the division has not established a maximum allowable reimbursement (MAR) or reimbursement rate, as applicable."

Review of the submitted documentation finds that:

- The requestor states:

The Division of Workers' Compensation (the "DWC") has not issued fee guidelines applicable to the long-term acute care Kindred provided to the Patient. Thus, even in the absence of Kindred's negotiated contract with CorVel, the claim should not have been paid pursuant to the inapplicable fee guideline relied upon by Definiti, but at a rate that is 'fair and reasonable.' . . . Here, the fair and reasonable rate was reflected in the rate set forth in the CorVel contract, providing for 75% of billed charges.
- For the reasons stated above, the CorVel contract is not applicable to the services in this dispute. However, the requestor further asserts that the contract is evidence of a fair and reasonable rate, stating:

75% of billed charges — is both consistent with Kindred's contract with CorVel and fair and reasonable in accordance with 28 T.A.C. § 134.1. Specifically, this rate is consistent with the calculations used in prior payments to Kindred for similar services by representative Texas worker's compensation carriers in 2015, as reflected in the spreadsheet attached to Kindred's MFDR Request as Exhibit G. These representative payments reflect that Texas workers' compensation carriers routinely reimburse Kindred based on a percentage of billed charges, averaging near 75%. Documentation of one such payment at a rate of 75% of billed charges is also included in Exhibit G . . . As shown in Exhibit G, Kindred is frequently reimbursed at a percentage of billed charges for similar services involving similar work and resource commitments, at an average rate of 72% for 2015.
- The Division has previously found, as stated in the adoption preamble to the former *Acute Care Inpatient Hospital Fee Guideline*, that "hospital charges are not a valid indicator of a hospital's costs of providing services nor of what is being paid by other payors" (22 *Texas Register* 6271). The Division further considered alternative methods of reimbursement that use hospital charges as their basis; such methods were rejected because they "allow the hospitals to affect their reimbursement by inflating their charges" (22 *Texas Register* 6268-6269). A health care provider's usual and customary charges are not evidence of a fair and reasonable rate or of what insurance companies are paying for the same or similar services. Payment of a hospital's billed charges (or a percentage of those charges) is not acceptable when it leaves the ultimate reimbursement in the control of the health care provider—which would ignore the 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. Therefore, the use of a health care provider's "usual and customary" charges cannot be favorably considered unless other data or documentation is submitted to support that the payment amount sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor submitted a spreadsheet indicating payments for inpatient services at various percentage rates.
- The respondent did not present copies of redacted medical bills or other documentation to support that the sample services on the spreadsheet were representative of or substantially similar to the services in dispute.
- The respondent presented only 2 redacted explanations of benefits to support the information in the spreadsheet; however, it was not clear that the EOBs matched up with any of the sample payments on the spreadsheet, and the 2 EOBs showed payments of 42.7% and 35.8% respectively, which supports neither the 75% percent rate nor the alternative 72% reimbursement rate that the requestor is seeking.
- The methodologies used by the insurance carriers to calculate payment for the disputed services are not discernible from the submitted information.
- Review of the submitted information finds that the documentation does not support that the hospital is routinely reimbursed at 75% of billed charges.
- The documentation does not support that the hospital is reimbursed based on a percentage of billed charges as the insurance carriers' methodology for calculating the payment.
- No single example payments showed a reimbursement rate of 72%; rather, this amount is the average percentage of reimbursement for the entire payment sample.
- The requestor has failed to support that the requested reimbursement at 75% of in the alternative 72% would ensure that similar procedures provided in similar circumstances receive similar reimbursement.

- The requestor has failed to support that the requested reimbursements would achieve effective medical cost control.
- The requestor did not support that the reimbursement sought was consistent with the criteria of Labor Code §413.011.
- The requestor did not submit nationally recognized published studies or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
- The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the submitted documentation 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.

**Conclusion**

In resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the Division is to adjudicate the payment, given the relevant statutory provisions and Division rules. The Division would like to emphasize that the outcome of this medical fee dispute relied upon the evidence presented by the parties. Even though all the evidence was not discussed, it was considered.

The applicable rule for determining reimbursement of the disputed long-term acute care hospital services is 28 Texas Administrative Code §134.1 regarding a fair and reasonable reimbursement. The evidence provided by the requestor was not found to be persuasive. Consequently, the requestor has failed to establish that additional reimbursement is due. As a result, the amount ordered is \$0.00.

**ORDER**

Based on 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**

	Grayson Richardson	April 18, 2016
Signature	Medical Fee Dispute Resolution Officer	Date

***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request 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 §141.1(d).

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