



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

UNIVERSITY OF NEW MEXICO
HEALTH SCIENCES CENTER

Respondent Name

TEXAS MUTUAL INSURANCE COMPANY

MFDR Tracking Number

M4-19-4192-01

Carrier's Austin Representative

Box Number 54

MFDR Date Received

May 22, 2019

Response Submitted By

Texas Mutual Insurance Company

REQUESTOR'S POSITION SUMMARY

"Per the Texas fee schedule (Rule 134.1d) we have the right to negotiate payment, per UNMG non-contracted policy we are requesting payment at 80% of the total billed amount."

RESPONDENT'S POSITION SUMMARY

"Rule 134.1d is not applicable to this complaint or bill type.... The bill referenced above was paid in accordance with Inpatient Hospital Fee Guidelines with a markup of 143% for DRG 502 as listed on the UB04 from the provider."

SUMMARY OF DISPUTE

Dates of Service	Disputed Services	Dispute Amount	Amount Due
October 22, 2018 to October 31, 2018	Inpatient Hospital Services	\$34,550.75	\$0.00

AUTHORITY

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and 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 §134.404 sets out the hospital facility fee guideline for inpatient services.
3. 28 Texas Administrative Code §134.1 sets out general provisions regarding medical reimbursement.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - P12 – WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
 - 97 – THE BENEFIT FOR THIS SERVICE IS INCLUDED IN THE PAYMENT/ALLOWANCE FOR ANOTHER SERVICE/PROCEDURE THAT HAS ALREADY BEEN ADJUDICATED.
 - 217 – THE VALUE OF THIS PROCEDURE IS INCLUDED IN THE VALUE OF ANOTHER PROCEDURE PERFORMED ON THIS DATE.
 - 305 – THE IMPLANT IS INCLUDED IN THIS BILLING AND IS REIMBURSED AT THE HIGHER PERCENTAGE CALCULATION.
 - 790 – THIS CHARGE WAS REIMBURSED IN ACCORDANCE TO THE TEXAS MEDICAL FEE GUIDELINE
 - W3 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
 - 193 – ORIGINAL PAYMENT DECISION IS BEING MAINTAINED. UPON REVIEW, IT WAS DETERMINED THAT THIS CLAIM WAS PROCESSED PROPERLY.

- 350 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
- 468 – REIMBURSEMENT IS BASED ON THE MEDICAL HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM METHODOLOGY.
- 891 – NO ADDITIONAL PAYMENT AFTER RECONSIDERATION

Issues

1. Under what authority is this medical fee dispute resolution request considered?
2. Are the services subject to a contract or negotiated agreement between the parties to this dispute?
3. What is the applicable rule for determining reimbursement for the disputed services?
4. How did the insurance carrier determine payment for the disputed services?
5. Is the requestor entitled to additional payment?

Findings

1. The requestor is a hospital that rendered disputed services in the state of New Mexico to an injured employee subject to a Texas Workers' Compensation insurance claim. The provider has requested medical fee dispute resolution in accordance with Texas Labor Code Section 413.031(a)(1), which entitles a health care provider to a review of medical services if payment is reduced or denied; and Rule §133.307, which sets out procedures for resolution of medical fee disputes. Because the requestor seeks the administrative remedy provided by the Labor Code and Rule §133.307 for resolving these medical fee issues, the division has jurisdiction to decide this dispute pursuant to the Texas Workers' Compensation Act and division rules.

2. The requestor states "Per the Texas fee schedule (Rule 134.1d) we have the right to negotiate payment..."

No information was presented to support the disputed services are subject to a contract or claim-specific negotiated fee agreement between the parties to this dispute. Accordingly, the reimbursement for the services will be reviewed in accordance with division rules and fee guidelines.

3. This dispute regards inpatient services provided by a New Mexico hospital not subject to the payment provisions of the division's *Hospital Facility Fee Guideline—Inpatient*. Rule §134.404(a)(1) is applicable to inpatient acute care hospitals that per the definition in Rule §134.404(b)(1) are "appropriately licensed by the Texas Department of State Health Services..." No information was presented to support a Texas license.

Payment is therefore subject to the general medical reimbursement provisions of 28 Texas Administrative Code §134.1(e), 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 Rule §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 643, 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 96, 104 (Texas Appeals – Austin 2003, petition for review denied), that “[E]ach ... 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.”

Of further note, Rule §134.1(g) requires the insurance carrier to “consistently apply fair and reasonable reimbursement amounts and maintain, in reproducible format, documentation of the insurance carrier’s methodology(ies) establishing fair and reasonable reimbursement amounts.”

And Rule §133.307(d)(2)(E)(v) requires the carrier to provide documentation that discusses, demonstrates, and justifies the amount paid is a fair and reasonable reimbursement in accordance with Labor Code §413.011 and Rule §134.1 if the dispute involves health care for which the division has not established a reimbursement rate.

Similarly, Rule §133.307(c)(2)(O) requires the requestor to provide documentation that discusses, demonstrates, and justifies the payment amount sought is a fair and reasonable rate of reimbursement in accordance with Rule §134.1.

4. In the following analysis, the submitted information is examined to determine which party presents the best evidence to support a payment that achieves a fair and reasonable reimbursement for the services in dispute.

The respondent provided documentation to support the insurance carrier paid \$27,102.25 to the health care provider based on the division’s *Hospital Facility Fee Guideline—Inpatient*, which, while not applicable to hospitals not licensed in Texas, is consistent with reimbursements paid to Texas hospitals for similar services.

That methodology, set out in Rule §134.404(f)(1)(A), reimburses Texas hospitals at the Medicare facility specific amount applying Medicare Inpatient Prospective Payment System (IPPS) formulas and factors multiplied by 143%.

As the division considered all the criteria in Finding 3 above when establishing the division’s fee guidelines, the payment methods used by those guidelines are presumed to be fair and reasonable in regard to services provided by Texas licensed hospitals.

Based on DRG code 502, the service location and bill-specific information, the Medicare facility specific amount is \$18,952.62. 143% of the facility amount is \$27,102.25. This payment amount is thus consistent with the payor’s proposed methodology and the division fee guideline for inpatient services provided in Texas.

The insurance carrier’s position is thus persuasive that the amount paid was fair and reasonable insofar as the services provided are comparable to similar services provided by Texas licensed facilities.

5. The requestor has the burden of proof to support the payment it seeks is a fair and reasonable reimbursement in accordance with the criteria in Finding 3 above. The standard of proof is by preponderance of the evidence.

The requestor states that “Per the Texas fee schedule (Rule 134.1d) we have the right to negotiate payment, per UNMG non-contracted policy we are requesting payment at 80% of the total billed amount.”

As found above, no evidence of a contract or pre-negotiated payment agreement was presented for review.

With regard to the request for payment at 80% of the total billed amount, 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).

In formulating the fee guidelines, the division further considered alternative payment methods that used hospital charges as the payment basis but rejected those because they “allow the hospitals to affect their reimbursement by inflating their charges” (22 Texas Register 6268-6269).

Payment of a percentage of the provider’s billed charge would leave the determination of the ultimate payment in the hands of the hospital itself — 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.

Thus, the use of a health care provider’s “usual and customary” charges, or a percentage of them, cannot be favorably considered unless other data is presented to support the payment amount sought is fair and reasonable.

Review of the submitted information finds no such data or other documentation to support the payment amount the hospital is seeking is a fair and reasonable reimbursement for the services in dispute.

The requestor did not discuss how the requested payment ensures the quality of medical care or achieves effective cost control. The requestor did not support that the requested payment is similar to fees paid for similar procedures provided in similar circumstances. Nor did the requestor show the amount is based on nationally recognized published studies, previous division medical dispute decisions, or values assigned for services involving similar work and resource commitments (if available).

The requestor failed to support that the requested reimbursement is consistent with the criteria of Labor Code §413.011(d) or satisfies the requirements of Rule §134.1(f). The requestor did not discuss, demonstrate or justify that the payment sought would be a fair and reasonable reimbursement for the services in dispute. The division thus concludes the requestor failed to meet the burden to support by a preponderance of the evidence that additional payment is due. Consequently, additional reimbursement 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 findings in this decision are based on the evidence available at the time of review. Even though not all the evidence was discussed, it was considered.

For the reasons above, the division finds the requestor has not established that additional payment is due. As a result, the amount ordered is \$0.00.

ORDER

In accordance with Texas Labor Code §413.031, based on the information submitted for review, the division hereby determines the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____	Grayson Richardson	_____	June 18, 2019
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 Rule §133.307. The appealing party must submit a *Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision* (form DWCO45M). The division must receive the request within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered either to the field office handling the claim or to the division at the contact information listed on the form. You must deliver a copy of the request to all other parties involved in the dispute at the same time you file the request. Include a **copy** of this **Medical Fee Dispute Decision** together with any other information required by 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.