



# 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**

UT HEALTH EAST TEXAS SPECIALTY

**Respondent Name**

TEXAS MUTUAL INSURANCE COMPANY

**MFDR Tracking Number**

M4-19-4512-01

**Carrier's Austin Representative**

Box Number 54

**MFDR Date Received**

June 17, 2019

**Response Submitted By**

Texas Mutual Insurance Company

#### REQUESTOR'S POSITION SUMMARY

"Per our calculations, this inpatient procedure has been underpaid."

#### RESPONDENT'S POSITION SUMMARY

"The requester's facility type is a long-term care hospital... Medicare does not use the IPPS payment method of reimbursement of an LTCH.... Rule 134.1(f) says essentially that a fair and reasonable reimbursement should be consistent with the criteria of the Labor Code §413.011... Texas Mutual has explained how it arrived at its payment amount and why it is fair and reasonable."

#### SUMMARY OF DISPUTE

Dates of Service	Disputed Services	Dispute Amount	Amount Due
December 5, 2018 to December 23, 2018	Long-Term Care Hospital (LTCH) Inpatient Services	\$17,255.79	\$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 (DWC).

#### Background

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.404 sets out the fee guideline for inpatient hospital services.
- 28 Texas Administrative Code §134.1 sets out general provisions regarding medical reimbursement.
- Texas Labor Code §413.011 sets out general provisions regarding reimbursement policies and fee guidelines.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - P5 – BASED ON PAYER REASONABLE AND CUSTOMARY FEES. NO MAXIMUM ALLOWABLE DEFINED BY LEGISLATED FEE ARRANGEMENT.
  - 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.
  - 426 – REIMBURSED TO FAIR AND REASONABLE.
  - 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.
- 891 – NO ADDITIONAL PAYMENT AFTER RECONSIDERATION

### Issues

1. What is the applicable rule for determining reimbursement of long-term care hospital services?
2. Is the requestor entitled to additional reimbursement?

### Findings

1. This dispute involves payment for hospital services provided by a long-term care facility. Long-term care hospitals (LTCH) are not paid under the Medicare IPPS, but instead have a separate payment system: Medicare’s Long-Term Care Hospital Prospective Payment System — which has not been adopted by DWC as a basis for reimbursement under any Texas fee guideline. Consequently, a payment amount cannot be determined using the formula in the Inpatient Hospital Fee Guideline under 28 Texas Administrative Code §134.404(f).

Review of the submitted information finds no documentation to support a negotiated contract or that the services were provided through a workers’ compensation health care network. Payment is therefore subject to the general medical reimbursement provisions of 28 TAC §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.

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.”

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.

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 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) or reimbursement rate, as applicable

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 requestor has the burden of proof. The standard of proof required is by a preponderance of the evidence. DWC first considers whether the requestor has met the burden to support that the payment amount requested is a fair and reasonable rate of reimbursement for the services in dispute. If the requestor's evidence is persuasive, DWC will then review the evidence presented by the respondent.

Review of the submitted documentation finds that:

- The requestor asks for total reimbursement of \$48,734.94 — the insurance carrier paid \$31,479.15, leaving an additional payment sought by the requestor of \$17,255.79.
- The requestor is not an acute care hospital, but rather a long-term care hospital (LTCH); payment therefore cannot be calculated using the Medicare IPPS formula.
- The requestor did not explain or support how it arrived at a total reimbursement of \$48,734.94.
- DWC could not replicate the requested reimbursement amount of \$48,734.94 proposed by the health care provider under any fee guideline formula or from the information presented by the requestor.
- The request for reconsideration letter states that the claim should be calculated according to “DRG-LTCH.”
- Using the Medicare Long-Term Care Hospital PPS PC Pricer, the Medicare amount would be \$31,479.15. 1(available from <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PCPricer/LTCH.html>)
- DWC notes the amount of \$31,479.15 paid by the insurance carrier matches Medicare's LTCH payment amount (without modification by any other factors).
- While Medicare's LTCH PPS system is not the basis of any DWC fee guideline reimbursement, the insurance carrier is proposing that system as the basis for their “Fair and Reasonable” payment methodology.
- And to the extent that the provider is asking for reimbursement according to Medicare's LTCH payment system, the requested payment amount does not match the Medicare LTCH reimbursement amount.
- The requestor did not explain or provide documentation to support how a payment of \$48,734.94 ensures quality medical care to injured workers.
- The requestor did not explain or provide documentation to support a payment of \$48,734.94 achieves effective medical cost control.
- The requestor did not explain or provide documentation to support a payment of \$48,734.94 ensures that similar procedures provided in similar circumstances receive similar reimbursement.
- The requestor did not explain or provide documentation to support that the proposed methodology is consistent with the criteria of Labor Code §413.011.
- The requestor did not explain or provide documentation to support that the proposed methodology satisfies the requirements of Rule §134.1.

The request for additional reimbursement is not supported. The requestor failed to discuss, demonstrate, and justify by a preponderance of the evidence that the payment sought is a fair and reasonable rate of reimbursement for the services in dispute. Consequently, 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 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.

The applicable rule for determining reimbursement of the disputed long-term care hospital services is 28 Texas Administrative Code §134.1, regarding a fair and reasonable reimbursement.

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

**ORDER**

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

Authorized Signature

\_\_\_\_\_  
Signature

Grayson Richardson  
Medical Fee Dispute Resolution Officer

October 11, 2019  
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 TAC §133.307. The appealing party must submit a *Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision* (form DWC045M). DWC must receive the request within twenty days of your receipt of this decision. You may fax, mail or personally deliver the request to either the field office handling the claim or to DWC at the contact information on the form. You must send a copy to all other parties in the dispute at the same time you file the request. Include a **copy** of this **Medical Fee Dispute Decision** along with any other information required by 28 TAC §141.1(d). Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.