



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

NORTH TEXAS REHABILITATION CENTER

Respondent Name

GREAT AMERICAN ALLIANCE INSURANCE CO.

MFDR Tracking Number

M4-20-0042-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

September 9, 2019

Response Submitted By

Flahive, Odgen & Latson, Attorneys at Law, PC

REQUESTOR'S POSITION SUMMARY

"Per the TDI Guidelines a fee schedule has not been determined for this type of treatment nor, has a modifier been assigned. ... At this time we are asking that these claims be sent back for Reprocessing and be paid fair and reasonable. ... The services we are providing, a Brain Injury Program has not yet been established and according to the TDI Guidelines, ... if a fee schedule is not yet established ... you have to come to a Fair and Reasonable rate."

RESPONDENT'S POSITION SUMMARY

"each date of service did not necessarily cover the same services. Rather the provider simply billed a flat fee of \$2,800 without consideration of the specific services that were provided... Billing in such a manner does not represent what should be fair and reasonable reimbursement amount. ... The carrier's EOBs identified the specific services for each date... and assigned a reimbursement amount that was fair and reasonable for each type of service.... It remains the carrier's position that the reimbursement rates on the EOBs are the best evidence of what is fair and reasonable.

SUMMARY OF DISPUTE

Dates of Service	Disputed Services	Dispute Amount	Amount Due
September 5, 2018 to September 12, 2018	Brain Injury Rehabilitation Program	\$5,589.82	\$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 §134.1 sets out general provisions regarding medical reimbursement.
- Texas Labor Code §413.011 sets forth general provisions regarding reimbursement policies and guidelines.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - P12 – WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
 - 375 – RE-EVALUATION: UPON FURTHER REVIEW, AN ADDITIONAL ALLOWANCE IS WARRANTED.
 - W3 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
 - 350 – BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.

Issues

1. Did the requestor waive the right to medical fee dispute resolution?
2. What is the rule for determining payment for the disputed services?
3. Did the requestor support that the payment amount sought is fair and reasonable?
4. Did the respondent support that the reimbursement paid was fair and reasonable?
5. Is the requestor entitled to additional payment?

Findings

1. 28 Texas Administrative Code §133.307(c)(1) requires requestors to timely file medical fee dispute resolution (MFDR) requests with DWC's MFDR Section or waive the right to MFDR.

Rule 28 TAC §133.307(c)(1)(A) further requires that a request for MFDR that does not meet any exceptions listed in 28 TAC §133.307(c)(1)(B) be filed no later than one year after the dates of service in dispute.

The disputed dates of service extend from September 5, 2018 to September 12, 2018.

The request was received in DWC's MFDR Section on September 9, 2019.

This date is later than one year after the disputed dates of service September 5 and September 6, 2018.

Review of the submitted information finds the circumstances do not involve any of the exceptions listed in Rule 28 TAC §133.307(c)(1)(B). Consequently, the MFDR request for dates of service September 5, 2018 and September 6, 2018 were not timely filed with DWC. The requestor has thus waived the right to MFDR for these services.

However, the requestor has timely filed the MFDR request for date of service September 12, 2018.

Accordingly, these services are eligible for review.

2. This dispute regards multidisciplinary brain injury rehabilitation services for which the division has not established a medical fee guideline. No documentation was found to support a negotiated or contracted rate. 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 28 TAC §134.1(f).

In the following analysis, the evidence presented by both parties to support their positions as to the fair and reasonable payment amount is examined in order to determine which party presents the best evidence of an amount that will achieve 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.

Rule 28 TAC §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.

3. The division will first review the information presented by the requestor to determine whether the burden is met to show the payment amount sought is a fair and reasonable rate of reimbursement for the disputed services. If the requestor's evidence is persuasive, the division will then review the evidence presented by the respondent to support that the amount paid was a fair and reasonable reimbursement for the disputed services.

Rule 28 TAC §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 seeks payment of their full billed charges of \$2800 per day of treatment.
- The division 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 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).
- While outpatient brain injury rehabilitation services are not the same as hospital care, the above principle is of similar concern here. 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 the provider's billed charge is thus not acceptable when it leaves the payment amount in the health care provider's control — 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.
- Accordingly, the use of a health care provider's "usual and customary" charges cannot be favorably considered unless other data or documentation is presented to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- In this dispute, however, the requestor has submitted additional information to support that \$2800.00 per day of treatment is a fair and reasonable reimbursement amount.
- The requestor submitted redacted copies of eight EOBs from different insurance carriers showing payment for the same or similar services of the full requested amount of \$2,800.00.
- The submitted evidence supports that a number of diverse payers found this amount to be an acceptable payment for the services in dispute.
- Additionally, the requestor has submitted a copy of a previous MFDR findings and decision in which DWC found that a reimbursement of \$2,800.00 was fair and reasonable for services that were similar to the Brain Injury Rehabilitation services in dispute.
- The documentation supports that the proposed payment achieves effective medical cost control while still ensuring the quality of medical care.
- It shows that similar procedures provided in similar circumstances have received similar reimbursement.
- The division finds the requested amount to be consistent with the criteria of Labor Code §413.011.
- The division concludes the requestor has satisfied the requirements of Rule 28 TAC §134.1.

The request for additional reimbursement is supported. The division concludes the requestor has discussed, demonstrated, and justified that the payment amount sought is a fair and reasonable rate of reimbursement for the services in dispute.

4. Because the requestor met their burden to show the amount sought is a fair and reasonable reimbursement, the division now reviews the information presented by the respondent to support whether the amount paid was a fair and reasonable reimbursement for the services in dispute.

Rule 28 TAC §133.307(d)(2)(E)(v) requires the insurance carrier's response to include:

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 ... if the dispute involves health care for which the division has not established a MAR or reimbursement rate

Review of the submitted documentation finds that:

- Rule 28 TAC §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.
- The EOBS document a consistent method of payment for the services.
- The EOBs describe in detail how each payment was calculated.
- The method adopted by the carrier pays for the component services performed during each day based on the documented amount of time performed for each service.
- The payer's method uses values assigned for services involving similar work and resource commitments to establish a fee amount for each component service.
- The respondent discussed and demonstrated that their adopted method ensures the quality of medical care while achieving effective medical cost control.
- The respondent showed that the proposed method provides similar reimbursement for similar services in similar circumstances.
- The respondent has supported that their adopted method meets the criteria of Labor Code §413.011.
- The respondent has supported that the amount paid satisfies the requirements of Rule §134.1.
- The division finds the amount paid to be a fair and reasonable reimbursement for the services in dispute.

The insurance carrier's position is also supported. The respondent has discussed, demonstrated and justified that the amount paid is a fair and reasonable rate of reimbursement for the services in this dispute.

The division concludes the respondent has met the requirements of Rule 28 TAC §133.307(d)(2)(E)(v).

5. Both the requestor and the respondent have successfully met their burdens in this fee dispute to discuss, demonstrate and justify that the payment sought (in the case of the requestor) and the amount paid by the insurance carrier (in the case of the respondent) are fair and reasonable reimbursements for the disputed services.

However, based on the information presented in this fee dispute, the requestor has not established by a preponderance of the evidence that additional payment is due.

Rule 28 TAC §134.1(e)(3) provides 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 28 TAC §134.1(f).

Because the insurance carrier made payment consistent with a fair and reasonable reimbursement as specified in Rule 28 TAC §134.1(f), additional payment is not 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, DWC finds the insurance carrier's payment to be a fair and reasonable reimbursement for the services in dispute; consequently, no 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, DWC hereby 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 4, 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.