



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 and Address

VISTA MEDICAL CENTER HOSPITAL
4301 VISTA ROAD
PASADENA TEXAS 77504

Carrier's Austin Representative Box

47

Respondent Name

ZENITH INSURANCE CO

MFDR Date Received

JULY 7, 2003

MFDR Tracking Number

M5-03-2847-02

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated February 17, 2003: "We Have Received Partial Payment For The Above-Referenced Claim In The Amount Of \$22,432.40. However, this payment is not accordance with TWCC Rule 134.401. Specifically, TWCC Rule 134.401 requires payment of 75% of audited charges for billed charges that reach the stop-loss threshold of \$40,000.00"

Requestor's Position Summary Dated April 2, 2004: "Vista Medical Center Hospital properly filed a request for Medical Dispute Resolution that was received by the Commission on June 23, 2003. The Commission improperly requested additional information for a retrospective medical necessity dispute and improperly deemed that the request for Medical Dispute was not filed until July 7, 2003...Vista Medical Center Hospital respectfully requests the TWCC remand the current decision and issue a proper finding based upon the dates of service from July 5-6, 2002 as Vista Medical Center Hospital is not in dispute of the determination by the hearing officer regarding dates of service July 7-10, 2002."

Amount in Dispute: \$66,995.65

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated July 22, 2003: "We have been retained by Zenith Insurance Company to represent its interest in the above-referenced medical dispute."

Response Submitted by: Wilson Grosenheider & Jacobs, L.L.P.

Respondent's Supplemental Position Summary Dated July 24, 2003: "We believe the requestor was reimbursed a fair and reasonable amount for the disputed services."

Response Submitted by: The Zenith

Respondent's Supplemental Position Summary Dated March 29, 2004: "The purpose of this correspondence is to request an appeal of the Finding as Decision (see attached) issued on March 8, 2004 and received on March 9, 2004..."

Response Submitted by: Stone, Loughlin & Swanson, L.L.P., P.O. Box 30111, Austin, TX 78755

Respondent's Supplemental Position Summary Dated December 18, 2012: "The medical records do not demonstrate that this was an outlier case. There is no evidence that Requestor provided services in this case that would not normally be provided to someone receiving the same type of surgery and that were unusually extensive and unusually costly. Furthermore, Requestor has not identified any specific services it contends were unusually extensive and it has not established the unusual cost of those services. In short, Requestor has not met its burden of proof. For these reasons, the Division should not approve reimbursement under the stop-loss exception but should affirm that reimbursement should be pursuant to the standard per diem method."

Response Submitted by: Stone, Loughlin & Swanson, L.L.P., P.O. Box 30111, Austin, TX 78755

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
July 5, 2002 through July 10, 2002	Inpatient Hospital Services	\$66,995.65	\$0.00

FINDINGS AND DECISION

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, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, 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.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, 26 *Texas Register* 9874, effective January 1, 2002, requires preauthorization for inpatient hospital services.
5. 28 Texas Administrative Code §133.301, 25 *Texas Register* 2115, effective July 15, 2000, addresses retrospective review of medical bills.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- F-The amount charged exceeds the maximum allowable fee for the Texas Workers' Compensation Medical Fee Guideline.
- F-Payment based on the assigned Per Diem amount per the 1997 Texas Inpatient Hospital Fee Guideline.
- F-Payment based on the Assigned Per Diem amount per the Texas hospital fee schedule.
- M-Payment reduced according to fair and reasonable.
- V-Payment has been denied because the carrier deems the treatment(s) and/or service(s) to be medically unreasonable and/or unnecessary based on a peer review judgment.
- G-Payment for these services is included in the Per Diem amount.
- M-The amount charged exceeds the maximum usual and customary fee for the same service(s) in the same geographic area.

Dispute M5-03-2847 was originally decided on March 4, 2004 and subsequently appealed to a judicial hearing at the 126th Judicial District under case number D-1-GN-07-003314. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a December 1, 2011 Judicial District order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed.

Issues

1. Does a medical necessity issue exist in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. 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. According to the explanation of benefits, the respondent denied reimbursement for the disputed services based upon “V-Payment has been denied because the carrier deems the treatment(s) and/or service(s) to be medically unreasonable and/or unnecessary based on a peer review judgment”.

The respondent's representative, Forte, gave preauthorization approval on June 11, 2002 and July 9, 2002 for a total of five (5) inpatient hospital days.

28 Texas Administrative Code §133.301(a) states “The insurance carrier shall not retrospective review the medical necessity of a medical bill for treatment(s) and/or service(s) for which the health care provider has obtained preauthorization under Chapter 134...”

Since preauthorization was obtained for the five inpatient hospital days in dispute, the insurance carrier's denial based upon “V” is not in accordance with 28 Texas Administrative Code §133.301(a). Therefore, a medical necessity issue does not exist in this dispute.

2. 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 \$116,175.60. The Division concludes that the total audited charges exceed \$40,000.
3. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states 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” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor position statement states that “We Have Received Partial Payment For The Above-Referenced Claim In The Amount Of \$22,432.40.”

However, this payment is not accordance with TWCC Rule 134.401. Specifically, TWCC Rule 134.401 requires payment of 75% of audited charges for billed charges that reach the stop-loss threshold of \$40,000.00.” This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive.

4. 28 Texas Administrative Code §134.401(c)(6) 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 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. The requestor’s position statement did not demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. 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.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. 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...” The length of stay was five days. The surgical per diem rate of \$1,118 multiplied by the length of stay of five days results in an allowable amount of \$5,590.00.
 - 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 \$49,419.00.
 - 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)(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 \$289.00/unit for Dilaudid PCA 100ml and \$380.82/unit for Ondansetron/Zofran 4. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$5,590.00. The respondent issued payment in the amount of \$22,432.40. Based upon the documentation submitted no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

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

Signature

Medical Fee Dispute Resolution Officer

Date

1/4/2013

Signature

Medical Fee Dispute Resolution Manager

Date

1/4/2013

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.