

Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Spring Branch Medical Center

Respondent Name

Texas Mutual Insurance Co.

MFDR Tracking Number

M4-03-4917-02

Carrier's Austin Representative

Box Number 54

DWC Date Received

March 28, 2003

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
April 4, 2002 – April 9, 2002	Inpatient Hospital Services	\$39,562.08	\$0.00

Requestor's Position

Initial statement: "Carrier paid per diem plus implants at cost, however, this claim pays per TWCC Rule 134.401 Acute Care Inpatient Hospital Fee Guideline. Per TWCC Rule 134.401(c)(6), claim pays @ 75% of total charges as charges exceed \$40,000.00 stop-loss threshold."

Subsequent statement dated April 25, 2003: "It is our position that reimbursement was improperly determined pursuant to the acute care inpatient hospital fee guidelines of the Texas Workers' Compensation Commission ('TWCC'). Specifically on the dates April 4, 2002 through April 9, 2002, [injured employee] received treatment at our client's facility relating to spinal surgery. Because [injured employee]'s admission was inpatient, this claim would be reimbursed pursuant to TWCC Rule 134.401(c)(6), TWCC, this claim would then be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00 ... 75% of the total audited charges of \$84,427.47 results in a maximum allowable reimbursement of \$63,320.60 pursuant to the stop-loss provision of the TWCC fee guidelines. The audits performed by Texas Mutual Insurance Company ('Texas Mutual') show this claim was paid at the non stop-loss acute care inpatient surgical per diem rate of \$1,118.00 plus separate reimbursement for implants at cost plus 10%."

Amount in Dispute: \$39,562.08

Respondent's Position

"This dispute involves this carrier's payment for ____date of service 04/04/02-04/09/02 per the table of disputed services for which the requester charged \$84,427.47 or \$16,885.50 including the implant charges or \$9,384.89 a day not including the implant charges for services that were NOT unusually extensive or costly. Therefore, this carrier reimbursed the requester a fair and reasonable reimbursement for implants and 3 days per diem based on the TWCC Acute Care In-Patient Fee Guideline."

Response Submitted by: Texas Mutual Insurance Company

Findings and Decision

Authority

This medical fee dispute is decided according to [Texas Labor Code \(TLC\) §413.031](#) and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC).

Statutes and Rules

1. [28 Texas Administrative Code \(TAC\) §133.305, 27 Texas Register 12282](#), applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical disputes.
2. [28 TAC §133.304, 17 Texas Register 1105](#), effective February 20, 1992, sets out the provisions for insurance carriers to dispute and audit medical bills.
3. [28 TAC §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.
4. [TAC 28 §134.1, 16 Texas Register 5210](#), effective October 7, 1991, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of an applicable division fee guideline.
5. [28 TAC §134.401, 22 Texas Register 6246](#), effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

Denial Reasons

The insurance carrier denied the payment for the disputed services with the following claim adjustment codes:

- TR – Reimbursed in accordance with the Texas Hospital Fee Guideline.
- TM – Services were reimbursed in accordance with the carrier's fair and reasonable; cost data is unavailable for your facility at this time. Additional reimbursement may be considered upon receipt of this information.

- RD – The reimbursement for the service rendered has been determined to be fair and reasonable based on billing and payment research and is in accordance with Labor Code 413.011(b)
- TR – Supplemental Payment
- RSUB – Supplemental Payment
- RD - Supplemental Payment

Dispute History

- This dispute was originally decided on June 22, 2004.
- The original dispute decision was appealed to District Court.
- The 353rd Judicial District remanded the dispute to the division pursuant to an agreed order of remand D-1-GN-07-003151 dated December 18, 2013.
- As a result of the remand order, the dispute was re-docketed at the DWC's medical fee dispute resolution section.
- M4-03-4917-02 is hereby reviewed.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. 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 TAC §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 TAC §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."

Consistent with the Third Court of Appeals' November 13, 2008, opinion, the DWC 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 TAC §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..." In that same opinion, the Third Court of Appeals states that the stop loss exception "...was meant to apply on a case-by-case basis in relatively few cases." 28 TAC §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 TAC §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, 28 TAC §134.401(c)(6)(A)(v) states that "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 respondent finds that the carrier did not deduct any charges in accordance with 28 TAC §134.401(c)(6)(A)(v). Therefore, the audited charges equal \$84,427.47. The DWC concludes that the total audited charges exceed \$40,000.00.
2. 28 TAC §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 does not address 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 DWC concludes that the requestor failed to meet the requirements of 28 TAC §134.401(c)(6).

3. 28 TAC §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). 28 TAC §134.401(c)(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." It 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, in its original position statement, states that "Carrier paid per diem plus implants at cost, however, this claim pays per TWCC Rule 134.401 Acute Care Inpatient Hospital Fee Guideline. Per TWCC Rule 134.401(c)(6), claim pays @ 75% of total charges as charges exceed \$40,000.00 stop-loss threshold." This statement does not meet the requirements of 28 TAC §134.401(c)(2)(C) because the requestor presumes that the disputed services meet the stop-loss exception since the billed amount was over \$40,000.00, thereby presuming that the admission was unusually extensive. The DWC concludes that the requestor failed to meet the requirements of 28 TAC §134.401(c)(2)(C).

4. 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 TAC §134.401(c)(1) subtitled *Standard Per Diem Amount* and §134.401(c)(4) subtitled *Additional Reimbursements*. The DWC 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.

28 TAC §134.401(c)(3)(A)(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 ...” A review of the submitted documentation finds that the length of stay for this admission was five surgical days; therefore, the standard per diem amount of \$1,118.00 multiplied by the five days result in a total allowable amount of \$5,590.00.

28 TAC §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 \$37,503.00

The medical documentation provided finds that although the requestor billed items under revenue code 278, the submitted invoice is not applicable to the dates of service. For that reason, no additional reimbursement can be recommended.

28 TAC §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 documentation finds that the requestor included charges of \$449.43 for Norcuron 10 ml, quantity three, \$449.43 for Rocuronium, quantity three and \$2,370.06 for Albuminar 25% 100 ml, quantity three. No documentation was found to support the cost of these drugs to the hospital. Therefore, no additional reimbursement is recommended.

Billed services include revenue code 390 for \$203.00. Per 134.401(c)(4)(B)(iv), revenue codes 380-399 shall be reimbursed at a fair and reasonable rate. 28 TAC §134.1(c) states, in relevant part, “Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers’ Compensation Act, §8.21(b), until such period that specific fee guidelines are established by the commission.” The requestor submitted no evidence to support a fair and reasonable rate for these charges. Therefore, no additional reimbursement is recommended.

The DWC concludes that the total allowable for this admission is \$5,590.00. The respondent issued payment in the amount of \$23,758.52. Based upon the documentation submitted, additional reimbursement cannot be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requester 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 TAC §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 DWC 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

December 30, 2024

Date

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 MFDR 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 this 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.