



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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AMENDED MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

VISTA MEDICAL CENTER HOSPITAL

Respondent Name

AMERICAN HOME ASSURANCE CO

MFDR Tracking Number

M4-04-1220

Carrier's Austin Representative

Box Number 19

MFDR Date Received

SEPTEMBER 23, 2003

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The Carrier did not provide a proper explanation in conjunction with the 'F' payment exception code as required by the TWCC Rules and Commission instructions. Therefore, the Carrier has made no legal denial of reimbursement under the applicable rules and statutes... if the total audited charges *for the entire admission* are at or above \$40,000, the Carrier shall reimburse using the 'Stop-Loss Reimbursement Factor' (SLRF). The SLRF of 75% is applied to the 'entire admission'."

Amount in Dispute: \$10,444.10

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary dated October 17, 2003: "To the extent that Requestor argues that the initial \$40,000 threshold of 'audited charges' may have been exceeded, but Requestor has not proven entitlement to any exception to the preferred per diem method. Such proof requires Requestor to show the services provided were **unusually extensive and unusually costly** for the subject admission. Requestor has failed to sustain the burden of proving that exception. In the absence of or insufficiency of such evidence, the preferred/default method of reimbursement is the per diem method...Having already reimbursed Requestor \$40,382.39, the Carrier has reimbursed Requestor an amount greater than or equal to the amount that would be calculated in accordance with the above-described TWCC Rules and SOAH Decisions. Carrier requests an **Order of Reimbursement** for any payment previously made over the amount calculated under the methods described in the above referenced SOAH decisions."

Respondent's Position Summary dated November 12, 2003: "Carrier has previously responded to this dispute on 10/17/03. The provider has not submitted additional pertinent information and the carrier position remains the same."

Responses Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
October 21, 2002 through October 24, 2002	Inpatient Hospital Services	\$10,444.10	\$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

- 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.
- 28 Texas Administrative Code §133.304(c), 17 *Texas Register* 1105, effective February 20, 1992, sets out the provisions for insurance carrier's to dispute and audit medical bills.
- 28 Texas Administrative Code §134.401, 22 *Texas Register* 6246, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
- 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.
- Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
- The services in dispute were reduced/denied by the respondent with the following reason codes:
 - F-The charges for this hospitalization have been reduced based on the fee schedule allowance.
 - F-The charge for this procedure exceeds fair and reasonable.
 - I004-Payment reflects results of desk audit. Itemization has been sent under separate cover.
- Dispute M4-04-1220 History
 - Dispute was originally decided on March 16, 2005.
 - The original dispute decision was appealed to District Court.
 - The 345th Judicial District remanded the dispute to the Division pursuant to an agreed order of remand dated July 10, 2015.
 - As a result of the remand order, the dispute was re-docketed at the Division's medical fee dispute resolution section.
 - M4-04-1220-02 is hereby reviewed.

Issues

- Did the respondent provide sufficient explanation for denial of the disputed services?
- Did the audited charges exceed \$40,000.00?
- Did the admission in dispute involve unusually extensive services?
- Did the admission in dispute involve unusually costly services?
- Is the requestor entitled to additional reimbursement?
- Is the respondent entitled to a refund?

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 dispute supplemented the original MDR submissions. The division received supplemental positions as noted above. Positions were exchanged among the parties as appropriate. Documentation filed by the requestor and respondent to date is 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...” 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 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. The requestor in its position statement asserts that, “The Carrier did not provide a proper explanation in conjunction with the ‘F’ payment exception code as required by the TWCC Rules and Commission instructions. Therefore, the Carrier has made no legal denial of reimbursement under the applicable rules and statutes.” 28 Texas Administrative Code §133.304(c), 17 Texas Register 1105, effective February 20, 1992, applicable to dates of service in dispute, states, in pertinent part, that “At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s). A generic statement that simply states a conclusion such as ‘not sufficiently documented’ or other similar phrases with no further description of the reason for the reduction or denial of payment does not satisfy the requirements of this section.” Review of the submitted documentation finds that the explanation of benefits were issued using the Division-approved form TWCC 62 and noted payment exception code “F.”

This payment exception code and descriptions support an explanation for the reduction of reimbursement based on former 28 Texas Administrative Code §134.401. This reason supports a reduction of the reimbursement amount from the requested stop-loss exception payment reimbursement methodology to the standard per diem methodology amount and provided sufficient explanation to allow the provider to understand the reason(s) for the insurance carrier's action(s). The Division therefore concludes that the insurance carrier has substantially met the requirements of 28 Texas Administrative Code §133.304(c).

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, 28 Texas Administrative Code §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 §134.401(c)(6)(A)(v); therefore the audited charges equal \$67,768.65. The Division concludes that the total audited charges exceed \$40,000.00.
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 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.” In its position, the requestor states, “the treatment rendered was

reasonable and necessary in accordance with the usual and customary standards of the medical community for the treatment of the compensable work-related injury and under the appropriate Treatment Guidelines.”

Review of the available information and documentation finds that the requestor failed to articulate, discuss or demonstrate how the treatment rendered in this case may be considered unusually extensive when compared to similar spinal surgeries, services, or admissions. For that reason, the Division finds that the requestor did not meet the requirements of 28 Texas Administrative Code § 134.401(c)(6)(A)(ii).

4. In regards to whether the services were unusually costly, 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. 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 requestor’s position statement asserts that, “if the total audited charges *for the entire admission* are at or above \$40,000, the Carrier shall reimburse using the ‘Stop-Loss Reimbursement Factor’ (SLRF). The SLRF of 75% is applied to the ‘entire admission’.”

The requestor asserts that because the **billed charges** exceed the stop-loss threshold, the admission in this case is unusually costly. The Division notes that audited charges are addressed as a separate and distinct factor described in 28 Texas Administrative Code §134.401(c)(6)(A)(i). Billed charges for services do not represent the cost of providing those services, and no such relation has been established in the instant case. The requestor fails to demonstrate that the **costs** associated with the services in dispute are unusual when compared to similar spinal surgery services or admissions. For that reason, the Division rejects the requestor’s position that the admission is unusually costly based on the mere fact that the billed or audited charges “substantially” exceed \$40,000. Therefore, the requestor fails to demonstrate that the resources used in this particular admission are unusually costly when compared to similar spinal surgery services or admissions.

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) subtitled *Standard Per Diem Amount* and §134.401(c)(4) subtitled *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.
 - 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...” Review of the submitted documentation finds that the length of stay for this admission was three (3) surgical days; therefore, the standard per diem amounts of \$1,118.00 multiplied by 3 days result in a total allowable amount of \$3,354.00.
 - 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 \$11,195.00.
 - 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)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$299.00 for revenue code 391-Blood Administration. 28 Texas Administrative Code §133.307(g)(3)(D), 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.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 391 would be a fair and reasonable rate of reimbursement. Additional

payment cannot 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 \$1,597.10/unit for Tobramycin 1.2 gm POW, \$265.35/unit for Thrombin 10,000 unit, and \$289.00/unit for Dilaudid PCA 100ml. The requestor did not submit documentation to support what the cost to the hospital was for this pharmaceutical. For that reason, additional reimbursement for this item cannot be recommended.

The Division concludes that the total allowable for this admission is \$3,354.00.00. The respondent issued payment in the amount of \$40,382.39. Based upon the documentation submitted, no additional reimbursement can be recommended.

6. In its response to the request for medical fee dispute resolution, the insurance carrier and respondent in this dispute requested “Carrier requests an **Order of Reimbursement** for any payment previously made over the amount calculated under the methods described in the above referenced SOAH decisions.” Former 28 Texas Administrative Code §133.304(p), 17 Texas Register 1105, effective February 20, 1992, provided, in pertinent part, that “An insurance carrier may request medical dispute resolution in accordance with §133.305 if... the insurance carrier has requested a refund under this section, and the health care provider: (1) failed to make payment by the 60th day after the date the insurance carrier sent the request for refund...” Former 28 Texas Administrative Code §133.305(a)(2)(C), 27 Texas Register 12282, effective January 1, 2003, provided that “a carrier dispute of a health care provider reduction or denial of the carrier request for refund of payment for health care previously paid by the carrier (refund request dispute)” can be a medical fee dispute. Former 28 Texas Administrative Code §133.307(b)(3), 27 Texas Register 12282, effective January 1, 2003, specified that “The carrier... in a dispute involving a carrier's refund request” may be a requestor in a medical fee dispute. Section 133.307(e) required that “...carrier requests for medical dispute resolution shall be made in the form, format, and manner prescribed by the commission.” Section 133.307(e)(2)(B) required that the request shall include “a copy of each... response to the refund request relevant to the fee dispute...” The division finds that the insurance carrier’s position statement in response to the health care provider’s request for medical fee dispute resolution does not constitute a request for refund request dispute resolution in the form and manner required by former applicable version of 28 Texas Administrative Code §133.307. Furthermore, no documentation was found to support that the insurance carrier ever presented a refund request to the health care provider to support its burden of proof for a specific refund amount in accordance with §133.304(p). The division concludes that the insurance carrier has not met the requirements of §133.304(p) or §133.307(e). For these reasons, the respondent’s request for an order of reimbursement is not proper, and is not supported. An order of reimbursement for the respondent is therefore not 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 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

01/06/2016
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.