



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

DR WAYNE ALANI
909 FROSTWOOD STE 340
HOUSTON TX 77024

Respondent Name

OLD GLORY INSURANCE CO

Carrier's Austin Representative Box

Box Number 17

MFDR Tracking Number

M4-09-A505-01

MFDR Date Received

JUNE 26, 2009

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "It has been repeatedly been explained that we were not trying to get reimbursed for a PPO reduction but paid correctly according to our Interplan contract."

Amount in Dispute: \$113.34

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The requestor is asking that the charges in dispute be paid per their PPO contract with InterPlan. Rule §134.202(d), states that reimbursement is the least of... The InterPlan contract calls for allowable that are greater than the DWC fee schedule, therefore the contract was not applied."

Response Submitted by: Claims Administrative Services, Inc.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 1, 2008	CPT Code 29880	\$105.05	\$0.00
	CPT Code 29876	\$80.29	\$0.00
TOTAL		\$113.34	\$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 §133.307 sets out the procedures for resolving a medical fee dispute.
- 28 Texas Administrative Code §133.307(c)(1), titled *MDR of Fee Disputes*, effective May 25, 2008, requires "A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request."
- 28 Texas Administrative Code §133.307(c)(1)(A), titled *MDR of Fee Disputes*, effective May 25, 2008, requires "A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of

this paragraph shall be filed no later than one year after the date(s) of service in dispute.”

4. Texas Labor Code, Sec. 408.0272(b), titled *CERTAIN EXCEPTIONS FOR UNTIMELY SUBMISSION OF CLAIM*, effective September 1, 2005, states “(b) Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if: (1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027(a), erroneously filed for reimbursement with: (A) an insurer that issues a policy of group accident and health insurance under which the injured employee is a covered insured; (B) a health maintenance organization that issues an evidence of coverage under which the injured employee is a covered enrollee; or (C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title; or (2) the commissioner determines that the failure resulted from a catastrophic event that substantially interfered with the normal business operations of the provider.”
5. Texas Labor Code §413.011, effective September 1, 2007, provides for the Division to request contract information.
6. Former 28 Texas Administrative Code §134.202, effective August 1, 2003, sets the reimbursement guidelines for the disputed services.
7. The services in dispute were reduced/denied by the respondent with the following reason codes:
Explanation of benefits
 - 138-Claim/service denied. Appeal procedures not followed or time limits not met.
 - According to the 28 Texas Administrative Code 133.250, an HCP is required to submit a request for reconsideration of a reduced or denied medical bill no later than eleven months after the date of service.
 - 1022-An additional allowance is recommended for the above procedure(s) as the PPO discount was incorrectly applied.
 - 0309-The charge for this procedure exceeds the fee schedule allowance.
 - Request for reconsideration. – According to the submitted documentation for date of service 02-01-08 there was not a PPO reduction taken; therefore, no additional payment due.
 - 0076-Billing is greater than surgical service fee.
 - 0086-Service performed was distinct or independent from other services performed on the same day.
 - 0090-Allowance for this procedure was calculated by subtracting the base code value from the non-base code value (when procedures are within the same family).

Issues

1. Was a request for medical dispute resolution timely filed in accordance with 28 Texas Administrative Code §133.307(c)(1)(A)?
2. Did the requestor timely submit the claims to the insurance carrier?
3. Does the payment rates outlined in 28 Texas Administrative Code §134.202(d) apply to this dispute?
4. Is the requestor entitled to additional reimbursement?

Findings

1. This dispute involves date of service February 1, 2008. The dispute was filed to TDI-DWC MFDR on June 26, 2009. TDI-DWC addresses the issue as follows.
 - The healthcare was provided in Houston, Texas which is located in Harris County.
 - On September 8, 2008, Governor Rick Perry issued a proclamation declaring that Hurricane Ike poses a threat of imminent disaster along the Texas Coast and in numerous counties including Harris County. The declaration states in pertinent part: “THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster based on the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat. As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.”
 - Governor Perry issued subsequent proclamations extending the state of disaster for the named counties due to the substantial destruction in South and East Texas. To date, the Hurricane Ike Disaster Proclamations cover a period from September 7, 2008 through March 6, 2009 for Harris County.
 - The Texas Department of Insurance issued Commissioner's Bulletins #B-0064-08, #B-0066-08, #B-0070-08 and #B-0012-09 as a result of the Governor's Proclamation. The bulletins states in part “Under these disaster circumstances for system participant residents of...Harris (and other named)...counties and regardless of where those residents may be currently located, the Texas workers' compensation

deadlines for the following procedures are tolled through the duration of the Governor's disaster proclamation: workers' compensation claim notification and filing deadlines, medical billing deadlines, and medical and income benefit dispute deadlines."

- 28 Texas Administrative Code §133.307(c)(1)(A), states in pertinent part "A request for medical fee dispute resolution...shall be filed no later than one year after the date(s) of service in dispute."
- In this dispute, 28 Texas Administrative Code §133.307(c)(1)(A), is computed by **counting** each day up to and including September 6 2009, then by **NOT counting** each day from September 7, 2008 through March 6, 2009, and finally by counting of days from March 7, 2009 and on. In other words, the total days would be computed by adding only the days counted before, and the days counted after the tolled period, not to include any of the days in the tolled period.

MFDR's obligation under the Governor's Proclamations and the Commission's Bulletins is to accept date of service February 1, 2008 as timely because the one-year dispute filing deadline, in this case, is tolled.

2. The Division finds that the requestor's qualifies for an exception to timely submission because of a catastrophic event, Hurricane Ike, that substantially interfered with the normal business operations of the provider per Texas Labor Code Section 408.0272(b)(2), the Governor's disaster proclamation and Commissioner's Bulletins.
3. The issue in dispute is whether additional reimbursement is due for CPT code 29880 and 29876 rendered on February 1, 2008.

The requestor contends that additional reimbursement is due based upon the Interplan contract.

The respondent states that additional reimbursement is not due because the allowable in the fee schedule is less than the allowable in the contract, and per Rule §134.202(d) they must pay the lesser allowable.

28 Texas Administrative Code §134.202(d) states "In all cases, reimbursement shall be the least of the:

- (1) MAR amount as established by this rule;
- (2) health care provider's usual and customary charge; or,
- (3) health care provider's workers' compensation negotiated and/or contracted amount that applies to the billed service(s)."

The Division finds the following regarding the contract:

- Both parties agree that an InterPlan contract exists.
- On October 13, 2010, the division requested a copy of the contract under which fees are being paid.
- The insurance carrier provided a copy of a contract between the provider and InterPlan, that included a list of payment rates.

The Division reviewed the submitted documentation and payment rates and finds that the total allowable for the disputed services will be the MAR amount established in 28 Texas Administrative Code §134.202(d)(1).

4. 28 Texas Administrative Code §134.202(b) states "For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section."

CPT codes 29880 and 29875 are both endoscopic procedures that are in the same endoscopic family. Both have a base endoscopy code of 29870.

According to the Medicare 2008 Surgery Manual "The endoscopic pricing method is denoted by an indicator of (3) under the 'Mult Proc' column on the MPFSDB. Calculate the allowance and limited charge (non-assigned claims only) at:

- One hundred percent for the procedure with the highest fee schedule amount.
- Subsequent procedures equal subsequent procedure allowance minus basic endoscopic allowance."

28 Texas Administrative Code §134.202(c)(1) states "To determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: "for service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Surgery, Radiology, and Pathology the conversion factor to be used for determining reimbursement in the Texas workers' compensation system is the effective conversion factor adopted by CMS multiplied by 125%."

Review of Box 32 on the CMS-1500 the services were rendered in Houston, Texas.

The Division finds the following:

Code	Medicare Allowable	MAR	Amount Paid	Amount Due
29880	\$653.33	$\$653.33 \times 125\% = \816.66	\$816.66	\$0.00
29876	\$617.55	$\$617.55 - \$389.25 = \$228.30 \times 125\% = \285.37	\$285.38	\$0.00
29870	\$389.25			

Conclusion

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

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

Date 3/28/2014

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.