SOAH DOCKET NO. 453-04-4455.M4
TWCC MDR NO. M4-03-1887-01

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, **Petitioner**	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
TEXAS ORTHO HOSPITAL, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Insurance Company of the State of Pennsylvania (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) ordering additional reimbursement to Texas Ortho Hospital (Provider) for a hospital stay provided to Claimant, an injured worker. The decision ordered Carrier to reimburse Provider an additional $20,377.77 by calculating reimbursement using the alternate stop-loss reimbursement methodology. The Carrier argued it correctly reimbursed Provider based on the standard per diem plus carve-outs reimbursement methodology contained in the 1997 Acute Care Hospital Fee Guideline. The Administrative Law Judge (ALJ) finds the per diem methodology should be followed in this proceeding. Accordingly, no additional reimbursement is required.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The MRD issued its decision on February 23, 2004. Petitioner filed a timely request for hearing on March 5, 2004, a copy of which was sent to Respondent at the address previously provided by Respondent. Notice of the hearing was issued to the parties on April 12, 2004, and was sent to Respondent at the address provided by Respondent. The hearing convened and

concluded on June 25, 2004, with the undersigned Administrative Law Judge (ALJ) presiding. Attorney James M. Loughlin represented Petitioner. Respondent did not appear at the hearing.

II. DISCUSSION

A. Factual Overview

Claimant sustained a compensable workers' compensation injury on ____. On December 20, 2001, Claimant was admitted to Provider's hospital in Houston, Texas where he underwent a lumbar/lumbosacral fusionBposterior technique (ICD-9 code 81.08). He was discharged from the hospital four days later. Provider submitted a bill to Carrier for $40,504.20 for facility charges associated with the surgical procedure and four-day inpatient stay. Of this amount, Provider charged $10,834.99 for implantables under revenue code 278.[1] Provider did not submit a copy of the implantables invoices with its original bill showing the cost to Provider for the implantables. Carrier reimbursed Provider $10,000.38 under the Acute Care Inpatient Hospital Fee Guideline's standard per diem plus carve-outs reimbursement method.[2] Provider subsequently re-submitted its bill to Carrier with copies of the implantables invoices. Upon receipt of the implantables invoices, Carrier determined that by reimbursing Provider 50 percent of the billed charges for the implantables it had overpaid Provider $1,809.70.[3] The implantables for which Provider charged $10,834.99 cost it no more than $3,714.13, resulting in a mark-up of at least 291%.[4] Adjusting Provider's billed

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[1] Exhibit 1. The individual items billed under revenue code 278 are listed on Provider's itemized statement at p. 5.

[2] Carrier's reimbursement to Provider included $4,120.00 for four surgical days (at $1,030.00 per day rather than $1,118.00, pursuant to a PPO agreement); $5,417.50 for the implantables (50 percent of billed charge with the statement inadequately identified without invoice documentation); and $462.88 as fair and reasonable reimbursement for blood products. Exhibit 2 (Explanation of Benefits dated 01/08/02).

[3] Exhibit 2 (Explanation of Benefits dated 02/01/02).

[4] Carrier's First Requests for Admission to Provider Nos. 11, 12, and 13. The Requests for Admission were received by Provider via facsimile on May 10, 2004 and via certified mail, return receipt requested, on May 12, 2004. Therefore,

charges for the implantables to its invoice cost plus ten percent brings the total audited charges to $33,754.75, below the $40,000 stop-loss threshold.[5]

Provider filed a request for medical dispute resolution claiming entitlement to reimbursement of 75% of its billed charges, or $30,378.15, under the stop-loss provisions of the Guideline because its billed charges exceeded $40,000. The MRD ordered the Carrier to pay an additional $20,377.77 based on the stop-loss provisions of the Guideline. The Carrier timely requested a hearing.

B. The Dispute

The dispute in this case centers on whether the standard per diem plus carve-outs or alternate stop-loss reimbursement methodology should be applied. The rules that apply to the reimbursement methodology are found in the Acute Care Inpatient Hospital Fee Guideline (Guideline) contained in the 1997 Medical Fee Guideline, at 28 TEX. ADMIN. CODE (TAC) ' 134.401. In the preamble to the Guideline, the Commission stated it was adopting the Guideline to balance the following statutory standards: (1) to ensure that injured workers receive quality health care reasonably required by the nature of their injury as and when needed; (2) to ensure that the fee guidelines are fair and reasonable; (3) to achieve effective medical cost control; (4) to ensure that the fee paid for a workers' compensation patient would not be in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living; and (5) to take into consideration increased security of payment under the Act.[6] The Commission expected the 1997

Provider's responses were due by May 30, 2004. Provider did not respond to the requests for admission. Therefore, the requests have been admitted pursuant to SOAH rule 155.31.

[5] Petitioner's First Requests for Admission No. 10.

[6] 22 *Tex. Reg*. 6265 (1997).

Guideline to reduce the number of disputes and decrease costs. However, the Guideline is somewhat unclear in terms of how to apply the stop-loss and the per diem reimbursement methodologies.

C. Analysis

In this case, the Carrier reimbursed the billed charges for the implantables at Provider's actual cost plus ten percent. The ALJ concludes that the charges for the implantables were properly reduced to determine whether the $40,000 stop-loss threshold had been met. Following that reduction, the total bill would be lower than $40,000, meaning the standard per diem reimbursement method would apply.

Four prior SOAH decisions have addressed the treatment of implantables in the context of the Commission's stop-loss rule.[7] In those decisions, the ALJs determined that even under the stop-loss method the Carrier could audit and reduce charges for implantables that exceeded a hospital's costs plus 10%. The ALJ in this case concurs with those determinations.

As noted in the previous decisions, the Commission has not applied these rules in a consistent manner with respect to the appropriate reimbursement of implantables. Sometimes the costs of the implantables have been carved out prior to applying the stop-loss provisions. More recently, the Commission has not allowed these costs to be carved out. Given this state of the regulatory framework, any potential interpretation would seem problematic. However, based on an overall view of the rules, read in the context of the Commission's policy objectives, the ALJ concludes the per diem rate is the default and preferred method of reimbursement that should be employed unless the hospital justifies use of the stop-loss method in a particular case.

[7] SOAH Docket No. 453-03-1626.M4 (May 20, 2003), SOAH Docket No. 453-03-0910.M4 (April 10, 2003), SOAH

This approach is consistent with the purpose of the stop-loss provisions, found at 28 TAC ' 134.401(c)(6): A[T]o ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.@ Elsewhere, the rule states that the threshold was established to ensure compensation for unusually extensive services required during an admission. Finally, the Commission's rules must provide effective medical cost control pursuant to Section 413.011(d) of the Act. With the implantables reduced to $4,085.54 (cost plus ten percent), the total bill is $33,754.75, below the stop-loss threshold. Therefore, the standard per diem plus carve-outs reimbursement method should be applied.

D. Conclusion

Under these circumstances, the ALJ finds that the standard per diem methodology is the appropriate methodology to apply in reimbursing Provider. Consequently, no additional reimbursement is be required.

III. FINDINGS OF FACT

1. Claimant, an injured worker, sustained a compensable workers' compensation injury on ____.

2. At the time of the compensable injury, Insurance Company of the State of Pennsylvania (Carrier) was responsible for the Claimant's workers' compensation coverage.

3. On December 20, 2001, Claimant was admitted to Texas Orthopedic Hospital (Provider) in Houston, Texas.

4. During the hospital stay Claimant underwent a lumbar/lumbosacral fusionBposterior technique.

5. Claimant was discharged from the hospital four days later, on December 24, 2001.

Docket No. 453-00-2092.M4 (April 24, 2001), and SOAH Docket No. 453-01-1612.M4 (September 6, 2001).

6. Provider billed Carrier $40,504.20 for facility charges associated with the surgical procedure and the four-day inpatient stay.

7. Of the $40,504.20 billed by Provider, $10,834.99 was for implantables, billed under Revenue Code 278.

8. Provider's actual cost for the implantables was no more than $3,714.13.

9. The implantables were marked up at least 291% above Provider's actual cost.

10. Adjusting Provider's billed charges for the implantables to its invoice cost plus ten percent brings the total audited charges to $33,754.75, below the $40,000 stop-loss threshold.

11. Carrier calculated reimbursement to Provider under the standard per diem plus carve-outs reimbursement method of the Guideline.

12. The Carrier reimbursed Provider a total of $10,000.38.

13. Provider filed a request for medical dispute resolution, claiming entitlement to reimbursement of 75% of its billed charges, or $30,378.15, under the stop-loss provisions of the guideline because its billed charges exceeded $40,000.

14. The MRD ordered Carrier to pay an additional $20,377.77 based on the stop-loss provisions of the Guideline.

15. Carrier timely requested a hearing before the State Office of Administrative Hearings.

16. Notice of the hearing was sent to all parties on April 12, 2004.

17. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031 of the Act and TEX. GOVT. CODE ANN. ch. 2003.

2. Carrier timely requested a hearing in accordance with 28 TEX. ADMIN. CODE ' 148.3.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. '' 2001.051 and 2001.052.

4. As the party appealing the MRD decision, Carrier has the burden of proof in this matter pursuant to 28 TEX. ADMIN. CODE ' 148.21(h).

5. As specified in the Guideline at 28 TEX. ADMIN. CODE ' 134.401(c)(2), all inpatient services provided by an acute care hospital for a surgical admission will be reimbursed using a standard per diem amount.

6. Under the Guideline at 28 TAC ' 134.401, implantables are excepted from Stop-Loss, and, when medically necessary, are reimbursed at cost plus 10 percent.

7. Although Provider's charges were eligible for consideration according to the stop-loss method set out in 28 TEX. ADMIN. CODE ' 134.401, stop-loss should not be allowed in this case because the charges met the $40,000 threshold only because Provider marked up its charges for implantables at least 291 percent above their cost.

8. Based on the foregoing Findings of Fact and Conclusions of Law, Carrier owes Provider no additional reimbursement.

ORDER

IT IS ORDERED THAT Insurance Company of the State of Pennsylvania owes Texas Orthopedic Hospital no additional reimbursement.

Signed August 27, 2004

GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS