SOAH DOCKET NO. 453-05-6483.M4
TWCC MDR NO. M4-05-0679-01

AMERICAN HOME ASSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
V.	§	**OF**
VISTA MEDICAL CENTER HOSPITAL,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

American Home Assurance Company (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division),[1] concluding that it owed additional reimbursement to Provider for a hospital stay provided to Claimant, an injured worker. Carrier argued that the Stop-Loss Exception to the per diem reimbursement methodology contained in the 1997 Acute Care Inpatient Hospital Fee Guideline (1997ACIHFG) does not apply and that reimbursement should be in accordance with the per-diem methodology.[2] The Administrative Law Judge (ALJ) finds the Stop-Loss Exception should be followed in this proceeding. American Home Assurance Company (Carrier) is ordered to pay additional reimbursement in the amount of $93,278.44, plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on April 1, 2005. Provider filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties, and the hearing convened and closed on February 14, 2008.

[1] Effective September 1, 2005, the legislature dissolved the Texas Workers' Compensation Commission (Commission) and created the Division of Workers' Compensation within the Texas Department of Insurance. Act of June 1, 2005, 79th Leg., R.S., ch. 265, § 8.001, 2005 Tex. Gen. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

[2] The 1997 ACIHFG established a general reimbursement scheme for all inpatient services provided by an acute care hospital for medical and/or surgical admissions using a service-related standard per diem amount. 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 28 TEX. ADMIN. CODE (TAC) § 134.401(c). This independent reimbursement mechanism, the Stop-Loss Method or Stop-Loss Methodology, is sometimes referred to as the Stop-Loss Exception or the Stop-Loss Rule.

This case was joined with other Stop-Loss cases for reasons of efficiency.[3]

II. DISCUSSION

A. Factual Overview

The basic facts were uncontested. Claimant sustained a compensable injury and was admitted to Provider, where Claimant underwent treatment. After Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of $170,139.08 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $33,287.00.

B. Issues

1. Summary of Positions and ALJ's Decision

In summary, the parties' positions and ALJ's findings are as follows:

	MRD	Provider	Carrier	ALJ
Charges	$168,753.93[4]	$170,139.08	$170,139.08	**$170,139.93**

[3] Beginning in 2003, the Division began referring a significant number of ACIHFG cases to SOAH. Between 2003 and August 31, 2005 approximately 885 ACIHFG cases were referred to SOAH for contested case hearings on issues including the Stop-Loss Exception, audits, and the reimbursement of implantables. In order to efficiently and economically manage this growing number of cases, SOAH in late 2004 and early 2005 began to join the cases into a Stop-Loss Docket, and the cases were abated. By the close of the 2005 regular legislative session, SOAH realized a finite, but still unknown, number of Stop-Loss cases would be referred to SOAH by the Division through August 31, 2005.

[4] The MRD determined that the Stop-Loss Exception applied on the basis of its finding that the services were unusually extensive. However, it reduced Provider's bill by $1,385.15, from $170,139.08 to $168,753.93, based on audit reductions. It applied the Stop-Loss Methodology by multiplying $168,753.93 times 75 percent to arrive at a total reimbursable amount of $126,565.45. It deducted Carrier's previous payment of $33,287.00 to arrive at a balance owed of $93,278.45.

Reimbursement Methodology	75%	x 75%[5]	per diem[6]	**x 75%**
Reimbursement Amount	$126,565.45	$127,604.31	$33,287.00	**$127,604.31**
Less Payment	($33,287.00)	($33,287.00)	($33,287.00)	**($33,287.00)**
Balance Due Provider	$93,278.45	$94,317.31	$0.00	**$93,278.45**[7]

2. Background

When a hospital's total audited bill is greater than $40,000, the Division's Stop-Loss Exception applies, and the hospital is reimbursed at 75% of its total audited bill. The purpose of the Stop-Loss Methodology is "to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker."[8] The following legal issues in this case were decided by a SOAH En Banc Panel[9] (En Banc Panel), and those determinations are

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5 Provider contended that its entire $170,139.08 charge should be determined according to the Stop-Loss Methodology and it should be paid an additional $94,317.31 ($170,139.08 x 75% , $127,604.31 less Carrier's previous payment of $33,287.00). It also asserted that Carrier's reductions on the basis of unnecessary treatment were inappropriate because the services were preauthorized and its reductions for unbundling (with the "G" code for global procedures) do not comply with Division rules requiring insurance carriers to provide an understandable explanation of their reasons for denying a charge. Provider said it could not understand or evaluate Carrier's rationale for unbundling reductions because Carrier did not identify which specific charges were unbundled.

6 Carrier contended that the Stop-Loss Methodology does not apply and its payment was correct according to the 1997ACIHFG. It also argued, assuming the Stop-Loss Methodology is found to apply, that it properly audited Provider's bill and that the bill should be reduced by $39,078.00 for unnecessary services and by $9,166.26 for items that were improperly unbundled. Addressing Provider's specific arguments, Carrier maintained that it is permissible for insurance carriers to challenge as unnecessary certain charges made in conjunction with a preauthorized procedure such as a surgical hospital admission, although items such as the admission itself, the length of stay, the preauthorized surgical procedure, and the doctor's bill for that procedure may not be denied as unnecessary. Carrier also argued that it was unnecessary to identify specific unbundled items that it denied because the items, such as charges that are global to an overall operating-room charge, are obvious and well-known in the industry.

7 The ALJ concludes that Provider should be reimbursed in accordance with the MRD decision. The Stop-Loss Methodology applies to this case because total audited charges exceed $40,000.00. Moreover, as the petitioner, Carrier has the burden of proof. The ALJ finds that Carrier did not persuasively prove that its reductions for unbundling and for unnecessary services were appropriate. Finally, Provider may not recover more than the MRD ordered because it did not appeal the MRD decision.

8 28 TAC § 134.401(c)(6).

9 En Banc Panel Order in Consolidated Stop Loss Legal Issues Docket, SOAH Docket No. 453-03-1487.M4 (Lead Docket), issued January 12, 2007.

incorporated herein. Legal arguments related to these issues will not be addressed, other than in the Conclusions of Law.

3. The ALJs conclude that a hospital's post-audit usual and customary charges for items listed in 28 TAC § 134.401(c)(4) are the audited charges used to calculate whether the Stop-Loss Threshold has been met for a workers' compensation admission. The ALJs decline to adopt the Carriers' argument to use the carve-out reimbursement amounts in § 134.401(c)(4) as audited charges, and they decline to adopt the Division's argument to use a fair-and-reasonable amount as determined by a carrier in its bill review as audited charges.

4. The ALJs find that when the stop-loss reimbursement methodology applies to a workers' compensation hospitalization, all eligible items, including items listed in § 134.401(c)(4), are reimbursed at 75% of their post-audit amount. Items listed in § 134.401(c)(4) are not reimbursed at the carve out amounts provided in that section when the stop-loss reimbursement methodology is applied.

5. The ALJs conclude that any reasons for denial of a claim or defenses not asserted by a Carrier before a request for medical dispute resolution may not be considered, whether or not they arise out of an audit. The ALJs also conclude that Carriers' audit rights are not limited by § 134.401(c)(6)(A)(v) when the stop-loss reimbursement methodology applies. In such cases, carriers may audit in accordance with § 134.401(b)(2)(c).

6. The ALJs find that a hospital establishes eligibility for applying the stop-loss reimbursement methodology under § 134.401(c)(4) when total eligible amounts exceed the Stop-Loss Threshold of $40,000. There is no additional requirement for a hospital to establish that any or all of the services were unusually costly or unusually extensive.[10]

Finally, in reply to a request for clarification, the En Banc Panel found that when referring to a hospital's usual and customary charges, the rules are referring to the hospital's own usual and customary charges and not to charges that are an average or median of other hospitals' charges.[11] Provider charged its usual and customary charges for the particular items or service.

In summary, the ALJ concludes that the Stop-Loss Threshold was met in this case and that the amounts in dispute should be calculated accordingly.

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[10] Because of a typographical error, the En Banc Panel's decision incorrectly cites § 134.401(c)(4) rather than § 134.401(c)(6) as the applicable rule.

[11] Letter from ALJ Catherine C. Egan dated February 23, 2007.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of his employment; his employer had coverage with American Home Assurance Company (Carrier).

2. Vista Medical Center Hospital (Provider) provided medical treatment to Claimant for the compensable injury.

3. Provider submitted itemized billing totaling $170,139.08 for the services provided to Claimant for the treatment in issue.

4. The $170,139.08 billed was Provider's usual and customary charge for these items and treatments.

5. Carrier has issued payments of $33,287.00 to Provider for the services in question.

6. Carrier denied further reimbursement to Provider.

7. Provider requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) on charges totaling $170,139.08.

8. Effective September 1, 2005, the legislature dissolved the Commission and created the Division of Workers' Compensation within the Texas Department of Insurance. The Commission and its successor are collectively referred to as the Division.

9. The MRD found that the Stop-Loss Exception applied in this case based on its determination that the services were unusually extensive.

10. The MRD applied $1,385.156 in audit reductions to Provider's charges to arrive at total audited charges of $168,753.93.

11. Applying the Stop-Loss Methodology, the MRD determined that Provider should be reimbursed a total of $126,565.45.

12. Carrier timely filed a request for a contested case hearing on the MRD's decision.

13. Provider did not request a hearing.

14. All parties were provided not less than 10-days' notice of hearing and of their rights under the applicable rules and statutes.

15. On February 14, 2008, Administrative Law Judge James W. Norman convened a hearing on the merits at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Carrier and Provider were present and represented by counsel. The Division did not participate in the hearing. The hearing concluded and the record closed on February 14, 2007.

16. Carrier's audit reduced Provider's bill by $9,166.26 for unbundling and $39,078.00 for unnecessary charges, in addition to other reductions.

17. There was insufficient evidence to conclude that Carrier's reductions for unbundling and unnecessary charges were appropriate.

18. Provider's audited charges under § 134.401(c)(6)(A)(v) are $168,753.93, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.

19. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of $126,565.44. After deduction of Carrier's prior payment of $33,287.00, Provider is entitled to additional reimbursement of $93,278.44 under the Stop-Loss Methodology.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. Provider timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) §148.3.

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

4. Petitioner had the burden of proof in this proceeding pursuant to 28 TAC § 148.21(h) and (i).

5. All eligible items, including the items listed in 28 TAC § 131.401(c)(4), are included in the calculation of the $40,000 Stop-Loss Threshold.

6. In calculating whether the Stop-Loss Threshold has been met, all eligible items are included at the hospital's usual and customary charges in the absence of an applicable MARS or a specific contract.

7. The carve-out reimbursement amounts contained in 28 TAC § 134.401(c)(4) are not used to calculate whether the Stop-Loss Threshold has been met.

8. When the Stop-Loss Methodology applies to a workers' compensation admission, all eligible items, including items listed in 28 TAC § 134.401(c)(4), are reimbursed at 75% of their post-audit amount.

9. Under the Stop-Loss Methodology, items listed in 28 TAC § 134.401(c)(4) are not reimbursed at the carve-out amounts provided in that section when the Stop-Loss Methodology applies.

10. Carriers' audit rights are not limited by 28 TAC § 134.401(c)(6)(A)(v) when the Stop-Loss Methodology applies. In such cases, carriers may audit in accordance with 28 TAC § 134.401(b)(2)(C).

11. Pursuant to 28 TAC § 133.307(j)(2), any defense or reason for denial of a claim not asserted by a carrier before a request for medical dispute resolution may not be considered at the hearing before SOAH, whether or not it arises out of an audit.

12. A hospital, Provider in this case, establishes eligibility for applying the Stop-Loss Methodology under 28 TAC § 134.401(c)(6) when total eligible charges exceed the Stop-Loss Threshold of $40,000. There is no additional requirement for a hospital to separately establish that any or all of the services were unusually costly or unusually extensive.

13. The Stop-Loss Methodology applies to this case.

14. The February 17, 2005 Staff Report (Staff Report) by MRD Director Allen C. McDonald, Jr., is not consistent with the Stop-Loss Rule, 28 TAC § 134.401(c)(6), and is not consistent with the Division's prior interpretation of the rule that the $40,000 Stop-Loss Threshold alone triggered the application of the Stop-Loss Methodology.

15. The Staff Report is not consistent with the Stop-Loss Rule, the preambles to the Stop-Loss Rule published in the Texas Register, or MRD decisions issued prior to February 17, 2005.

16. The Staff Report has no legal effect in this case.

17. Applying the Stop-Loss Methodology in this case, Provider is entitled to total reimbursement of $126,278.44.

18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $33,287.00 of this amount.

19. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $93,278.44, plus any applicable interest.

ORDER

It is hereby **ORDERED** that American Home Assurance Company reimburse Vista Medical Center Hospital the additional sum of $93,278.44, plus any applicable interest, for services provided to Claimant.

SIGNED March 25, 2008.

JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS