

**SOAH DOCKET NO. 453-05-2085.M4
TWCC MDR NO. M4-03-5558-01**

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| THE UNIVERSITY OF TEXAS SYSTEM, Petitioner | § § § § § § § | BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS |
| V. | | |
| VISTA MEDICAL CENTER HOSPITAL, Respondent | | |

DECISION AND ORDER

The University of Texas System (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 denying additional reimbursement to Provider for a hospital stay provided to Claimant, an injured worker. Carrier argued that reimbursement for this admission should be based on the per-diem reimbursement methodology contained in the 1997 Acute Care Inpatient Hospital Fee Guideline (1997ACIHFG).^{2 3} The Administrative Law Judges (ALJs) find the Stop-Loss Exception should be followed in this proceeding. Accordingly, Carrier is ordered to pay additional reimbursement in the amount of \$29,724.80, plus any applicable interest.⁴

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.

³ Carrier submitted a Motion for Summary Judgment prior to the hearing, to which Provider later responded. The motion was based on Carrier's assertion that the Stop-Loss Exception did not apply because on the basis of an audit, Carrier reduced Provider's charges to less than \$40,000.00, the threshold for applying the Stop-Loss Exception. Carrier contended that Provider's charges should be reduced because it improperly unbundled certain charges. Carrier's motion will be resolved in this decision on the hearing on the merits.

⁴ ALJ Tommy L. Broyles presided at the hearing. ALJ James W. Norman reviewed the entire record and wrote this decision. ALJ Howard S. Seitzman has reviewed the decision.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on October 25, 2004. Petitioner filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties, and the hearing convened and concluded on November 15, 2007. This case was joined with other Stop-Loss cases for reasons of efficiency.⁵

II. DISCUSSION

A. Factual Overview

The basic facts were uncontested. Claimant sustained a compensable injury and was admitted to Vista Medical Center Hospital (Provider), where Claimant underwent treatment. After Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of \$44,205.07 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid \$3,429.00.

B. Issues

1. Summary of Positions and ALJs' Decision

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

⁵ 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.

| | MRD | Provider | Carrier | ALJs |
|----------------------------------|---------------------|--------------------------|-----------------------|---------------------|
| Charges | \$44,205.07 | \$44,205.07 ⁶ | \$44,205.07 | \$44,205.07 |
| 75% Stop Loss Methodology | Stop-Loss Exception | x 75% | per diem ⁷ | x 75% |
| Reimbursement Amount | \$33,153.80 | \$33,153.80 | \$3,429.00 | \$33,153.80 |
| Less Payment | (\$3,429.00) | (\$3,429.00) | (\$3,429.00) | (\$3,429.00) |
| Balance Due Provider | \$29,724.80 | \$29,724.80 | \$0.00 | \$29,724.80 |

2. Background

When a hospital's total audited bill is greater than \$40,000, the Division's Stop-Loss

⁶ Provider witness Rita Morales, who supervises Provider's billing, testified that Provider billed its usual and customary charges. Ms. Morales acknowledged, however, that because she did not begin working for the company that bills Provider's charges until July 2002 and the services and charges were dated in May 2002, it would be difficult for her to say for sure what Provider's charges were at that time. However, Carrier requested a hearing in this case. The burden was on Carrier to prove that Provider is not entitled to the amount determined by MRD. It did not prove that Provider did not charge its usual and customary charges.

⁷ Carrier elicited testimony from Mary Carroll, who works for Medical Business Management Services, a company that adjusts claims for Carrier, that after an audit, she reduced Provider's charges by \$8,911.84 to \$35,293.23 based on her conclusion that Provider improperly unbundled certain charges. On that basis, Carrier contended that the Stop-Loss Exception does not apply because Carrier's audited charges did not exceed the \$40,000.00 threshold. Carrier calculated a per diem amount of \$3,354.00, based on a three-day hospital stay, plus \$75.00 for "blood admin," for a total payment of \$3,429.00.

In its reply to Carrier's Motion for Summary Judgment, Provider contended that Carrier did not adequately explain in its explanation of benefits (EOB) the reasons for its unbundling assertion. Carrier used the "G" code for unbundling in denying all but \$3,429.00 of Carrier's \$44,205.07 in charges except for a denial of \$224.00 for a "blood admin" charge. Carrier responded and contended that Provider waived any assertion of improper notice of its reason for denial because Provider failed to raise that issue in its request for medical dispute resolution.

Without deciding whether a provider can waive an insurer's failure to follow a Division rule in denying a claim, the ALJs find that Provider did adequately raise the unbundling issue when, in its table of disputed services, it said that Carrier did not provide the proper payment exception code. Provider was correct in its assertion that the use of the "G" code to deny more than \$40,000.00 of Provider's \$44,205.07 in charges was inappropriate—Ms. Carroll's own testimony indicates that the unbundling reduction was only \$8,911.84. Ms. Carroll acknowledged that Provider could not know which charges were unbundled by looking at the EOB.

By applying the "G" code to virtually all charges except for paying \$3,345.00 (3 times \$1,118.00), Carrier was saying in effect that per-diem reimbursement rather than the Stop Loss Exception applied. Use of the G code for that purpose was inappropriate. Moreover, according to Ms. Carroll, Provider could not know which charges were unbundled by looking at the EOB. The Division's rules at 28 TEX. ADMIN. CODE (TAC) § 133.307(j)(2) provide that any denial reasons or defenses not raised before a request for medical dispute resolution may not be considered. The ALJ finds that Carrier did not adequately comply with that rule and that its reasons for denial may not be considered.

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 Panel⁹ (En Banc Panel), and those determinations are 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).
4. 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

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.

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.

customary charges and not to charges that are an average or median of other hospitals' charges.¹¹ Provider is required to charge its usual and customary charges, and Carrier failed to prove any of the charges assessed were not Provider's usual charges for that particular item or service.

In summary, the ALJs conclude that the stop-loss threshold was met in this case and that the amounts in dispute should be calculated accordingly.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of his employment; his employer had coverage with The University of Texas System (Carrier).
2. Vista Medical Center Hospital (Provider) provided medical treatment to Claimant for the compensable injury.
3. Provider submitted itemized billing totaling \$44,205.07 for the services provided to Claimant for the treatment in issue.
4. There were no charges for implantables.
5. Carrier has issued payments of \$3,429.00 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 \$44,205.07.
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. Based on its finding that the Stop-Loss Exception applied, MRD concluded that Carrier owed Provider \$33,153.80. After deducting the \$3,429.00 already paid, MRD issued its Findings and Decision, holding that Carrier owed an additional \$29,724.80.
10. Carrier timely filed a request for a contested case hearing on the MRD's decision.
11. All parties were provided not less than 10-days notice of hearing and of their rights under the applicable rules and statutes.

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

12. On October 25, 2007, Administrative Law Judge Tommy L. Broyles 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 November 14, 2007.
13. Carrier did not prove that the \$44,205.07 billed was not Provider's usual and customary charges for these items and treatments.
14. Carrier reduced Provider's charges by \$8,911.84 to \$35,293.23 based on its assertion that Provider improperly unbundled certain charges.
15. Carrier used exception code "G" in its explanation of benefits (EOB) in reducing Carrier's charges for unbundling by more than \$40,000.00.
16. Carrier did not appropriately use exception code G in denying Provider's claim.
17. Provider's total audited charges under § 134.401(c)(6)(A)(v) are \$44,205.07, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.
18. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of \$33,153.80. After deduction of Carrier's prior payment of \$3,429.00, Provider is entitled to additional reimbursement of \$29,724.80 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 Reimbursement 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 Reimbursement 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 Reimbursement Methodology applies.
10. Carriers' audit rights are not limited by 28 TAC § 134.401(c)(6)(A)(v) when the Stop-Loss Reimbursement Methodology applies. In such cases, carriers may audit in accordance with 28 TAC § 134.401(b)(2)(C).
11. Carrier's EOB did not adequately comply with the Division's rules in stating its reason for denying Provider's claim on the basis of unbundling. 28 TAC § 133.307(j)(2).
12. 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.
13. A hospital, Provider in this case, establishes eligibility for applying the Stop-Loss Reimbursement 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.
14. The Stop-Loss Reimbursement Methodology applies to this case.
15. 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.
16. 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.
17. The Staff Report has no legal effect in this case.
18. Applying the Stop-Loss Methodology in this case, Provider is entitled to total reimbursement of \$33,153.80.
19. As specified in the above Findings of Fact, Carrier has already reimbursed Provider \$3,429.00 of this amount.
20. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of \$29,724.80, plus any applicable interest.

ORDER

It is hereby **ORDERED** that The University of Texas System reimburse Vista Medical Center Hospital the additional sum of \$29,724.80, plus any applicable interest, for services provided to Claimant.

SIGNED January 8, 2008.

**JAMES W. NORMAN
TOMMY L. BROYLES
HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGES
STATE OFFICE OF ADMINISTRATIVE HEARINGS**