

<b>INDEMNITY INSURANCE COMPANY,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>SPINE HOSPITAL OF SOUTH TEXAS,</b>	§	
<b>Respondent</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

Indemnity Insurance 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)<sup>1</sup> ordering additional reimbursement to Spine Hospital of South Texas (Provider) for a hospital stay provided to Claimant, an injured worker. Provider argued that reimbursement for this admission should be based on the Stop-Loss Exception to the per diem reimbursement methodology contained in the 1997 Acute Care Inpatient Hospital Fee Guideline (1997 ACIHFG).<sup>2</sup> The Administrative Law Judge (ALJ) finds the Stop-Loss Exception should be followed in this proceeding. Accordingly, Carrier is ordered to pay additional reimbursement in the amount of \$45,928.13, plus any applicable interest.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

The MRD issued its decision on May 27, 2005. Provider filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties. The hearing convened

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<sup>1</sup> 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.

<sup>2</sup> 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.

## 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 \$81,982.37 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid \$13,714.05.

### 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	ALJs
<b>Charges</b>	\$81,636.96 <sup>4</sup>	\$81,982.37	\$81,982.37	<b>\$81,982.37</b>
<b>Reimbursement Methodology</b>	x 75%	x 75%	per diem	<b>x 75%</b>

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<sup>3</sup> 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.

<sup>4</sup> MRD determined that the Stop-Loss Exception did apply because the admission involved unusually extensive services. However, it limited reimbursement for implantables to 200 percent of cost, which it said is the usual markup. With this adjustment, Provider's total audited charges were reduced from \$81,982.37 to \$81,636.96 and reimbursement was reduced from \$61,486.78 to \$61,227.72.

<b>Reimbursement Amount</b>	\$61,227.69	\$59,642.18 <sup>5</sup>	\$13,714.05 <sup>6</sup>	<b>\$59,642.18<sup>7</sup></b>
<b>Less Payment</b>	(\$13,657.00)	(\$13,714.05)	(\$13,714.05)	<b>(\$13,714.05)</b>
<b>Balance Due Provider</b>	\$47,570.69	\$45,928.13	\$0.00	<b>\$45,928.13</b>

## 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."<sup>8</sup> The following legal issues in this case were decided by a SOAH En Banc Panel<sup>9</sup> (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.

1. 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

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<sup>5</sup> Provider contended it is entitled to reimbursement in accordance with the Stop-Loss Methodology. However, based on a contract that requires it to reduce its reimbursement by three percent, it said it is entitled to \$59,642.18 (\$81,982.37 x .75, \$61,486.78 - \$1,844.60 (3% of amount owed), \$59,642.18). In response to Carrier's argument that certain supplies/implants were not documented, Provider argued that Carrier waived an "N" code reason for denial by not indicating the specific documentation request within 14 days of its receipt of the medical bill, as required by 28 TAC § 133.301(d)(1), (5).

<sup>6</sup> Carrier reduced Provider's charges to \$13,714.05 based on the maximum allowable reimbursement in a fee guideline, a negotiated contract price, and lack of appropriate documentation for some supplies/implants.

<sup>7</sup> The ALJ agrees with Provider. Carrier's "N" code reduction for supplies/implants was inconsistent with the Division's rules in effect at the time at 28 TAC § 133.304(c), which requires a sufficient explanation in an EOB to allow a provider to understand the insurance carrier's reasons for denying a claim, rather than a generic conclusory statement such as "not sufficiently documented," and at 28 TAC § 133.307(j)(2), providing that any denial reason not raised before a medical-dispute-resolution request may not be considered. Based on the fact that there were invoices for supplies/implants (Provider's Ex. 1 at DM 13-16) and the operative report shows the use of implants (Provider's Ex. 1 at DM 26-28), Carrier's N code denial is not understandable. Reading Rules 133.304(c) and 133.307(j)(2) together, the ALJ concludes that Carrier's reason for denial of these claims was inadequate and may not be considered.

The ALJ was unable to find evidence showing that Provider's charges should be reduced on the basis of a negotiated contract, except for the three percent reduction made by Provider. Carrier argued that its reduction was in accordance with the contract's terms. As the appellant, Carrier had the burden of proof. It did not show further reductions were warranted.

<sup>8</sup> 28 TAC § 134.401(c)(6).

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

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.

2. The ALJs find that when the Stop-Loss 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 Methodology is applied.
3. 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 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 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.<sup>10</sup>

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.<sup>11</sup> Provider charged its usual and customary charges for the items and services provided.

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.

### **III. FINDINGS OF FACT**

1. Claimant sustained a compensable injury in the course and scope of his employment; the employer had coverage with Indemnity Insurance Company (Carrier).
2. Spine Hospital of South Texas (Provider) provided medical treatment to Claimant for the compensable injury.

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<sup>10</sup> 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.

<sup>11</sup> Letter from ALJ Catherine C. Egan dated February 23, 2007.

3. Provider submitted itemized billing totaling \$81,982.37 for services provided to Claimant.
4. The \$81,982.37 billed was Provider's usual and customary charges for these items and treatments.
5. Carrier issued payments of \$13,714.05 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).
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. MRD issued its Findings and Decision holding that \$47,570.69 in additional reimbursement was owed Provider.
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.
12. On March 25, 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 that day and the record closed on March 25, 2008.
13. Provider's total audited charges under § 134.401(c) (6) (A) (v) are \$81,982.37, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.
14. Provider reduced its requested reimbursement from \$61,486.78 to \$59,642.18 based on a contract with Carrier that required it to reduce its charges by three percent.
15. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of \$59,642.18. After deduction of Carrier's prior payment of \$13,714.05, Provider is entitled to additional reimbursement of \$45,928.13, plus any applicable interest, 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. Carrier 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. Carrier 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) (4) 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 \$59,642.18.
18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider \$13,714.05 of this amount.

19. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of \$45,928.13, plus any applicable interest.

**ORDER**

It is hereby **ORDERED** that Indemnity Insurance Company reimburse Spine Hospital of South Texas the additional sum of \$45,928.13, plus any applicable interest, for services provided to Claimant. Any requested relief not expressly granted herein is denied.

**SIGNED May 2, 2008.**

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