SOAH DOCKET NO. 454-14-4080.M4-NP

DALLAS INDEPENDENT SCHOOL DISTRICT,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
v.	§	
	§	
TEXAS HEALTH PRESBYTERIAN HOSPITAL OF DALLAS,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

REVISED DECISION AND ORDER

Dallas Independent School District (Carrier)[1] challenges the order of reimbursement to Texas Health Presbyterian Hospital of Dallas (Provider) for inpatient services provided to an injured worker (Claimant). The Administrative Law Judge (ALJ) concludes that Carrier met its burden of proof to show that the order incorrectly calculated the reimbursement amount, but also finds that Carrier still owes $269.83.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

Provider filed a request for medical fee dispute resolution (MFDR) with the Texas Department of Insurance, Division of Workers' Compensation (Division). On March 13, 2014, the Division issued its MFDR Findings and Decision. On June 12, 2014, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On June 16, 2014, the Division issued a Notice of Hearing. The hearing was held September 8, 2014, before ALJ Rebecca S. Smith at SOAH's offices located in Austin, Texas. Carrier was represented by attorney Steven M. Tipton. Provider was represented by Tiffany Bumpas.

A decision and order was issued on November 3, 2014. On November 21, 2014, Carrier filed a Motion for Rehearing. On December 22, 2014, the ALJ granted the Motion for Rehearing. This revised Decision and Order now follows.

---

[1] Carrier called itself ".Carrier" when prefiling exhibits. The Administrative Law Judge is following its lead.

II. APPLICABLE LAW

The Texas Department of Insurance rule found at 28 Texas Administrative Code § 134.404 applies to medical services provided in an outpatient acute care hospital on or after March I, 2008. · That rule provides that in the absence of a contracted fee schedule, reimbursement to, _a provider shall be the maximum allowable reimbursement (MAR) amount, including any applicable outlier payment amounts and reimbursement for implantables[2]. The rule also sets out how to calculate the MAR:

> The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) reimbursement formula and factors as published annually in the *Federal Register*. The following minimal modifications shall be applied.
>
> (1) The sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by:
>
> (A) 143 percent; unless
>
> (B) a facility or surgical implant provider requests separate reimbursement in accordance with subsection (g) of this section, in which case the facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 108 percent.
>
> (2) When calculating outlier payment amounts, the facility's total billed charges shall be reduced by the facility's billed charges for any item reimbursed separately under subsection (g) of this section.[3]
>
> Subsection (g), referenced above, addresses the reimbursement of implantables:[4]
>
> Implantables, when billed separately by the facility or a surgical implant provider in accordance with subsection (f)(l)(B) of this section, shall be reimbursed at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus IO percent or $1,000 per billed item add-on, whichever is less, but not to exceed $2,000 in add-on[s] per admission.

---

[2] 28 Tex. Admin. Code § 134.404(e)(2).

[3] 28 Tex. Admin. Code § 134.404(1).

[4] An "implantable" is defined as an object or device that is surgically implanted, embedded, inserted, or otherwise applied, and related equipment necessary to operate, program, and recharge the implantable. 28 Tex. Admin. Code § 134.404(b)(2).

The party appealing the MFDR decision, in this case Carrier, has the burden of proof by a preponderance of the evidence to show that the decision does not satisfy the relevant standards.

III. EVIDENCE AND ANALYSIS

A. Evidence

Provider treated Claimant, who was injured on _____. Provider sent Carrier a bill for $188,352.90 for Claimant's treatment and separately invoiced $10,128.01 for implantables.[5] The $188,352.90 bill states at the bottom that "implant invoices [are] attached for separate reimbursement."[6] Carrier paid Provider a total of $28,273.72 for both bills.[7]

Carrier introduced several exhibits into evidence and presented the testimony of _____ an employee of _____[8] who explained how she used a program on Medicare's website called the CMS IPPS Pricer (Pricer) to calculate the MAR. Carrier's exhibits included the bills from Provider and the separate invoice for the implantables. The exhibits also included instructions in the use of the Pricer and some correspondence, including an email exchange with a Division employee about calculating the outlier payment amount.

Provider did not present any witnesses. Its exhibits were an unexplained printout from its computer system appearing to relate to the reimbursement rate; a letter to Carrier requesting additional payment; and the MFDR findings and decision.[9]

B. The Pricer

No one expressly challenged the use of the Pricer to calculate the MAR.[10] From the evidence, it appears that several pieces of information are entered into the Pricer, which then applies the relevant IPPS calculations to reach the Medicare facility-specific allowable amount. The Pricer calculates two parts, the federal specific portion (FSP) and the outlier payment amount, and then calculates a total amount, which is the Medicare facility-specific allowable amount.

---

[5] Carrier Ex. 4 at 34-38.

[6] Carrier Ex. 4 at 34-35.

[7] Carrier Ex. 3.

[8] While the nature of A____was not explained, Ms. S_____ testified that as part of her work, she often deals with how inpatient services get paid.

[9] Provider Exs. 1, 2, 3.

[10] It is not clear whether Provider objects to this. Provider introduced a screenshot from what appears to be its own computer system that might provide a separate calculation.

The FSP depends on the Diagnosis Related Group (DRG) for a patient's condition. In this case, the DRG is 483, which according to the Pricer, results in an FSP of $12,238.17. Provider does not appear to dispute this amount, which matches the "base rate" contained in Provider Exhibit 1.

The outlier payment amount is in greater dispute. The Pricer uses the hospital's total charge amount to calculate the outlier payment amount. This amount is entered on a line labeled "charges amount." Ms. Shaw testified that when different charge amounts for the same DRG are entered, the FSP stays the same, but the outlier amounts change. She showed this by using two different screen shots from the Pricer.[11] The first screen shot used the full billed amount to calculate the outlier payment, and the second reduced the billed amount by $61,286.00.

When the MFDR Officer did the calculation, she used the full billed amount of $188,352.90 to calculate the outlier payment, which, Ms. S_____ testified, results in a total Medicare facility specific allowable amount of $28,619.43. This is the same figure reflected in Ms. S_____'s first Pricer screen shot.[12]

As discussed above, the Hospital Facility Fee Guideline requires that when calculating an outlier payment amount, the total billed charges are to be reduced by the billed charges for separately-reimbursed implantables.[13] Carrier argued that the MDFR Officer erred by not making this reduction. Ms. S_____ testified, and the screen print from the Pricer confirmed, that reducing the billed 'charges in this way reduced the amount of the outlier payment, which in turn reduced the Medicare facility-specific allowable amount.

Ms. S_____· testified that the hospital billed $61,286.00 for the implantables.[14] Based on this information, the total payment used to calculate the outlier payment should be reduced by this amount, resulting in a total billed charges amount of $127,066.90. From this, based on the Pricer, the Medicare facility-specific amount is $16,125.50, instead of the $28,619.43 Medicare facility-specific amount found by the MDFR Officer.

To calculate the MAR, $16,125.50 is multiplied by 108%, which comes to $17,415.54. This amount is added to the $11,128.01 implantables amount,[15] for a total

---

[11] Carrier Ex. 2.

[12] Provider's Exhibit 1 appears to suggest that the outlier payment amount should be higher than the one the MFDR Officer reached. This exhibit lists an "Outlier + Adjs," of $17,599.02. Adding this amount to the $12,238.17 "base rate" listed results in the amount listed in this exhibit as the "DRG Rate" of $29,837.19. Again, there was no testimony explaining Provider's Exhibit 1, so the *ALJ* cannot credit this calculation.

[13] 28 Tex. Admin. Code § 134.404(1)(2).

[14] *See also* Carrier Ex. 4 at 34.

[15] Carrier Ex. 5

reimbursement amount of $28,543.55. The Provider previously paid $28,273.72. Subtracting the amount previously paid leaves a remaining balance of $369.83. Accordingly, Carrier is required to reimburse Provider $369.83.[16]

IV. FINDINGS OF FACT

1. Dallas Independent School District (Carrier) challenged the order of reimbursement to Texas Health Presbyterian Hospital of Dallas (Provider) for inpatient acute care services provided to an injured worker (Claimant) from _____ until July 31, 2012.

2. Provider performed the services on Claimant and submitted a request for reimbursement to Carrier.

3. Provider billed Carrier $188,352.90 for services to Claimant.

4. Carrier reimbursed $28,273.72 to Provider for services to Claimant.

5. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division) on May 30, 2013, requesting an additional $15,078.48 in reimbursement.

6. On March 13, 2014, the Division issued its Medical Fee Dispute Resolution Findings and Decision, finding that Provider was entitled to an additional $13,776.08 in reimbursement.

7. On June 12, 2014, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.

8. On June 16, 2014, the Division issued a Notice of Hearing. The notice informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.

9. The hearing was held September 8, 2014, before Administrative Law Judge (ALJ) Rebecca S. Smith at SOAH's hearings facility in Austin, Texas. Carrier was represented by attorney Steven M. Tipton. Provider was represented by Tiffany Bumpas. The record closed that day.

10. The reimbursement amount for the implantables is $11,128.01.

---

[16] Carrier notes, in its Motion for Rehearing, that this is "essentially equal to the PASS THRU AMT which the Carrier chose not to dispute further." (Motion at unnumbered page 9) The ALJ will not accept the suggestion that she just ignore this amount because it is roughly equal to an amount Carrier did not challenge. The Carrier chose not challenge this amount or present evidence to support a challenge. The ALJ will not assume that a challenge would have been successful.

11. The maximum allowable reimbursement (MAR) for the services is $17,415.54.

12. The total amount of reimbursement (the MAR plus the implantables) is $28,543.55.

13. Carrier has already paid $28,273.72 of the $28,543.55.

14. Carrier should be required to reimburse Provider an additional $269.83.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.

2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051 and 2001.052.

3. Carrier had the burden of proof in this proceeding by a preponderance of the evidence.

4. When implantables are separately invoiced, the MAR is calculated by multiplying the sum of the Medicare facility-specific reimbursement amount and any applicable outlier payment amount by 108%. 28 Tex. Admin. Code § 134.404(f)(1)(B).

5. When calculating the outlier payment, if implantables are separately invoiced, the facility's total billed charges shall be reduced by the facility's billed charges for any item separately reimbursed. 28 Tex. Admin. Code § 134.404(f)(2).

6. The request for reimbursement of $13,776.08 is not consistent with 28 Texas Administrative Code § 134.404(f).

7. Additional reimbursement of $269.83 is consistent with 28 Texas Administrative Code § 134.404(f).

ORDER

Carrier is required to pay Provider additional reimbursement of $269.83 for services provided to Claimant.

NONPREVAILING PARTY DETERMINATION

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the nonprevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the nonprevailing party and any costs for services provide by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, Provider is the nonprevailing party. The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

ISSUED February 20, 2015.

REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS