STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Lighthouse Rehabilitation Center
Petitioner **File No. 21-1011**

v

Citizens Insurance Company of the Midwest
Respondent

Issued and entered
this 4th day of May 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. Procedural Background

On March 5, 2021, Lighthouse Rehabilitation Center (Petitioner) filed with the Director of the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request concerns payments made by Citizens Insurance Company of the Midwest (Respondent) to the Petitioner.

The Department accepted this appeal on March 12, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on March 16, 2021. Respondent filed a reply to the Petitioner's appeal on April 6, 2021.

The Petitioner's appeal is made under R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. Accordingly, the denial constitutes a determination from which a provider may file an appeal to the Department. The Petitioner seeks reimbursement in the amount of $188.85, which is the difference in payments for the dates of service at issue that are eligible for appeal.[1]

II. Factual Background

At issue are five dates of service in October 2020 and nine dates of service in November 2020. In October 2020, the Petitioner provided treatment under CPT Codes 90832, 99213, 98038, and 99000. In

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[1] The Petitioner's appeal also included reference to dates of service in June 2020. MCL 500.3157a applies only to treatment rendered after July 1, 2020. Accordingly, the June 2020 dates of service are not eligible for appeal and were not reviewed. In addition, the Petitioner's appeal included dates of service for which the basis for the Respondent's reduced reimbursement was a billing or coding error. Appeals to the Department must pertain to overutilization or inappropriate cost; billing and coding errors are not a sufficient basis for appeal. Accordingly, those dates of service are also not eligible for appeal and were not reviewed.

November 2020, the Petitioner provided treatment under CPT Codes 97535, 90832, 97129, 90832, 97161, and 97140.

On November 18, 2020, the Petitioner submitted a bill to the Respondent for reimbursement for the October 2020 dates of service. In an Explanation of Review dated December 14, 2020, the Respondent reduced the Petitioner's reimbursement on the basis that the charge for the services appeared to exceed a reasonable amount when compared to charges of other providers in the same geographic area, and the Fair Health Medical Benchmark Database. The Petitioner requested reconsideration from the Respondent on January 25, 2021. On February 16, 2021, the Respondent issued a reconsideration determination, and maintained that the reduced reimbursement amounts for the dates of service were appropriate.

On December 18, 2020, the Petitioner submitted a bill to the Respondent for reimbursement for the November 2020 dates of service. In an Explanation of Review dated January 8, 2021, the Respondent reduced the Petitioner's reimbursement on the basis that the charge for the services appeared to exceed a reasonable amount when compared to charges of other providers in the same geographic area, and the Fair Health Medical Benchmark Database. The Petitioner requested reconsideration from the Respondent on January 25, 2021. On February 16, 2021, the Respondent issued a reconsideration determination, and maintained that the reduced reimbursement amounts for the dates of service were appropriate.

Petitioner's Argument

In its appeal request, the Petitioner argues that because CPT Codes 90832, 97535, and 97129 were fully reimbursed on previous and subsequent bills to the Respondent, that those codes should be fully reimbursed in the instant case. For the remaining CPT Codes at issue (99213, 90838, 99000, 97161, and 97140), the Petitioner asserts that their charges are reasonable. In support of its argument, the Petitioner submitted bills previously paid in full by the Respondent for the same injured person.

Respondent's Argument

In its reply, the Respondent argues that the reimbursement paid to the Petitioner was based on usual and customary charges. In support of its argument, the Respondent submitted documentation showing a reduction in payments by CPT code based on the amounts under the FAIR Health Relative Value Physician/Medical Benchmark Database.

III. Analysis

Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of

the Code. This appeal does not involve claims of overutilization; rather, it is a dispute regarding the appropriateness of cost for treatment rendered by the Petitioner.

In support of its position, the Petitioner asserts that it expects full reimbursement for the dates of service at issue because their charges are "reasonable." Under Chapter 31 of the Code, a provider may charge a reasonable amount for treatment, training, products, services, or accommodations; however, an insurer is only required to reimburse "reasonable charges" for services. See MCL 500.3157(1)[2]; MCL 500.3107(1)(a). Under the Code, "the 'customary charge' limitation in § 3157 and the 'reasonableness' language in § 3107 constitute separate and distinct limitations on the amount health-care providers may charge and what insurers must pay with respect to victims of automobile accidents who are covered by no-fault insurance." *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365 at 376, 670 NW2d 569 (2003), aff'd 472 Mich 91, 693 NW2d 368 (2005).

The Petitioner argues in its appeal that its costs were reasonable. The Petitioner also argues that it is entitled to full reimbursement because the Respondent had fully reimbursed the Petitioner for the same CPT Codes in other submitted bills. The Department was provided the following documentation with the appeal request: Petitioner's narrative for the appeal request, the explanation of review letters from the Respondent, and the Petitioner's letters to the Respondent requesting reconsideration for the determinations. The Petitioner's letters requesting reconsideration to the Respondent did not include additional analysis of the reasonableness of its costs.

In the Explanations of Review, the Respondent stated that they reduced reimbursement payments to an amount they deemed reasonable due to geographic region and pricing benchmarks for the CPT Codes submitted. According to the Petitioner's narrative, the Respondent advised the Petitioner that the FAIR Health database for reimbursement benchmarking is updated regularly. Therefore, a provider might encounter different reimbursement amounts for the same CPT Code as the database updates to reflect reasonable reimbursement rates at a given time. The Respondent asserted that previous reimbursement amounts paid to the Petitioner are not a qualifying basis for determining future reasonableness.

Under Chapter 31 of the Code, an insurer is required only to pay a reasonable amount. See MCL 500.3107(1)(a). Where the amount paid is based on a determination of what is reasonable, there is no violation of the Code, even if the amount is less than what the provider has charged. It is appropriate for insurers to use a survey of charges to determine whether a charge is reasonable. See *Advocacy Org*, *supra*, 257 Mich App at 380, 382; 670 NW2d 569, 578, 579 (2003). The Respondent has demonstrated that their reimbursements were reasonable. Therefore, the Department concludes that the Petitioner's reimbursement for the dates of service at issue was appropriate under the Code.

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[2] Section 3157 was amended by PA 21 of 2019 effective July 2, 2021; however, the relevant language in what is now Section 3157(1) was substantively unchanged and is therefore applicable to the dates of service in this appeal.

IV. ORDER

The Director upholds Respondent's determinations dated February 16, 2021.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

Recoverable Signature

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford