STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Relevar Home Care
Petitioner **File No. 21-1220**

v

Auto Club Insurance Association
Respondent

Issued and entered
this 1st day of October 2021
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On August 5, 2021, Relevar Home Care (Petitioner) filed with 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 for an appeal concerns the determination of Auto Club Insurance Association (Respondent) that the cost of treatment or services was inappropriate under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the denial of a bill pursuant to R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. The Respondent issued its denial to the Petitioner on June 2, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the date of service at issue.

The Department accepted the request for an appeal on August 17, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on August 17, 2021 and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on August 27, 2021.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for skilled nursing services rendered on May 7, 2021. The Petitioner used a revenue code of 051 for a skilled nursing visit and a procedure code of T1030, which is described as nursing care provided in the home by a registered nurse on per diem.

With its appeal request, the Petitioner submitted a statement in which the Petitioner argues that "at least" the Fair Health Charge Benchmark Database rate should be used for review of its bill rather than the Respondent's own market survey of similar providers within the Petitioner's geographical region. The Petitioner explained that it provided skilled nursing services to the injured person, who suffered a head injury, which causes "impulsive decision making and safety concerns as it relates to medications."

The Petitioner's request for an appeal stated:

> [The Respondent] is paying $165 for a skilled nursing visit in which we are billing $290. They state the reason for this rate as "market rates" used to determine our rate for reimbursement…The Fair Health Database indicates an out-of-network rate for Code T1030, for the Port Huron area of $229.

In its written response to the appeal, the Respondent included a market survey and rate review of comparative skilled nursing rates including nine home care providers operating within the 48060 zip code of Port Huron, Michigan. The Respondent explained its reasoning for the reimbursement amount:

> This visit was paid in the amount of $165 according to a market survey performed by a rehabilitation nurse in [the Petitioner's] geographical location. This is not an issue of overutilization. The issue is simply what is the reasonable and customary rate for the service provided by [the Petitioner.] [The Respondent] correctly paid the reasonable and customary rate as determined by the market survey…[The Petitioner] declined to perform its own market survey for comparison.

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 involves a dispute regarding inappropriate cost.

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)[1], MCL 500.3107(1)(a). Under the Code, "the 'customary charge' limitation in § 3157 and the 'reasonableness' language in § 3107 constitute separate

[1] Section 3157 was amended by PA 21 of 2019 effective for dates of service July 2, 2021 and after; 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.

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 did not provide a rationale for its billed rate of $290.00 for the date of service at issue. Further, the Petitioner did not submit its own market survey for comparative home care providers within its geographical region in support of its billed rate.

The Respondent's market survey for similar providers within the Petitioner's geographic region is an appropriate method of analysis for the bill in question. The Respondent's market survey request noted the following:

> [The Respondent] requested a market survey of skilled nursing rates for weekly medication set up. The [injured person] is recovering from TBI with sequalae, cognitive and neurobehavioral dysfunction, right hemiparesis, gait disturbance and headaches. He resides in Port Huron, MI 48060.

In its market survey and rate review, the Respondent presented several skilled nursing visit rates ranging from $125.00 to $200.00 per visit.

Under MCL 500.3107(1)(a), an insurer is only required to pay a reasonable amount. 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 for Patients & Providers v Auto Club Ins Ass'n,* 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 amount paid for the date of service at issue was appropriate under the Code.

IV. ORDER

The Director upholds the Respondent's determination dated June 2, 2021.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

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