STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Best Care Nursing Services
Petitioner **File No. 21-1473**

v

Progressive Michigan Insurance Company
Respondent

Issued and entered
this 7th day of January 2022
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On October 14, 2021, Best Care Nursing Services (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 Progressive Michigan Insurance Company (Respondent) that the cost of treatment, products, services, or accommodations that the Petitioner rendered 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 the Petitioner bill denials on September 14, 15, and 22, 2021. The Petitioner seeks reimbursement from the Respondent for the full amount billed for the dates of service at issue.

The Department accepted the request for an appeal on October 15, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on October 15, 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 November 3, 2021. The Department issued a Notice of Extension to both parties on December 1, 2021.

II. Factual Background

This appeal concerns the appropriate reimbursement amount for home health aide services rendered on 51[1] dates of service under Healthcare Common Procedural Coding System (HCPCS) Level II code G0156, which is described as a home health or hospice aide in a home setting, each 15 minutes.

With its appeal request, the Petitioner submitted six *Explanation of Review* letters and a narrative outlining its reason for appeal. In its request for appeal, the Petitioner stated noted that the injured person has a traumatic brain injury requiring 24-hour care, 7 days a week, with the addition of skilled nursing services twice per month and "as needed." The Petitioner also noted that it has "met the criteria for NOT receiving a reduction" under MCL 500.3157 and it "used the Medicare billing code with a fee schedule attached, we have sent our 2019 chargemaster. 2019 rates can easily be verified by [the Respondent] since this is an established rate between us for several years."

Additionally, the Petitioner's request for appeal stated:

> Electing to reimburse well below 200% of Medicare and well below our 2019 Chargemaster causes the following hardships: 1) will not allow our agency or anyone else's to provide care 2) causing undue and serious financial hardship to us as a company. 3)This is not in line with the guidelines established within the auto no fault laws … This is in direct violation of the new law which spells out reimbursement for services that 1) use a Medicare code with a fee schedule, and 2) have a January 2019 Chargemaster.

In its *Explanations of Review* letters, the Respondent stated that it based its reimbursement "based on the applicable percentage of the provider charge description master and is further adjusted by the annual [Consumer Price Index]." In its reply, the Respondent reaffirmed its initial determination and stated that the recommended reimbursement amount for the dates of service at issue were made pursuant to MCL500.3157(7). Specifically, the Respondent stated:

> The Michigan Legislature amended MCL 500.3157, which is the section of the No-Fault Act that now provides the rate at which an insurer has to reimburse an attendant care provider. The at-issue rate change went into effect as of July 1, 2021. To be clear, Medicare does NOT pay for 24 hour a day care at home, which is what is being billed in this claim. That can be confirmed at the following Medicare website: https://www.medicare.gov/coverage/home-health-services. As such, pursuant to MCL 500.3157(7)(i), when "Medicare does not provide an amount payable for a treatment...For treatment or training rendered after July 1, 2021 and before July 2, 2022", 55%." DIFS issued bulletin 2021-16-INS, which stated that benefits payable under MCL 500.3157(7) shall be

[1] The dates of service at issue are July 2-31, 2021 and August 1-22, 2021.

> increased by 4.11% for that same time period … It is extremely important to point out that this Provider prior to the July 1, 2021 amendment of MCL 500.3157 was billing [us] for the same services at issue in this appeal using CPT Code S9122.

On October 15, 2021, the Department requested the Petitioner submit its charge description master (CDM). See MCL 500.3157(7). The Petitioner submitted its CDM to the Department on October 15, 2021.

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 cost.

For dates of service after July 1, 2021, MCL 500.3157 governs the appropriate cost of treatment and training. Under that section, a provider may charge a reasonable amount, which must not exceed the amount the provider customarily charges for like treatment or training in cases that do not involve insurance. Further, a provider is not eligible for payment or reimbursement for more than specified amounts. For treatment or training that has an amount payable to the person under Medicare, the specified amount is based on the amount payable to the person under Medicare. If Medicare does not provide an amount payable for a treatment or rehabilitative occupational training under MCL 500.3157(2) through (6), the provider is not eligible for payment or reimbursement of more than a specified percentage of the provider's charge description master in effect on January 1, 2019 or, if the provider did not have a charge description master on that date, an applicable percentage of the average amount the provider charged for the treatment on January 1, 2019. Reimbursement amounts under MCL 500.3157(2), (3), (5), or (6) may not exceed the average amount charged by the provider for the treatment or training on January 1, 2019. See MCL 500.3157(8); MAC R 500.203.

MCL 500.3157(15)(f) defines "Medicare" as "fee for service payments under part A, B, or D of the federal Medicare program established under subchapter XVIII of the social security act, 42 USC 1395 to 1395lll, without regard to the limitations unrelated to the rates in the fee schedule such as limitation or supplemental payments related to utilization, readmissions, recaptures, bad debt adjustments, or sequestration." Under MAC R 500.203, reimbursements payable to providers are calculated according to "amounts payable to participating providers under the applicable fee schedule." "Fee schedule" is defined by MAC R 500.201(h) as "the Medicare fee schedule or prospective payment system in effect on March 1 of the service year in which the service is rendered and for the area in which the service was rendered." Accordingly, reimbursement to providers under MCL 500.3157 is

calculated either on a fee schedule (i.e., fee-for-service) basis or on a prospective payment system basis.

HCPCS Level II Code G0156 has an amount payable under Medicare when it is billed on a prospective payment system basis. No payment amount is available for HCPCS Level II Code G0156 under on a fee-schedule basis because that code is not priced separately. Although the Petitioner stated that it was billing on the basis of the HHPPS, the Petitioner did not provide any supporting documentation to substantiate this assertion. Where there is no amount payable under Medicare, reimbursement is calculated based on a provider's charge description master or average amount charged on January 1, 2019. See MCL 500.3157(7).

To calculate the appropriate reimbursement amount, the Department relied on the Petitioner's submitted CDM as of January 1, 2019 for HCPCS Level II code G0156. Pursuant to MCL 500.3157(7), the amounts payable to the Petitioner for the codes and dates of service at issue are as follows:

HCPCS code	2019 CDM amount	55% of 2019 CDM amount	4.11% CPI adjustment	Amount payable for the dates of service at issue
G0156	$	$	$	$ per unit
G0156 (holiday)	$	$	$	$ per unit

The Department finds that the Petitioner is due additional reimbursement for the dates of service at issue.

IV. ORDER

The Director reverses the Respondent's determinations dated September 14, 15, and 22, 2021, that the cost of the treatment on the dates of service at issue in this appeal was inappropriate under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner is entitled to reimbursement in the amount payable under MCL 500.3157 for the treatment on the dates of service discussed herein, and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. R 500.65(6). The Respondent shall, within 21 days of this order, submit proof that it has complied with this order.

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:

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford