
In the ORS 656.248 Medical Fee Dispute of

Tim A. Becker, Claimant

Contested Case No: 10-055H

PROPOSED & FINAL ORDER

August 3, 2010

INTRACTABLE PAIN CENTER, Petitioner

LIBERTY NORTHWEST INSURANCE CORP., Respondent

Before Bruce D. Smith, Administrative Law Judge

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to Workers' Compensation Division's Administrative Order dated March 18, 2010. Hearing convened on July 6, 2010. Claimant was not present, and is not represented. Authorized representative Regina Purtzer was present on behalf of medical service provider Dr. Purtzer, doing business as Intractable Pain Centers (IPC). Erickson Air Crane Company and its insurer Liberty Northwest are represented by attorney Meg A. Carman. The documentary record consists of Exhibits 1 through 28, as identified in the Division's April 26, 2010 exhibit list, plus Exhibits B, D, and I through L, submitted by IPC.

Exhibits A, C, and E through H, offered by IPC, were not admitted.

The record closed on July 6, 2010, the date of final argument.

ISSUES

Issues are: (1) whether the insurer correctly reduced payment to Dr. Purtzer/Intractable Pain Centers (IPC) for medical services provided to claimant on February 3, 2010; and (2) whether IPC is entitled to bill and collect a \$50 per month service fee for Liberty's ostensibly late or improper payment.

FINDINGS OF FACT

Claimant sustained a compensable back injury on November 16, 1992 (Ex. 2-1), and Liberty ultimately accepted a lumbar ligamentous injury, and T7-8 herniated disc. (Ex. 13-1). Claimant eventually came under the care of Dr. Purtzer, who practices at IPC.

On February 3, 2010 claimant underwent a urine drug screen test at IPC. (Testimony of Regina Purtzer). On that date the provider used a single standard (four-ounce) specimen cup, and the resulting urine specimen was then tested for twelve different classes of drugs by placing twelve separate plastic dipsticks into the specimen, and reading the individual results. (*Id.*). The dipsticks come individually wrapped, and each one is unique, and used to test for a specific drug class. (*Id.*). On the date in question claimant's urine specimen was tested for the presence of amphetamines, barbiturates, benzodiazepines, methadone, methamphetamine, opiates, oxycodone, phencyclidine (PCP), cannabinoids (THC), cocaine, propoxyphene, and tricyclic antidepressants. (*Id.*; Ex. 20-9).

In addition to charges for the office visit, IPC billed Liberty \$60 apiece for each of the 12 drug screens, using CPT® code 80101; and also billed \$50 under CPT® code 99070 for the urine cup, and \$75 under CPT® code 99091 for collecting/reviewing physiologic data in relation to the visit. (Ex. 20-3). Liberty paid for the office visit, and one drug screen (Ex. 25-5); but declined the other charges. (Ex. 25-7). When it was not paid in full as billed, IPC levied a \$50 charge under CPT® code 99199 (Ex. 20-4); and instituted review with the director. (Ex. 20).

The purpose of urine drug screen testing is to allow the physician to monitor the patient's intake of both street drugs and prescription medication. (Testimony of Regina Purtzer). The physician decides which specific drugs to test for, depending upon the individual needs and circumstances of each patient. (*Id.*). One of the reasons that IPC selected the testing protocol it used here is that test results are available within 10 minutes of testing. (*Id.*). The Oregon Medical Board requires drug testing of patients like claimant; and IPC reports the test results to the insurer on a standardized form (Ex. K-3), showing each drug tested, whether it was positive or negative, and detection periods (how long the drug was in the system). (Testimony of Regina Purtzer; Ex. K-4).

Dr. Purtzer himself got the information from the 12 individual drug tests, and completed the report (Ex. 20-9) that was sent to the director. (Testimony of Regina Purtzer). IPC notified Liberty that of the 12 individual tests (Ex. 20-5 through -9); and documented the charges under CPT® code 99091. (Ex. 28-5).

Ms. Purtzer testified that not less than 30 minutes was spent here in reminding the patient of his appointment, asking him to bring his prescription medications, perform pill counts, etc.; and then interpreting the results. (Testimony of Regina Purtzer). All of this was documented. (*Id.*; Ex. K-2).

Ms. Purtzer testified that IPC charges every client or payor a \$50 per month service charge for any bill not paid in full within 45 days, and the monthly charge continues until the bill is paid in full. (Testimony of Regina Purtzer). This is to cover staff time for rebilling. (*Id.*).

Lida Evans is a clinical bill review nurse at Liberty: she is a registered nurse and a certified professional coder. (Testimony of Lida Evans). Ms. Evans reviews billing to make sure bills are properly coded and documented (*Id.*), including the charges at issue here. (Ex. 25).

The single drug screen test (code 80101) used by IPC came to Ms. Evans' attention due to the high amount that was being billed. (Testimony of Lida Evans). She called IPC and an office person there told her that they had used a 12-test method with single "Q12 test cup," which has 12 readings on the side of the cup, enabling the provider to determine whether specific drugs are present in the urine. (*Id.*). Ms. Evans called Medical Reviewer Larry Kroesing, who told her that there must be a separate report for each drug tested, and advised her to pay for the service as a single unit. (*Id.*). Thereafter Liberty asked IPC for refunds of prior payments for drug screens as multiple units. (*Id.*).

CPT® code 99091 is used to bill for collection/interpretation of physiologic data that is either digitally stored (such as EEG machine data) and/or recorded by the patient (such as

writing down glucose monitoring data). (Testimony of Lida Evans). Here there is no evidence of stored data in the chart notes, because there is no stored data: only that the patient tested positive for certain drugs. (*Id.*).

CPT® Code 99070 is used to bill for supplies and materials over and above the usual; but since the urine cup is essential to the drug screen test, it is not considered “over and above.” (Testimony of Lida Evans). A urine cup is not durable medical equipment in this (medical office) context – it is essential to the test, and is part of the test; so the provider cannot charge extra. (*Id.*).

Collection/interpretation of “physiologic data” does not include such things as information regarding medication review, pill counts, which are all part of routine evaluation/management. (Testimony of Lida Evans). CPT® Code 99091 would properly be used to bill for such things as blood pressure readings, and glucose monitoring. (*Id.*). When Ms. Purtzer asked the witness whether the Ameritox report (Ex. K-3), which informs the insurer what the patient is taking, etc., would be considered physiologic data, Ms. Evans responded that most providers would routinely include this information in the chart note. (*Id.*).

On March 18, 2010 the director issued an Administrative Order, finding that Liberty was not liable for additional payment for services rendered by Dr. Purtzer to claimant on February 3, 2010. (Ex. 27). Separately addressing each of four disputed types of charges, the director first found that the drug screen testing was properly paid under CPT® code 80101, in the amount of \$60 for a single unit, rather than \$60 each for 12 separate drug screens, as charged by IPC. (Ex. 27-3).

Next, the director held that Liberty was not liable under CPT® code 99070 for payment for the drug screen urine cup, finding that the cup was an integral part of the service, and not a supply that was furnished “over and above” what is usually included in the service. (*Id.*).

Third, the director addressed the disputed charge under CPT® code 99091 for collecting and handling the urine specimen. The director summarized the code provision as follows:

“CPT® code 99091 is described as collection and interpretation of physiologic data (e.g., ECG, blood pressure, glucose monitoring) digitally stored and/or transmitted by the patient and/or caregiver to the physician or other qualified health care professional, requiring a minimum of 30 minutes of time.”

Finding no documentation in the record to suggest that IPC had collected, transmitted or interpreted digital data in relation to its handling of the urine specimen, the director concluded that Liberty was not liable for this charge. (Ex. 27-3).

Finally, based upon its finding that all charges had been properly paid, the director concluded that any charge for unpaid medical billings was moot; and held that Liberty was not liable for \$50 per month service fees billed by IPC under CPT® code 99199 for unpaid billings.

CONCLUSIONS OF LAW AND OPINION

Scope of ALJ Review

This matter arises under ORS 656.248(12) and OAR 436-009-0008 for resolution of a dispute over payment of fees for medical services. (Ex. 27). The hearing is conducted under OAR 436-001.¹ Scope of ALJ review for this medical fee dispute is *de novo*. OAR 436-001-0225(1). Because the date of service at issue here is February 3, 2010, the applicable Division 9 rules are found in WCD Admin. Order 09-054 (eff. January 1, 2010).

IPC's Entitlement to Additional Fees For Drug Screen Under CPT® Code 80101

At issue is whether Dr. Purtzer is entitled to charge and collect a separate \$60 fee for each of 12 drugs tested in the drug screen protocol administered to claimant on February 3, 2010. Dr. Purtzer bears the burden of proving that he is entitled to charge and collect such fees. ORS 40.105; ORS 656.283(6); OAR 436-001-0170(1).

IPC argues that the fee schedule allows it to bill out for 12 different individual tests, and that Liberty's \$60 payment does not even pay for the supplies, much less the procedures. IPC asks the ALJ to require Liberty to pay \$660 (at \$60 each) on the remaining 11 urine test results.

Liberty argues that the director properly found that the drug test that IPC uses is a cup for 12 different drugs: a very simple test, requiring no analysis. There were not 12 separate tests done; there was a single drug test, providing information regarding 12 separate drugs, with no quantitative analysis. The director considered this a single drug test; and this is what the CPT code allows. Liberty contends that it paid in accordance with the Oregon fee schedule, and urges me to affirm the director. I agree with Liberty.

The report on the drug screen here contains twelve check-the-box entries, where the provider indicated whether each of the twelve drugs tested was positive or negative. (Ex. 20-9). According to the director this is a single report (Ex. 27-3), and I agree; indeed, although the report includes information regarding twelve drug classes, it is nonetheless a single report. In its written response to the Division IPC noted that 12 individual drugs were tested, and “disagree[d] that a report must be submitted for each drug tested.” (Ex. 28-1). According to the director, however, under CPT® code 80101 “[t]he result of the drug screen is reported separately.” (Ex. 27-2). I find that director is entitled to deference with regard to interpretation of the applicable administrative rule at issue here.² (Ex. 25-7). *See Mershon v. Liberty Northwest Ins. Corp.*, 96 Or App 223, *rev den* 308 Or 315 (1989) (director's interpretation of administrative rules within agency's special expertise is generally entitled to deference). Accordingly, I find that Liberty is not liable for additional payment with regard to the drug screen test/reporting.

¹ See OAR 436-009-0008(6).

² Although the CPT® codes generally are not authored by the Division, they are incorporated in the Division's administrative rules. OAR 436-009-0050.

IPC's Entitlement to Separate Payment For Drug Screen Cup Under CPT® Code 99070

At issue is whether Dr. Purtzer is entitled to charge and collect a \$50 fee for the urine specimen cup it used as part of the drug screen administered to claimant on February 3, 2010. Dr. Purtzer bears the burden of proving that he is entitled to charge and collect such a fee. ORS 40.105; ORS 656.283(6); OAR 436-001-0170(1).

IPC contends that under CPT® code 99070 it is entitled to bill for the urine specimen cup used in the drug screen.

Liberty responds that the test cannot be administered without the cup, so it is not something the provider furnishes “over and above” the usual service, and the provider cannot charge extra for it. Liberty urges me to affirm the director.

I agree with the director that the urine cup is an integral part of the drug screen service; and find that the specimen cup is not furnished “over and above” what is usually included in the service. In making this finding I note that the director is entitled to deference with regard to the director’s interpretation (Ex. 25-7) of Division rules. *Mershon v. Liberty Northwest Ins. Corp.*, *supra*. Accordingly, I find that Liberty is not liable for additional payment with regard to the drug screen specimen cup.

IPC's Entitlement to Separate Payment For Collection/Interpretation of Physiologic Data Under CPT® Code 99091

At issue is whether Dr. Purtzer is entitled to charge and collect a \$75 fee for collection and interpretation of physiologic data in connection with the drug screen administered to claimant on February 3, 2010. Dr. Purtzer bears the burden of proving that he is entitled to charge and collect this fee. ORS 40.105; ORS 656.283(6); OAR 436-001-0170(1).

IPC argues that the process of collecting data in relation to the urine drug screen is properly billed separately under the CPT® code 99091. IPC notes that it took at least 30 minutes to remind the patient of his appointment, ask him to bring his prescription medications, perform pill counts, collect a urine specimen, and interpret the results. In addition, the patient's blood pressure was taken, and “physiologic data” was thus was "transmitted by the patient." IPC contends that the chart notes here (Ex. 20-5 through -9) constitute "storing information."

Liberty argues that there is no justification for the billing for “collection and analysis of stored data” here: IPC is simply attempting to charge for information that the physician normally obtains and documents in a routine office visit. Liberty urges me to affirm the director. I agree with Liberty.

According to the 2009 CPT® code manual, services properly chargeable under code 99091 pertain to

“collection and interpretation of physiologic data (*e.g.*, ECG, blood pressure, glucose monitoring) digitally stored and/or transmitted by the patient and/or

caregiver to the physician or other qualified health care professional, requiring a minimum of 30 minutes of time.” (Ex. 27-3).

IPC argues that this section does not require that the information be stored in digital format. I am not so sure. The phrase quoted from the manual is ambiguous – does the adverb “digitally” modify only the adjective “stored,” or does it also modify “transmitted?” If the latter, then IPC is wrong. In any event, I find that IPC has failed to prove that 30 minutes time was required to store and/or transmit physiologic data here. According to Ms. Purtzer’s testimony, the time charged under this code included such tasks as calling the patient to remind him of his appointment, asking him to bring his prescription medications, and performing pill counts, which I find do not constitute storing or transmission of physiologic data.

Further, I agree with Liberty that IPC seems to be including in this separate charge information that would normally be included in the chart note. Separate charges for this information are not allowed under OAR 436-009-0015(2), and (3), which read as follows:

“(2) A medical provider may not charge any fee for completing a medical report form required by the director under this chapter or for providing chart notes required by OAR 436-009-0010(3).

“(3) The medical provider may not charge a fee for the preparation of a written treatment plan and the supplying of progress notes that document the services billed as they are integral parts of the fee for the medical service.”

In any event, I again note that the director is entitled to deference with regard to the interpretation of Division rules. *Mershon v. Liberty Northwest Ins. Corp.*, *supra*. Accordingly, I find that Liberty is not liable for additional payment with regard to the collection, interpretation, storage or transmittal of physiologic data here.

IPC’s Entitlement to Rebilling Fees Under CPT® Code 99199

At issue is whether Dr. Purtzer is entitled to charge and collect a service charge or rebilling fee in the amount of \$50 per month for late or incomplete payment of charges for medical goods and services. Dr. Purtzer bears the burden of proving that he is entitled to charge and collect such fees. ORS 40.105; ORS 656.283(6); OAR 436-001-0170(1).

IPC argues that its \$50 monthly service charge is reasonable, and is properly billed under CPT® code 99199.

Liberty responds by pointing out that 11 days after the subject bill was received it was properly paid, accompanied by the explanation of benefits form (Ex. 25-5), required by OAR 436-009-0030(4) and (8). While conceding that a reasonable monthly service charge is allowed under the rules, Liberty argues that an automatic \$50 per month charge is not reasonable; and asks that the administrative order be affirmed. I agree with Liberty.

The rule allowing a medical service provider to charge a fee for late payment of a medical bill is found at OAR 436-009-0030(7), which reads as follows:

“(7) Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.”

First, I find that Liberty timely paid in full the allowable amount for all services furnished on the date in question. In addition, for the reasons that follow, I find that the monthly service charge levied by IPC is not the equivalent of a reasonable monthly service charge allowed under administrative rules.

I find for three reasons that Dr. Purtzer’s flat \$50 per month charge for any bill not paid by an insurer in full within 45 days is not the equivalent of the “reasonable monthly service charge” allowed by OAR 436-009-0030(7). First, on its face the IPC policy³ is restricted to insurers, and is therefore not a charge “the provider customarily levies * * * to the general public.” Although Ms. Purtzer testified that under its policy all payors are charged the fee, the written policy offered by IPC here (Ex. 28-31) covers only insurers.

Second, the policy does not include an exception for an insurer who disputes the charges under OAR 436-009-0030(8). Under OAR 436-010-0008(5)(e) bills subject to the director’s review are not considered payable pending outcome of the review.

Finally, I find that a flat charge of \$50 per month for unpaid billings is *per se* unreasonable, because it bears no relationship to the unpaid amount, or to the cost of rebilling for unpaid charges. If the IPC policy does covers individuals along with insurers (as Ms. Purtzer testified it does), an uninsured patient trying to pay off a charge of \$51 at the rate of \$50 per month (starting 30 days from date of service) could pay \$50 per month for life and never pay off the bill. For these reasons, I find that Liberty is not liable for payment of IPC’s monthly service charges.

ORDER

IT IS THEREFORE ORDERED that the director’s Administrative Order dated March 18, 2010 is affirmed in its entirety.

³ The policy reads in pertinent part as follows: “In accordance with OAR 436-009-0030(7) any *insurer* requiring a report attachment for payment that fails to pay in full for medical services within 45 days of service, *will be charged a monthly service charge* of \$50.00 per date of service until the bill is paid in full.” (Ex. 28-31). (Emphasis added).