TEXAS DEPARTMENT OF INSURANCE
Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)
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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name
UNITED HEALTHCARE

Respondent Name
METROPOLITAN TRANSIT AUTHORITY

MFDR Tracking Number
M4-11-4393-01

Carrier's Austin Representative
Box Number 19

MFDR Date Received
July 28, 2011

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "United Healthcare asserts that it paid medical service claims totaling $547.86 which clearly should have been billed to, and paid in good faith by the workers' compensation carrier in this case. The carrier has never disputed the compensability of the injury. The carrier has never offered a substantive objection to the compensability of the services... we are requesting medical fee dispute resolution to be found in our favor."

Amount in Dispute: $547.86

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "...United Healthcare asserts that it is seeking reimbursement as a sub-claimant under section 409.0091 of the Texas Labor Code. United Healthcare has not, however, established that it has met the pre-requisites establishing that it can seek reimbursement pursuant to section 409.0091. United Healthcare sent the carrier a request for reimbursement on March 28, 2011, but it did not submit proof as to when it received the data match from the Division pursuant to section 402.084 of the Texas Labor Code. United Healthcare also did not prove that it filed a request for reimbursement with the carrier within 18 months after it paid the healthcare providers. Therefore, United Healthcare has failed to prove that it timely filed its request for medical dispute resolution. See Tex. Lab. Code §409.0091(n)."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 15, 2009	Ambulance & Professional Services	$547.86	$547.86

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Texas Labor Code §409.0091 sets out the requirements for health care insurers to bill for and receive reimbursement from workers' compensation carriers for services provided to covered Texas injured employees.
2. 28 Texas Administrative Code §102.3 applies to the computation of time.
3. 28 Texas Administrative Code §140.7 applies to Health Care Insurer Reimbursement.
4. 28 Texas Administrative Code §140.8 applies to Reimbursement of Medical Benefits.
5. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

Issues

1. Did the health care insurer timely file a request for reimbursement from the workers' compensation insurance carrier?
2. Were the workers' compensation insurance carrier denial reasons supported?
3. Is reimbursement due to the health care insurer?

Findings

Texas Labor Code §409.0091 was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8, and is effective for dates of injury on or after September 1, 2007, with few exceptions. The requestor of this medical fee dispute is Medrecovery management. Medrecovery management is an authorized representative of United Healthcare - a health care insurer as defined by Texas Labor Code §409.0091(a). Medrecovery management and United Healthcare are collectively referred to as the subclaimant for the purposes of this medical fee dispute. Texas Labor Code §409.0091(c) states that health care paid by a health care insurer may be reimbursable as a medical benefit. The subclaimant alleges it paid for services provided to an injured employee with a compensable Texas workers' compensation claim and is seeking to recover $547.86 from Metropolitan Transit Authority - a Texas workers' compensation insurance carrier – hereto after referred to as the carrier. The provisions of Texas Labor Code §409.0091, and 28 Texas Administrative Code Rules §§140.7 and 140.8 apply to this request for reimbursement and are hereby considered.

1. In order for the subclaimant to recover amounts it paid on behalf of the injured employee that received the services in dispute, the subclaimant must request reimbursement from the carrier in the form, manner and timeframes prescribed by Texas Labor Code §409.0091. Two concurrently running deadlines limit the subclaimant's timeframe for a request for reimbursement from the carrier. These are found at Texas Labor Code §409.0091(n). The subclaimant's submission for reimbursement must be sent not later than six months from the date of a data match, and not later than 18 months from the date that the subclaimant originally paid health care providers for the services in dispute. The division now considers the available documentation in order to establish the date of a request for reimbursement, the data match date, and the date that the subclaimant originally paid for the services in dispute.

   Date of Request for Reimbursement

   The subclaimant is required to provide the information denoted in Texas Labor Code §409.0091(f) with any request for reimbursement it makes to the carrier. Division rule at Title 28 Texas Administrative Code §140.8(c) (1) requires that the request for reimbursement "be in the form and manner prescribed by the Division of Workers' Compensation (Division) and must contain all the required elements on the form." The division prescribed DWC Form-026 titled *REQUEST FOR REIMBURSEMENT OF PAYMENT MADE BY THE HEALTH CARE INSURER* for use by subclaimants when making a request for reimbursement pursuant to §409.0091.

   The subclaimant alleges that it first billed the carrier using DWC Form-026 on March 25, 2011. Review of the documentation available finds correspondence dated April 4, 2011 from Metropolitan Transit Authority. The letter is addressed to MedRecovery Management LLC to the attention of Susan Esford and states that "On March 29, 2011, we received your DWC-26 form requesting reimbursement for the above named patient, date of service, and billed amount." This correspondence referred to the same injured employee, and date of service involved in this medical fee dispute.

The division therefore concludes that the subclaimant billed the carrier on or about March 25, 2011 and the carrier acknowledged that it received of the DWC Form 26 on March 29, 2011.

Data Match Date

The requestor alleges that it received a data match pursuant to Texas Labor Code §402.084(c-3) from the division on February 16, 2011. A sworn affidavit dated April 11, 2011 and signed by Susan Esford, a representative of the subclaimant, affirms that a response file named tx16151068914207302741128924525 1p20110214080000.zip was sent by the division and received by the subclaimant. The subclaimant further affirms that the file contained 27,599 separate matches including one match to the name, and division-assigned claim number consistent with the injured employee identified as the recipient of the services in dispute. Comparison to the division's records supports the assertions made by the requestor in the sworn affidavit.

The division finds that the subclaimant reasonably supported that it received a data match on February 16, 2011 identifying the injured employee that received the service in dispute.

Payment Dates

A document titled "United Healthcare– TX Billing Transmittal" which identified the injured employee that received the services in dispute, and supports that the health care insurer or subclaimant:

- paid $177.86 to Stephen Hecht, tax id 760459500 on November 19, 2009, for professional services totaling $338.00, provided on October 15, 2009.
- paid $18.00 to Houston EMS – City of Houston, tax ID 746001164 on October 13, 2010, for ambulance services totaling $22.50, provided on October 15, 2009.
- paid $332.00 to Houston EMS – City of Houston, tax id 746001164 on, October 13, 2010 for ambulance services totaling $415.00, provided on October 15, 2009.
- paid $20.00 to Houston EMS – City of Houston, tax id 746001164 on October 13, 2010, for ambulance services totaling $25.00, provided on October 15, 2009.

The division finds that the subclaimant supported that it paid for the services in dispute.

Comparison of the data match date to the date that the carrier acknowledged receipt of a request for reimbursement from the subclaimant finds that the subclaimant billed the carrier within the required 6-month deadline. Furthermore, comparison of the dates that the subclaimant paid for the services in dispute to the billing date finds that the subclaimant sent a request for reimbursement from the carrier within the required eighteen month deadline. The division concludes that the subclaimant met both timeliness requirements of Texas Labor Code §409.0091(n).

2. On April 4, 2011, the carrier sent a letter to the subclaimant explaining why the subclaimant's request for reimbursement was not processed. This letter reads, in pertinent part:

   On March 29, 2011, we received your DWC-26 form requesting reimbursement for the above named patient, date of service, and billed amount. In order to assist us with your request, please provide the following information:

   - The date you received the Electronic Claims Data provided by the DWC under Section 402.084 c-3.

   In regards to the data match date, Texas Labor Code §409.0091 does not specifically require a data match date, nor does it require the subclaimant to provide the "data match report" with the initial request for reimbursement. In its response to the request for a "data match report" the subclaimant responded by stating that:

   We cannot submit documentary evidence to that effect…Neither are we able to share a copy of the matching file since these files are very large and contain confidential information on a large number of individuals and workers' compensation cases…To address your concerns with how and when this case was identified by United Healthcare, we offer the enclosed sworn affidavit.

The subclaimant raises legitimate concerns over the request for the data match report by the respondent. In lieu of the entire data match report, the subclaimant offered a sworn affidavit attesting to the data match file named tx16151068914207302741128924525 1p20110214080000.zip dated April 11, 2011. The affidavit contained very detailed information about the data match request file to the division, and response file from the division. The division compared the data match information on the sworn affidavit to its records and was able to verify the existence of a data match containing information related to the specific injured employee involved in this medical fee dispute. The division finds that the information provided is reasonable and sufficient to support both that a data match occurred, and that the data match included the injured employee that received the services in dispute.

On April 4, 2011, the carrier sent a letter to the subclaimant explaining why the subclaimant's request for reimbursement was not processed. This letter reads, in pertinent part:

> On March 29, 2011, we received your DWC-26 form requesting reimbursement for the above named patient, date of service, and billed amount. In order to assist us with your request, please provide the following information:
>
> - Copy of medical records substantiating all services rendered.

The respondent requested medical records for the services provided, the division notes that Texas Labor Code §409.0091(f) does not require medical records as part of a request for reimbursement under §409.0091. Additionally, the division notes that the intent of the Law at Texas Labor Code §409.0091 was for health care insurers and workers' compensation insurance carriers cooperate and be reasonable when it came to requests for medical records. Specifically, the adoption preamble to 28 Texas Administrative Code §140.8 adopted to be effective September 23, 2008, 33 TexReg 8002, states:

> Commenter states that the health care insurer and its agents have no problem providing additional information to a workers' compensation insurance carrier if that information is within the possession of either entity. The commenter also states that this was a good faith agreement between the parties in the legislative negotiations to cooperate when additional information was needed by the workers' compensation insurance carrier…The commenter states that it was recognized that certain information, **such as medical records** [emphasis added], were not in the possession of either the health care insurer or its agents, and the workers' compensation insurance carrier may need that information, the solution was to allow the parties to enter dispute resolution to enable either the agency or an independent review organization to request information in the possession of third parties or that could not be obtained by other means. Agency Response: The Division agrees with the comment in part and agrees to change the wording as follows: "It is the health care insurer's obligation to furnish its authorized representatives with any information within its possession or control that is necessary for the resolution of a reimbursement request." Also, hearing officers have been delegated authority to approve subpoena requests to enable parties to properly prepare and possibly reach an agreement before requesting dispute resolution.

Review of the information and documentation provided including the initial DWC Form-026 and the subsequent information provided by the subclaimant finds that the workers' compensation insurance carrier possessed the information necessary to resolve a reimbursement request for the services in dispute.

The division's medical fee dispute resolution program concludes that the information and documentation provided by the subclaimant is sufficient to substantiate that a complete and timely request for reimbursement was made. For that reason, the division finds that the services in dispute are eligible for payment pursuant to Texas Labor Code §409.0091(h).

3. For the reasons stated above, the division finds that the services in dispute are eligible for payment. Applicable Texas Labor Code §409.0091(h) states, in part:

> For each medical benefit paid, the workers' compensation insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline…or the actual amount paid by the health care insurer.

The Texas medical fee guidelines are found at Title 28, Part 2, of the Texas Administrative Code (TAC). The general Medical Reimbursement Rule at 28 Texas Administrative Code §134.1(e) requires that:

> (e) Medical reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with:
> (1) the Division's fee guidelines;
> (2) a negotiated contract; or
> (3) in the absence of an applicable fee guideline or a negotiated contract, a fair and reasonable reimbursement amount as specified in §134.1(f).

For the disputed professional service codes, a division fee guideline exists. The fee rules listed below are used to calculate the division's allowable fee guideline for comparison to the amounts that the health care insurer (HCI) paid pursuant to §409.0091(h) as follows:

Date of Service	Service Code	Zip Code Service Location	Fee Rule 28 TAC	Fee Guideline Allowable	Amount Paid by HCI	§409.0091(h) Lesser of Fee Guideline and HCI Paid
10/15/2009	99284	77030	§134.203	$179.98	$177.86	$177.86
						$177.86

For the disputed ambulance service codes, no division fee guideline exits therefore reimbursement must be a fair and reasonable amount as specified in §134.1(f).

> (f) Fair and reasonable reimbursement shall:
> (1) be consistent with the criteria of Labor Code §413.011;
> (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and
> (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available.

The amounts the subclaimant paid for ambulance are also the amounts the subclaimant is seeking to recover in this medical fee dispute. Texas Labor Code §409.0091(h) states, in pertinent part that:

> In the absence of a fee guideline for a specific service paid, the amount per service paid by the health care insurer **shall** be considered in determining a fair and reasonable payment under rules under this subtitle defining fair and reasonable medical reimbursement.

In this case, the amount that the subclaimant is seeking is the same amount it paid for services provided to the injured employee covered by the workers' compensation carrier. This fact, in and of itself, meets the criteria for a fair and reasonable amount of reimbursement because the requested reimbursement is for the <u>same</u> procedures provided in the <u>same</u> circumstance to the <u>same</u> individual injured employee. No comparison is therefore needed to establish whether the amounts paid by the subclaimant meet the criteria that "values assigned for services involving similar work and resource commitments." The division concludes that the amount paid by the health care insurer is fair and reasonable. The remaining services are therefore allowed for reimbursement as follows:

Date	Service Code	Fee Rule 28 TAC	Bill Amount	Amount Paid by HCI	$409.0091(h) No Fee Guideline
10/15/2009	A0425	None	$22.50	$18.00	$18.00
10/15/2009	A0429	None	$415.00	$332.00	$332.00
10/15/2009	A0382	None	$25.00	$20.00	$20.00
					$370.00

The Division finds that the total recommended allowable for the services in dispute is $547.86.

Conclusion

The division concludes that the subclaimant's request for reimbursement is sufficiently supported. Reimbursement in the amount of $547.86 is recommended. Pursuant to Texas Labor Code §409.0091(h), the subclaimant may not recover interest as part of this subclaim.

The division emphasizes that medical fee dispute outcomes rely upon the assertions presented by the requestor and respondent during dispute resolution and during the medical billing process. Although all the evidence was not discussed, it was considered.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The division hereby ORDERS the respondent to remit to the requestor the amount of $547.86, without interest, due within 30 days of receipt of this Order.

Authorized Signature

		March 25, 2016
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MFDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of this *Medical Fee Dispute Resolution Findings and Decision***, together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.