



## **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**

PHI AIR MEDICAL

**Respondent Name**

NATIONAL INTERSTATE INSURANCE

**MFDR Tracking Number**

M4-12-1478-02

**Carrier's Austin Representative**

Box Number 06

**MFDR Date Received**

January 4, 2012

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "PHI Air Medical charges are being paid subject to a Workers Compensation ('Fee Schedule') amount or by a usual and reasonable fee based on faulty data, and should have been paid in full. This is because the statute and regulation limiting payment to the fee schedule amount, and the fee schedule itself, do not apply to air ambulance carriers due to federal preemption under federal aviation law."

**Requestor's Position Summary dated June 6, 2014:** "But if the Division continues to apply the Texas statute in contravention of the ADA, both statute and rules require application of the 'fair and reasonable' standard."

**Requestor's Position Summary dated July 8, 2014:** "The air ambulance providers have submitted documentation demonstrating that their market-driven charges represent the cost of doing business, plus a very modest profit margin . . . The Statute and Rules Do Not Allow for Default-to-Medicare Reimbursement"

**Amount in Dispute:** \$14,150.73

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Requestor filed its medical fee dispute resolution request on January 4, 2012 as indicated by the Division's date stamp and MR-100 letter. Pursuant to rule 133.307(c)(1)(A), a request for medical fee dispute resolution must be filed no later than one year after the date(s) of service in dispute. The disputed date of service is September 12, 2010. Therefore, Requestor was required to file its request no later than September 12, 2011. Because it did not do so, it has waived its right to medical fee dispute"

**Response Submitted by:** Stone Loughlin & Swanson LLP

**Respondent's Position Summary dated May 20, 2014:** "There is a Division fee guideline rate for air ambulance services . . . The Medicare rates for ambulance services (both ground and air) are not listed in the Medicare DMEPOS fee schedule. They are listed in Medicare's Ambulance Fee Schedule."

**Response Submitted by:** Stone Loughlin & Swanson, LLP, PO Box 30111 Austin, Texas 78755

**Respondent's Position Summary dated June 27, 2014:** "There are no exceptions for ambulance services in the rules . . . subsection [134.203] (d) can reasonably be interpreted to include ambulance services and therefore, reimbursement is at 125% of the Medicare rate."

**Response Submitted by:** Stone Loughlin & Swanson, LLP, PO Box 30111 Austin, Texas 78755

## **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 12, 2010	Air Ambulance Services	\$14,150.03	\$0.00

## **FINDINGS AND DECISION**

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

### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. On May 6, 2014 both the requestor and respondent in this dispute were given the opportunity to supplement their original MFDR submission, position or response as applicable. The Division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the services in dispute are eligible for reimbursement.
3. Dispute M4-12-1478-01 was originally decided on July 9, 2012 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 454-12-7779.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a January 15, 2014 SOAH order of remand. As a result of the remand order, the dispute was re-docketed at Medical Fee Dispute Resolution and is hereby reviewed.

### **Issues**

1. Does the federal McCarran-Ferguson exempt the applicable Texas Workers' Compensation medical fee guideline from preemption by the federal Airline Deregulation Act?
2. Did the requestor waive the right to medical fee dispute resolution?

### **Findings**

1. The requestor maintains that the Federal Aviation Act, as amended by the Airline Deregulation Act of 1978 section 41713 of Title 49 USCA, preempts the authority of the Texas Labor Code to apply its medical fee schedule amount. The respondent argues that the McCarran-Ferguson Act exempts The Texas Workers' Compensation fee schedule from preemption by the Federal Aviation Act, as amended by the Airline Deregulation Act of 1978 section 41713 of Title 49 USCA. This threshold legal issue was considered by the State Office of Administrative Hearings (SOAH) in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.* SOAH held that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that "In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . ." The Division agrees. The Division concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act, or the Airline Deregulation Act of 1978, based upon SOAH's threshold issue discussion and the information provided by the parties in this medical fee dispute. The disputed services will therefore be decided pursuant to Texas Labor Code §413.031 and all applicable rules and fee guidelines of the Texas Department of Insurance, Division of Workers' Compensation.

2. 28 Texas Administrative Code §133.307(c)(1) states: "Timeliness. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request. (A) A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute." The date of the services in dispute is September 12, 2010. The request for medical dispute resolution was received in the Medical Dispute Resolution (MDR) section on January 4, 2012. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

**Conclusion**

The Division finds that the requestor has waived the right to medical fee dispute resolution for the services in dispute, as addressed in 28 Texas Administrative Code §133.307(c)(1) and (c)(1)(A). For that reason, the merits of the issues raised by the parties to this dispute have not been addressed.

**ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

**Authorized Signatures**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Grayson Richardson  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
October 1, 2014  
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 MDR 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 the *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.**