**Texas Department of Insurance**
**Division of Workers' Compensation**
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4812 telephone • 512-804-4811 fax • www.tdi.texas.gov

# MEDICAL FEE DISPUTE RESOLUTION DISSMISSAL

## GENERAL INFORMATION

**Requestor Name and Address**

PHI AIR MEDICAL
PO BOX 60557
LOS ANGELES CA 90060

**Respondent Name**
TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK

**MFDR Tracking Number**
M4-12-1611-01

**Carrier's Austin Representative Box**
Box Number 19

**MFDR Date Received**
January 13, 2012

## REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Moreover, these authorities have determined that preemption applies to an air ambulance carrier's intrastate operations, and to any state laws affecting those operations, so long as the company involved meets the definition of a "carrier" under federal law. A company meets this definition if any of the company's aircraft fly interstate transports, even though most of its transports are intrastate. As applied to air ambulance providers meeting the definition of an "air carrier" such as PHI Air Medical, that regulation clearly constitutes " a law, regulation or other provision having the force and effect of law related to a price … of an air carrier. " It therefore falls squarely within the scope of ADA preemption and is invalid as to such carriers. Thus, PHI Air Medical is entitled to be paid because on full billed charges."

**Amount in Dispute:** $8,685.59

## RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The Respondent paid Requestor 125% of the 2011 Medicare air ambulance fee schedule for locality 28 (Tarrant County) in accordance with the Texas law Requestor has invoked.."

**Response Submitted by:** City of Mansfield c/o Flahive, Ogden & Latson, P.O. BOX 201320, Austin, TX 78720

## FINDINGS

**Background**

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 TexReg 3954, sets out the procedures for resolving a medical fee dispute.
2. Office of the Attorney General(OAG) opinion letter GA-0684 dated November 20, 2008 addresses whether the federal Airline Deregulation Act(ADA) preempts the state statue and regulations authorizing an EMS subscription program as applied to air ambulances

**Issues**

1. Is the requestor an interstate air ambulance carrier?

2. Does the Federal Aviation Act, in particular the Airline Deregulation Act of 1978 section 41713 of Title 49 U.S.C.A., preempt the state statutes concerning air ambulance services?
3. Does the Division of Workers' Compensation have jurisdiction over disputes involving interstate air ambulance services?

**Findings**

1. The requestor billed ambulance codes A0431 defined as "Ambulance service, conventional air services, transport, one way (rotary wing)" and A0436 defined as "Rotary wing air mileage, per statute mile" for air ambulance service from Tarrant County to JPS Health Network in Fort Worth, TX. The requestor, PHI Air Medical, submitted Air Carrier Certificate number HEEA617E which certifies that PHI has "met the requirements of the Federal Aviation Act of 1958….and is hereby authorized to operate as an air carrier in accordance with said Act…..". This supports the requestor as an interstate carrier providing intrastate services.

2. 49 USC Section 41713(b)(1) states that "... a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart." In opinion number GA-0684, dated November 20, 2008, the Texas Attorney General concluded that 49 USC Section 41713 preempted certain provisions of the Texas Health and Safety Code and Texas Administrative Code "to the extent these provisions relate to rates charged by air carriers providing air ambulance services." The United States Supreme Court has held that: "To ensure that the states could not undo federal deregulation with regulation of their own, the ADA (Airline Deregulation Act of 1978) included a preemption provision, prohibiting the States from enforcing any law 'relating to rates, routes or services of any air carrier'." Morales v. Tran World Airlines, Inc., 504 U.S. 374, 112 S. Ct 2031 (1992). Accordingly, the Division finds that 49 USC Section 41713 preempts provisions of the Texas Labor Code and Title 28 Texas Administrative Code Chapter 134.203(d) relating to the price of air transportation furnished to an injured worker by an interstate air carrier under that federal law.

3. Per 28 Texas Administrative Code §133.307(a)(3), "...the role of the Division of Workers' Compensation (Division) is to adjudicate the payment, given the relevant statutory provisions and Division rules." Insofar as adjudicating the fees for the disputed services would involve enforcing a law, regulation, or other provision related to the price of air transportation provided by an interstate carrier, the Division finds that this dispute is not under the jurisdiction of the Division of Workers' Compensation and is therefore not eligible for medical fee dispute resolution under §133.307.

**Conclusion**

The Division concludes that it does not have jurisdiction over disputes involving fees for interstate air ambulance carriers. The dispute is hereby dismissed for good cause pursuant to 28 Texas Administrative Code §133.307(e)(3)(J).

## *DISMISSAL*

The Division has determined that it does not have jurisdiction over this dispute. The request for medical fee dispute resolution is hereby dismissed.

**Authorized Signature**

| | | |
|---|---|---|
| | | 7/11/12 |
| Signature | Medical Fee Dispute Resolution Officer | Date |

## *YOUR RIGHT TO REQUEST AN APPEAL*

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. Texas Administrative Code §133.307(f) states:" A party to a medical fee dispute may seek review of the MDR decision or ***dismissal*** [emphasis added]." 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**.