



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

MED-TRANS CORP AIRMED 1

Respondent Name

ZURICH AMERICAN INSURANCE CO

MFDR Tracking Number

M4-16-0018-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

September 02, 2015

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "This is a **request for a medical fee dispute** for assistance on the above referenced claim. **This claim has been processed incorrectly.** We have made multiple attempts to settle this claim with the insurance carrier, but have had no success.

According to the United State Code Title 49, 41713, **the Airline Deregulation Act (ADA) of 1978 states that individual states cannot regulate the prices, routes or services of the air ambulance industry**, therefore, it is inappropriate that air ambulance services be subject to state workers' compensation allowance and should be reimbursed at 100% of billed charges.

We realize that we have been unable to make the two attempts requested to settle this claim with the carrier, however it is by no fault of our own. We have been unable to get responses from the carrier to do this before the one year timely filing to the Workers' Compensation Board is up. I am submitting all correspondence on this claim."

Amount in Dispute: \$24,404.98

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This will acknowledge receipt of the request for medical fee dispute resolution (MFDR) by CorVel Healthcare Corporation (CorVel), Third Party Administrator for Zurich American Insurance Company on the above referenced claim.

Issue

1. Did the requestor waive its right to medical fee dispute resolution for date of service 08/30/14? ...

Respondent's Position Summary

Pursuant to division rule §133.307(c) and (c)(1)(A) a request for MFDR 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. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR.

1. CorVel asserts the requestor, Med-Trans Corporation is entitled to \$0.00 reimbursement for air ambulance services in dispute based on the requestor's failure to request medical fee dispute resolution no later than one year after the date of service in dispute."

Response Submitted by: CORVEL

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 30, 2014	Air Ambulance Services	\$24,404.98	\$0.00

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. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

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 (ADA) of 1978, 49 U.S.C. §41713, preempts the authority of the Texas Labor Code to apply the Division's medical fee schedule amount. 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. To be eligible for medical fee dispute resolution, a request must be timely filed in accordance with 28 Texas Administrative Code §133.307(c)(1), which states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR 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 August 30, 2014. The request for medical dispute resolution was received in the Medical Dispute Resolution (MDR) section on September 02, 2015. 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

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

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 disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

10/9/15
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request 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 §141.1(d).

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