



MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION
GENERAL INFORMATION

<u>Requestor Name</u> PHILIP GASQUOINE PHD	<u>MFDR Tracking Number</u> M4-19-2288-01
<u>Respondent Name</u> TEXAS MUTUAL INSURANCE COMPANY	<u>MFDR Date Received</u> December 20, 2018
	<u>Carrier's Austin Representative</u> Box Number 54

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "In this case, the treating doctor, who was Alfonso Ochoa, MD, referred the patient to me (see attached referral dated October 2, 2017). I practice in Edinburg Texas where there are few, if any, other neuropsychologists available...The lawyer's response letter of April 6, 2018 states: 'Complainant did not request pre-authorization for out of network performance of the neurophysiological (sic) examination.' That is incorrect. If I am requesting to perform the procedure and I am out of network, then obviously I did."
Amount in Dispute: \$1,050.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Texas Mutual claim [claim number] is in the Texas Star Network... Texas Mutual reviewed its online Network provider directory for the requestor's name and for its tax identification number, and found no evidence PHILIP GASQUOINE PHD is a participant in that Network... Because this fee reimbursement dispute involves a Network requirement under the Insurance Code and not the Labor Code, Texas Mutual argues DWC MDR has no jurisdiction in this matter. No payment is due."
Response Submitted by: Texas Mutual Insurance Company

SUMMARY DISPUTED SERVICES

Date(s) of Service	Disputed Service(s)	Amount in Dispute	Amount Ordered
October 30, 2017	96118 x 6	\$1,050.00	\$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

- 28 Texas Administrative Code §133.305, sets out the procedures for resolving medical disputes.
- 28 Texas Administrative Code §133.307, sets out the procedures for resolving medical fee disputes.
- 28 Texas Insurance Code Chapter 1305 applicable to Health Care Certified Networks.

Issue

- Did the requestor obtain approval from the certified network to treat the injured employee?
- Is this dispute eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307?

Findings

The requestor filed this medical fee dispute with the Division requesting resolution pursuant to 28 Texas Administrative Code (TAC) §133.307 titled *MDR of Fee Disputes*. The authority of the Division of Workers' Compensation is to apply the Texas Labor Code (TLC) statutes and rules, including 28 TAC §133.307 and is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305. In particular, TIC §1305.153 (c) provides that "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation." The requestor therefore has the burden to prove that the condition(s) outlined in Texas Insurance Code §1305.006 were met in order to be eligible for dispute resolution. The following are the Division's findings.

1. The requestor seeks reimbursement for CPT code 96118 x 6 rendered on October 30, 2017. Texas Mutual's response to Consumer Protection letter dated April 6, 2018, states in pertinent part, "Pre-authorization for a neuropsychological examination off the claimant was granted on October 11, 2017. However, pre-authorization was only granted for the procedure. Complainant did not request pre-authorization for out of network performance of the neurophysiological examination ... In this instance, complainant – who was himself not a participant of the Texas Star Network – needed to have either referred claimant to a network doctor or sought pre-authorization as a non-network provider for the neuropsychological examination. Complainant's decision to only obtain pre-authorization for the procedure was not in compliance with Texas Insurance Code 1305.103(e)."

Texas Insurance Code Section 1305.006 (3) requires, in pertinent part, "An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee... (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103." The requestor, therefore has the burden to prove that it obtained the appropriate approval from the certified healthcare network for the out-of-network care it provided.

Texas Insurance Code Section 1305.153 (e) requires, in pertinent part, "(c) Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."

Texas Insurance Code Section 1305.103 (e) requires, in pertinent part, "(e) A treating doctor shall provide health care to the employee for the employee's compensable injury and shall make referrals to other network providers, or request referrals to out-of-network providers if medically necessary services are not available within the network. Referrals to out-of-network providers must be approved by the network. The network shall approve a referral to an out-of-network provider not later than the seventh day after the date on which the referral is requested, or sooner if circumstances and the condition of the employee require expedited approval. If the network denies the referral request, the employee may appeal the decision through the network's complaint process under Subchapter I." The requestor therefore, has the burden to prove that the condition(s) outline in Texas Insurance Code §1305.103 (e) were met.

The requestor, in its response to Medical Fee Dispute Resolution states in pertinent part, "The lawyer's response letter of April 6, 2018 states: 'Complainant did not request pre-authorization for out of network performance of the neurophysiological (sic) examination.' That is incorrect. If I am requesting to perform the procedure and I am out of network, then obviously I did." Although the requestor obtained pre-authorization for the treatment, the Division finds that the requestor submitted insufficient documentation to support that an out-of-network referral was obtained to by the treating doctor and approved by the network. The Division therefore concludes, that the requestor did not receive approval from the Certified Network to treat the injured employee; thereby failing to meet the requirements of Texas Insurance Code Section 1305.006(3).

2. The requestor failed to prove in this case that that the requirements of Texas Insurance Code Section 1305.006(3) were met. Consequently, the services in dispute are not eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307.

DECISION

Based upon the documentation submitted by the parties, the Division has determined that this dispute is not eligible for resolution pursuant to 28 Texas Administrative Code §133.307.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

Date

April 5, 2019

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, effective May 31, 2012, *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 MDR 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).