



# 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**

MARK W BAILY D.C.

**MFDR Tracking Number**

M4-20-1029-01

**MFDR Date Received**

December 23, 2019

**Respondent Name**

TEXAS MUTUAL INSURANCE COMPANY

**Carrier's Austin Representative**

Box Number 54

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Per decision dated 08-08-18 by Warren Hancock, Administrative Law Judge, (see enclosed). Healthcare Networks are liable for payment for MMI/IR examinations because the service is not considered treatment and does not meet the criteria outlined in the Labor Code for Certified Networks."

**Amount in Dispute:** \$500.00

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Texas Mutual claim [claim number] is in the WorkWell Network (Attachment) Texas Mutual reviewed its online Network provider directory for the requestor's name and for its tax identification number, and found no evidence SOUTH TEXAS SPINE GROUP or Mark Bailey, DC is a participant in that Network... Mark Bailey, DC was a physician selected by the treating doctor not previously seen, and not the role of the Designated Doctor, therefore the network requirements apply per Insurance Code 1305.103 (e). 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."

**Response Submitted by:** Texas Mutual Insurance Company

#### SUMMARY OF FINDINGS

| Date(s) of Service | Disputed Service(s) | Amount in Dispute | Amount Due |
|--------------------|---------------------|-------------------|------------|
| September 8, 2018  | 99456               | \$500.00          | \$0.00     |

#### FINDINGS AND DECISION

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

**Background**

1. 28 Texas Administrative Code (TAC) §133.307, sets out the procedures for resolving medical fee disputes
2. 28 Texas Insurance Code (TIC) Chapter 1305 applicable to Health Care Certified Networks.
3. 28 TAC §§10.120 through 10.122 address the submission of a complaint by a health care provider to the Health Care Network.

**Issues**

1. Did the Requestor obtain an out-of-network referral from the injured employee's treating doctor that was approved by the network pursuant to §1305.103?
2. Is this dispute eligible for medical fee dispute resolution pursuant to 28 TAC §133.307?

**Findings**

1. The requestor filed this medical fee dispute to the DWC asking for resolution pursuant to 28 TAC (TAC) §133.307 titled *MDR of Fee Disputes*. The authority of the DWC is to apply TLC statutes and rules, including 28 TAC §133.307, is limited to the conditions outlined in the applicable portions of the TIC, Chapter 1305. TIC §1305.153 (c) provides that “Out-of-network providers who provide care as described by §1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation.”

TIC §1305.006 states, in pertinent part, “(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 §1305.103.”

The requestor therefore has the burden to prove that the condition(s) outlined in the TIC §1305.006 were met to be eligible for dispute resolution. The following are the DWC’s findings.

The requestor states in pertinent part, “Per decision dated 08-08-18 by Warren Hancock, Administrative Law Judge, (see enclosed). Healthcare Networks are liable for payment for MMI/IR examinations because the service is not considered treatment and does not meet the criteria outlined in the Labor Code for Certified Networks.”

The requestor included a copy of the ALJ decision’s summary page, dated August 9, 2018, which states in pertinent part, “Copies of the decision and a fact sheet are attached...” However, the requestor did not include a copy of the decision and the fact sheet with the DWC060 for consideration in this dispute. The DWC records reveal that the CCH Decision & Order referenced by the requestor dated, August 6, 2018 was appealed and subsequently reversed and rendered by striking. See Appeal No. 182018 at <http://www.tdi.texas.gov/appeals/2018cases/182018r.pdf>.

The DWC finds that TIC §1305.103 requires that “(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...”

2. The requestor has the burden to prove that it obtained the appropriate approved out-of-network referral for the out-of-network healthcare it provided. Review of the submitted documentation finds that the requestor submitted insufficient documentation to support that a referral was obtained from the treating doctor and approved by the network to treat the injured employee. The DWC concludes that the requestor thereby has failed to meet the requirements of TIC §1305.103 and 1305.006(3). Consequently, the services in dispute are not eligible for medical fee dispute resolution pursuant to 28 TAC §133.307.

The TDI rules at 28 TAC §§10.120 through 10.122 address the submission of a complaint by a health care provider to the Health Care Network. The DWC finds that the disputed may be filed to the Texas Department of Insurance’s (TDI) Complaint Resolution Process, if the health care provider or facility is dissatisfied with the outcome of the network complaint process. The complaint process outlined in TIC Subchapter I, §1305.401 - §1305.405 may be the appropriate administrative remedy to address fee matters related to health care certified networks.

**FINDINGS**

Based upon the documentation submitted by the parties and in accordance with the provisions of TLC §413.031, the DWC has determined that the requestor is not eligible for Medical Fee Dispute Resolution under 28 TAC §133.307.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
January 17, 2020  
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 TAC §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 DWC within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the DWC 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 DWC. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 TAC §141.1 (d).