



# 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**

HEALTHCARE SUBROGATION GROUP

**Respondent Name**

INDEMNITY INSURANCE COMPANY

**MFDR Tracking Number**

M4-20-1988-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

April 14, 2020

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Subclaimant served the attached DWC 026 and requested reimbursement with full documentation required by law. Carrier replied seeking medical reports and medical billing. In fact, the law provides that defenses applicable to a provider are not applicable to a health insurer subclaimant. The Rule at 140.8 (h)(3)(C) makes it clear that medical records are not appropriate request to a MFDR where there is no compensability or extent of injury dispute. Despite good faith efforts, Subclaimant has not been able to overcome the unjustified request for provider billing and medical records."

**Amount in Dispute:** \$878.70

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The EOB was dated December 4, 2019. The sub-claimant was required to file the DWC-60 within 120 days of that date. The provider failed to do so when it did not file the DWC-60 until April 14, 2020. Pursuant to Rule 140.8 (h)(3)(A) and 133.307 (c)(1), the sub-claimant is not entitled to pursue medical fee dispute resolution. Accordingly, the sub-claimant's DWC-60 should be dismissed."

**Response Submitted by:** Flahive, Ogden & Latson

### SUMMARY OF FINDINGS

Date(s) of Service	Disputed Service(s)	Amount in Dispute	Amount Due
March 24, 2019	Professional Services	\$878.70	\$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.

#### **Background**

1. TLC §409.0091 sets out the reimbursement procedures for health care insurers.
2. TLC §409.0091(s) sets out an exception for reimbursement for services provided to injured employees with dates of injury prior to September 1, 2007.

3. 28 Texas Administrative Code (TAC) §140.7 applies to Health Care Insurer Reimbursement under Labor Code §409.0091.
4. 28 TAC §140.8 applies to Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091.
5. 28 TAC §140.8(h) sets out the conditions for requests by the health care insurer for dispute resolution.
6. 28 TAC §133.307 sets out the procedures for resolving medical fee disputes.

## **Issues**

1. Did the health care insurer meet the applicable requirements of TLC §409.0091?
2. Did the workers' compensation insurance carrier fulfill its duties to timely pay, reduce or deny payment?
3. Is reimbursement due to the health care insurer?

## **Findings**

TLC §409.0091 effective September 1, 2007 was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8. The requestor of this medical fee dispute represents a health care insurer as defined by TLC §409.0091(a). TLC §409.0091(c) states that health care paid by a health care insurer may be reimbursable as a medical benefit. The requestor is seeking \$3,696.19 pursuant to the provisions of §409.0091. The respondent is a Texas workers' compensation insurance carrier. The provisions of TLC §409.0091, and 28 TAC Rules §§140.7 and 140.8 apply to this request for reimbursement by a health care insurer and are hereby applied in the DWC's determination of whether payment is due in this case.

TLC §409.0091(i) states "On receipt of a request for reimbursement under this section, the workers' compensation insurance carrier shall respond to the request in writing not later than the 90th day after the date on which the request is received." Review of the documentation finds the following.

- The health care insurer's request for reimbursement sent on November 14, 2019 via fax. Review of the dates on the EOBs indicate that it was received by the workers' compensation insurance carrier on November 25, 2019.
- 28 TAC §102.3(a) (1) computing a period of days. In counting a period of time measured by days, the first day is excluded and the last day is included. Additionally, 28 TAC §102.3(a)(3) states that, unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day. The respondent was therefore required to respond to the reimbursement request not later than January 26, 2020.
- Review of the EOBs support that the insurance carrier responded on December 4, 2019.

The DWC concludes that the workers' compensation insurance carrier timely responded to the health care insurer's request for reimbursement.

TLC §409.0091(l) states that "Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and division rules."

Applicable TLC §409.0091(k)(1), and corresponding 28 TAC §140.8 (h)(3)(A)(i), states that a health care insurer must file a request for medical dispute resolution with the Division not later than the 120th day after a workers' compensation insurance carrier fails to respond to a health care insurer's reimbursement request or reduces or denies the requested reimbursement amount for reasons other than lack of medical necessity.

28 TAC §140.8 (h)(3)(B) furthermore states that a medical dispute based on the workers' compensation insurance carrier's failure to respond to a health care insurer's reimbursement request or the result of a reduction or denial of the requested reimbursement amount for reasons other than those listed in paragraph (1) or (2) of this subsection is subject to medical dispute resolution pursuant to §133.307 of this title, notwithstanding the definition of medical fee dispute in §133.305 of this title (relating to MDR--General), and the health care insurer must follow the medical fee dispute resolution process allowed for a health care provider under that section, with any modifications specified by this subsection. The reimbursement request is therefore subject to dispute resolution under 28 TAC §133.307.

The requestor was therefore required to file its request to medical fee dispute resolution not later than 120 days from December 4, 2019 for the services in this dispute. Review of the documentation finds that the requestor filed for medical fee dispute resolution on April 14, 2020. This date is past the 120-day filing deadline required by 28 TAC §140.8 (h)(3)(A)(i).

The DWC finds that the requestor failed to meet the timeliness condition for filing a medical fee dispute set out by TLC §409.0091(k)(1) and corresponding 28 TAC §140.8 (h)(3)(A)(i). For this reason, the medical fee dispute is not eligible for review.

**Conclusion**

The outcome of this medical fee dispute relied upon the available evidence presented by the requestor and the respondent. Even though all the evidence was not discussed, it was considered. For the reasons stated above, the DWC finds that the requestor failed to establish that additional reimbursement is due. As a result, the amount ordered is zero.

**ORDER**

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 entitled to \$0.00 reimbursement for the disputed services.

**Authorized Signature**

Signature	Medical Fee Dispute Resolution Officer	Date
		May 21, 2020

**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 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** along with any other required information specified in 28 TAC §141.1(d).

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