

SOAH DOCKET NO. 454-13-0601.M4
DWC NO. _____

**FACILITY INSURANCE
CORPORATION,
Petitioner**

v.

**METHODIST HOSPITAL,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Facility Insurance Corporation (Carrier) challenges the October 1, 2012 Medical Fee Dispute Resolution Findings and Decision (MFDR Decision) of the Texas Department of Insurance, Division of Workers' Compensation (Division). The MFDR Decision ordered Carrier to pay \$14,309.72 in reimbursement to Methodist Hospital (Provider). The Administrative Law Judge (ALJ) finds that Provider did not have notice that Carrier had access to an informal or voluntary network as required by 28 Texas Administrative Code § 133.4. Therefore, the ALJ finds that Carrier owes an additional \$14,309.72 to Provider.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Provider requested medical fee dispute resolution from the Division on April 8, 2011.¹ The Division issued its MFDR Decision on October 1, 2012, ordering Carrier to pay additional reimbursement to Provider for outpatient services rendered to an injured worker.² On October 26, 2012, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision. On June 21, 2013, the Division issued a notice of hearing.³

¹ Carrier Ex. 1 at 2.

² Carrier Ex. 1.

³ The adequacy of the notice of hearing is not contested.

ALJ Kerrie Jo Qualtrough convened the hearing on the merits on September 9, 2013, in SOAH's offices in Austin, Texas. Carrier was represented by attorney Steven M. Tipton, and Provider was represented by attorney James G. Gummert. The ALJ held open the evidentiary record to allow Carrier to obtain and submit additional documentation regarding the notice required by 28 Texas Administrative Code § 133.4. Carrier submitted a status report and additional exhibits on September 20, 2013,⁴ and Provider filed a written closing argument on September 27, 2013, with the evidentiary record closing on that date.

II. DISCUSSION

A. Disputed Issue

There is one disputed issue in this case: whether Provider had notice that Carrier had access to the Coventry Health Care/First Health (Coventry/First Health) network fee arrangement. Provider concedes that if notice had been provided in accordance with 28 Texas Administrative Code § 133.4, then Carrier does not owe more than the \$10,808.92 already paid to Provider. As a party contesting the MFDR Decision, Carrier has the burden of proof.

⁴ Provider did not object to Carrier Exs. 6, 7, and 8, and the ALJ admits those exhibits into the evidentiary record.

B. Applicable Law

In 2008, the Department adopted 28 Texas Administrative Code § 133.4 requiring notice to health care providers of contractual agreements between insurance carriers and informal or voluntary networks.⁵ This rule provides:

Each informal network or voluntary network, or the insurance carrier, or the insurance carrier's authorized agent, as appropriate, shall notify each affected health care provider of any person that is given access to the informal or voluntary network's fee arrangement with that health care provider within the time and manner provided by this section.⁶

An insurance carrier is an entity included within the definition of a "person."⁷

Section 133.4 sets out the requirements for the time, manner, and content of the notice to providers.⁸ For example, the notice must include the person's name, address, and telephone number, as well as the start date and any end date of access.⁹ Notice through the use of a website is permissible if that website contains the necessary information and is updated at least monthly with current and correct information.¹⁰

If the required notice is not given, the insurance carrier may not pay a health care provider the contracted fee negotiated by an informal or voluntary network.¹¹ Instead, the insurance carrier must pay the health care provider according to the Division fee guidelines under 28 Texas Administrative Code § 134.4(e)(1), or if there is no guideline, reimbursement

⁵ 33 Tex. Reg. 5701 (Jul. 18, 2008).

⁶ 28 Tex. Admin. Code § 133.4(c).

⁷ 28 Tex. Admin. Code § 133.4(b).

⁸ 28 Tex. Admin. Code § 133.4(d), (f).

⁹ 28 Tex. Admin. Code § 133.4(d)(2).

¹⁰ 28 Tex. Admin. Code § 133.4(d)(4).

¹¹ 28 Tex. Admin. Code § 133.4(g).

must be a fair and reasonable reimbursement under 28 Texas Administrative Code § 134.4(e)(3).¹²

C. Facts

An injured worker received outpatient hospital services from Provider on April 9, 2010.¹³ Provider had a network fee arrangement with the Coventry/First Health network. The parties do not dispute that this network was an informal or voluntary network to which 28 Texas Administrative Code § 133.4 applies.

Provider's bills were addressed to International Solutions, a third-party administrator for various insurance companies, including Carrier.¹⁴ UniMed is the bill reviewer for International Solutions. UniMed submitted an explanation of benefits to Provider, indicating that Carrier was the insurance company responsible for the claim.¹⁵

Provider billed \$25,118.64, and Carrier paid \$10,808.92, leaving a balance of \$14,309.74.¹⁶ The MFDR Decision determined that there was insufficient documentation that the disputed services were provided under a contractual agreement between Carrier and Provider.¹⁷ Therefore, the MFDR reviewed the payment in accordance with Division rules and fee guidelines and ordered Carrier to reimburse Provider \$14,309.72, two cents less than the amount requested by Provider.¹⁸

D. Carrier's Position

¹² 28 Tex. Admin. Code § 133.4(h).

¹³ Carrier Ex. 1 at 1. Section 133.4 applies to health care services "rendered between August 1, 2008, and December 31, 2010, pursuant to an informal network or voluntary network fee agreement with a health care provider." 28 Tex. Admin. Code § 133.4(k).

¹⁴ Provider Ex. 1 at 31.

¹⁵ Carrier Ex. 2.

¹⁶ Provider Ex. 1 at 3.

¹⁷ Carrier Ex. 1 at 3.

¹⁸ Carrier Ex. 1 at 3, 4. Because Provider did not contest the MFDR Decision, its maximum additional reimbursement is \$14,309.72.

Carrier claims that it had access to the network fee arrangement through the Coventry/First Health network, and that Provider had notice of that access. According to Carrier, the Coventry/First Health network gave the required notice to Provider in 2008 when it created a website to notify health care providers of those persons who had access to the informal or voluntary network fee arrangements.¹⁹ Carrier maintains that this notice complied with 28 Texas Administrative Code § 133.4(d)(4).

In addition, Carrier points out that the “HCA Patient Account Services Request for Reconsideration”²⁰ (Request for Reconsideration) sent by Provider shows that Provider contested Carrier’s payment because it was not in accordance with “the contract terms as determined by our agreement” and “not paid according to our contract rate.”²¹ Therefore, according to Carrier, the evidence shows that Provider had the proper notice and was paid the proper amount according to that network fee arrangement.

E. Provider’s Position

According to Provider, the Division adopted 28 Texas Administrative Code § 133.4 in an effort to combat the “silent PPO problem.” A silent PPO occurs when a payer accesses a discounted payment rate for services without direct authorization from the provider. This would allow a carrier to get the benefit of the lower contracted rates without incurring the contractual obligation to use a provider’s services. To address this issue, section 133.4 requires that each affected health care provider must be given notice of all “persons” who have access to a network fee arrangement, and section 133.4 defines the term “person” to include insurance carriers.²²

¹⁹ Carrier Ex. 8.

²⁰ Carrier Ex. 6.

²¹ Carrier Ex. 6 at 1, 2.

²² 28 Tex. Admin. Code § 133.4(b), (c).

Provider argues that there is no evidence in the record that the website notice relied upon by Carrier complies with the time and content requirements in 28 Texas Administrative Code § 133.4. Therefore, it is Provider's position that Carrier is not entitled to pay Provider the contracted fee negotiated by the informal or voluntary network.

Provider contends that its bill for \$25,118.64 is based on its usual and customary charges and complies with the Division's fee guidelines.²³ Provider asserts that, given the lack of notice, Carrier must pay \$14,309.72 in reimbursement, as calculated by the MFDR Decision.

F. ALJ's Analysis

The ALJ agrees with Provider that the evidence does not demonstrate that Provider was given notice of Carrier's access to the network fee arrangement in accordance with 28 Texas Administrative Code § 133.4. Although Carrier provided evidence of a website,²⁴ that evidence does not demonstrate that the website met the requirements of section 133.4(d)(4). There is no evidence showing that the website met the general time and content requirements or that Carrier's name was included on that website.

Carrier asserts that Provider's Requests for Reconsideration reference "agreed contract terms," thereby demonstrating that Provider knew Carrier had access to the network fee arrangement.²⁵ However, the Request for Reconsideration is simply a form document, which allows for claim-specific information to be entered into a field. Without evidence that shows notice of Carrier's access to the network fee arrangement was given to Provider, the ALJ declines to find that a general reference to an unspecified contract on a form indicates that Provider had actual knowledge of Carrier's access to the Coventry/First Health network fee arrangement.

²³ Provider Ex. 1 at 3.

²⁴ Carrier Ex. 8.

²⁵ Carrier Ex. 6.

In conclusion, this evidentiary record does not demonstrate that notice was given to Provider as required by section 133.4. Therefore, because there is no evidence that sufficient notice of Carrier's access to the network fee arrangement was given to Provider as required by 28 Texas Administrative Code § 133.4, Carrier may not pay Provider the contracted fee negotiated by the informal or voluntary network.²⁶ The ALJ finds that the amount owed to Provider, as calculated in the MFDR Decision, was correct and Carrier must pay Provider \$14,309.72, in accordance with the Division's fee guidelines.²⁷

VI. FINDINGS OF FACT

1. The Division of Workers' Compensation (Division) of the Texas Department of Insurance issued its Medical Fee Dispute Resolution Findings and Decision (MFDR Decision) on October 1, 2012. The MFDR Decision ordered Facility Insurance Corporation (Carrier) to pay Methodist Hospital (Provider) an additional \$14,309.72.
2. On October 26, 2012, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision.
3. On June 21, 2013, the Division issued a notice of hearing. The notice of hearing included the date, time, and location of the hearing; a short, plain statement of the matters asserted; and citations to the applicable statutes and rules.
4. On September 9, 2013, Administrative Law Judge Kerrie Jo Qualtrough convened the hearing on the merits in SOAH's offices in Austin, Texas. Carrier was represented by attorney Steven M. Tipton, and Provider was represented by attorney James G. Gummert.
5. Carrier submitted a status report and additional exhibits on September 20, 2013. Provider filed a written closing argument on September 27, 2013, and the evidentiary record closed on that date.
6. An injured worker received outpatient hospital services from Provider on April 9, 2010.
7. Provider requested reimbursement of \$25,118.64 from International Solutions for services provided to the injured worker on April 9, 2010. International Solutions is the third-party administrator for Carrier.
8. Provider charged its usual and customary charges for the outpatient hospital services provided to the injured worker on April 9, 2010.

²⁶ "The insurance carrier is not entitled to pay a health care provider at a contracted fee negotiated by an informal network or voluntary network if . . . the notice to the health care provider does not meet the requirements of [Texas] Labor Code § 413.011 and this section . . ." 28 Tex. Admin. Code § 133.4(g)(1).

²⁷ 38 Tex. Admin. Code § 133.4(h).

9. Carrier paid Provider a total of \$10,808.92 and denied the remainder of Provider's requested reimbursement.
10. Provider requested medical fee dispute resolution on April 8, 2011.
11. Provider had a network fee arrangement with the Coventry Health Care/First Health (Coventry/First Health) network.
12. The Coventry/First Health network is an informal or voluntary network.
13. Provider was not given notice that Carrier had access to the network fee arrangement.
14. Carrier owes Provider reimbursement in the amount of \$14,309.72.

VII. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided to Carrier and Provider. Tex. Gov't Code §§ 2001.051, 2001.052.
3. Carrier had the burden of proof in this proceeding by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
4. Each informal network or voluntary network, or the insurance carrier, or the insurance carrier's authorized agent, as appropriate, must notify each affected health care provider of any person that is given access to the informal or voluntary network's fee arrangement with that health care provider within the time and manner provided by 28 Texas Administrative Code § 133.4. 28 Tex. Admin. Code § 133.4(c).
5. For purposes of determining compliance with 28 Texas Administrative Code § 133.4, Carrier is a person. 28 Tex. Admin. Code § 133.4(b).
6. Carrier failed to prove that Provider had been given notice that Carrier had access to a network fee arrangement as required by 28 Texas Administrative Code § 133.4.
7. Carrier is not entitled to pay Provider at a contracted fee negotiated by an informal network or a voluntary network because there was no notice to Provider that met the requirements of 28 Texas Administrative Code § 133.4. 28 Tex. Admin. Code § 133.4(g)(1).
8. Because Carrier is not entitled to pay Provider at the contracted rate, the Division fee guidelines apply. 28 Tex. Admin. Code § 133.4(h).
9. Carrier must reimburse Provider \$14,309.72, the remaining unpaid amount that complies with the Division fee guidelines. 28 Tex. Admin. Code § 133.4(e)(1).

ORDER

Carrier is to pay Provider an additional \$14,309.72 for Provider's treatment of the injured worker on April 9, 2010.

ISSUED October 16, 2013.



**KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**