

**SOAH DOCKET NO. 454-14-4081.M4-NP**

<b>NEW HAMPSHIRE INSURANCE CO.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>TEXAS HEALTH OF AZLE,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

New Hampshire Insurance Company (Carrier) challenges the order granting additional reimbursement to Texas Health of Azle (Provider) for services provided to an injured worker in an emergency room. The issue in this case is whether the Provider is entitled to additional reimbursement for services billed under Current Procedural Terminology Code (CPT) 96375. The underlying Medical Fee Dispute Resolution Decision (MFDR Decision) awarded reimbursement for services delivered under that CPT Code, despite the fact that Provider had not identified that CPT code as part of the medical fee dispute before the Texas Department of Insurance, Division of Workers' Compensation (Division). Carrier contends that the Division had no authority to order reimbursement under that code and that the MFDR must, therefore, be reversed. The Administrative Law Judge (ALJ) agrees. Provider is not entitled to additional reimbursement for services billed under CPT Code 96375.

**I. NOTICE AND PROCEDURAL HISTORY**

There are no issues of notice in this proceeding. Therefore, the adequacy of notice is addressed in the Findings of Fact and Conclusions of Law without further discussion here.

Provider filed a request for medical fee dispute resolution with the Division. On April 24, 2014, the Division issued its MFDR Decision. On June 12, 2014, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On June 16, 2014, the Division issued a Notice of Hearing. A hearing convened before ALJ Shannon Kilgore on September 9, 2014, at SOAH's facilities in Austin, Texas.

Carrier was represented by Charles Finch, attorney. Provider was represented by Carol Ford. Evidence was received and the record closed on the same day.

## II. DISCUSSION

### A. Facts

The date of service was March 2, 2013. Provider billed under ten different CPT codes, including 96365, for the services provided to the claimant. Carrier denied reimbursement under eight of the codes, including 96365. Carrier's denial of reimbursement under CPT Code 96365 was explained as follows: "The benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated."<sup>1</sup> Carrier determined that reimbursement was due on the remaining two codes in these amounts:

CPT Code 96375	\$76.17
CPT Code 99284	\$446.46. <sup>2</sup>

Provider's request for medical fee dispute resolution, the "DWC060," stated only that reimbursement for services billed under CPT Code 96365, in an amount of \$284.66, was in dispute.<sup>3</sup>

In its MFDR Decision, the Division reviewed nine of the ten codes billed. The Division determined that no reimbursement was due for seven of the codes, including the one appealed, CPT Code 96365. The Division further determined that Carrier had correctly determined \$446.46 was due for CPT Code 99284. And, finally, the Division determined that Carrier owed a total of \$228.48 for CPT Code 96375, rather than the \$76.17 Carrier had paid. Therefore, the Division ordered Carrier to make additional reimbursement to Provider for the difference between the \$76.17 that Carrier paid for CPT Code 96375 and the \$228.48 the Division ordered

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<sup>1</sup> Carrier Ex. 1 at 5-6.

<sup>2</sup> *Id.* at 4-6.

<sup>3</sup> *Id.* at 2.

for that Code, or \$152.31.

## B. Analysis

Carrier asserts that the Division and SOAH lack jurisdiction over the question of reimbursement for services billed under CPT Code 96375 because Provider's request for medical fee dispute resolution only identified CPT Code 96365 as at issue.<sup>4</sup> Provider argues that the Division should have, and does have, jurisdiction over all claims.

The ALJ concludes that Provider waived its right to MFDR concerning reimbursement for services billed under CPT Code 96375. Rule 133.307<sup>5</sup> provides in relevant part:

(c) Requests for MFDR shall be filed in the form and manner prescribed by the division. . . .

(1) Timeliness. A requestor shall timely file the request with the division's MFDR Section *or waive the right to MFDR*. . . .

(2) Health Care Provider or Pharmacy Processing Agent Request. The requestor shall provide the following information and records with the request for MFDR in the form and manner prescribed by the division. . . . *The request shall include:*

. . . .

(F) *the treatment or service code(s) in dispute*. . . .<sup>6</sup>

The DWC060 form is the "form and manner prescribed by the [D]ivision" for requesting MFDR, and the DWC060 has a space for the requestor to fill in the "treatment or service codes in dispute." Provider wrote "96365" in that space.<sup>7</sup> An accompanying "Position Statement" attached to the DWC060 by Provider again identified 96365 as the particular code in dispute.<sup>8</sup> Therefore, the issue of reimbursement under CPT Code 96375 was not properly before the Division. Carrier is not required to pay Provider an additional \$152.31 in reimbursement for

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<sup>4</sup> There is no indication that the designation of CPT Code 96365 on the DWC060 and accompanying position statement was a typographical error on Provider's part.

<sup>5</sup> 28 Tex. Admin. Code § 133.307.

<sup>6</sup> Emphasis added.

<sup>7</sup> Carrier Ex. 1 at 2.

<sup>8</sup> *Id.* at 3.

CPT Code 96375.

### III. FINDINGS OF FACT

1. On \_\_\_\_\_, emergency room services were performed for an injured worker, the claimant involved in this case.
2. New Hampshire Insurance Company (Carrier) was the responsible workers' compensation insurer for the claimant.
3. Texas Health of Azle (Provider) billed Carrier under ten different CPT codes for the services provided to the claimant. Carrier denied reimbursement under eight of the codes, and determined that reimbursement of \$76.17 was due for CPT Code 96375 and \$446.46 for CPT Code 99284.
4. Carrier's denial of reimbursement under CPT Code 96365 was explained as follows: "The benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated."
5. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division) using the "DWC060" form.
6. The DWC060 form is the "form and manner prescribed by the [D]ivision" for requesting MFDR, and the DWC060 has a space for the requestor to fill in the "treatment or service codes in dispute."
7. Provider's DWC060 stated that reimbursement only for services billed under CPT Code 96365, in an amount of \$284.66, was in dispute. An accompanying "Position Statement" attached to the DWC060 by Provider again identified 96365 as the particular code in dispute.
8. On April 24, 2014, the Division issued its Medical Fee Dispute Resolution (MFDR) Decision.
9. In its MFDR Decision, the Division reviewed nine of the codes billed. The Division determined:
  - no reimbursement was due for seven of the codes (including the one appealed, CPT Code 96365);
  - Carrier had correctly determined \$446.46 was due for CPT Code 99284;
  - Carrier owed \$228.48 for CPT Code 96375, rather than the \$76.17 Carrier had determined to pay; and
  - Carrier therefore owed Provider the difference between \$76.17 and \$228.48, or

\$152.31.

10. Carrier requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MFDR Decision.
11. On June 16, 2014, the Division issued a Notice of Hearing.
12. The Notice of Hearing informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
13. A hearing convened before ALJ Shannon Kilgore on September 9, 2014, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Carrier was represented by Charles Finch, attorney. Provider was represented by Carol Ford. Evidence was received and the record closed on the same day.

#### **IV. CONCLUSIONS OF LAW**

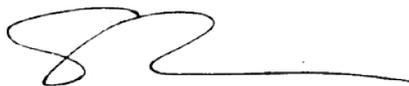
1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Texas Labor Code § 413.031 and Texas Government Code chapter 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051 and 2001.052.
3. Carrier had the burden of proof in this proceeding.
4. Requests for MFDR shall be filed in the form and manner prescribed by the Division. A request shall include the treatment or service code(s) in dispute. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. 28 Tex. Admin. Code § 133.307(c)(1)-(2).
5. Provider waived its right to MFDR as to reimbursement for services billed under CPT Code 96375.
6. The issue of reimbursement under CPT Code 96375 was not properly before the Division.

## ORDER

**IT IS ORDERED** that Texas Health of Azle is not entitled to additional reimbursement from New Hampshire Insurance Company for services rendered under CPT Code 96375.

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the non-prevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the non-prevailing party and any costs for services provided by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, Texas Health of Azle is the non-prevailing party. The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

**SIGNED September 29, 2014.**



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**SHANNON KILGORE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**