Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name
United Healthcare

Respondent Name
AM TRUST

MFDR Tracking Number
M4-09-7209-01

Carrier's Austin Representative
Box Number 17

MFDR Date Received
March 24, 2009

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "We are requesting that you [workers' compensation insurance carrier] reimburse the **established TX workers' compensation fee schedule allowances**…United Healthcare asserts that it paid medical service claims totaling $277.85 which clearly should have been billed to, and paid in good faith by the workers' compensation carrier in this case. The carrier has never disputed the compensability of the injury. The carrier has never offered a substantive objection to the compensability of the services."

Amount in Dispute: $277.85

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Please note that a group insurer (United) once again relies on Sec. 409.0091(s) to attempt to recoup moneys from the compensation carrier (Benchmark) for money the United improvidently paid in ancient history. Benchmark believes that United improperly relies on the above statute and would state further in support."

Response Submitted by: Pappas & Suchma, 10375 Richmond Avenue, Suite 1670, Houston Texas 77042-4113 Austin Representative Box Number 29

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 1, 2003	Medical Treatment	$277.85	$146.04

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

1. Texas Labor Code §409.0091 applies only to dates of injury on or after September 1, 2007 **except** as provided by Texas Labor Code 409.0091(s).
2. Texas Labor Code §409.0091(f) relates to the form and manner in which the health care insurer shall file for reimbursement from the workers' compensation insurance carrier.
3. The provisions of Texas Labor Code §409.0091 apply to this medical fee dispute.
4. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

Issues

1. Did the health care insurer meet the requirements of Texas Labor Code §409.0091?
2. Did the workers' compensation insurance carrier fulfill its duties to timely pay, reduce or deny payment?
3. Did the carrier waive defenses or denial reasons pursuant to 28 Texas Administrative Code Rule §133.307?
4. Is reimbursement due to the health care insurer?

Findings

Texas Labor Code §409.0091 was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8, and was effective September 1, 2007. The requestor of this medical fee dispute represents a health care insurer (hereto after referred to as requestor) as defined by Texas Labor Code §409.0091(a). Texas Labor Code §409.0091(c) states that health care paid by a health care insurer may be reimbursable as a medical benefit. The requestor is seeking $277.85 from the Texas workers' compensation insurance carrier (hereto after referred to as respondent) that it alleges it paid to a health care provider on behalf of an injured employee with a compensable workers' compensation claim. The provisions of Texas Labor Code §409.0091, and 28 Texas Administrative Code Rules §§140.7 and 140.8 apply to the request for reimbursement by a health care insurer.

Texas Labor Code §409.0091(s) applies if information was provided to a health care insurer before January 1, 2007 under Texas Labor Code §402.084(c-3). Under §409.0091(s)(2) the health care insurer may not file for reimbursement from the workers' compensation carrier later than March 1, 2008. The requestor may then file a subclaim with the Division if the request for reimbursement has been presented and denied. The services in dispute relate to an injury that occurred on [redacted] and the services in dispute were provided on October 1, 2003. Consequently, in this particular case, the specific provisions of Texas Labor Code §409.0091(s) apply.

1. In order to be eligible for reimbursement, the requestor in this case has the burden to prove that it meets the requirements of Labor Code §409.0091(s). That is, the requestor must prove that it obtained a data match before January 1, 2007, and that it filed a request for reimbursement from the workers' compensation insurance carrier not later than March 1, 2008.
   - Requestor provided a sworn affidavit attesting to the existence of a data match response file *tx161510689142073027411289245251t11282006090000* from the Division dated November 28, 2006. The affidavit included and identified the injured employee that received the services in dispute. The Division finds that the details provided in the affidavit sufficiently supports that the requestor obtained a data match before January 1, 2007 from the division. For that reason, the division finds that the requestor met the data match requirement of §409.0091(s).
   - Documentation also sufficiently supports that the requestor appropriately filed DWC Form-026 on November 7, 2007 (Certified mail 7007 0710 0000 9612 0578). The request included all information and documentation required by §409.0091(f) for the services in dispute. The Division concludes that the requestor met the filing requirements of §409.0091(s).

2. Upon receipt of a request for reimbursement under §409.0091, the respondent was required to "respond to the request in writing not later than the 90th day after the date on which the request is received" pursuant to applicable §409.0091(i). The delivery receipt from the certified mail 7007 0710 0000 9612 0578, demonstrates that the DWC Form-026 request for reimbursement was received and signed for by a Mr. Bill Pitt on behalf of the respondent on November 14, 2007. Documentation supports that the respondent responded to the filing on or about January 28, 2008. The Division concludes that the respondent timely responded to the DWC Form-26 request for reimbursement from the requestor.

   The respondent denied reimbursement alleging that the requestor failed to request and receive a timely data match, and that it failed to request reimbursement within 6 months from the date of the data match pursuant to §409.0091. The Division concluded above that the data match was appropriately and timely obtained, and that the request for reimbursement was also appropriately and timely filed in accordance with the provisions of §409.0091(s). The respondent's contention that the request for reimbursement should have been filed within 6 months from the data match simply does not apply because the services in dispute meet an exception to the six month requirement as stated in Texas Labor Code §409.0091(n) as follows:

   > **Except as provided by Subsection (s),** [emphasis added] a health care insurer must file a request for reimbursement with the workers' compensation insurance carrier not later than six months after the date on which the health care insurer received information under Section 402.084 (c-3)…

The Division concludes that the respondent's denials timely presented to the requestor are not supported.

3. This medical fee dispute was filed by the requestor on March 24, 2009. The carrier responded to the medical fee dispute on April 13, 2009. In its response, the carrier "contends the [group health carrier] is not entitled to reimbursement." In support of its position, the respondent raised certain defenses and denial reasons for the first time. 28 Texas Administrative Code Rule §133.307 (d)(2)(F) states that only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party can be considered. Any new denial reasons or defenses raised "shall not be considered in the [medical fee dispute] review." The Division concludes that the denial reasons and defenses raised by the respondent in its April 9, 2009 letter to medical fee dispute resolution cannot be considered.

4. For the reasons stated above, the division finds that the services are eligible for reimbursement. Applicable Texas Labor Code §409.0091(h) states:

> For each medical benefit paid, the workers' compensation insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline as of the date of service or the actual amount paid by the health care insurer… The health care insurer may not recover interest as a part of the subclaim.

To determine the actual amount paid by the requestor, the division examined the available documentation. A document titled "Aetna Life Insurance Co. – Trad – TX Billing Transmittal" was found which identified the injured employee that received the services in dispute, and which supports that the health care insurer or subclaimant paid $277.85 to health care provider Paul M. Mann Sr., tax id 411289245 on October 17, 2005, for services totaling $385.00, provided on October 1, 2003.The Division finds that the amount paid by the sublcaimant is $277.85.

To determine the amount due, the division looks to the Texas medical fee guidelines found at Title 28, Part 2, of the Texas Administrative Code (TAC). The table below points to the applicable TAC Rule and section, and illustrates the fee guideline allowable compared to the amounts paid by the subclaimant or health care insurer (HCI) for the purpose of establishing the total allowable for the services in dispute. The "§409.0091(h) Allowable**"** column represents the lesser of the amount payable under the applicable fee guideline and the actual amount paid by the subclaimant.

Date	Service Code	Zip Code of Service Location	Type	Fee Rule 28 TAC	Fee Guideline Allowable	Amount Paid by HCI	§409.0091(h)
10/01/2003	65205	77338	11	134.202	$63.85	$97.85	$63.85
10/01/2003	65222	77338	11	134.202	$82.19	$180.00	$82.19
						Total	$146.04

The division concludes that the total allowable for the services in dispute is $146.04, without interest.

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 Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is $146.04.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $146.04, without interest, due within 30 days of receipt of this Order.

Authorized Signature

Signature	Medical Fee Dispute Resolution Manager	February 16, 2016 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing 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 §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

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