



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 and Address

PHI AIR MEDICAL
PO BOX 60557
LOS ANGELES CA 90060-0557

Respondent Name

TEXAS MUTUAL INSURANCE CO.

Carrier's Austin Representative Box

Box Number 54

MFDR Tracking Number

M4-12-1496-02

MFDR Date Received

January 4, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "PHI Air Medical's charges are being paid subject to a Workers Compensation ('Fee Schedule') amount or by a usual and reasonable fee based on faulty data, and should have been paid in full. This is because the statute and regulation limiting payment to the fee schedule amount, and the fee schedule itself, do not apply to air ambulance carriers due to federal preemption under federal aviation law. . . . authorities have determined that preemption applies to an air ambulance carrier's intrastate operations, and to any state laws affecting those operations, so long as the company involved meets the definition of a 'carrier' under federal law. . . . As applied to air ambulance providers meeting the definition of an 'air carrier' such as PHI Air Medical, that regulation clearly constitutes 'a law, regulation or other provision having the force and effect of law related to a price . . . of an air carrier.' It therefore falls squarely within the scope of ADA preemption and is invalid as to such carriers. Thus, PHI Air Medical is entitled to be paid based on full billed charges."

Amount in Dispute: \$15,407.96

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "In accordance with the Texas Medical Fee Guideline for Professional Services, Texas Mutual based its reimbursement on the Medicare Ambulance fee schedule, plus a 25% markup. See 28 TAC Sec. 134.203 (d) and (f). The rules reference how to calculate maximum allowable reimbursements or 'fair and reasonable' payments depending upon the circumstances. Under Medicare, air ambulance services have no relative value units. Texas Medicaid reimburses air ambulance services based on the lesser of the provider's actual charges or the published Medicaid fee."

Response Submitted by: Texas Mutual Insurance Company, 6210 E. Highway 290, Austin, Texas 78723

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
June 4, 2011	Air Ambulance Services	\$15,407.96	\$0.00

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. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1 sets forth general provisions related to medical reimbursement.
3. Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
4. Dispute M4-12-1496 was originally decided on June 10, 2012 and subsequently appealed to a contested case hearing at the State Office of Administrative Hearings (SOAH) under case number 454-12-7771.M4. This dispute was then remanded to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) pursuant to a January 15, 2014 SOAH order of remand. As a result of the remand order, this dispute was re-docketed at the Division's Medical Fee Dispute Resolution Section and is hereby reviewed.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - W1 – WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT
 - 635 – REIMBURSEMENT IS BASED ON THE MEDICARE AMBULANCE FEE SCHEDULE, PLUS A 25% MARKUP.
 - 790 – THIS CHARGE WAS REIMBURSED IN ACCORDANCE TO THE TEXAS MEDICAL FEE GUIDELINE.

Issues

1. Does the Federal Aviation Act, in particular the Airline Deregulation Act of 1978 section 41713 of Title 49 U.S.C.A., preempt the Division's jurisdiction to consider the medical fee issues in this dispute?
2. What is the applicable rule for determining reimbursement of the disputed services?
3. Is the requestor entitled to reimbursement?

Findings

1. The requestor asserts that "the statute and regulation limiting payment to the fee schedule amount, and the fee schedule itself, do not apply to air ambulance carriers due to federal preemption under federal aviation law." The requestor cites the Federal Aviation Act as amended by the Airline Deregulation Act of 1978 section 41713 of Title 49 U.S.C.A. as the basis for the alleged federal preemption of the Texas Labor Code and the Division's fee guidelines with respect to the services in dispute. The State Office of Administrative Hearings (SOAH) considered this issue in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.*, holding that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that "In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . . Thus, the ALJ concludes that the Airline Deregulation Act—which does not regulate insurance—does not preempt the ability of DWC to establish reimbursement rates, timelines for reimbursement, rules determining the extent of coverage, and numerous other requirements related to the administration of the workers' compensation insurance program, even such regulations are applied to air ambulance providers. . . . Thus, the medical fee guidelines and other payment rules are part of the business of insurance and, pursuant to the McCarran-Ferguson Act, the Airline Deregulation Act does not preempt and invalidate them—even when applied to air ambulance services." The Division agrees with the findings of the ALJ. The Division concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act, or the Airline Deregulation Act of 1978. The disputed services will therefore be reviewed per applicable division rules and fee guidelines.
2. Per 28 Texas Administrative Code §134.203(d) The Maximum Allowable Reimbursement (MAR) for Healthcare Common Procedure Coding System (HCPCS) Level II codes A, E, J, K, and L shall be determined as follows: (1) 125 percent of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule; (2) if the code has no published Medicare rate, 125 percent of the published Texas Medicaid fee schedule, durable medical equipment (DME)/medical supplies, for HCPCS; or (3) if neither paragraph (1) nor (2) of this subsection apply, then as calculated according to subsection (f) of this section." Per 28 Texas Administrative Code §134.203(f), "For products and services for which no relative value unit or payment has been assigned by Medicare, Texas Medicaid as set forth in §134.203(d) or §134.204(f) of this title, or the Division, reimbursement shall be provided in accordance with §134.1 of this title (relating to Medical Reimbursement)." Review of the Medicare DMEPOS fee schedule finds that disputed service codes A0431 and A0436 have not been assigned a relative value unit or payment by Medicare. Review of the Texas Medicaid fee schedule, durable medical equipment (DME)/medical supplies, for HCPCS codes A0431 and A0436 finds that these codes have not been assigned a relative value unit or payment by Texas Medicaid. The Division has not established a payment rate for the services in dispute. Therefore, the applicable rule for determining reimbursement of the disputed services is 28 Texas Administrative Code §134.1.

3. This dispute relates to air ambulance services with reimbursement subject to the provisions of 28 Texas Administrative Code §134.1, effective March 1, 2008, 33 *Texas Register* 626, which requires that, in the absence of an applicable fee guideline or a negotiated contract, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection 134.1(f), which states that "Fair and reasonable reimbursement shall: (1) be consistent with the criteria of Labor Code §413.011; (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and (3) be based on nationally recognized published studies, published Division medical dispute decisions, and/or values assigned for services involving similar work and resource commitments, if available."

Additionally, Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

Former 28 Texas Administrative Code §133.307(c)(2)(G), effective May 25, 2008, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable." Review of the submitted documentation finds that:

- The requestor's position statement asserts that "PHI Air Medical is entitled to be paid based on full billed charges."
- The Division has previously found, as stated in the adoption preamble to the former *Acute Care Inpatient Hospital Fee Guideline*, that "hospital charges are not a valid indicator of a hospital's costs of providing services nor of what is being paid by other payors" (22 *Texas Register* 6271). The Division further considered alternative methods of reimbursement that use hospital charges as their basis; such methods were rejected because they "allow the hospitals to affect their reimbursement by inflating their charges" (22 *Texas Register* 6268-6269). While an air ambulance service is not a hospital, the above principle similarly applies in this case. A health care provider's usual and customary charges, in and of themselves, are not evidence of a fair and reasonable rate or of what insurance companies are paying for the same or similar services. Payment of the "full billed charges" is not acceptable because it leaves the ultimate reimbursement in the control of the health care provider, which ignores the objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. Therefore, the use of a health care provider's "usual and customary" charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
- The requestor did not submit nationally recognized published studies or documentation of values assigned for services involving similar work and resource commitments to support the requested reimbursement.
- The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the submitted documentation finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution. After thorough review and consideration of the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The requestor has failed to establish that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

January 31, 2014
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.