

## Medical Fee Dispute Resolution Findings and Decision

### General Information

**Requestor Name**

AIR EVAC EMS INC.

**Respondent Name**

XL Specialty Insurance Co

**Request Submitted by:**

AIR EVAC EMS INC.

**Response Submitted by:**

Flahive, Ogden &amp; Latson

**MFDR Tracking Number**

M4-23-0596-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

11/7/2022

### Summary of Findings

| Dates of Service | Disputed Services      | Amount in Dispute | Additional Payment Ordered |
|------------------|------------------------|-------------------|----------------------------|
| 3/15/2022        | Air ambulance services | \$84,381.51       | \$0.00                     |
| Total            |                        |                   | \$0.00                     |

### Requestor's Position

Air Evac EMS, Inc. (Air Evac) states the following: "According to the United States Code Title 49, [41713](#), the Airline Deregulation Act (ADA) of 1978 states that individual states cannot regulate the prices, routes or services of the air ambulance industry, therefore, it is inappropriate that air ambulance services be subject to state workers' compensation allowance and should be reimbursed at 100% of billed charges."

**Amount in Dispute:** \$84,381.51

### Respondent's Position

Flahive, Ogden & Latson on behalf of XL Specialty Insurance states the following: "Based upon Requestor's initial representation that air transport was appropriate and that ground

transport was not, the Respondent in good faith paid 125% of the Medicare air ambulance rate allowances (using the percentage found by the SOAH ALJ in a prior docket)... The Requestor is Not Entitled to Its Full Billed Charges or Any Claimed Fair and Reasonable Rate."

## **Findings and Decision**

### Authority

This medical fee dispute is decided according to Texas Labor Code § [413.031](#) and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC).

### Statutes and Rules

1. Texas Labor Code § [408.027](#) sets out provisions regarding the timely submission of claims for payment by a health care provider and the timeframe and procedures for an insurance carrier to act on the claim.
2. Texas Labor Code § [413.011](#) sets out general provisions regarding reimbursement policies and guidelines.
3. Texas Labor Code § [413.013](#) sets out the authority for DWC to establish programs for the systematic monitoring of the necessity of treatments rendered and fees charged and paid for medical treatments or services.
4. Texas Labor Code § [413.031](#) sets out provisions regarding medical dispute resolution and states that the role of DWC is to adjudicate the payment given the relevant statutory provisions and commissioner rules.
5. Texas Labor Code § [413.0312](#) sets out provisions for medical fee dispute resolution.
6. 28 Texas Administrative Code § [133.307](#) sets out the procedures for resolving medical fee disputes.
7. 28 Texas Administrative Code § [134.1](#) sets out general provisions regarding medical reimbursement.
8. 28 Texas Administrative Code § [134.203](#) sets out the fee guideline for professional medical services.

### Denial Reasons

The insurance carrier reduced or denied the payment for the disputed services with the following claim adjustment codes:

- 237 - THE RECOMMENDED ALLOWANCE IS BASED ON USUAL, CUSTOMARY AND

REASONABLE RATES FOR THIS GEOGRAPHICAL AREA.

- 309 - THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE.
- P 12 - WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
- P5 - BASED ON PAYER REASONABLE AND CUSTOMARY FEES. NO MAXIMUM ALLOWABLE DEFINED BY LEGISLATED FEE ARRANGEMENT.
- N600 - Adjusted based on the applicable fee schedule for the region in which the service was rendered.

### Relevant Litigation

In 2018, a federal district court granted a declaratory judgment and permanent injunction preventing DWC from enforcing Texas Labor Code § [413.011](#) and 28 Texas Administrative Code §§ [134.1](#) and [134.203](#) against Air Evac, stating these sections were preempted by the ADA. The United States Court of Appeals for the Fifth Circuit affirmed the federal district court's judgment. *Air Evac EMS, Inc. v. Sullivan*, 8 F.4th 346 (5th Cir. 2021).

Air Evac filed a state court action for mandamus relief in Travis County, Cause No. D-1-GN-23-007317, asserting that DWC has a duty to adjudicate Air Evac's medical fee disputes without "enforcing" the "specific provisions that would otherwise operate to unlawfully reduce Air Evac's rates."

### Issues

Can DWC order additional reimbursement in this medical fee dispute?

### Findings

1. The Requestor maintains that DWC has a duty to adjudicate and resolve Air Evac's medical fee disputes without "enforcing" the "specific provisions that would otherwise operate to unlawfully reduce Air Evac's rates."
2. The ADA and other relevant federal statutes do not require the Respondent to pay any air-ambulance claims and do not set a rate of payment or require payment at whatever rate the Requestor chooses to charge them.
3. Texas Labor Code § [408.027](#) requires a provider who seeks workers' compensation insurance payments to submit its claim for payment "not later than the 95th day" after the date of service, and further requires insurance carriers to "pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day" after receiving the claim. Texas Labor Code § [408.027\(a\)-\(b\)](#).
4. Both the Requestor and the Respondent have performed these duties. Per state law, health care providers determine the initial bills for medical services by billing insurance carriers their usual and customary charges. This first step is the same where a maximum allowable reimbursement (MAR) has been established for a particular medical procedure and where no MAR exists.

5. In both situations, insurance carriers review the medical bills submitted and pay or deny them in accordance with DWC's rules—the MARs in the Medical Fee Guideline or the procedures delineated in the Dispute and Audit Rules.
6. There is no MAR applicable to air ambulance services.
7. Insurance carriers do not make the final determination of the fees for disputed medical bills. If an insurance carrier and a health care provider disagree on the reimbursement amount, DWC enforces applicable state laws and regulations to make the decision on the proper payment, subject to review. See Texas Labor Code §§ [413.013\(2-4\)](#) and [413.031\(a\)](#) and 28 Texas Administrative Code § [133.307\(a\)](#). Any party not satisfied with the outcome may continue the review process through a benefit review conference, an appeal through the State Office of Administrative Hearings, and then the courts. Texas Labor Code §§ [413.031\(b\), \(k\), and \(k-1\)](#); [413.0312](#); and 28 Texas Administrative Code § [133.307\(g\)](#).
8. The Texas workers' compensation system operates through insurance carriers, and the Workers' Compensation Act (Act) is the foundation of every workers' compensation insurance policy issued in Texas. The Act prescribes payment terms under workers' compensation policies. The reimbursement amount, and the formula for determining that amount, is part of every policy. It is the payment responsibility assumed by an insurance carrier in the insurance contract.
9. In this instance, given the absence of an applicable MAR, the Respondent insurance carrier executed its direct contractually assumed payment responsibility through prompt delivery of what it determined to be a fair and reasonable reimbursement amount.
10. DWC cannot adjudicate, up or down, the Respondent's initial payment amount without applying the laws enjoined by the *Sullivan* injunction.
11. Barred from application of Texas Labor Code § [413.011](#) and 28 Texas Administrative Code §§ [134.1](#) and [134.203](#), in its decision of this request for additional payment, DWC concludes that the request for additional reimbursement is not supported.

## Conclusion

In resolving disputes on the amount of payment due for healthcare, the role of DWC is to adjudicate the payment, given the relevant statutory provisions and rules. DWC would like to emphasize that the findings and decision in this dispute are based on the evidence presented by the Requestor and Respondent. Even though all the evidence was not discussed, it was considered.

DWC is barred from applying Texas Labor Code § [413.011](#) and 28 Texas Administrative Code §§ [134.1](#) and [134.203](#) in its decision of this request for additional payment. Therefore, DWC concludes that it may not apply applicable rules to modify the initial payment made by the Respondent. As a result, the additional amount ordered is \$0.00.

## Order

Based on the documentation the parties submitted and in accordance with applicable law, DWC has determined that it cannot order payment of additional reimbursement for the services involved in this dispute.

### Authorized Signature

|                    |                                                        |                                  |
|--------------------|--------------------------------------------------------|----------------------------------|
| _____<br>Signature | _____<br>Medical Fee Dispute Resolution Officer        | _____<br>August 27, 2024<br>Date |
| _____<br>Signature | _____<br>Director of Medical Fee Dispute<br>Resolution | _____<br>August 27, 2024<br>Date |

## Your Right to Appeal

Either party to this medical fee dispute has a right to seek review of this decision under 28 TAC § [133.307](#), which applies to disputes filed on or after **June 1, 2012**.

A party seeking review must submit DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)* and follow the instructions on the form. You can find the form at [www.tdi.texas.gov/forms/form20numeric.html](http://www.tdi.texas.gov/forms/form20numeric.html). DWC must receive the request within **20 days** of when you receive this decision. You may fax, mail, or personally deliver your request to DWC using the contact information on the form or the field office handling the claim. If you have questions about DWC Form-045M, please call CompConnection at 1-800-252-7031, option three or email [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).

The party seeking review of the MFDR decision must deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with DWC. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** with any other required information listed in 28 TAC § [141.1\(d\)](#).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, opción tres o correo electronico [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).