



## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**

HEALTHCARE SUBROGATION GROUP

**Respondent Name**

FCCI INSURANCE COMPANY

**MFDR Tracking Number**

M4-23-1248-01

**Carrier's Austin Representative**

Box Number 47

**DWC Date Received**

January 30, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
June 21, 2022	12002, 73130-RT, 90471, 90715, 99283-25, J3490, 73130-26-RT, 12002, and 99284-25	\$1,437.93	\$0.00
<b>Total</b>		\$1,437.93	\$0.00

### Requestor's Position

"... a health insurer's failure to seek reimbursement from the provider and/or a provider's failure to bill the workers' compensation carrier cannot be interposed as a denial to a reimbursement request. Consequently, Carrier's denial of the reimbursement request based on the assertion that the providers would need to bill Carrier and that Subclaimant would then need to seek reimbursement from the providers is invalid and expressly prohibited by 28 TAC §140.7(d)."

**Amount in Dispute:** \$1,437.93

### Respondent's Position

The Austin carrier representative for FCCI Insurance Company is Burns, Anderson Jury & Brenner. Burns, Anderson Jury & Brenner was notified of this medical fee dispute on February 7, 2023. Rule §133.307(d)(1) states that if the division does not receive the response within 14 calendar days of the dispute notification, then the division may base its decision on the available information. As of today, no response has been received from the carrier or its representative. We therefore base this decision on the information available as authorized under §133.307(d)(1).

## 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. The provisions of Texas Labor Code (TLC) §§409.009, and 409.0091 apply to dispute resolution.
2. TLC §409.0091 applies to dates of injury on or after September 1, 2007, except as provided by TLC §409.0091(s).
3. TLC §409.0091(s) applies to health care insurer when information is provided before January 1, 2007, pursuant to TLC §402.084(c-3).
4. TLC §402.084 sets out the procedures for record check and release of information.
5. TLC §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.
6. 28 Texas Administrative Code (TAC) §§TAC §140.6, 140.8 and 28 TAC §133.307 set out the procedures for health insurers to pursue medical fee dispute resolution.

### Denial Reasons

Copies of the EOBs were not provided by either of the parties for consideration in this review.

### Issues

1. Did the Subclaimant file for dispute resolution in accordance with TLC §409.009?
2. Did the Requestor file for dispute resolution in accordance with TLC §409.0091 and Texas Administrative Code (TAC) §140.8?
3. Did the Subclaimant file for reimbursement from the workers' compensation insurance carrier in the form and manner prescribed by TLC §409.0091(l)?
4. Did the subclaimant submit a DWC060 in accordance with TLC §409.0091(f) and (n)?
5. Did the Subclaimant file for reimbursement from the workers' compensation insurance carrier in the form and manner prescribed by TLC §409.0091 (i)?
6. Did the subclaimant submit sufficient documentation to support that the requirements of 28 TAC §140.8 were met?
7. Is the Subclaimant entitled to reimbursement for the disputed services?

## Findings

1. The healthcare insurer (subclaimant) seeks recovery from the Texas workers' compensation insurance carrier, for professional services rendered to a Texas workers compensation claimant on June 21, 2022. The subclaimant seeks recovery pursuant to both §409.009 and §409.0091.

The subclaimant is seeking \$1,437.93, pursuant to §409.009.

TLC § 409.009 states in pertinent part, "A person may file a written claim with the division as a subclaimant if the person has: 1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and (2) sought and been refused reimbursement from the insurance carrier.

28 TAC §140.6(d) states in pertinent part, "Subclaimants, other than subclaimants described in §409.0091, must pursue a claim for reimbursement of medical benefits and participate in medical dispute resolution in the same manner as an injured employee or in the same manner as a health care provider, as appropriate, under Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments); and 2) A health care insurer subclaimant must submit a reimbursement request in the form/format and manner prescribed by the Division and must contain all the required elements listed on the form.

28 TAC §133.307 (c)(1)(A), requires filing not later than one year after the date(s) of service in dispute. In addition, the EOBs, medical bills, medical documentation were absent in the dispute DWC060 package. The request for dispute resolution contained insufficient documentation to show compliance with 28 TAC §140.6(d), TLC § 409.009 and 28 TAC §133.307.

The Subclaimant has provided insufficient information that; (a) the Requestor billed the insurance carrier utilizing the required standard forms used by the Center for Medicare and Medicaid Services per 28 TAC §133.10(a)(1); (b) the Requestor billed the carrier no later than the 95th day after the date the services are provided per 28 TAC §133.20(b); (c) the Requestor included correct billing codes from the applicable Division fee guidelines per 28 TAC §133.20 (c) and §134.203 (b)(1) that requires use of Medicare payment policies including its coding and billing; and/or (e) that the services were directly supervised by a licensed health care provider as required by 28 TAC §134.203(e)(2).

The Division finds that the Subclaimant has not met the specified rule requirements, and therefore, consideration has not been given to the merits of the request for reimbursement under TLC § 409.009.

2. TLC §409.0091 effective September 1, 2007, was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8. The Subclaimant of this medical fee dispute represents a health care insurer as defined by TLC §409.0091(a). TLC §409.0091(c) states that health care paid by a health care insurer may be reimbursable as a medical benefit.

The Subclaimant is seeking \$1,437.93, pursuant to TLC §409.0091. The respondent is a Texas workers' compensation insurance carrier. The provisions of TLC §409.0091, and 28 TAC Rule §140.8 apply to this request for reimbursement by a health care insurer and are hereby applied in the Division's determination of whether payment is due in this case.

3. TLC §409.0091(l) states that "Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and division rules."

Applicable TLC §409.0091(k)(1) and corresponding 28 TAC §140.8 (h)(3)(A)(i), states that a health care insurer must file a request for medical dispute resolution with the Division not later than the 120th day after a workers' compensation insurance carrier fails to respond to a health care insurer's reimbursement request or reduces or denies the requested reimbursement amount for reasons other than lack of medical necessity.

A review of the FCCI Insurance Group letter finds that the workers' compensation insurance carrier responded to the reimbursement request letter submitted by the subclaimant on December 27, 2022. The Division received the dispute on January 30, 2023.

The Division finds that the medical dispute resolution request was filed with the Division not later than the 120<sup>th</sup> day after the workers' compensation insurance carrier responded to the health care insurer's reimbursement request letter dated December 27, 2022.

4. TLC §409.0091 (f) (4)(5) states, "Sec. 409.0091(f) Subject to the time limits under Subsection (n), the health care insurer shall provide, with any reimbursement request, the tax identification number of the health care insurer and the following to the workers' compensation insurance carrier, in a form prescribed by the division: (4) information identifying the workers' compensation case...( 5) information describing the health care paid by the health care insurer..."

TLC §409.0091 states, "(n) Except as provided by Subsection (s), 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) and not later than 18 months after the health care insurer paid for the health care service."

The Subclaimant contends that a data match was received from the Division on September 23, 2022. The Subclaimant provided a copy of a DWC Form-026 dated January 30, 2023. The division received the medical fee dispute resolution request on January 30, 2023, the same date that is provided on the DWC026.

The reimbursement request form (DWC026), which was submitted to the Division with the DWC medical fee dispute resolution request (DWC060), contained all the data mandated by TLC §409.0091(f).

The Division finds that the subclaimant did not provide enough evidence to substantiate that the data mandated by §409.0091(f) was provided to the insurance carrier in the form and manner (DWC026 form) before the medical fee dispute resolution request was filed.

5. TLC §409.0091(i) states "On receipt of a request for reimbursement under this section, the workers' compensation insurance carrier shall respond to the request in writing not later than the 90th day after the date on which the request is received."

The Subclaimant submitted a copy of a "Reimbursement Request" letter dated October 14, 2022. FCCI Insurance Group responded to the reimbursement request letter on December 27, 2022, which states in relevant part, "submit a bill for services rendered in proper form and with accompanying documentation to the address noted above. FCCI can only reimburse the medical provider and not third-party billers, in order to comply with proper reporting responsibilities to the State (where applicable), as well as to ensure accurate pricing per Workers' compensation Fee Schedules."

The Division received the subclaimants DWC060 on January 30, 2023. A review of the DWC060 finds that the Subclaimant provided a copy of the DWC026 form dated January 30, 2023, the same date the Division received the DWC060 dispute.

The Division concludes that the worker's compensation insurance carrier promptly responded to the health care insurer's "Reimbursement Request" letter dated October 13, 2022, on December 27, 2022. However, the Division finds that Subclaimant submitted inadequate documentation to support the fact that DWC026 form was submitted to the Workers Compensation Insurance Company prior to the MDR request.

6. 28 TAC §140.8(c)(2), states, "(2) Notice. The health care insurer must give notice of the request to the injured employee and the health care provider that performed the services that are the subject of the reimbursement request. The notice shall include a copy of the reimbursement request and an explanation that the health care insurer is seeking reimbursement for medical care costs."

A review of the documents presented with the medical fee dispute resolution request finds that Subclaimant did not submit any documents to support the requirements of 28 TAC 140.8(c)(2).

7. The Division finds that the following:
  - Pursuant to TLC §409.0091 (f), the Subclaimant submitted insufficient documentation to support that DWC026 was submitted to the insurance carrier prior to the filing of the Medical Fee Dispute Resolution request.

- Pursuant to §140.8(c)(2), the Subclaimant submitted inadequate documentation to support that both the injured worker and the healthcare practitioner who provided the services that are the subject of the reimbursement request were notified of the request by the health insurance. A copy of the reimbursement request and an explanation of the health care insurer's request for payment for medical expenses must be included in the notice.

The Division finds that the Subclaimant has not met the specified rule requirements, and therefore, consideration has not been given to the merits of the request for reimbursement under TLC § 409.0091.

Conclusion

The outcome of this medical fee dispute is based on the evidence presented by the Subclaimant and the respondent at the time of adjudication. Though all evidence may not have been discussed, it was considered.

The Division finds the requester has established that reimbursement of \$0.00 is due.

**Order**

Under TLC §§413.031 and 413.019, the Division has determined the Subclaimant is entitled to \$0.00 reimbursement for the services in dispute.

**Authorized Signature**

Signature	Medical Fee Dispute Resolution Officer	July 31, 2024 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, call CompConnection at 1-800-252-7031, option 3 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 3 o correo electrónico [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).