

ADVISORY NO. 390
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TOPIC: VOLUNTARY DISCOUNT AGREEMENTS BETWEEN PROVIDERS AND CARRIERS

In HB 7, the Legislature abolished TEX.LAB.CODE §408.0223 regarding voluntary carrier networks permitted prior to HB 7. In the same bill, they amended TEX. LAB. CODE § 413.011(d) to state that “an insurance carrier may pay fees to a healthcare provider that are inconsistent with the fee guidelines adopted by the Division if the insurance carrier or a network under Chapter 1305, INS.CODE has a contract with a healthcare provider and that contract includes a specific fee schedule.”

In Commissioner’s Bulletin No. B-0071-05, TDI has addressed the effect of the change to 413.011(d) and the Insurance Code provisions requiring network services to be provided only by Certified Networks. After restating the Insurance Code and Labor Code, TDI simply states:

Contracts outside of a certified network for fees that are different than the Division’s medical fee guidelines and that are not between an insurance carrier and a healthcare provider are inconsistent with §413.011(d), TEX.LAB.CODE

The Bulletin further states that any person not certified as a network, but operating or performing the “acts of a network,” is subject to investigation and disciplinary action.

There is a very strong argument that negotiating a contract providing for nothing more than a discount and paying pursuant to a discount may not be “acts of a network.” The contract would not affect ADL requirements, statutory preauthorization, statutory dispute resolution, DWC treatment guidelines, DWC return to work guidelines, case management, steerage, statutory choice of doctor’s rules, etc. Rather, the contract would be limited to the discounts expressly permitted by 413.011(d).

The network definition cited in the Bulletin pertains to networks formed to “provide or arrange to provide” healthcare services. For contractual fee discounts, neither the carrier nor the employer would provide or arrange for care. The employee retains the absolute choice of provider and the carrier simply pays for the treatment at the discounted rate according to a contract other than a network contract.

The Bulletin fails to address whether a contract between the healthcare provider and a

vendor which is subsequently assigned to the carrier constitutes a “contract between an insurance carrier and a healthcare provider” as contemplated by the Labor Code and the Bulletin. Because most, if not all, carriers utilize third parties to develop the list of contracting healthcare providers, the Bulletin presents a question as to whether this business model is now permitted. The answer to the question may be contract specific depending upon the language in your current contract. Whether an assigned agreement meets this test of a “contract between an insurance carrier and a healthcare provider” should be examined by each carrier. The TDI Bulletin neither accepts nor rejects a contractual analysis.

Discussions about this issue will almost certainly evolve. We are at an early stage in dealing with this question. We are unable to recommend that you either continue or discontinue the use of voluntary discounts that you have in place currently. We certainly recommend that you investigate your current discount contracts to see if they can be construed as an agreement between the provider and the carrier.