



# 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](http://www.tdi.texas.gov)

### MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

#### GENERAL INFORMATION

**Requestor Name**

SUMMIT REHABILITATION CENTERS

**Respondent Name**

AMERICAN ZURICH INSURANCE COMPANY

**MFDR Tracking Number**

M4-06-1017-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

October 5, 2005

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "DOS 11/8/04 through 11/16/04, 11/18/04 through 11/23/04, 11/30/05, 12/7/04, 12/8/04 . . . 12/9/04, 12/28/04, 12/30/0, 1/6/05, 3/3/05, 3/22/05, 3/24/05, 5/24/05 through 6/8/05 and 6/21/05: No EOB was received for these services. . . .

DOS 2/18/05 through 2/23/05: Services were for preauthorized and provided by approved TWCC doctor.

DOS 11/17/04, 11/24/04, 12/2/04, 12/3/04, 12/5/04 . . . 12/14/04, 12/17/04, 12/21/04, 1/4/05, 5/6/05, 5/19/05 and 6/13/05: Services are not Global."

**Amount in Dispute:** \$10,662.71

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "carrier moves to dismiss this dispute as the Requestor failed to comply with DWC rules. . . . Here, the Requestor failed to provide copies of the original bills or EOBs. . . . the carrier denied these payment for several reasons, however, most of the bills were denied based on the carrier's peer advisor's opinion that they were not necessary."

**Response Submitted by:** Ronald M. Johnson, Flahive, Ogden & Latson, 505 West 12th Street, Austin, Texas 78701

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
November 8, 2004 to June 21, 2005	Rehabilitation Services	\$10,662.71	\$6,970.68

#### 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**

- 28 Texas Administrative Code §133.305 sets out general provisions regarding medical dispute resolution.
- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §180.20 sets out requirements regarding the approved doctor list.
- 28 Texas Administrative Code §134.202 sets out the fee guidelines for professional medical services.
- 28 Texas Administrative Code §129.5 sets out guidelines regarding work status reports.

6. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - G – THIS VISIT HAS BEEN INCLUDED IN THE TREATMENT PERFORMED.
  - G – CORRECT CODING INITIATIVE BUND LE GUIDELINES INDICATE THIS CODE IS A COMPREHENSIVE COMPONENT OF ANOTH ER CODE ON THE SAME DAY.
  - K – CHARGE DENIED: DOCTOR DID NOT HAVE ADL OR TEMPORARY EXCEPTION STATUS ON DATE OF SERVICE. TWCC SPEC IFIES THAT DOCTORS MUST HAVE APPROVED DOC

### **Issues**

1. Are there unresolved issues of medical necessity?
2. Does the request meet the requirements for medical fee dispute resolution?
3. Is the denial reason related to treatment by a physician not on the approved doctor list supported?
4. Is the denial reason related to Medicare's correct coding initiative payment policy supported?
5. Is the denial reason related to the visit included in the treatment performed supported?
6. May the respondent raise new denial reasons or defenses?
7. What is the recommended payment for the services in dispute?
8. Is the requestor entitled to reimbursement?

### **Findings**

1. The respondent argues that "the carrier denied these payment for several reasons, however, most of the bills were denied based on the carrier's peer advisor's opinion that they were not necessary." Per 28 Texas Administrative Code §133.305, effective January 1, 2003, 27 *Texas Register* 12282, "Medical Fee Disputes involve a dispute over the amount of payment for health care rendered to an injured employee and determined to be medically necessary and appropriate for treatment of that employee's compensable injury. The dispute is for reasons other than the medical necessity of the care (e.g. based upon the requirements of commission rules or fee guidelines)." By facsimile transmission dated January 5, 2007, the requestor asked the Division to withdraw from further consideration in this dispute all disputed services that had been denied by the insurance carrier for reasons of medical necessity. Accordingly, any such services are no longer in dispute and will not be considered in this review.
2. The respondent asks the Division to dismiss the dispute, stating that "carrier moves to dismiss this dispute as the Requestor failed to comply with DWC rules. . . . Here, the Requestor failed to provide copies of the original bills or EOBs." Review of the submitted documentation finds as follows:
  - 28 Texas Administrative Code §133.307(e)(2)(A), effective January 1, 2003, 27 *Texas Register* 12282, requires that the request shall include "a copy of all medical bill(s) as originally submitted to the carrier for reconsideration." Review of the submitted documentation finds copies of all the bills for the disputed services as submitted for reconsideration. The Division concludes that the requestor has met the requirements of §133.307(e)(2)(A).
  - 28 Texas Administrative Code §133.307(e)(2)(B), effective January 1, 2003, 27 *Texas Register* 12282, requires that the request shall include "a copy of each explanation of benefits (EOB) . . . relevant to the fee dispute or, if no EOB was received, convincing evidence of carrier receipt of the provider request for an EOB." Review of the of the submitted documentation finds a request for reconsideration letter, dated August 24, 2005, which states "No EOB was received for these services. . . . If payment has been issued for these services, and we are in error, please provide a copy of the front and back of the check and any related documentation." Additionally, the requestor sent a certified mail receipt signed by a representative of the insurance carrier supporting that the request letter was received on August 29, 2005. Accordingly, the Division concludes that the requestor has submitted convincing evidence of carrier receipt of the provider request for an EOB. Accordingly, the requestor has met the requirements of §133.307(e)(2)(B).
  - Furthermore, 28 Texas Administrative Code §133.307(j)(1)(C), effective January 1, 2003, 27 *Texas Register* 12282, requires that each insurance carrier response, unless previously provided in the request and requestor's additional documentation, shall include "a copy of all medical audit summaries and/or explanations of benefits (EOBs) relevant to the fee dispute, or a statement certifying that the carrier did not receive the provider's disputed billing prior to the request." Review of the submitted documentation finds that the respondent has not provided a copy of all medical audit summaries and/or explanations of benefits (EOBs) relevant to the fee dispute, or a statement certifying that the carrier did not receive the provider's disputed billing prior to the request. The Division concludes that the respondent has not met the requirements of §133.307(j)(1)(C).

After thorough review of the submitted documentation, the Division concludes that the respondent's motion for dismissal is without merit, and is therefore denied.

3. The insurance carrier denied work hardening services for dates of service February 18, February 21, and February 23, 2005 with payment exception code K – “CHARGE DENIED: DOCTOR DID NOT HAVE ADL OR TEMPORARY EXCEPTION STATUS ON DATE OF SERVICE. TWCC SPEC IFIES THAT DOCTORS MUST HAVE APPROVED DOC.” Division rule at 28 Texas Administrative Code §180.20, requires that, except in an emergency, or for immediate post-injury medical care, injured employees shall receive health care from a doctor on the approved doctor list. Review of the S.O.A.P. notes for February 18 through February 23, 2005 finds that the provider of services was Marivel C. Subia, DC. Review of Division records finds that Dr. Subia was credentialed on the approved doctor list during the disputed dates of service. The insurance carrier’s denial reason is not supported. Reimbursement will therefore be considered per applicable rules and fee guidelines.
4. Procedure code 97140-59, date of service November 17, 2004, was denied by the insurance carrier with payment exception code G – “CORRECT CODING INITIATIVE BUND LE GUIDELINES INDICATE THIS CODE IS A COMPREHENSIVE COMPONENT OF ANOTH ER CODE ON THE SAME DAY.” Per 28 Texas Administrative Code §134.202(b), “For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers’ Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided . . .” Per Medicare policy, Procedure code 97140 may not be reported with procedure codes 98940 and 97012 performed on the same date. A modifier may be allowed to distinguish separate services. The provider used modifier 59 to indicate a separate encounter or anatomical location. However, review of the submitted documentation finds that the modifier is not supported. The S.O.A.P. notes indicate that the procedures were performed during the same encounter and at the same anatomical location. Separate payment is not supported. The insurance carrier’s denial reason is supported. Reimbursement is not recommended.
5. The insurance carrier denied procedure code 99213, dates of service November 17, 2004, November 24, 2004, December 2, 2004, December 3, 2004, December 8, 2004, December 17, 2004, December 21, 2004, and January 4, 2005, with payment exception code G – “THIS VISIT HAS BEEN INCLUDED IN THE TREATMENT PERFORMED.” The insurance carrier provided documentation to support that Medicare policy requires that when a physician bills evaluation and management codes and physical therapy codes on the same date, the documentation must support that “the visit was unrelated to the physical therapy services for which separate payment is made.” Review of the submitted documentation finds insufficient information to support separate payment of the evaluation and management codes for these disputed dates. The insurance carrier’s denial reason is supported. Reimbursement is not recommended.
6. As stated above, the requestor has supported that the insurance carrier received medical bills for the remaining disputed services as well as a request for explanations of benefits; however, the respondent did not submit documentation to support that it has paid, reduced or denied payment for the disputed services. The respondent has failed to submit copies of all medical audit summaries and/or explanations of benefits regarding the disputed services as required under 28 Texas Administrative Code §133.307(j)(1)(C). Per 28 Texas Administrative Code §133.307(j)(2), “The response shall address only those denial reasons presented to the requestor prior to the date the request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of a request. Any new denial reasons or defenses raised shall not be considered in the review.” No documentation was found to support that the insurance carrier presented any denial reasons to the requestor prior to the date the request for medical dispute resolution was filed. Accordingly, the insurance carrier has waived the right to raise any new denial reasons or defenses to these disputed services. The services will therefore be reviewed for payment per applicable Division rules and fee guidelines.
7. This dispute relates to professional medical services with reimbursement subject to the provisions of 28 Texas Administrative Code §134.202(c)(1), effective January 5, 2003, 27 *Texas Register* 4048 and 12304, which requires that to determine the maximum allowable reimbursements (MARs) for professional services system participants shall apply the Medicare payment policies with the following minimal modifications: “for service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Surgery, Radiology, and Pathology the conversion factor to be used for determining reimbursement in the Texas workers’ compensation system is the effective conversion factor adopted by CMS multiplied by 125%.” Reimbursement is calculated as follows:
  - Procedure code 72100, service date November 8, 2004, has a Medicare payment rate of \$39.95. This amount multiplied by 125% results in a MAR of \$49.94.
  - Procedure code 99204, service date November 8, 2004, has a Medicare payment rate of \$139.93. This amount multiplied by 125% results in a MAR of \$174.91.
  - Procedure code 96004, service date November 9, 2004, has a Medicare payment rate of \$122.20. This amount multiplied by 125% results in a MAR of \$152.75.
  - Procedure code 97012, service date November 9, 2004, has a Medicare payment rate of \$15.37. This amount multiplied by 125% results in a MAR of \$19.21.





- Procedure code 96004, service date November 30, 2004, has a Medicare payment rate of \$122.20. This amount multiplied by 125% results in a MAR of \$152.75.
- Procedure code 97012, service date November 30, 2004, has a Medicare payment rate of \$15.37, multiplied by 2 units is \$30.74. This amount multiplied by 125% results in a MAR of \$38.43.
- Procedure code 97110, service date November 30, 2004, has a Medicare payment rate of \$29.59, multiplied by 4 units is \$118.36. This amount multiplied by 125% results in a MAR of \$147.95.
- Procedure code 97140-59, service date November 30, 2004, has a Medicare payment rate of \$27.30. This amount multiplied by 125% results in a MAR of \$34.13.
- Procedure code 98940, service date November 30, 2004, has a Medicare payment rate of \$26.89. This amount multiplied by 125% results in a MAR of \$33.61.
- Procedure code 99213, service date November 30, 2004, has a Medicare payment rate of \$54.59. This amount multiplied by 125% results in a MAR of \$68.24.
- Procedure code 96004, service date December 7, 2004, has a Medicare payment rate of \$122.20. This amount multiplied by 125% results in a MAR of \$152.75.
- Procedure code 97012, service date December 7, 2004, has a Medicare payment rate of \$15.37, multiplied by 2 units is \$30.74. This amount multiplied by 125% results in a MAR of \$38.43.
- Procedure code 97110, service date December 7, 2004, has a Medicare payment rate of \$29.59, multiplied by 4 units is \$118.36. This amount multiplied by 125% results in a MAR of \$147.95.
- Procedure code 97140-59, service date December 7, 2004, has a Medicare payment rate of \$27.30. This amount multiplied by 125% results in a MAR of \$34.13.
- Procedure code 98940, service date December 7, 2004, has a Medicare payment rate of \$26.89. This amount multiplied by 125% results in a MAR of \$33.61.
- Procedure code 99213, service date December 7, 2004, has a Medicare payment rate of \$54.59. This amount multiplied by 125% results in a MAR of \$68.24.
- Procedure code G0283, service date December 7, 2004, has a Medicare payment rate of \$11.53. This amount multiplied by 125% results in a MAR of \$14.41.
- Per 28 Texas Administrative Code §129.5(j), reimbursement for Division specific code 99080-73, service date December 8, 2004, is \$15.00.
- Procedure code 97012, service date December 9, 2004, has a Medicare payment rate of \$15.37, multiplied by 2 units is \$30.74. This amount multiplied by 125% results in a MAR of \$38.43.
- Procedure code 97110, service date December 9, 2004, has a Medicare payment rate of \$29.59, multiplied by 4 units is \$118.36. This amount multiplied by 125% results in a MAR of \$147.95.
- Procedure code 97140-59, service date December 9, 2004, has a Medicare payment rate of \$27.30. This amount multiplied by 125% results in a MAR of \$34.13.
- Procedure code 98940, service date December 9, 2004, has a Medicare payment rate of \$26.89. This amount multiplied by 125% results in a MAR of \$33.61.
- Procedure code 99213, service date December 9, 2004, has a Medicare payment rate of \$54.59. This amount multiplied by 125% results in a MAR of \$68.24.
- Procedure code G0283, service date December 9, 2004, has a Medicare payment rate of \$11.53. This amount multiplied by 125% results in a MAR of \$14.41.
- Procedure code 97545-WH, service date February 18, 2005, represents the initial two hours of work hardening services in a non-CARF accredited program. Per 28 Texas Administrative Code §134.202(c)(5)(A)(ii), "If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80% of the MAR." Additionally, per §134.202(c)(5)(C)(i) and (ii), "The first two hours of each session shall be billed and reimbursed as one unit, using the 'Work hardening/conditioning; initial 2 hours' CPT code with modifier 'WH.' . . . Reimbursement shall be \$64.00 per hour." Reimbursement for the initial two hours for this date is 80% of \$128.00, or \$102.40. This amount is recommended.

- Procedure code 97546-WH, service date February 18, 2005, represents the subsequent hours of work hardening services in a non-CARF accredited program. Per 28 Texas Administrative Code §134.202(c)(5)(A)(ii), "If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80% of the MAR." Additionally, per §134.202(c)(5)(C)(i) and (ii), "Each additional hour shall be billed using the 'Work hardening/conditioning; each additional hour' CPT code with modifier 'WH.' . . . Reimbursement shall be \$64.00 per hour." Five hours multiplied by \$64.00 results in a MAR of \$320.00. This amount multiplied by 80% is \$256.00. This amount is recommended.
- Procedure code 97545-WH, service date February 21, 2005, represents the initial two hours of work hardening services in a non-CARF accredited program. Per 28 Texas Administrative Code §134.202(c)(5)(A)(ii), "If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80% of the MAR." Additionally, per §134.202(c)(5)(C)(i) and (ii), "The first two hours of each session shall be billed and reimbursed as one unit, using the 'Work hardening/conditioning; initial 2 hours' CPT code with modifier 'WH.' . . . Reimbursement shall be \$64.00 per hour." Reimbursement for the initial two hours for this date is 80% of \$128.00, or \$102.40. This amount is recommended.
- Procedure code 97546-WH, service date February 21, 2005, represents the subsequent hours of work hardening services in a non-CARF accredited program. Per 28 Texas Administrative Code §134.202(c)(5)(A)(ii), "If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80% of the MAR." Additionally, per §134.202(c)(5)(C)(i) and (ii), "Each additional hour shall be billed using the 'Work hardening/conditioning; each additional hour' CPT code with modifier 'WH.' . . . Reimbursement shall be \$64.00 per hour." Five hours multiplied by \$64.00 results in a MAR of \$320.00. This amount multiplied by 80% is \$256.00. This amount is recommended.
- Procedure code 97545-WH, service date February 23, 2005, represents the initial two hours of work hardening services in a non-CARF accredited program. Per 28 Texas Administrative Code §134.202(c)(5)(A)(ii), "If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80% of the MAR." Additionally, per §134.202(c)(5)(C)(i) and (ii), "The first two hours of each session shall be billed and reimbursed as one unit, using the 'Work hardening/conditioning; initial 2 hours' CPT code with modifier 'WH.' . . . Reimbursement shall be \$64.00 per hour." Reimbursement for the initial two hours for this date is 80% of \$128.00, or \$102.40. This amount is recommended.
- Procedure code 97546-WH, service date February 23, 2005, represents the subsequent hours of work hardening services in a non-CARF accredited program. Per 28 Texas Administrative Code §134.202(c)(5)(A)(ii), "If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80% of the MAR." Additionally, per §134.202(c)(5)(C)(i) and (ii), "Each additional hour shall be billed using the 'Work hardening/conditioning; each additional hour' CPT code with modifier 'WH.' . . . Reimbursement shall be \$64.00 per hour." Five hours multiplied by \$64.00 results in a MAR of \$320.00. This amount multiplied by 80% is \$256.00. This amount is recommended.
- Procedure code 97750-FC, service date March 3, 2005, has a Medicare payment rate of \$30.92, multiplied by 8 units is \$247.36. This amount multiplied by 125% results in a MAR of \$309.20.
- Procedure code 99213, service date March 24, 2005, has a Medicare payment rate of \$54.65. This amount multiplied by 125% results in a MAR of \$68.31.
- Procedure code 97012, service date May 24, 2005, has a Medicare payment rate of \$15.21. This amount multiplied by 125% results in a MAR of \$19.01.
- Procedure code 97110, service date May 24, 2005, has a Medicare payment rate of \$28.91, multiplied by 4 units is \$115.64. This amount multiplied by 125% results in a MAR of \$144.55.
- Per Medicare payment policy, procedure code 97140 may not be reported with code 97012 performed on the same date. Payment is included in the reimbursement for the other code. The provider did not use a modifier to distinguish separate services. Separate payment is not recommended.
- Procedure code 99213, service date May 24, 2005, has a Medicare payment rate of \$54.65. This amount multiplied by 125% results in a MAR of \$68.31.
- Procedure code G0283, service date May 24, 2005, has a Medicare payment rate of \$11.72. This amount multiplied by 125% results in a MAR of \$14.65.
- Procedure code 96004, service date June 1, 2005, has a Medicare payment rate of \$124.20. This amount multiplied by 125% results in a MAR of \$155.25.

- Procedure code 97012, service date June 1, 2005, has a Medicare payment rate of \$15.21. This amount multiplied by 125% results in a MAR of \$19.01.
  - Procedure code 97110, service date June 1, 2005, has a Medicare payment rate of \$28.91, multiplied by 4 units is \$115.64. This amount multiplied by 125% results in a MAR of \$144.55.
  - Procedure code 99213, service date June 1, 2005, has a Medicare payment rate of \$54.65. This amount multiplied by 125% results in a MAR of \$68.31.
  - Procedure code G0283, service date June 1, 2005, has a Medicare payment rate of \$11.72. This amount multiplied by 125% results in a MAR of \$14.65.
  - Per Medicare payment policy, procedure code 97140 may not be reported with code 97012 performed on the same date. Payment is included in the reimbursement for the other code. The provider did not use a modifier to distinguish separate services. Separate payment is not recommended.
  - Procedure code 97012, service date June 6, 2005, has a Medicare payment rate of \$15.21. This amount multiplied by 125% results in a MAR of \$19.01.
  - Procedure code 97110, service date June 6, 2005, has a Medicare payment rate of \$28.91, multiplied by 4 units is \$115.64. This amount multiplied by 125% results in a MAR of \$144.55.
  - Procedure code 99213, service date June 6, 2005, has a Medicare payment rate of \$54.65. This amount multiplied by 125% results in a MAR of \$68.31.
  - Procedure code G0283, service date June 6, 2005, has a Medicare payment rate of \$11.72. This amount multiplied by 125% results in a MAR of \$14.65.
  - Per 28 Texas Administrative Code §129.5(j), reimbursement for Division specific code 99080-73, service date June 8, 2005, is \$15.00.
8. The total recommended payment for the services in dispute is \$6,970.68. The insurance carrier has paid \$0.00, leaving an amount due to the requestor of \$6,970.68. This amount is recommended.

**Conclusion**

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 \$6,970.68.

***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 \$6,970.68 plus applicable accrued interest per 28 Texas Administrative Code §134.803, and/or §134.130 if applicable, due within 30 days of receipt of this Order.

**Authorized Signature**

Signature	Grayson Richardson Medical Fee Dispute Resolution Officer	April 24, 2014 Date
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***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.**