



# 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**

MEYER L PROLER MD & ASSOCIATES

**Respondent Name**

TEXAS MUTUAL INSURANCE CO

**MFDR Tracking Number**

M4-11-1963-01

**Carrier's Austin Representative**

Box Number 54

**MFDR Date Received**

JANUARY 27, 2011

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary dated January 26, 2011:** "Texas Mutual denied payment for the attached claims because (i) Dr. Proler did not disclose his ownership interest in StatLink Manager and/or (ii) he did not provide the appropriate level of supervision to give him the right to bill for the technical component of the services. As demonstrated above:

1. Dr. Proler had absolutely no obligation under DWC rules to disclose his ownership interest in StatLink because: a. StatLink, a management company, b. As a management company StatLink provides no health care services and is not a health care provider; and c. Dr. Proler refers no patients to StatLink.
2. The use of the real time, visual and audio telemedicine technology allows Dr. Proler to supervise the technician providing the technical portion of the IOM EMG services as if he were in the same room with the technician and surgical team, thereby meeting the requirement for direct supervision required by the DWC rules.
3. Physician supervision of technicians assisting in the performance of EMGs furnished as part of a remote IOM procedure provided through the use of telemedicine technology is accepted by Medicare and virtually every commercial payor."

**Amount in Dispute:** \$659.53

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Texas Mutual Insurance Company (Texas Mutual) requests this dispute be dismissed because the requestor filed the dispute before requesting reconsideration. Texas Mutual has not received a request for reconsideration on the bill."

**Response Submitted by:** Texas Mutual Insurance Co., 6210 East Highway 290, Austin, TX 78723-1098

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 29, 2010	CPT Code 95920-26 (2) – Intra-operative neurophysiology testing, per hour (List separately in addition to code for primary procedure)	\$322.66	\$322.66
	CPT Code 95822-26 - Electroencephalogram (EEG); recording in coma or sleep only	\$81.77	\$81.77
	CPT Code 95925-26 - Short-latency somatosensory evoked potential study, stimulation of any/all	\$40.79	\$40.79

	peripheral nerves or skin sites, recording from the central nervous system; in upper limbs		
	CPT Code 95926-26 - Short-latency somatosensory evoked potential study, stimulation of any/all peripheral nerves or skin sites, recording from the central nervous system; in lower limbs	\$41.52	\$41.52
	CPT Code 95904-26 - Nerve conduction, amplitude and latency/velocity study, each nerve; sensory	\$53.02	\$0.00
	CPT Code 95861-26 - Needle electromyography; 2 extremities with or without related paraspinal areas	\$119.77	\$119.77
TOTAL		\$659.53	\$606.51

### ***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, effective May 25, 2008, sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. Texas Labor Code §401.011, effective September 1, 2009 defines a health care provider.
4. 28 Texas Administrative Code §180.24 effective March 14, 2002, sets out the financial disclosure requirements and penalties for healthcare providers.
5. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated October 18, 2010

- Per Rule 180.24, financial disclosure not met.
- CAC-B7-This provider was not certified/eligible to be paid for this procedure/service on this date of service.
- CAC-W1-Workers compensation state fee schedule adjustment.
- CAC-16-Claim/service lacks information which is needed for adjudication. At least one remark code must be provided (May be comprised of either the remittance advice remark code or NCPDP reject reason code).
- 225-The submitted documentation does not support the service being billed. We will re-evaluate this upon receipt of clarifying information.
- 784-Testing exceeds recommendations of treatment guidelines (i.e. ODG).
- 892-Denied in accordance with DWC rules and/or medical fee guideline.
- 896-Statutory/regulatory violation.

#### **Issues**

1. Is StatLink a healthcare provider as defined in Texas Labor Code §401.011?
2. Does a financial disclosure issue exist?
3. Did nerve conduction testing, CPT code 95904, exceed the treatment guidelines?
4. Does the documentation support service billed with CPT code 95822-26?
5. What is Medicare National Coverage Policy regarding Intraoperative Neurophysiologic Monitoring via telemedicine?
6. Is the requestor entitled to reimbursement for CPT codes 95920-26, 95822-26, 95925-26, 95926-26 and 95861-26?

#### **Findings**

1. Texas Labor Code §401.011(20) defines a "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care."

Texas Labor Code §401.011(21) defines "Health care practitioner" means:

- (A) an individual who is licensed to provide or render and provides or renders health care; or
- (B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor."

Texas Labor Code §401.011(22) defines "Health care provider" means a health care facility or health care practitioner.

The Division finds that the submitted documentation does not support that StatLink is a healthcare provider as defined in Texas Labor Code §401.011.

2. The respondent denied reimbursement for the disputed services based upon reason "Per Rule 180.24, financial disclosure not met".

The requestor states in the January 26, 2011 position summary that "Dr. Proler had absolutely no obligation under DWC rules to disclose his ownership interest in StatLink because: a. StatLink, a management company, b. As a management company StatLink provides no health care services and is not a health care provider; and c. Dr. Proler refers no patients to StatLink."

28 Texas Administrative Code §180.24(b) states " Submission of Financial Disclosure Information to the division. (1) If a health care practitioner refers an injured employee to another health care provider in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest, the health care practitioner shall file a disclosure with the division within 30 days of the date the first referral is made unless the disclosure was previously made. This annual disclosure shall be filed for each health care provider to whom an injured employee is referred and shall include the information in paragraph (2) of this subsection."

Because StatLink does not meet the definition of healthcare provider per in Texas Labor Code §401.011, the Division finds that a financial disclosure issue does not exist.

3. The respondent denied reimbursement for CPT code 95904-26 based upon reason code "784-Testing exceeds recommendations of treatment guidelines (i.e. ODG)."

The requestor noted on the submitted bill that the disputed service, CPT code 95904, was for the diagnosis 722.10 and 724.4.

Per the ODG "Intraoperative EMG and nerve conduction velocity monitoring on peripheral nerves during surgery is not recommended" for the diagnoses 722.10 and 724.4. Therefore, denial of reimbursement based upon reason code "784" is supported. Reimbursement is not recommended for CPT code 95904.

4. The respondent denied reimbursement for CPT code 95822-26 based upon reason code "225-The submitted documentation does not support the service being billed. We will re-evaluate this upon receipt of clarifying information".

A review of the Intraoperative Neurophysiology Report indicates "EEG during induced sleep was recorded throughout the surgery". Therefore, the documentation does support the service billed.

5. 28 Texas Administrative Code §134.203(a)(5) states "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare."

28 Texas Administrative Code §134.203(b) states "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules."

The requestor states in the April 1, 2011 supplemental response that "Texas Mutual continues to treat office-based Diagnostic EMGs and IOM/EMGs performed through the use of live, interactive technology ('telemedicine') during a surgical procedure as one and the same procedure. The difference in these procedures is found not only in the site of service, the types of provider furnishing the service, the purpose of the procedure, the credentialing required for the providers, but also in how the procedures are coded. IOM/EMGs are coded with AMA CPT 95920 whereas Diagnostic EMGs are coded with CPT 95860-95872."

Per Medicare's National Coverage Policy for Intraoperative Neurophysiologic Monitoring, effective March 1, 2008, which states "Monitoring may be performed from a remote site, as long as a trained technician (see detail above) will be in continuous attendance in the operating room, with either the physical or electronic capacity for real-time communication with the supervising physician."

The Division finds that per Medicare's National Coverage Policy, IOMs may be performed by telemedicine; therefore, reimbursement is recommended for CPT codes 95920-26, 95822-26, 95925-26, 95926-26 and 95861-26.

6. According to the explanation of benefits, the respondent denied reimbursement for CPT code 95920-26, 95822-26, 95925-26, 95926-26 and 95861-26 based upon reason code "892-Denied in accordance with DWC rules and/or medical fee guideline".

28 Texas Administrative Code §134.203(c)(1) states, "...To determine to MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications...For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$53.68..."

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Participating Amount = Maximum Allowable Reimbursement (MAR).

Review of Box 32 on the submitted CMS-1500s indicates a zip code 77002. This zip code is located in Harris County. The Medicare conversion factor for Harris County is 36.8729.

The 2010 DWC conversion factor for this service is 54.32.

The Medicare participating amount for code 95920-26 in Harris County is \$109.51. Therefore, the MAR is \$161.33. The requestor billed for two hours. \$161.33 X 2 = \$322.66, this amount is recommended for reimbursement.

The Medicare participating amount for code 95822-26 in Harris County is \$55.51. Therefore, the MAR is \$81.77, this amount is recommended for reimbursement.

The Medicare participating amount for code 95925-26 in Harris County is \$27.69. Therefore, the MAR is \$40.79, this amount is recommended for reimbursement.

The Medicare participating amount for code 95926-26 in Harris County is \$28.19. Therefore, the MAR is \$41.52, this amount is recommended for reimbursement.

The Medicare participating amount for code 95861-26 in Harris County is \$81.30. Therefore, the MAR is \$119.77, this amount is recommended for reimbursement.

**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 \$606.51.

**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 \$606.51 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

**Authorized Signature**

\_\_\_\_\_  
Signature

Elizabeth Pickle, RHIA  
Medical Fee Dispute Resolution Officer

04/24/14  
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.**