



## TEXAS DEPARTMENT OF INSURANCE

**Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)**  
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### MEDICAL FEE DISPUTE RESOLUTION FINDINGS & DECISION

#### GENERAL INFORMATION

**Requestor Name and Address**

AZAR MARAGHI DC  
9700 RICHMOND AVE STE 120  
HOUSTON TX 77042

[REDACTED]

**Respondent Name**

ALIEF ISD

**Carrier's Austin Representative**

Box Number 21

**MFDR Tracking Number**

M4-13-2278

**MFDR Date Received**

MAY 7, 2013

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** The requestor did not submit a position summary.

**Amount in Dispute:** \$14,915.00

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The Respondent's position is that its denial for these services was appropriate as they were services for conditions not part of the compensable injury."

**Response Submit by:** Thornton, Biechlin, Segrato, Reynolds & Guerra LC

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 3, 2012 through April 27, 2012 and May 1, 2012 through May 2, 2012	Professional Services	\$9,380.00	\$0.00
April 30, 2012 and May 7, 2012; and May 14, 2012 through July 13, 2012	Professional Services	\$4,435.00	\$495.00
May 11, 2012	Professional Services	\$1,135.00	\$0.00

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 sets out the procedures for resolving medical fee disputes.
1. 28 Texas Administrative Code §133.20 sets out medical bill submission procedures for health care providers.
2. 28 Texas Administrative Code §102.4 establishes rules for non-Commission communications.
3. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
4. Texas Labor Code §408.0272 provides for certain exceptions to untimely submission of a medical claim.
5. 28 Texas Administrative Code §134.203 sets out guidelines for reimbursement.
6. 28 Texas Administrative Code §134.204 sets out guidelines for reimbursement for Division specific services.
7. 28 Texas Administrative Code §129.5 sets out the guidelines for Work Status Reports.
8. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - B13 – Previously paid. Payment for this claim/service may have been provided in a previous payment.
  - 247 – A payment or denial has already been recommended for this service.
  - 29 – The time limit for filing has expired.
  - D9 – Duplicate control number 100009243.
  - 219 – Based on extent of injury.
  - 5053 – Treatment is not related to original work injury.

## **Issues**

1. Are CPT Codes for dates of service April 30, 2012 and May 7, 2012 through July 13, 2012 reimbursable under 28 Texas Administrative Code §134.204 and 28 Texas Administrative Code §129.5?
2. Did the medical fee dispute referenced above contain information/documentation that indicates that there are **unresolved** issues of Compensability, Extent of Injury and/or Liability (CEL)?
3. Are the disputed services eligible for review by Medical Fee Dispute Resolution?

## **Findings**

1. Review of the services for date of service April 30, 2012 and May 7, 2012 through July 13, 2012 is as follows:
  - CPT Code 97545-WH for dates of service April 30, 2012 and May 7, 2012. In accordance with 28 Texas Administrative Code §134.204(h) The following shall be applied to Return To Work Rehabilitation Programs for billing and reimbursement of Work Conditioning/General Occupational Rehabilitation Programs, Work Hardening/Comprehensive Occupational Rehabilitation Programs, Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs, and Outpatient Medical Rehabilitation Programs. To qualify as a Division Return to Work Rehabilitation Program, a program should meet the specific program standards for the program as listed in the most recent Commission on Accreditation of Rehabilitation Facilities (CARF) Medical Rehabilitation Standards Manual, which includes active participation in recovery and return to work planning by the injured employee, employer and payor or carrier; (3) For Division purposes, Comprehensive Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Hardening. (A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT Code 97545 with modifier "WH." Each additional hour shall be billed using CPT Code 97546 with modifier "WH." CARF accredited Programs shall add "CA" as a second modifier. (B) Reimbursement shall be \$64 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to 8 minutes and less than 23 minutes. Review of the submitted information finds

insufficient documentation that the work hardening program met the requirements of 28 Texas Administrative Code §134.204(h); therefore, reimbursement cannot be recommended.

- CPT Code 97546-WH for dates of service April 30, 2012 and May 7, 2012. In accordance with 28 Texas Administrative Code §134.204(h) The following shall be applied to Return To Work Rehabilitation Programs for billing and reimbursement of Work Conditioning/General Occupational Rehabilitation Programs, Work Hardening/Comprehensive Occupational Rehabilitation Programs, Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs, and Outpatient Medical Rehabilitation Programs. To qualify as a Division Return to Work Rehabilitation Program, a program should meet the specific program standards for the program as listed in the most recent Commission on Accreditation of Rehabilitation Facilities (CARF) Medical Rehabilitation Standards Manual, which includes active participation in recovery and return to work planning by the injured employee, employer and payor or carrier; (3) For Division purposes, Comprehensive Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Hardening. (A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT Code 97545 with modifier "WH." Each additional hour shall be billed using CPT Code 97546 with modifier "WH." CARF accredited Programs shall add "CA" as a second modifier. (B) Reimbursement shall be \$64 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to 8 minutes and less than 23 minutes. Review of the submitted information finds insufficient documentation that the work hardening program met the requirements of 28 Texas Administrative Code §134.204(h); therefore, reimbursement cannot be recommended.
- CPT Code 97545-WH and CPT Code 97546-WH for date of service May 11, 2012 were denied using denial code "29 – Time limit for filing has expired." 28 Texas Administrative Code §133.20(b) requires that, except as provided in Texas Labor Code §408.0272, "a health care provider shall not submit a medical bill later than the 95th day after the date the services are provided." Texas Labor Code §408.0272(b) provides that: Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if: (1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027(a), erroneously filed for reimbursement with: (A) an insurer that issues a policy of group accident and health insurance under which the injured employee is a covered insured;(B) a health maintenance organization that issues an evidence of coverage under which the injured employee is a covered enrollee; or (C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title; or (2) the commissioner determines that the failure resulted from a catastrophic event that substantially interfered with the normal business operations of the provider.

No documentation was found to support that any of the exceptions described in Texas Labor Code §408.0272 apply to the services in this dispute. For that reason, the health care provider was required to submit the medical bill not later than 95 days after the date the disputed services were provided.

Texas Labor Code §408.027(a) states that "Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment." 28 Texas Administrative Code §102.4(h) states that: Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on: (1) the date received, if sent by fax, personal delivery or electronic transmission or,(2) the date postmarked if sent by mail via United States Postal Service

regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.

Review of the submitted information finds insufficient documentation to support that a medical bill was submitted within 95 days from the date the services were provided. Consequently, the requestor has forfeited the right to reimbursement due to untimely submission of the medical bill, pursuant to Texas Labor Code §408.027(a).

- CPT Code 99214 for dates of service May 14, 2012, June 7, 2012 and July 13, 2012. In accordance with 28 Texas Administrative Code §134.203(b) 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. Review of the documentation submitted finds the requestor has supported the office visits and is due reimbursement in accordance with 28 Texas Administrative Code §134.203(c)(1) as follows:
  - ❖ CPT Code 99214 – The reimbursement amount calculated according to the Texas Fee Guideline is  $(54.86 \div 34.0376) \times \$114.11$ ; the requestor is seeking \$160.00 per date of service; therefore, reimbursement in the amount of \$480.00 ( $\$160.00 \times 3$ ) is recommended.
- CPT Code 99080-73 for dates of service May 14, 2012, June 7, 2012 and July 13, 2012. In accordance with 28 Texas Administrative Code §129.5(d) the doctor shall file the Work Status Report: (2) when the employee experiences a change in work status or a substantial change in activity. Review of the submitted Work Status Reports finds date of service May 14, 2012 shows change in work status; however, review of the Work Status Reports for June 7, 2012 and July 13, 2012 shows no change in work status. Therefore, in accordance with 28 Texas Administrative Code §129.5(i) reimbursement in the amount of \$15.00 is recommended.
- CPT Code 97750-FC for date of service May 17, 2012. In accordance with 28 Texas Administrative Code 28 Texas Administrative Code §134.204(g) The following applies to Functional Capacity Evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT Code 97750 with modifier "FC." FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required. Review of the submitted information finds insufficient documentation that the FCE met the requirements of 28 Texas Administrative Code §134.204(g); therefore, reimbursement cannot be recommended.

2. The medical fee dispute referenced above contains information/documentation that indicates that there are **unresolved** issues of extent of injury for the same service(s) for which there is a medical fee dispute. Review of the EOBs presented by the both the requestor and respondent indicate denial reason code "219 – Based on extent of injury" and "5053 – Treatment is not related to original work injury."

3. **Unresolved extent-of-injury dispute:** The medical fee dispute referenced above contains unresolved issues of extent-of-injury for the same service(s) for which there is a medical fee dispute. The insurance carrier notified the requestor of such issues in its explanation of benefits (EOB) response(s) during the medical billing process.

**Dispute resolution sequence:** 28 Texas Administrative Code §133.305(b) requires that extent-of-injury disputes be resolved prior to the submission of a medical fee dispute for the same services. 28 Texas Administrative Code §133.307(f) (3) (C) provides for dismissal of a medical fee dispute if the request for the medical fee dispute contains an unresolved extent of injury dispute for the claim. 28 Texas Administrative Code § 133.307(c) (2) (K) provides that a request for a medical fee dispute must contain a copy of each EOB related to the dispute.

**Extent-of-injury dispute process:** The Division hereby notifies the requestor that the appropriate process to resolve the issue(s) of CEL, including disputes or disagreements among the parties over whether the medical services in dispute were related to the compensable injury, may be found in Chapter 410 of the Texas Labor Code, and 28 Texas Administrative Code §141.1. As a courtesy to the requestor, instructions on how to file for resolution of the extent of injury issue are attached.

The division finds that due to the unresolved CEL issues, the medical fee dispute request for dates of service July 26, 2012 through May 14, 2013 is not eligible for review until a final decision has been issued in accordance with 28 Texas Administrative Code §133.307(c)(1)(B).

**Dismissal provisions:** 28 Texas Administrative Code § 133.307(f) (3) provides that a dismissal is not a final decision by the Texas Department of Insurance, Division of Workers' Compensation ("Division"). The medical fee dispute may be submitted for review as a new dispute that is subject to the requirements of 28 Texas Administrative Code § 133.307. 28 Texas Administrative Code § 133.307 (c)(1)(B) provides that a request for medical fee dispute resolution may be filed not later than 60 days after a requestor has received the final decision, inclusive of all appeals, on the extent-of-injury dispute.

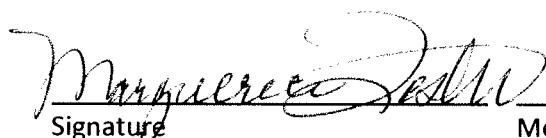
### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution. This decision is based upon a review of all the evidence presented by the parties in this dispute. Even though not all the evidence was discussed, it was considered. The Division finds that dates of service April 3, 2012 through April 27, 2012 and May 1, 2012 and May 2, 2012 are not eligible for medical fee dispute resolution under 28 Texas Administrative Code §133.307; however, dates of service April 30, 2012 and May 7, 2012 through July 13, 2012 are eligible for medical fee dispute resolution and a review of all the evidence presented by the parties for this date of service was considered.

### ***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 \$495.00 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

  
Signature

Marguerite Foster  
Medical Fee Dispute Resolution Officer

September 24, 2015  
Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request 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 §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**