



# TEXAS DEPARTMENT OF INSURANCE

## Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Orthopaedic Surgery Center of San Antonio

**Respondent Name**

Zenith Insurance Company

**MFDR Tracking Number**

M4-16-0557-01

**Carrier's Austin Representative**

Box Number 47

**MFDR Date Received**

November 2, 2015

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Please see attached DWC-60 in regards to two unpaid surgery codes in which the surgeon, ... was paid and not our facility."

**Amount in Dispute:** \$4479.62

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Zenith's position is that no additional payment is due to the Provider as these procedures were disallowed correctly as included in the value of another procedure performed on this date."

**Response Submitted by:** The Zenith

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
November 13, 2014	Ambulatory Surgery Center Fees (29824, 29825)	\$4479.62	\$0.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.402 sets out the fee guidelines for Ambulatory Surgery Centers.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - CO59 – Processed based on multiple or concurrent procedure rules.
  - CO97 – The benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
  - COB12 – Services not documented in patients' medical records.

- 224 – Duplicate charge.

### Issues

1. What are the fee guidelines that apply to this dispute?
2. Is the insurance carrier's reason for denial of payment for CPT code 29825 supported?
3. Is the insurance carrier's reason for denial of payment for CPT code 29824 supported?

### Findings

1. The services in dispute are ambulatory surgery center fees subject to 28 Texas Administrative Code §134.402, which states, in relevant part,
  - (d) For coding, billing, and reporting, of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare payment policies in effect on the date a service is provided with any additions or exceptions specified in this section, including the following paragraphs.
    - (1) Specific provisions contained in the Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by the CMS in administering the Medicare program.
    - (2) Independent Review Organization decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.
    - (3) Whenever a component of the Medicare program is revised and effective, use of the revised component shall be required for compliance with Division rules, decisions, and orders for services rendered on and after the effective date, or after the effective date or the adoption date of the revised Medicare component, whichever is later.

The Division finds that 28 Texas Administrative Code §134.402(d)(1) and (2) do not apply to this dispute. Therefore, the services will be reviewed in accordance with the Medicare program and payment policies in effect on the date of service, in accordance with 28 Texas Administrative Code §134.402(d)(3).

2. The insurance carrier denied disputed CPT code 29825 with claim adjustment reason code CO59 – “Processed based on multiple or concurrent procedure rules.” Medicare's National Correct Coding Initiative (NCCI) provides a conflict edit for CPT code 29825 when billed in conjunction with CPT code 29827. A modifier is allowed when appropriate. The requestor billed CPT code 29825 with modifier 59.

The following guidelines apply to the use of modifier 59:

Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services performed on the same day. Modifier 59 is used to identify procedures/services, other than E/M services, that are not normally reported together, but are appropriate under the circumstances. **Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual** [emphasis added]. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier is available, and the use of modifier 59 best explains the circumstances, should modifier 59 be used.

The NCCI Policy Manual, effective January 1, 2014, Chapter 4, page IV-17, #22, states,

CMS considers the shoulder joint to be a single anatomic structure. An NCCI procedure to procedure edit code pair consisting of two codes describing two shoulder joint procedures should never be bypassed with an NCCI-associated modifier when performed on the ipsilateral shoulder joint. This type of edit may be bypassed only if the two procedures are performed on contralateral joints.

Further, Chapter 1, page I-29 of this manual states, “Unless services are performed at separate patient encounters or at separate anatomic sites, the less complex service is included in the more complex service and is not separately reportable.”

Documentation does not support that 29827 and 29825 were performed at separate patient encounters or at separate anatomic sites. The requestor has failed to overcome the NCCI edit for this code with the use of modifier 59. The insurance carrier’s denial reason is supported. Additional reimbursement cannot be recommended for this service.

- 3. The insurance carrier denied disputed CPT code 29824 with claim adjustment reason code CO59 – “Processed based on multiple or concurrent procedure rules.”

Review of the submitted documentation finds that CPT code 29824-SG-RT was not supported. The insurance carrier’s denial reason is supported. Additional reimbursement cannot be recommended for this service.

**Conclusion**

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

**ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

**Authorized Signature**

_____	<u>Laurie Garnes</u>	<u>December 29, 2015</u>
Signature	Medical Fee Dispute Resolution Officer	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, 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 MFDR 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.**