



# 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**

Texas Bone and Joint Center

**Respondent Name**

Qbe Insurance Corporation

**MFDR Tracking Number**

M4-16-0847-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

November 30, 2015

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The Approved Doctors List of the workers' compensation system expired August 31, 2007. Under Official Order No. 3365 of the Texas Commissioner of Workers' Compensation...."

**Amount in Dispute:** \$4,590.20

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Subject to further review, the carrier asserts that it has paid according to applicable fee guidelines and challenges whether the disputed charges are consistent with applicable fee guidelines."

**Response Submitted by:** Flahive, Ogden & Latson

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 24, 2014 through June 26, 2015	Physical Therapy Services	\$4,590.20	\$1,268.05

#### 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 §134.203 sets out the reimbursement guidelines for professional medical services.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 4280 – This procedure code requires a functional reporting G code to be billed
  - 811 – Charges denied because on this date of service, provider was not on the approved doctor list
  - 247 – A payment or denial has already been recommended for this service

- B7 – This provider was not certified/eligible to be paid for this procedure/service on this date of service
- 193 – Original payment decision is being maintained. This claim was processed properly the first time

### Issues

1. Was the request for MFDR submitted timely?
2. Are the insurance carrier’s reasons for denial or reduction of payment supported?
3. What is the applicable rule pertaining to reimbursement?
4. Is the requestor entitled to additional reimbursement?

### Findings

1. 28 Texas Administrative Code §133.307 (c) states,

Requests for MFDR shall be filed in the form and manner prescribed by the division. Requestors shall file two legible copies of the request with the division.

(1) Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

(B) A request may be filed later than one year after the date(s) of service if:

(i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability;

(ii) a medical dispute regarding medical necessity has been filed, the medical fee dispute must be filed not later than 60 days after the date the requestor received the final decision on medical necessity, inclusive of all appeals, related to the health care in dispute and for which the insurance carrier previously denied payment based on medical necessity; or

(iii) the dispute relates to a refund notice issued pursuant to a division audit or review, the medical fee dispute must be filed not later than 60 days after the date of the receipt of a refund notice.

The request for Medical Fee Dispute Resolution pertains to dates of service September 29, 2014 through June 26, 2015. The request for MFDR was received by the Division on November 30, 2015. Therefore dates of service September 24, 2014, October 1, 2014, October 8, 2014, October 10, 2014, and October 15, 2014 are not considered timely as no exception described in the above rule were found.

2. The insurance carrier denied disputed services with claim adjustment reason code B7 – “This provider was not certified/eligible to be paid for this procedure/service on this date of service” and 811 – “Charges denied because on this date of service, provider was not on the approved doctor list.” The requirement of an “Approved doctor list” was abolished with the enactment of HB7, see the summary found at, <https://www.tdi.state.tx.us/wc/dwc/legisupdate.html>

### ***Approved Doctor List (ADL)(§408.023, Labor Code)***

- *Retains the ADL and the associated requirements for non-network doctors until 9/1/2007 (or an earlier date, if determined by the Commissioner of Workers' Compensation). Network doctors are not required to be on the ADL.*
- *However, HB 7 requires doctors, including network doctors, to comply with the Division's financial disclosure and impairment rating training and testing requirements.*

The insurance carrier's denial reason is not supported. The disputed services will therefore be reviewed per applicable Division rules and fee guidelines.

3. 28 Texas Administrative Code 134.203 (c) states,

To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications. (1) 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 (date of service yearly conversion factor).

The maximum allowable reimbursement will be calculated as follows;

- Procedure code 97530, service date October 31, 2014. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.002 is 0.44088. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.987 is 0.52311. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.799 is 0.00799. The sum of 0.97198 is multiplied by the Division conversion factor of \$55.75 for a MAR of \$54.19. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.19. The PE reduced rate is \$39.61. The total is \$93.80.
- Procedure code 97110, service date October 31, 2014. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.002 is 0.4509. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.987 is 0.43428. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.799 is 0.00799. The sum of 0.89317 is multiplied by the Division conversion factor of \$55.75 for a MAR of \$49.79. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$37.69 at 2 units is \$75.38.
- Procedure code 97002, service date November 5, 2014. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.6 multiplied by the geographic practice cost index (GPCI) for work of 1.002 is 0.6012. The practice expense (PE) RVU of 0.56 multiplied by the PE GPCI of 0.987 is 0.55272. The malpractice RVU of 0.03 multiplied by the malpractice GPCI of 0.799 is 0.02397. The sum of 1.17789 is multiplied by the Division conversion factor of \$55.75 for a MAR of \$65.67. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$65.67.

- The total allowable reimbursement for the services in dispute from 2014 is \$234.85. This amount less the amount previously paid by the insurance carrier of \$0.00 leaves an amount due to the requestor of \$234.85. This amount is recommended.
- Procedure code 97530, service date April 24, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.4422. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.995 is 0.52735. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.772 is 0.00772. The sum of 0.97727 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$54.92. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.92. The PE reduced rate is \$40.10. The total is \$95.02.
- Procedure code 97110, service date April 24, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.45225. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.995 is 0.4378. The malpractice RVU of 0.02 multiplied by the malpractice GPCI of 0.772 is 0.01544. The sum of 0.90549 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$50.89. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$38.59 at 2 units is \$77.18.
- Procedure code 97530, service date May 15, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.4422. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.995 is 0.52735. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.772 is 0.00772. The sum of 0.97727 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$54.92. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.92. The PE reduced rate is \$40.10. The total is \$95.02.
- Procedure code 97110, service date May 15, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.45225. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.995 is 0.4378. The malpractice RVU of 0.02 multiplied by the malpractice GPCI of 0.772 is 0.01544. The sum of 0.90549 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$50.89. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$38.59 at 2 units is \$77.18.
- Procedure code 97530, service date June 17, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.4422. The

practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.995 is 0.52735. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.772 is 0.00772. The sum of 0.97727 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$54.92. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.92. The PE reduced rate is \$40.10. The total is \$95.02.

- Procedure code 97110, service date June 17, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.45225. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.995 is 0.4378. The malpractice RVU of 0.02 multiplied by the malpractice GPCI of 0.772 is 0.01544. The sum of 0.90549 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$50.89. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$38.59 at 2 units is \$77.18.
- Procedure code 97530, service date June 18, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.4422. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.995 is 0.52735. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.772 is 0.00772. The sum of 0.97727 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$54.92. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.92. The PE reduced rate is \$40.10. The total is \$95.02.
- Procedure code 97110, service date June 18, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.45225. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.995 is 0.4378. The malpractice RVU of 0.02 multiplied by the malpractice GPCI of 0.772 is 0.01544. The sum of 0.90549 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$50.89. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$38.59 at 2 units is \$77.18.
- Procedure code 97530, service date June 23, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.4422. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.995 is 0.52735. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.772 is 0.00772. The sum of 0.97727 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$54.92. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.92. The PE reduced rate is \$40.10. The total is \$95.02.

- Procedure code 97110, service date June 23, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.45225. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.995 is 0.4378. The malpractice RVU of 0.02 multiplied by the malpractice GPCI of 0.772 is 0.01544. The sum of 0.90549 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$50.89. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$38.59 at 2 units is \$77.18.
  - Procedure code 97530, service date June 26, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.44 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.4422. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 0.995 is 0.52735. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.772 is 0.00772. The sum of 0.97727 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$54.92. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure has the highest PE for this date. The first unit is paid at \$54.92. The PE reduced rate is \$40.10. The total is \$95.02.
  - Procedure code 97110, service date June 26, 2015. The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. For this procedure, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.005 is 0.45225. The practice expense (PE) RVU of 0.44 multiplied by the PE GPCI of 0.995 is 0.4378. The malpractice RVU of 0.02 multiplied by the malpractice GPCI of 0.772 is 0.01544. The sum of 0.90549 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$50.89. Per Medicare policy, when more than one unit of designated therapy services is performed on the same day, full payment is made for the first unit of the procedure with the highest practice expense. Payment for each subsequent unit is reduced by 50% of the practice expense. This procedure does not have the highest PE for this date. The PE reduced rate is \$38.59 at 2 units is \$77.18.
4. The total allowable reimbursement for the services in dispute for 2015 is \$1,033.20. This amount less the amount previously paid by the insurance carrier of \$0.00 leaves an amount due to the requestor of \$1,033.20. This total plus the MAR of the 2014 charges, or (\$1,033.20 + \$234.85) equals a total MAR of \$1,268.05. 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 \$1,268.05.

**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 \$1,268.05 plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

December , 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, 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.**