



# 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 SURGICAL CENTER

**Respondent Name**

PACIFIC EMPLOYERS INSURANCE CO

**MFDR Tracking Number**

M4-16-3455-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

July 15, 2016

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "This clean claim was billed requesting the surgical procedure be paid at 153% of CMS with separate reimbursement for our implants. According to Texas Workers Compensation Rule 134.402, 'Implantable devices are reimbursed at the providers cost plus 10% to \$1,000.00 per item or \$2,000.00 per case.' In this case our implants cost more than was paid on the claim. Manufacturer's invoices are attached."

**Amount in Dispute:** \$15,995.36

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The CPT codes utilized by Requestor for 'implants,' L8681 and L8689, are not implants. They are classified as DME, durable medical equipment. These codes could not be located on the list of implant codes. Because they are considered DME, they were paid pursuant to the specific DME rule and Medicare fee schedule."

**Response Submitted by:** Downs Stanford, PC

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
November 30, 2015	Implantable Durable Medical Equipment, Procedure Codes L8689 & L8681	\$15,995.36	\$15,525.36

#### 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 medical fee guideline for ambulatory surgery centers.

3. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - P1 – (P12) WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
  - P12 – WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
  - W3 – REQUEST FOR RECONSIDERATION (ZE10)
  - 193 – ORIGINAL PAYMENT DECISION IS BEING MAINTAINED. UPON REVIEW, IT WAS DETERMINED THAT THIS CLAIM WAS PROCESSED PROPERLY. (ZD86)
  - 97 – THE BENEFIT FOR THIS SERVICE IS INCLUDED IN THE PAYMENT/ALLOWANCE FOR ANOTHER SERVICE/PROCEDURE THAT HAS ALREADY BEEN ADJUDICATED.
  - Z710 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE. (Z710)
  - 1 – This item was previously submitted with a notification of decision issued to payor, provider (duplicate invoice). (U301)

### **Issues**

1. Do the disputed items qualify as implantables?
2. What is the recommended reimbursement for the disputed items?
3. Is the requestor entitled to additional reimbursement?

### **Findings**

1. This dispute regards facility reimbursement of an ambulatory surgery center subject to 28 Texas Administrative Code §134.402. The items in dispute are:
  - HCPCS code L8689 — a replacement external recharging system for the (internal) battery component of an implantable neurostimulator; and
  - HCPCS code L8681 — a replacement patient programmer (external) for use with an implantable programmable neurostimulator pulse generator.

The requestor asks for reimbursement for the disputed items as “implantables.”

The respondent reduced payment for the disputed items with claim adjustment reason code P12 – “WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT,” asserting in their position statement that:

L8681 and L8689 are not implants. They are classified as DME, durable medical equipment. These codes could not be located on the list of implant codes. Because they are considered DME, they were paid pursuant to the specific DME rule and Medicare fee schedule.

Review of the submitted information finds that, while both items are external devices that are not inserted into the body, they are nonetheless “implantables” as defined by Division rule.

Per 28 Texas Administrative Code §134.402(b)(5)(E), the meaning of “Implantable” includes: “related equipment necessary to operate, program, and recharge the implantable.”

Code L8689 meets the definition of related equipment necessary to recharge the implantable (a previously implanted neurostimulator).

And code L8681 meets the definition of related equipment necessary to operate the neurostimulator.

The respondent argues that “These codes could not be located on the list of implant codes. Because they are considered DME, they were paid pursuant to the specific DME rule and Medicare fee schedule.”

Regardless of any specific Medicare payment policy regarding DME, Texas statutes and Division rules take precedence over Medicare payment policies where there is any conflict.

While Rule §134.402 (d) requires that for coding, billing, and reporting of facility services, system participants shall apply the Medicare payment policies in effect on the date a service is provided with any additions or exceptions specified in the rule; §134.402(d)(1) further specifies that:

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.

When the Division originally changed the formula for reimbursement of implantables in 2005, they expressed concern in the adoption preamble that Medicare's reimbursements for implantables were insufficient to cover ASC providers' costs, and thus the amendment would enhance both consistency of reimbursement and injured workers' access to care:

The amendment providing reimbursement for implantables is a targeted approach to address situations where the cost of an implantable, by itself, exceeds the ASC group case rate or the MFG rate allowed in the workers' compensation system. Assuring sufficient reimbursement for these specific items enhances access to ASC services for injured workers. Although the Medicare system includes limited additional reimbursement for implantables, it was generally accepted in the ASC Focus Group meetings that orthopedic procedures were performed relatively infrequently in an ASC setting for the Medicare population. The limited Medicare reimbursement for high-cost, high-tech implantables associated with orthopedic procedures was cited as a primary reason for this suppressed utilization. The information provided by some of the ASC Focus Group members highlighted the high-cost of surgically implanted devices due to technology advances and medical cost inflation. The amended rule enhances consistency of reimbursement for surgically implanted devices by implementing a cost-based reimbursement, similar to the inpatient hospital methodology. (30 Texas Register 1299, March 4, 2005)

The Division's specific provisions in the rule regarding implantables supersede Medicare payment policies. Accordingly, an item's status as an "implantable" is not defined by inclusion on a Medicare list, or by any Medicare payment policy. The Division rules include a specific definition of "implantables," and per §134.402(d), system participants must apply those exceptions to Medicare payment policies as specified in the section.

Accordingly, the Division concludes that the insurance carrier's payment reductions are not supported.

Moreover, the health care provider's request to be reimbursed for these items as "implantables" is supported.

Consequently, the items will be reviewed for additional payment according to applicable Division rules.

2. Review of the submitted documentation finds that the underlying surgery involved the implantation of a spinal cord stimulating generator (a device intensive procedure) billed under CPT code 63685—payment for this service is not in dispute.

The dispute regards payment for implantable items necessary to recharge and operate the implanted neurostimulator, billed under HCPCS codes L8689 and L8681, with reimbursement subject to the provisions of 28 Texas Administrative Code §134.402(f)(B)(i), which states that if an ASC facility requests separate reimbursement for an implantable, reimbursement shall be:

the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on's per admission

The requestor provided documentation to support that the invoice amount for L8689 (recharging system) is \$2,900.00. 10% of this amount is \$290.00. The recommended reimbursement is \$3,190.00.

The requestor provided documentation to support that the invoice amount for L8681 (patient programmer) is \$14,700.00. 10% of this amount is \$1,470. This amount exceeds the limit of \$1,000 per billed item add on. The recommended reimbursement is \$15,700.00.

3. The total allowable reimbursement for the services in dispute is \$18,890.00. The insurance carrier has paid \$3,364.64. The amount due to the requestor is \$15,525.36.

### **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 \$15,525.36.

**ORDER**

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$15,525.36, plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

Authorized Signature

_____	<u>Grayson Richardson</u>	<u>August 12, 2016</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.**