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
FONDREN OTHROPEDIC GROUP, LLP

Respondent Name
LIBERTY INSURANCE CORP

MFDR Tracking Number
M4-17-0118-01

Carrier's Austin Representative
Box Number 01

MFDR Date Received
SEPTEMBER 15, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "We have attached the coded operative report as documentation and it clearly states decompression was above and beyond what would have been necessary to simply perform an interbody fusion due to significant spinal stenosis."

Amount in Dispute: $4,941.67

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The bill and documentation attached to the medical dispute have been re-reviewed and our position remains unchanged."

Response Submitted By: Liberty Mutual Insurance

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 4, 2016	CPT Code 63047-59 Laminectomy, facetectomy and foraminotomy (unilateral or bilateral with decompression of spinal cord, cauda equina and/or nerve root[s], [eg, spinal or lateral recess stenosis]), single vertebral segment; lumbar	$2,301.20	$0.00
	CPT Code 63048-59 Laminectomy, facetectomy and foraminotomy (unilateral or bilateral with decompression of spinal cord, cauda equina and/or nerve root[s], [eg, spinal or lateral recess stenosis]), single vertebral segment; each additional segment, cervical, thoracic, or lumbar (List separately in addition to code for primary procedure)	$432.69	$0.00
	CPT Code 22830 Exploration of spinal fusion	$1,685.07	$1,685.07
	CPT Code 63047-AS-59	$269.98	$0.00

	CPT Code 63048-AS-59	$50.79	$0.00
	CPT Code 22830-AS	$201.94	$201.94
TOTAL		$4,941.67	$1,887.01

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

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. 28 Texas Administrative Code §134.1, effective March 1, 2008, requires in the absence of an applicable fee guideline, medical reimbursement shall be fair and reasonable.
4. The services in dispute were reduced/denied by the respondent with the following reason code:
    - 150-Code description not given.
    - X901-Documentation does not support level of service billed.
    - B291-This is a bundled or non covered procedure based on Medicare guidelines; no separate payment allowed.
    - W3-Additional payment made on appeal/reconsideration.
    - 193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly the first time.

Issues

1. Does the documentation support billing 63047-59, 63048-59, 63047-AS-59, and 63048-AS-59? Is the requestor entitled to reimbursement?
2. Is the allowance of code 22830 included in the allowance of code 22633? Is the requestor entitled to reimbursement?

Findings

1. The disputed issue is whether the requestor is due additional reimbursement per 28 Texas Administrative Code §134.203.

   On the disputed date of service the requestor billed for spinal surgery services codes 22633, 63047, 22830, 22842, 22634, 22851, 62350, 63048, 20931 and 20936. The requestor appended modifier 59-Distinct Procedural Service and AS -Physician assistant, nurse practitioner, or clinical nurse specialist services for assistant at surgery to codes.

   According to the explanation of benefits, the respondent denied reimbursement for code 63047-59, 63047-AS-59, 63048-59 and 63048-AS-59 based upon "X901-Documentation does not support level of service billed."

   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…"

   Per CCI edits, CPT codes 63047 and 63048 have a conflict with code 22633.

   The Operative Report indicates that claimant underwent "Laminectomy with facetectomy and foraminotomy, bilateral L3 and L4," and "TLIF interbody fusion at L3-4 and L4-5."

   A review of the Operative Report finds that codes 63047, 63048 were performed at the same level as 22633 and 22634; therefore, reimbursement is not recommended.

2. The respondent denied reimbursement for codes 22830 and 22830-AS based upon reason code "B291-This is

a bundled or non covered procedure based on Medicare guidelines; no separate payment allowed."

Per CCI edits, code 22830 is included in the allowance of code 22633. A review of the Operative Report indicates that claimant underwent "Exploration of spinal fusion, L5-S1." The Division finds that the denial is not supported because code 22830 was performed at a different level; therefore, reimbursement is recommended.

Medicare Claims Processing Manual, Chapter 12, Section 120.1 titled Limitations for Assistant-at-Surgery Services Furnished by Nurse Practitioners and Clinical Nurse Specialists (Rev. 2656, Issuance: 02-07-13, Effective: 02-19-13, Implementation: 02-19-13) states, "Medicare law at section 1833(a)(1)(O) of the Social Security Act authorizes payment for services that NPs and CNSs furnish as an assistant-at-surgery. Specifically, when a NP or CNS actively assists a physician in performing a surgical procedure and furnishes more than just ancillary services, the NP's and CNSs' services are eligible for payment as assistant-at-surgery services… The A/B MAC (B) shall pay covered NP and CNS assistant-at-surgery services at 80 percent of the lesser of the actual charge or 85 percent of the 16 percent that a physician is paid under the Medicare Physician Fee Schedule. Since physicians are paid at 16 percent of the surgical payment amount under the Medicare Physician Fee Schedule for assistant-at-surgery services, the actual payment amount that NPs and CNSs receive for assistant-at-surgery services is 13.6 percent of the amount paid to physicians.
Only the AS modifier must be reported on the claim form when a NP or CNS bills assistant-at-surgery services"

Per 28 Texas Administrative Code §134.203(c)(1)(2), "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 $52.83. For Surgery when performed in a facility setting, the established conversion factor to be applied is $66.32.

(2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year. The following hypothetical example illustrates this annual adjustment activity if the Division had been using this MEI annual percentage adjustment: The 2006 Division conversion factor of $50.83 (with the exception of surgery) would have been multiplied by the 2007 MEI annual percentage increase of 2.1 percent, resulting in the $51.90 (with the exception of surgery) Division conversion factor in 2007."

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

The 2016 DWC conversion factor for this service is 71.32.

The Medicare Conversion Factor is 35.8043

Review of Box 32 on the CMS-1500 the services were rendered in zip code 77030, which is located in Houston, Texas; therefore, the Medicare participating amount is based on locality "Houston, Texas".

Therefore using the above formula, the Division finds the following:

CPT Code	Medicare Participating Amount	MAR	Carrier Paid	Amount Due
22830	$849.22	$1,691.59, the requestor is seeking a lesser amount of $1,685.07	$0.00	$1,685.07
22830-AS	$849.22	$1,691.59 X 85% of 16% = $230.05, the requestor is seeking a lesser amount of $201.94	$0.00	$201.94

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 $1,887.01.

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 $1,887.01, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

		12/14/2016
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.