



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)
7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645
(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

ULTIMATE PAIN SOLUTIONS

Respondent Name

NEW HAMPSHIRE INSURANCECO

MFDR Tracking Number

M4-17-3007-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

JUNE 13, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Ultimate Pain Solutions believe that the claims listed below were unpaid and underpaid as Gallagher Bassett did not pay the (MAR) Maximum Allowable Reimbursement value for the claims."

Amount in Dispute: \$87,696.60

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The bills in question were escalated and the review has been finalized. Our bill audit company has determined additional monies are owed plus interest, please see below explanation. Attached is a copy of the payment summaries for your records. We are requesting the dispute be withdrawn."

Position Summary Submitted by: Gallagher Bassett

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Rows include services like Chronic Pain Management Program, Psychiatric diagnostic evaluation, Psychological Testing, Office Visit, Work Status Report, Psychotherapy, and Functional Capacity Evaluation.

July 1, 2016 thru November 16, 2016	CPT Codes 97545-WH and 97546-WH (167 Hours) Work Hardening	\$34,386.60	\$6,604.80
TOTAL		\$87,696.60	\$17,574.81

FINDINGS AND DECISION

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 a medical fee dispute.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets out the fee guidelines for reimbursement of professional medical services provided in the Texas workers' compensation system.
3. Texas Labor Code §408.027, effective September 1, 2007, sets out the rules for timely submission of a claim by a health care provider.
4. 28 Texas Administrative Code §133.20, effective January 29, 2009, sets out the procedure for healthcare providers submitting medical bills.
5. 28 Texas Administrative Code §102.4(h), effective May 1, 2005, sets out rules to determine when written documentation was sent.
6. 28 Texas Administrative Code §129.5, effective July 16, 2000, sets out the procedure for reporting and billing work status reports.
7. 28 Texas Administrative Code §134.230, effective July 7, 2016 sets out the reimbursement guidelines for rehabilitation management programs.
8. 28 Texas Administrative Code §134.225, effective July 7, 2016, sets out the reimbursement guidelines for functional capacity evaluations.
9. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - B12-Services not documented in patients' medical records.
 - P12-Workers' compensation jurisdictional fee schedule adjustment.
 - Z710-The charge for this procedure exceeds the fee schedule allowance.
 - 16-Claim/service lacks information or has submission/billing error(s) which is needed for adjudication.
 - 18-Duplicate claim/service.
 - 29-The time limit for filing has expired.
 - 45-Charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement.
 - 4-The procedure code is inconsistent with the modifier used or a required modifier is missing.
 - W3-Request for reconsideration.

Issues

1. What is the amount in dispute?
2. Is the insurance carrier's denial of timely filing supported? Is the requestor entitled to reimbursement?
3. Is the requestor entitled to additional reimbursement for the chronic pain management program rendered on November 28, 2016 through April 7, 2017?
4. Is the requestor due additional reimbursement for CPT codes 90791 and 96101?
5. Is the requestor due reimbursement for CPT code 99213?
6. Is the requestor due reimbursement for CPT code 99080-73?
7. Is the requestor due reimbursement for CPT code 90834?
8. Does the documentation support billing CPT Code 97750-FC rendered on November 12, 2016?
9. Is the requestor due reimbursement for CPT code 97002?
10. Is the requestor due additional reimbursement for work hardening program rendered from July 1, 2016 thru November 16, 2016?

Finding

1. According to the *Table of Disputed Services*, the requestor billed \$92,915.00 and was paid \$3,438.40 for the disputed services rendered from June 17, 2016 through April 7, 2017. The requestor is seeking additional reimbursement of \$87,696.60 for the disputed services. The respondent noted in the response that an

additional payment of \$3,352.26 was issued to the requestor. This additional payment will be considered in the review.

2. According to the explanation of benefits, the respondent denied reimbursement for CPT codes 97545-WH, 97546-WH, 99213, 99080-73 and 90834 rendered on July 1, July 20, July 27, July 29, August 8, and August 10, 2016 based upon reason code "29-The time limit for filing has expired."

Texas Labor Code §408.027(a) states, "A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. 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, "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."

To determine when the bills were sent, the division reviewed the submitted documentation and finds that the requestor submitted a report from Office Ally that supports the bills for dates of service July 1, 2016 through August 29, 2016 were electronically submitted on September 19, 2016. Therefore, the respondent's denial based upon reason code "29" is not supported. The division finds a timely filing issue does not exist.

3. CPT Code 97799-CP:

- a) According to the submitted explanation of benefits, the respondent denied reimbursement for the chronic pain management program rendered on November 21, and November 23, 2016 based upon "4-The procedure code is inconsistent with the modifier used or a required modifier is missing." A review of the submitted billing finds that the requestor initially billed with modifier "59", then corrected the bill and appended "CP" to code 97799. The division finds that because the bill was corrected reimbursement is due.
- b) The requestor is seeking additional reimbursement for a chronic pain management program rendered to the injured worker from November 28, 2016 through April 7, 2017. To determine if additional reimbursement is due the division refers to 28 Texas Administrative Code §134.230.

28 Texas Administrative Code §134.230 (5) states "The following shall be applied for billing and reimbursement of Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs. (A) Program shall be billed and reimbursed using CPT code 97799 with modifier "CP" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited programs shall add "CA" as a second modifier. (B) Reimbursement shall be \$125 per hour. Units of less than one hour shall be prorated in 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes."

28 Texas Administrative Code §134.230(1) states "Accreditation by the CARF is recommended, but not required. (A) If the program is CARF accredited, modifier "CA" shall follow the appropriate program modifier as designated for the specific programs listed below. The hourly reimbursement for a CARF accredited program shall be 100 percent of the maximum allowable reimbursement (MAR). (B) If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80 percent of the MAR."

DATE	CODE	No. of Hours	MAR	IC PAID	AMOUNT DUE
November 21, 2016 thru December 16, 2016	97799-CP	152	\$125 X 80% = \$100/hr X 152 hours = \$15,200.00	\$4,500.00	\$10,700.00

4. CPT Codes 90791 and 96101:

The requestor is seeking dispute resolution for CPT codes 90791 and 96101 rendered on June 17, 2016 in the

amount of \$2,270.00. The respondent initially denied reimbursement for these services based upon "16-Claim/service lacks information or has submission/billing error(s) which is needed for adjudication." Based upon the respondent's position summary this denial was not maintained and payment of \$652.26 was issued on these codes.

To determine if additional reimbursement is due the division refers to 28 Texas Administrative Code §134.203.

28 Texas Administrative Code §134.203(a)(5) states "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare."

28 Texas Administrative Code §134.203(b)(1) 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; 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."

CPT code 90791 is defined as "Psychiatric diagnostic evaluation." CPT code 90791 is not defined as a timed procedure. The 2016 CPT manual indicates the code may be reported more than one per patient when a separate evaluation with an informant is performed. A review of the submitted documentation supports only one evaluation was performed and it was with the claimant; therefore, based on the code descriptor and the submitted report, one unit is recommended for reimbursement.

CPT code 96101 is defined as "Psychological testing (includes psychodiagnostic assessment of emotionality, intellectual abilities, personality and psychopathology, eg, MMPI, Rorschach, WAIS), per hour of the psychologist's or physician's time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report."

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 56.82.

The Medicare Conversion Factor is 35.8043.

Review of Box 32 on the CMS-1500 the services were rendered in zip code 77042, which is located in Houston, Texas; therefore the Medicare carrier locality is "Houston, Texas".

Using the above formula, the Division finds the following:

CODE	MEDICARE PARTICIPATING AMOUNT	MAR	IC PAID	AMOUNT DUE
90791	\$134.47	\$213.40	\$522.48	\$0.00
96101	\$81.78	\$129.78	\$129.78	\$0.00

5. **CPT code 99213:**

According to the submitted explanation of benefits, the respondent denied reimbursement for the office visit based upon timely filing. As stated above, the requestor supported bills were timely submitted; therefore, reimbursement is due:

Per 28 Texas Administrative Code §134.203(c)(1)(2) the following is recommended:

DATE	CODE	MEDICARE PARTICIPATING AMOUNT	MAR	IC PAID	AMOUNT DUE
July 20, 2016	99213	\$74.16	\$117.69	\$0.00	\$117.69

6. **CPT Code 99080-73:**

According to the submitted explanation of benefits, the respondent denied reimbursement for the report based upon timely filing. As stated above, the requestor supported bills were timely submitted; therefore, reimbursement is due.

Per 28 Texas Administrative Code §129.5(i)(1) states "Notwithstanding any other provision of this title, a doctor may bill for, and a carrier shall reimburse, filing a complete Work Status Report required under this section or for providing a subsequent copy of a Work Status Report which was previously filed because the carrier, its agent, or the employer through its carrier, asks for an extra copy. The amount of reimbursement shall be \$15. A doctor shall not bill in excess of \$15 and shall not bill or be entitled to reimbursement for a Work Status Report which is not reimbursable under this section. Doctors are not required to submit a copy of the report being billed for with the bill if the report was previously provided. Doctors billing for Work Status Reports as permitted by this section shall do so as follows: (1) CPT code "99080" with modifier "73" shall be used when the doctor is billing for a report required under subsections (d)(1), (d)(2), and (f) of this section."

DATE	CODE	MAR	IC PAID	AMOUNT DUE
July 20, 2016	99080-73	\$15.00	\$0.00	\$15.00

7. **CPT Code 90834:**

Neither party to the dispute submitted explanation of benefits for CPT code 90834 rendered on July 22, 2016. The respondent did not dispute that they had not received the bills and had opportunity to audit the bills; therefore, the disputed services will be reviewed per fee guideline.

Per 28 Texas Administrative Code §134.203(c)(1)(2), the appropriate reimbursement for psychotherapy, CPT code 90834 is:

CODE	MEDICARE PARTICIPATING AMOUNT	MAR	IC PAID	AMOUNT DUE
90834	\$86.53	\$137.32	\$0.00	\$137.32

8. **CPT Code 97750-FC:**

The respondent denied reimbursement for the functional capacity evaluation rendered on November 12, 2016 based upon "16-Claim/service lacks information or has submission/billing error(s) which is needed for adjudication."

28 Texas Administrative Code §134.225 states in part , “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.”

A review of the submitted medical records finds that the requestor did not submit a copy of the FCE report to support billed service; therefore, the respondent’s denial based upon reason code “16” is supported. As a result, no reimbursement is recommended.

9. CPT Code 97002:

The respondent denied reimbursement for the physical therapy evaluations rendered on October 24 and November 12, 2016 based upon “4-The procedure code is inconsistent with the modifier used or a required modifier is missing.” A review of the submitted billing finds on October 24, 2016 the requestor billed code 97002 with modifier “WH”. A modifier was not billed on the November 12, 2016 bill.

The division finds the requestor did not submit medical documentation to support billing CPT code 97002. The division finds the respondent’s denial of payment is supported. As a result, reimbursement is not recommended.

10. CPT Code 97545-WH and 97546-WH:

- a.) Neither party to the dispute submitted explanation of benefits for dates of service July 21, 2016, July 22, 2016 and July 27, 2016. The respondent did not dispute that they had not received the bills and had opportunity to audit the bills; therefore, the disputed services will be reviewed per fee guideline.
- b.) The respondent denied reimbursement for the work hardening program rendered on September 14, 2016 based upon “P12-Workers’ compensation jurisdictional fee schedule adjustment.” The respondent wrote, “Denied-Procedure reimbursable only when billed in conjunction with primary procedure on same date of service.” 28 Texas Administrative Code §134.230(3) states, “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." The division reviewed the submitted billing and finds that the requestor did not bill the initial two hours of the work hardening program with code 97545-WH. Therefore, did not bill for services in accordance with 28 Texas Administrative Code §134.230(3). As a result, reimbursement is not recommended.
- c.) The respondent denied reimbursement for the work hardening program rendered on September 30, October 7 and 10, 2016 based upon “16-Claim/service lacks information or has submission/billing error(s) which is needed for adjudication.” A review of the submitted billing indicates the requestor billed for eight (8) hours of work hardening using CPT codes CPT codes 97545-WH and 97546-WH. The submitted documentation supports billed service; therefore, reimbursement per 28 Texas Administrative Code §134.230(3) is recommended.
- d.) The respondent denied reimbursement for the work hardening program rendered from October 21 through November 11, 2016 based upon “4-The procedure code is inconsistent with the modifier used or a required modifier is missing.” A review of the submitted medical billing finds the requestor billed codes 97545-WH and 97546-WH for the work hardening program in accordance with 28 Texas Administrative Code §134.230(3); therefore, the respondent’s denial of payment based upon reason code “4” is not supported.
- e.) According to the explanation of benefits, the respondent denied reimbursement for the work hardening program rendered from October 14 to November 11, 2016 based upon “P12-Workers’ compensation jurisdictional fee schedule adjustment.” The respondent wrote, “Procedure has exceeded the maximum allowed units of service.” A review of the submitted billing and records find the respondent’s denial is not supported. As a result, reimbursement per 28 Texas Administrative Code §134.230(3) is recommended.
- f.) Per 28 Texas Administrative Code §134.230 the appropriate reimbursement for the work hardening program, CPT codes 97545-WH and 97546-WH is:

- 28 Texas Administrative Code §134.230(1) states “Accreditation by the CARF is recommended, but not required. (A) If the program is CARF accredited, modifier "CA" shall follow the appropriate program modifier as designated for the specific programs listed below. The hourly reimbursement for a CARF accredited program shall be 100 percent of the maximum allowable reimbursement (MAR). (B) If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80 percent of the MAR.”
- 28 Texas Administrative Code §134.230(3) states, “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 eight minutes and less than 23 minutes.”

DATE	CODE	No. of Hours	MAR	IC PAID	AMOUNT DUE
July 1, 2016 thru November 16, 2016	97545-WH & 97546-WH	161	\$64.00 X 80% = \$51.20/hr X 161 hours = \$8,243.20	\$1,638.40	\$6,604.80

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 \$17,574.81.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$17,574.81, 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

Date

02/07/2019

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