



# 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**

Simon J. Forster, D.C.

**Respondent Name**

Indemnity Insurance Company of North America

**MFDR Tracking Number**

M4-18-0094-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

September 8, 2017

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** Submitted documentation does not include a position statement from the requestor. Accordingly, this decision is based on the information available at the time of review.

**Amount in Dispute:** \$709.96

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "It has been determined that ESIS Med Bill Impact will stand on the original recommendation of \$0.00. The provider's license number is missing."

**Response Submitted by:** ESIS Bill Review

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 21, 2017	Designated Doctor Examination	\$709.96	\$674.43

### 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 §134.239 sets out the fee guidelines for return to work and evaluation of medical care examinations.
- Texas Labor Code §408.0041 provides the requirements for designated doctor examinations.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - TX03 – Entitlement to benefits.
  - ANSIP6 – Based on entitlement to benefits.
  - 148 – This procedure on this date was previously reviewed

- 18 – Duplicate claim/service.

### Issues

1. Did the insurance carrier raise a new defense pursuant to 28 Texas Administrative Code §133.307?
2. Is the insurance carrier's denial of the disputed services supported?
3. Is Dr. Forster entitled to additional reimbursement?

### Findings

1. In its position statement, ESIS Bill Review (ESIS) argued on behalf of Indemnity Insurance Company of North America, "The provider's license number is missing."

28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

Review of the submitted documentation finds that the insurance carrier failed to present a denial based on the provider's license number to Dr. Forster in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The division concludes that this defense presented in the position statement presented by ESIS shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Dr. Forster is seeking reimbursement for a designated doctor examination to determine the extent of the compensable injury and physical performance testing performed on March 21, 2017. The insurance carrier denied the disputed services with procedure codes TX03 – "ENTITLEMENT TO BENEFITS," and P6 – "Based on entitlement to benefits."

Texas Labor Code §408.0041(h) states that the insurance carrier shall pay for a designated doctor examination unless otherwise prohibited. Available documentation supports that the disputed services were ordered by the division. Therefore, neither the services in question nor the payment of them are prohibited by statute, rule, or order of the commissioner. The insurance carrier's denial for this reason is not supported.

3. Per 28 Texas Administrative Code §134.235,

The following shall apply to return to work (RTW)/evaluation of medical care (EMC) examinations. When conducting a division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT code 99456 with modifier "RE." In either instance of whether maximum medical improvement/ impairment rating (MMI/IR) is performed or not, the reimbursement shall be \$500 in accordance with §134.240 of this title and shall include division-required reports. Testing that is required shall be billed using the appropriate CPT codes and reimbursed in addition to the examination fee.

The submitted documentation indicates that Dr. Forster performed an examination to determine the extent of the compensable injury. Therefore, the maximum allowable reimbursement (MAR) for this examination is \$500.00.

The submitted documentation also supports that Dr. Forster performed physical performance testing. This testing is subject to the fee guidelines found in 28 Texas Administrative Code §134.203(c) which 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 \$52.83...
- (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 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. The division conversion factor for 2017 is \$57.50.

For CPT code 97750 on March 21, 2017, the relative value (RVU) for work of 0.45 multiplied by the geographic practice cost index (GPCI) for work of 1.0 is 0.45.

The practice expense (PE) RVU of 0.46 multiplied by the PE GPCI of 1.02 is 0.4692. 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 reduced PE for subsequent units is 0.2346.

The malpractice (MP) RVU of 0.02 multiplied by the MP GPCI of 0.757 is 0.15140.

The sum of the calculations for the first unit, 0.93434, is multiplied by the division conversion factor of \$57.50 for a total of \$53.72. The sum of the calculations for subsequent units, 0.69974, is multiplied by the division conversion factor of \$57.50 for a total of \$40.24. The total MAR for 4 units is \$174.43.

The total allowable reimbursement for the services in question is \$674.43. 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 \$674.43.

### **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 \$674.43, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

_____	Laurie Garnes	February 14, 2018
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 Rule §133.307, effective May 31, 2012, *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. **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.**