



## 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**

KATHRYN OVERZET, CNIM

**Respondent Name**

LM INSURANCE CORP

**MFDR Tracking Number**

M4-18-2571-01

**Carrier's Austin Representative**

Box Number 01

**MFDR Date Received**

MARCH 13, 2018

#### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary:** "The nurse at Liberty Mutual reviewing the claims and reconsiderations/appeals wants our office to under-code, which are not the services we performed nor are they the services we received authorization on. They want us to change 95938 to 95926 because they think only the lower portion of the SSEPs are necessary which we have proved to be incorrect in our appeal; this is fraud. Also, CPT 95940 is reimbursable since there is an allowed amount on the WC fee schedule for this code and the rendering provider type that can be reimbursed. This company pays technical claims all the time."

**Amount in Dispute:** \$6,958.00

#### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary:** "CPT 95940-59-x 6 units were denied based on Medicare guidelines listed under Local Coverage Determination L35003. This LCD states under 'Limitations' that this test must be ordered by the operating surgeon and the monitoring must be performed by a physician...CPT 95938-TC-59 was denied based on Medicare guidelines listed under Local Coverage Determination L34975. The diagnosis listed by the attending surgeon, Dr. Anthony Gioia of [REDACTED] are not listed as payable diagnoses according to the Medicare L34975 policy."

**Response Submitted By:** Liberty Mutual Insurance Co.

#### ***SUMMARY OF FINDINGS***

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 10, 2017	CPT Code 95938-TC-59 Short-latency somatosensory evoked potential study, stimulation of any/all peripheral nerves or skin sites, recording from the central nervous system; in upper and lower limbs	\$3,760.00	\$486.63

	CPT Code 95940-59 (X 6) Continuous intraoperative neurophysiology monitoring in the operating room, one on one monitoring requiring personal attendance, each 15 minutes (List separately in addition to code for primary procedure)	\$3,198.00	\$0.00
TOTAL		\$6,958.00	\$486.63

### **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 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, provides for fair and reasonable reimbursement of health care in the absence of an applicable fee guideline.
- 4.Texas Labor Code §413.011 sets forth provisions regarding reimbursement policies and guidelines.
- 5.The services in dispute were reduced / denied by the respondent with the following reason codes:
  - 150, B291, 193, W3-This is a bundled or non covered procedure based on Medicare guidelines; no separate payment allowed.
  - B227, 58-Services are not reimbursable to this provider type.

#### **Issues**

1. Was the request for medical dispute resolution filed timely?
2. Is the allowance of code 95938-TC-59 included in the allowance of another procedure rendered on the disputed date of service? Is the requestor due reimbursement?
3. Is the respondent's denial of payment for code 95940-59 supported? Is the requestor due reimbursement?

#### **Findings**

1. This dispute involves date of service March 10, 2017. The dispute was filed to TDI-DWC MFDR on March 13, 2018. TDI-DWC addresses the issue as follows:
  - The requestor performed the service in Dallas, County and his billing provider is located in Waller County.
  - On August 23, 2017, Governor Greg Abbott issued a proclamation declaring that Hurricane Harvey poses a threat of imminent disaster along the Texas Coast and in numerous counties including Waller County. The declaration states in pertinent part: "THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such treat. Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster. Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such

statutes and rules for the duration of this declared disaster.”

- Governor Abbott issued subsequent proclamations extending the state of disaster for the named counties due to the substantial destruction in South, Central and East Texas. To date, the Hurricane Harvey Disaster Proclamations cover a period from August 23, 2017 through January 10, 2018 for Waller County.
- The Texas Department of Insurance issued Commissioner’s Bulletins# B-0020-17 and B-0042-17 as a result of the Governor’s Proclamation. The bulletins “required insurance carriers to continue to process and pay workers’ compensation claims and tolled (paused) deadlines for specified workers’ compensation procedures involving system participants who reside in the counties listed in the Governor’s disaster proclamation.”
- 28 Texas Administrative Code §133.307(c)(1)(A), states in pertinent part “A request for medical fee dispute resolution...shall be filed no later than one year after the date(s) of service in dispute.”
- In this dispute, 28 Texas Administrative Code §133.307(c)(1)(A), is computed by **counting** each day up to and including August 23, 2017, then by **NOT counting** each day from August 24, 2017, through January 9, 2018, and finally by counting of days from January 10, 2018 and on. In other words, the total days would be computed by adding only the days counted before, and the days counted after the tolled period, not to include any of the days in the tolled period.

MFDR’s obligation under the Governor’s Proclamations and the Commission’s Bulletins is to accept date of service March 10, 2017, as timely because the one-year dispute filing deadline, in this case, is tolled.

2. According to the explanation of benefits, the respondent denied reimbursement for CPT code 95938 based upon “This is a bundled or non covered procedure based on Medicare guidelines; no separate payment allowed.”

The respondent contends that payment is not due because, “CPT 95938-TC-59 was denied based on Medicare guidelines listed under Local Coverage Determination L34975. The diagnosis listed by the attending surgeon, Dr. Anthony Gioia of [REDACTED] are not listed as payable diagnoses according to the Medicare L34975 policy.”

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) 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...”

On the disputed date of service the requestor billed CPT codes 95938-TC-59, 95940-59, 95861-TC-59, A4215 and A4556. Only codes 95938-TC-59 and 95940-59 are in dispute.

Per CCI edits, the allowance of CPT codes 95938-TC-59 is not included in the allowance of another service performed on this date; therefore, the respondent’s denial is not supported. The division finds reimbursement is due per the fee guideline.

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).

Review of Box 32 on the CMS-1500 the services were rendered in zip code 75234, which is located in Dallas, Texas; therefore, the Medicare participating amount is based on locality "Dallas, Texas".

The 2017 DWC conversion factor for this service is 57.5.

The 2017 Medicare Conversion Factor is 35.8887

The Medicare participating amount for 95938-TC at this location is \$303.73.

Using the above formula the division finds the MAR is \$486.63. The respondent paid \$0.00. The requestor is due the difference between MAR and amount paid of \$486.63.

3. The respondent denied reimbursement for CPT code 95940-59 based upon "Services are not reimbursable to this provider type."

The respondent continues to stand on position that reimbursement is not due stating, "CPT 95940-59-x 6 units were denied based on Medicare guidelines listed under Local Coverage Determination L35003. This LCD states under 'Limitations' that this test must be ordered by the operating surgeon and the monitoring must be performed by a physician."

A review of the submitted documentation finds the requestor did not submit any medical records to support billing code 95940-59. The requestor did not support that code 95940-59 was billed in accordance with Medicare's policies. As a result, reimbursement is not recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that reimbursement is due. As a result, the amount ordered is \$486.63.

### ***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 \$486.63 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

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Signature

Medical Fee Dispute Resolution Officer

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4/12/2018

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, 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 MDR 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.**