



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

AUSTIN CHIROPRACTIC ASSOCIATES, PA
SIMON J. FORSTER, DC

Respondent Name

TOKIO MARINE AMERICA INSURANCE

MFDR Tracking Number

M4-18-3894-01

Carrier's Austin Representative

Box Number 47

MFDR Date Received

JUNE 11, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "I ordered/performed a functional assessment billed by utilizing AMA CPT code '97750', which is a completely distinct and separate procedure from the procedure 98956 W5 WP. The code 97750 is code for functional testing...This assessment is more appropriate to utilize when specific functional tests are required to answer a question pertaining to specific functional ability, (without requiring a complete assessment comprised of all the 14 sub-component element requirements outlined in TAC §134.204(g) for a full functional capacity evaluation."

Amount in Dispute: \$157.47

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Carrier received the Explanation of Review processed on 03/01/2018 recommending payment in the amount of \$1,150.00. Carrier issued payment on 03/05/2018 in the amount of \$1,150.00 check number 800207114...Carrier has submitted supporting documentation of these facts and respectfully contends that the medical bills in question have been paid and no additional allowance is owed."

Response Submitted By: Tokio Marine America

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: January 23, 2017, CPT Code 97750 (X3), \$157.47, \$157.47

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 §134.250, effective July 7, 2016, provides the policies and procedures for MMI/IR.
3. 28 Texas Administrative Code §134.203, sets the fee guideline for professional services.

4. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits

- 97-Payment adjusted because the benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
- 906-In accordance with clinical based coding edits (National Correct Coding Initiative/outpatient code editor), component code of comprehensive medicine, evaluation and management services procedure (90000-99999) has been disallowed.
- W3-Additional payment made on appeal/reconsideration.
- 193-Original payment decision is being maintained. This claim was processed properly the first time.
- 1014-The attached billing has been re-evaluated at the request of the provider. Based on this re-evaluation, we find our original review to be correct. Therefore, no additional allowance appears to be warranted.

Issues

1. What is the applicable fee guideline?
2. Is the respondent's denial of payment supported?
3. Is the requestor due reimbursement?

Findings

1. The applicable fee guideline for physical performance test is 28 Texas Administrative Code §134.203.
2. According to the submitted explanation of benefits the respondent denied reimbursement for the FCEs based upon "97-Payment adjusted because the benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated," and "906-In accordance with clinical based coding edits (National Correct Coding Initiative/outpatient code editor), component code of comprehensive medicine, evaluation and management services procedure (90000-99999) has been disallowed." The respondent contends that reimbursement is not due because "Carrier received the Explanation of Review processed on 03/01/2018 recommending payment in the amount of \$1,150.00. Carrier issued payment on 03/05/2018 in the amount of \$1,150.00 check number 800207114...Carrier has submitted supporting documentation of these facts and respectfully contends that the medical bills in question have been paid and no additional allowance is owed."

On the disputed date of service, the requestor billed for CPT codes 97750, 99456-W5-WP and 99456-RE-W7. The respondent paid \$1,150.00 for codes 99456-W5-WP and 99456-W7-RE. Only code 97750 is in dispute.

The requestor wrote "The code 97750 is code for functional testing...This assessment is more appropriate to utilize when specific functional tests are required to answer a question pertaining to specific functional ability, (without requiring a complete assessment comprised of all the 14 sub-component element requirements outlined in TAC §134.204(g) for a full functional capacity evaluation."

To determine if the respondent's denial of payment is supported, the division refers to the following rules:

- 28 Texas Administrative Code §134.250(5) states, "If the examination for the determination of MMI and/or the assignment of IR requires testing that is not outlined in the AMA Guides, the appropriate CPT code(s) shall be billed and reimbursed in addition to the fees outlined in paragraphs (3) and (4) of this section."
- 28 Texas Administrative Code §134.235 states "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."
- 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."

CPT code 97750 is defined as "Physical performance test or measurement (eg, musculoskeletal, functional capacity), with written report, each 15 minutes." CPT code 97750 requires direct one-on-one patient contact.

The division finds per 28 Texas Administrative Code §134.235, "Testing that is required shall be billed using the appropriate CPT codes and reimbursed in addition to the examination fee." Therefore, the respondent's denial of payment is not supported.

3. 28 Texas Administrative Code §134.203(c)(1) 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."

28 Texas Administrative Code §134.203(c)(2) states "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."

The Division conversion factor for 2018 is \$58.31.

The Medicare conversion factor for 2018 is 35.9996.

Review of Box 32 on the CMS-1500 finds that the services were rendered in zip code 78758 which is located in Austin, Texas; therefore, the Medicare locality is "Austin, Texas."

The Medicare participating amount for CPT code 97750 is \$38.79.

Using the above formula, the MAR is \$62.83/or less per unit. The requestor billed for 3 units; therefore, \$62.83 X 3 \$188.49. The respondent paid \$0.00. The difference between MAR and amount paid is \$188.49. The requestor is seeking a lesser amount of \$157.47; this amount is recommended for reimbursement.

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 \$157.47.

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 \$157.47 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

7/26/2018

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, 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.