



## 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**

PATIENT CARE INJURY CLINIC, PA

**Respondent Name**

XL INSURANCE AMERICA INC

**MFDR Tracking Number**

M4-18-3990-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

JUNE 13, 2018

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "After requesting reconsideration in a timely fashion VIA mail to ESIS it is quite evident that the carrier is unwilling to reimburse our facility for services rendered. We submitted our bills and proper clinical documentation in a timely fashion.

The division's commissioner issued bulleting #B-0020-17. The proclamation states that system participants who reside within the counties listed have the right for the Texas workers' compensation deadlines to be tooled through the duration of the proclamation. The proclamation further states that a waiver is applied to non-emergency healthcare provided out of network.

We feel that our facility should be paid according to the workers compensation fee schedule guidelines."

**Amount in Dispute:** \$1,325.68

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Carrier maintains the position that the provider is not entitled to reimbursement based on extent of injury. Excepted injury is for the left ankle. Bills submitted are for the right shoulder and therefore are not entitled to reimbursement."

**Response Submitted by:** ESIS

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 12, 2017 December 14, 2017 December 18, 2017 December 19, 2017	CPT Code 97110-GP (X 3 units) Therapeutic Procedure	\$154.51/ea	\$121.59 X 4 = \$486.36
December 12, 2017 December 14, 2017 December 18, 2017 December 19, 2017	CPT Code 97140 (X 2 units)	\$93.58/ea	\$75.32 X 4 = \$301.28

December 12, 2017 December 14, 2017 December 18, 2017 December 19, 2017	CPT Code 97112	\$58.60/ea	\$55.91 X 4 = \$223.64
December 12, 2017 December 14, 2017 December 18, 2017 December 19, 2017	CPT Code G0283	\$24.83/ea	\$0.00
TOTAL		\$1,325.68	\$1,011.28

### ***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. Texas Labor Code §408.027, effective September 1, 2007, sets out the rules for timely submission of a claim by a health care provider.
3. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets out the reimbursement guidelines for professional services.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 222-Charge exceeds Fee Schedule allowance.
  - 240-Charge reviewed to multiple procedure ground rules.
  - 362-Modifier –GP Services delivered under an outpatient physical therapy plan of care.
  - 402-The appropriate modifier was not utilized.
  - 29-The time limit for filing has expired.
  - 4-The procedure code is inconsistent with the modifier used or a required modifier is missing.
  - 59-Processed based on multiple or concurrent procedure rules.
  - P12-Workers compensation jurisdictional fee schedule adjustment.
  - 148-This procedure on this date was previously reviewed.
  - B7-This provider was not certified/eligible to be paid for this procedure/service on this date of service.
  - NS01-Not approved provider.

#### **Issues**

1. Were the bills filed timely?
2. Did the respondent submit the response in accordance with 28 Texas Administrative Code §133.307?
3. What is the applicable fee guideline for professional services?
4. Is the denial of payment for physical therapy services supported?
5. Is the requestor entitled to additional reimbursement?

#### **Findings**

1. This dispute involves date of service December 12, 2017 through December 19, 2017. The respondent denied reimbursement for the disputed dates of service based upon "29-The time limit for filing has expired." TDI-DWC addresses the issue as follows:
  - The requestor performed the service in Houston, Texas located in Harris 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 Harris 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 Harris 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."
  - 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."
  - 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 dates of service December 12, 2017 through December 19, 2017 as timely because the 95 day filing deadline, in this case, is tolled.
2. The respondent states in the position summary that "Carrier maintains the position that the provider is not entitled to reimbursement based on extent of injury. Excepted injury is for the left ankle. Bills submitted are for the right shoulder and therefore are not entitled to reimbursement."

28 Texas Administrative Code §133.307(d)(2)(F) states, "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. If the response includes unresolved issues of compensability, extent of injury, liability, or medical necessity, the request for MFDR will be dismissed in accordance with subsection (f)(3)(B) or (C) of this section."

The Division finds that the respondent raises issues in the position summary that were not presented to the requestor prior to the date the request for MFDR was filed with the division for the disputed services. A review of the submitted explanation of benefits does not list any denial reasons to support the issues raised in the position summary; therefore, the response was not submitted in accordance with 28 Texas Administrative Code §133.307.

3. The fee guidelines for disputed services is found in 28 Texas Administrative Code §134.203.
4. On the disputed dates of service the requestor billed CPT codes 97110-GP, 97140-GP, 97112-GP, and G0283.

According to the explanation of benefits, the respondent denied reimbursement for the disputed physical therapy services based upon "362-Modifier –GP Services delivered under an outpatient physical therapy plan of care," "402-The appropriate modifier was not utilized," and "4-The procedure code is inconsistent with the modifier used or a required modifier is missing."

Per 28 Texas Administrative Code §134.203(a)(5), "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.”

G0283 is described as “Electrical stimulation (unattended), to one or more areas for indication(s) other than wound care, as part of a therapy plan of care.”

97110 is described as “Therapeutic procedure, 1 or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility.”

97112 is described as “Therapeutic procedure, 1 or more areas, each 15 minutes; neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture, and/or proprioception for sitting and/or standing activities.”

97140 is described as “Manual therapy techniques (eg, mobilization/ manipulation, manual lymphatic drainage, manual traction), 1 or more regions, each 15 minutes.”

GP modifier is described as “Services delivered under an outpatient physical therapy plan of care.” G0283 is used when “(This modifier is only reported when the service is performed as a part of the therapy plan of care. These services are “sometimes therapy” codes that can be performed by non-therapists. Report this modifier only when a qualified therapist performs the service. If a non-therapist performs the service do not report this modifier.)” The requestor appended this modifier to codes 97110, 97112 and 97140.

Medicare’s *Claims Processing Manual*, Chapter 5, Section 20.1, titled Discipline Specific Outpatient Rehabilitation Modifiers - All Claims, effective July 1, 2014 states in part, “GP Services delivered under an outpatient physical therapy plan of care.”

The division finds that the requestor is due reimbursement for billed codes 97110, 97112 and 97140 because they were billed in accordance with the above referenced Medicare Policy. Reimbursement is not recommended for code G0283 because a required modifier “GP” is missing.

5. 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.”

On the disputed dates of service, the requestor billed CPT codes 97110-GP, and 97530-GP. CMS published Medical Learning Network (MLN) Matters, effective January 1, 2011 which states in part “Many therapy services are time-based codes, i.e., multiple units may be billed for a single procedure. The Centers for Medicare & Medicaid Services (CMS) is applying a MPPR to the practice expense payment when more than one unit or procedure is provided to the same patient on the same day, i.e., the MPPR applies to multiple units as well as multiple procedures. Full payment is made for the unit or procedure with the highest PE payment. For subsequent units and procedures, furnished to the same patient on the same day, full payment is made for work and malpractice and 80 percent payment for the PE for services furnished in office settings and other non-institutional settings and at 75 percent payment for the PE services furnished in institutional settings.” The multiple procedure rule discounting applies to the disputed service.

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 77076, which is located in

Houston, Texas; therefore, the Medicare participating amount is based on locality "Houston, Texas".

The 2017 DWC conversion factor for this service is 57.5.

Using the above formula and multiple procedure rule (MPR) discounting policy, the Division finds the following:

Code	Medicare Participating Amount	MAR	MAR X # of Dates	IC Paid	Amount Due
97110-GP (X3)	\$33.45/ea	\$53.59 X # of units = \$121.59	\$121.59 X 4 = \$486.36	\$0.00	\$486.36
97140-GP (X2)	\$30.93/ea	\$49.55 X # of units = \$75.32	\$75.32 X 4 = \$301.28	\$0.00	\$301.28
97112-GP	\$94.90	\$55.91	\$55.91 X 4 = \$223.64	\$0.00	\$223.64

### **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 \$1,011.28.

### ***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 \$1,011.28 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

2/12/2019  
\_\_\_\_\_  
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.**