



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

SAMUEL J ALIANELL MD

Respondent Name

INSURANCE COMPANY OF NORTH AMERICA

MFDR Tracking Number

M4-18-4010-01

Carrier's Austin Representative

Box Number 15

MFDR Date Received

June 18, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The claims were denied for precertification/authorization/notification absent. There was no mention of a utilization review nor Dr. Osborne's peer review from January 3, 2018. We will, however address this report. Dr. Osborne opines that the services are medically necessary. He further opines that office visits should only be on a quarterly basis. The claimant is being monitored for compliance with Class II controlled substances which are being prescribed on a monthly basis... We do not believe that preauthorization was required for follow up office visits with the physician for medication management."

Amount in Dispute: \$1,950.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Dates of service 2/13/17, 3/14/17 and 5/11/17 are outside the 1-year filing requirement and therefore are not eligible for reimbursement. Based upon peer review, ODG supports quarterly visits. During the period of dates listed on the MDR request, office visits were paid quarterly per ODG. Please see attached payment screen. Therefore, it is the Carrier's position that the other dates of service are outside ODG which require preauthorization. Since preauthorization was not obtained, the provider is not eligible for reimbursement."

Response Submitted by: ESIS

SUMMARY OF DISPUTED SERVICE(S)

Date(s) of Service	Disputed Service(s)	Amount In Dispute	Amount Due
February 13, 2017 through December 12, 2017	99213 x 7 and 80307 x 3	\$1,950.00	\$1,023.48

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 §134.600 sets out the guidelines for preauthorization, concurrent review, and voluntary certification of healthcare.
- 28 Texas Administrative Code §137.100 sets out the Treatment Guidelines.
- 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.

5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 197 – Precertification/authorization/notification absent
 - 2 – No proof of pre-auth

Issue(s)

1. Are dates of service February 13, 2017, March 14, 2017 and May 11, 2017 eligible for review?
2. What is the definition of CPT Code 80307?
3. Was preauthorization required for CPT Codes 80307 and 99213?
4. What is the fee schedule for CPT Code 80307 and 99213?
5. Is the requestor entitled to reimbursement?

Findings

1. The respondent asserts the requestor has waived the right to MFDR “based on the requestor’s failure to request medical fee dispute resolution no later than one year after the date of service in dispute.”

28 Texas Administrative Code §133.307(c)(1) requires that a requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. Rule §133.307(c)(1)(A) further requires a request for MFDR, that does not meet certain exceptions listed in Rule §133.307(c)(1)(B), to be filed no later than one year after the date(s) of service in dispute.

The dates of the service in dispute are February 13, 2017, March 14, 2017 and May 11, 2017. The request for medical fee dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) Section on June 18, 2018. This date is later than one year after the date(s) of service in dispute.

- The requestor performed the services in zip code 77384, Conroe, Texas which is located in Montgomery 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 Montgomery 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 threat. 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 Montgomery 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 dates of service February 13, 2017, March 14, 2017 and May 11, 2017, as timely because the one-year dispute filing deadline, in this case, is tolled. As a result, the disputed services are reviewed pursuant to the division rules and guidelines.

2. 28 Texas Administrative Code §134.203 (b) states in pertinent part, "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 80307 is defined as "Drug test(s), presumptive, any number of drug classes, any number of devices or procedures; by instrument chemistry analyzers (eg, utilizing immunoassay [eg, EIA, ELISA, EMIT, FPIA, IA, KIMS, RIA]), chromatography (eg, GC, HPLC), and mass spectrometry either with or without chromatography, (eg, DART, DESI, GC-MS, GC-MS/MS, LC-MS, LC-MS/MS, LDTD, MALDI, TOF) includes sample validation when performed, per date of service."

3. The requestor seeks reimbursement for CPT Codes 99213 and 80307 rendered on February 13, 2017 through December 12, 2017. The insurance carrier denied the disputed services with denial reduction codes, "197 – Precertification/authorization/notification absent", and "2 – No proof of pre-auth."

28 Texas Administrative Code §134.600 (p) (12) states in pertinent part "(p) Non-emergency health care requiring preauthorization includes: (12) treatments and services that exceed or are not addressed by the commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the insurance carrier. This requirement does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits)."

Review of 28 Texas Administrative Code §134.600 finds that clinical laboratory services and office visits do not require preauthorization. Therefore, the services in dispute are subject to 28 Texas Administrative Code §137.100.

28 Texas Administrative Code §137.100(c) states, "Health care provided in accordance with the Division treatment guidelines is presumed reasonable as specified in Labor Code §413.017 and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a)." Furthermore, 28 Texas Administrative Code §137.100(f) states that "A health care provider that proposes treatments and services which exceed, or are not included, in the treatment guidelines may be required to obtain preauthorization..."

The service in dispute is CPT Code 80307, drug test. Review of the 2017 edition of the ODG treatment guidelines finds that "Drug Testing" is recommended. Because the service in dispute was provided in accordance with the division's treatment guidelines, preauthorization is not required. Therefore, the insurance carrier's denial is not supported, and the requestor is entitled to reimbursement for CPT Code 80307.

The service in dispute is CPT Code 99213, office visit. Review of the 2017 edition of the ODG treatment guidelines finds, that office visits are "recommended." Because the office visits in dispute were provided in accordance with the division's treatment guidelines, preauthorization is not required. Therefore, the insurance carrier's denial reason is not supported, and the requestor is entitled to reimbursement for CPT Codes 99213.

28 Texas Administrative Code §134.600 (c) (1) (B) states in pertinent part, "(c) The insurance carrier is liable for all reasonable and necessary medical costs relating to the health care: (1) listed in subsection (p) or (q) of this section only when the following situations occur... (B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care..."

4. 28 Texas Administrative Code §134.203 states in pertinent part, "(c) 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..."

- Procedure code 99213, rendered on February 13, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
 - Procedure code 99213, rendered on March 14, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
 - Procedure code 99213, rendered on May 11, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
 - Procedure code 99213, rendered on June 20, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
 - Procedure code 80307, rendered on June 20, 2017, represents a lab service paid per Rule §134.203(e). The Medicare Clinical Lab Fee is \$61.02. 125% of this amount is \$76.28. The requestor is therefore entitled to a reimbursement amount of \$76.28.
 - Procedure code 80307, rendered on July 25, 2017, represents a lab service paid per Rule §134.203(e). The Medicare Clinical Lab Fee is \$61.02. 125% of this amount is \$76.28. The requestor is therefore entitled to a reimbursement amount of \$76.28.
 - Procedure code 99213, rendered on September 19, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
 - Procedure code 99213, rendered on November 14, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
 - Procedure code 80307, rendered on November 14, 2017, represents a lab service paid per Rule §134.203(e). The Medicare Clinical Lab Fee is \$61.02. 125% of this amount is \$76.28. The requestor is therefore entitled to a reimbursement amount of \$76.28.
 - Procedure code 99213, rendered on December 12, 2017, has a Work RVU of 0.97 multiplied by the Work GPCI of 1 is 0.97. The practice expense RVU of 1.02 multiplied by the PE GPCI of 0.929 is 0.94758. The malpractice RVU of 0.07 multiplied by the malpractice GPCI of 0.809 is 0.05663. The sum is 1.97421 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$113.52. The requestor is therefore entitled to a reimbursement amount of \$113.52.
5. Review of the submitted documentation finds that the requestor is entitled to a total reimbursement amount of \$1,023.48.

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 \$1,023.48.

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 \$1,023.48 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

May 9, 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.