



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

TEXAS HEALTH FORT WORTH

MFDR Tracking Number

M4-19-0062-01

MFDR Date Received

September 5, 2018

Respondent Name

TEXAS MUTUAL INSURANCE COMPANY

Carrier's Austin Representative

Box Number 54

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The purpose of this letter is to inform you that payment for services provided by the above referenced patient does not comply with Chapters 134.403 and 134.404 of Texas Administrative Code."

Amount in Dispute: \$17.67

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Texas Mutual paid the disputed codes consistent with Medicare's multiple procedure reduction policy. No additional payment is due."

Response Submitted by: Texas Mutual Insurance Company

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Service(s)	Amount In Dispute	Amount Due
December 12 and December 19, 2017	97140 and 97035 x 2	\$17.67	\$0.00

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

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.403 sets out the hospital facility fee guideline for outpatient services.
- 28 Texas Administrative Code §134.203 sets out the sets out the fee guidelines for the reimbursement of workers' compensation professional medical services provided on or after March 1, 2008.
- Texas Insurance Code §1305 applicable to Health Care Certified Networks.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - CAC-P12 – Workers Compensation Jurisdictional fee schedule adjustment
 - 356 – This outpatient allowance was based on the Medicare's methodology (Part B) plus the Texas markup
 - 650 – Allowance is reduced per the multiple procedure payment reduction for selected therapy services
 - 725 – Approved non-network provider for Texas Star Network claimant per rule 1305.153(c)

Issues

1. Did the out-of-network healthcare provider meet the requirements of Chapter §1305.006?
2. What Rules apply to physical therapy services rendered in a facility setting?
3. Did the requestor bill in accordance with 28 Texas Administrative Code §134.203 (b)?
4. Is the requestor entitled to reimbursement?

Findings

1. The requestor billed CPT Codes 97035 rendered on December 12, 2017 and CPT Codes 97140 and 97035 rendered on December 19, 2017, to an injured employee enrolled in the Texas Star Network, a certified healthcare network. The insurance carrier's response indicates that the claim is in the Texas Star Network. The requestor seeks a decision from the Division's medical fee dispute resolution (MFDR) section as an out-of-network healthcare provider.

The insurance carrier denied/reduced the disputed charges with denial reason code "CAC-P12 – Workers Compensation Jurisdictional fee schedule adjustment", "356 – This outpatient allowance was based on the Medicare's methodology (Part B) plus the Texas markup", 650 – Allowance is reduced per the multiple procedure payment reduction for selected therapy service" and "725 – Approved non-network provider for Texas Star Network claimant per rule 1305.153(c)."

The requestor filed this medical fee dispute to the Division asking for resolution pursuant to 28 Texas Administrative Code (TAC) §133.307 titled *MDR of Fee Disputes*. The authority of the Division of Workers' Compensation to resolve matters involving employees enrolled in a certified health care network, is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305 and limited application of Texas Labor Code statutes and rules, including 28 Texas Administrative Code §133.307.

Chapter §1305.006 outlines the insurance carrier's liability for out-of-network healthcare and states, "An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee:

- (1) emergency care;
- (2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract; and
- (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103.

The insurance carrier indicates on the EOB the following "Approved non-network provider for Texas Star Network claimant per rule 1305.153 (c)."

The Divisions medical fee dispute resolution section, may address disputes involving health care provided to an injured employee enrolled in an HCN, only if the out-of-network health care provider was authorized by the certified network to do so. The Division finds that the requestor has therefore, met the exception outlined in Chapter 1305.006(3). As a result, the disputed services are under the jurisdiction of the Division of Workers' Compensation and therefore, eligible for medical fee dispute resolution. The disputed services are reviewed pursuant to the applicable rules and guidelines, pursuant to Texas Insurance Code §1305.153(c)."

2. This dispute regards occupational therapy services performed in an outpatient hospital facility setting. Such services, are not paid under Medicare's Outpatient Prospective Payment System but rather under Medicare's Physician Fee Schedule for professional services.

Rule §134.403(h) requires that if Medicare pays using other Medicare fee schedules, reimbursement shall be made using the DWC fee guideline applicable to the code on the date the service was provided. Accordingly, payment for these services is calculated under the DWC Medical Fee Guideline for Professional Services, Rule §134.203(c):

"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...The conversion factors listed in paragraph (1) . . . 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..."

The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by a conversion factor. The MAR is calculated by substituting the division conversion factor. The applicable division conversion factor for calendar year 2017 is \$57.50.

Per Medicare payment policy, when more than one unit of certain therapy services with multiple procedure payment indicator '5' is billed, the first unit of the code with the highest practice expense for that day is paid in full. Payment for each extra therapy unit performed on the same date is reduced by 50% of the practice expense.

3. The Division will now determine whether the requestor is entitled to additional reimbursement for the disputed services. Texas Insurance Code §1305.153 (c) provides “Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers’ Compensation Act and applicable rules of the commissioner of workers’ compensation.”
- 28 Texas Administrative Code §134.203 (c) states in pertinent part, “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 97035, December 12, 2017, has a Work RVU of 0.21 multiplied by the Work GPCI of 1.006 is 0.21126. The practice expense RVU of 0.14 multiplied by the PE GPCI of 0.991 is 0.13874. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.76 is 0.0076. The sum is 0.3576 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$20.56. For each extra therapy unit, payment is reduced by 50% of the practice expense. The PE for this code is not the highest. The PE reduced rate is \$16.57. The insurance carrier paid \$18.58, as a result no additional reimbursement is recommended.
 - Procedure code 97140, December 19, 2017, has a Work RVU of 0.43 multiplied by the Work GPCI of 1.006 is 0.43258. The practice expense RVU of 0.41 multiplied by the PE GPCI of 0.991 is 0.40631. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.76 is 0.0076. The sum is 0.84649 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$48.67. For each extra therapy unit, payment is reduced by 50% of the practice expense. The PE for this code is not the highest. The PE reduced rate is \$36.99. The insurance carrier paid \$36.99, as a result no additional reimbursement is recommended.
 - Procedure code 97035, December 19, 2017, has a Work RVU of 0.21 multiplied by the Work GPCI of 1.006 is 0.21126. The practice expense RVU of 0.14 multiplied by the PE GPCI of 0.991 is 0.13874. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.76 is 0.0076. The sum is 0.3576 multiplied by the DWC conversion factor of \$57.50 for a MAR of \$20.56. For each extra therapy unit, payment is reduced by 50% of the practice expense. The PE for this code is not the highest. The PE reduced rate is \$16.57. The insurance carrier paid \$16.57, as a result no additional reimbursement is recommended.
4. Review of the submitted documentation finds that the insurance carrier issued payments consistent with 28 Texas Administrative Code §134.203 (c). As a result, the requestor is not entitled to additional reimbursement for the disputed services.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	October 12, 2018 Date
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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 prefriere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.