



# 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**

MARK H. HENRY MD

**Respondent Name**

LIBERTY INSURANCE CO

**MFDR Tracking Number**

M4-19-0164-01

**Carrier's Austin Representative**

Box Number 01

**MFDR Date Received**

SEPTEMBER 12, 2018

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The healthcare provider's position on this claim is that this date of service has been partially denied. We find that one of the charges on this claim has not been paid at 100% of the statutory fee as required by law per Texas Administrative Code Title 28 Part 2 Chapter 134 Subchapter C Rule 134.202. The attached medical records adequately support each of the services provided and is sufficient to warrant payment."

**Amount in Dispute:** \$8,765.89

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "CPT 99285-57 was adjusted with payment...Our denial for CPT 69990 remains upheld though. CPT 69990 flags a National Correct Coding Initiative (NCCI) with CPT codes 26037, 35207, and 64890 performed on the same day same session. Modifier 59 was not coded by the provider...The medical record does not support greater than (>) 1 unit for the operating microscope."

**Response Submitted By:** Liberty Mutual Insurance

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 23, 2018	CPT Code 99285	\$353.20	\$93.26
	CPT Code 64890 (X2)	\$2,248.36/ea	\$311.44
	CPT Code 69990(X2)	\$449.67	\$0.00
	CPT Code 35207	\$1,552.60	\$50.92
	CPT Code 69990	\$310.52	\$0.00
	CPT Code 26037	\$1,153.51	\$35.56
TOTAL		\$8,765.89	\$491.18

## ***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. The services in dispute were reduced / denied by the respondent with the following reason code:
  - X030-The report-documentation was not included with the billing. This charge will be evaluated upon receipt of the report-documentation.
  - MPRO-In accordance with the CMS physician fee schedule guidelines, this service was reduced due to the multiple surgery rule.
  - MX50-Per NCCI, the procedure code is denied due to misuse of column 2 code with column 1 code. Procedure included in 26037.
  - MRCA-This service was reduced in accordance with the Workers' compensation fee schedule rules for physician services.
  - P12-Workers' compensation fee schedule adjustment.
  - 52-Service performed resulted in the initial decision to perform the surgery.
  - 309-The charge for this procedure exceeds the fee schedule allowance.
  - 877-Reimbursed is based on the contracted amount.
  - 97-The value of this procedure is included in the value of another procedure performed on this date.
  - W3-Additional payment made on appeal/reconsideration.
  - B13-Previously paid. Payment for this claim/service may have been provided in a previous payment.
  - 193-Original payment decision is being maintained. Upon review, it was determined that tis claim was processed properly.
  - 876-Fee schedule amount is equal to the charge.

### **Issues**

1. What is the applicable fee guideline for professional services?
2. Is the allowance of CPT code 69990 included in the allowance of another service performed on this date?
3. Are the disputed services subject to a contractual agreement?
4. Is the requestor due additional reimbursement for CPT codes 99285, 64890, 35207 and 26037?

### **Findings**

1. The fee guidelines for disputed services are found in 28 Texas Administrative Code §134.203.
2. The requestor is seeking medical fee dispute resolution for CPT code 69990. The respondent wrote in the position summary that "Our denial for CPT 69990 remains upheld though. CPT 69990 flags a National Correct Coding Initiative (NCCI) with CPT codes 26037, 35207, and 64890 performed on the same day same session. Modifier 59 was not coded by the provider...The medical record does not support greater than (>) 1 unit for the operating microscope."

According to the explanation of benefits, the respondent denied reimbursement for CPT code 69990 based upon reason code "97-The value of this procedure is included in the value of another procedure performed on this date," and "MX50-Per NCCI, the procedure code is denied due to misuse of column 2 code with column 1 code. Procedure included in 26037."

On the disputed date of service, the requestor billed CPT codes 99285, 64890, 35207, 26037, and 69990.

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 69990 is described as “Microsurgical techniques, requiring use of operating microscope (List separately in addition to code for primary procedure.”

Per CCI edits, code 69990 is included in the allowance of codes 35207 and 26037; a modifier is allowed to differentiate the service. A review of the medical bill finds the requestor did not append a modifier to code 69990 to differentiate it from codes 35207 and 26037. The division finds the respondent’s denial of payment based upon codes “97” and “MX50” is supported. As a result, reimbursement is not recommended.

3. According to the submitted explanation of benefits, the respondent reduced payment for the disputed services based upon a contractual agreement. No documentation was provided to support that a reimbursement rate was negotiated between the workers’ compensation insurance and provider prior to the services being rendered; therefore, the respondent’s denial based upon reason code “877” is not supported. The division finds the disputed services will be reviewed per the division’s fee guideline.
4. The requestor is seeking additional reimbursement for CPT codes 99285, 64890, 35207, and 26037.

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).

The 2018 DWC conversion factor for this service is 73.19.

The Medicare Conversion Factor is 35.9996

Review of Box 32 on the CMS-1500 the services were rendered in Houston, Texas.

Using the above formula, the division finds:

Code	Medicare Participating Amount	Subject to Multiple Procedure Rule Discounting	MAR	IC Paid	Total Amount Due
99285	\$178.31	No	\$362.52 or less Requestor is seeking \$353.20	\$259.94	\$93.26

Code	Medicare Participating Amount	Subject to Multiple Procedure Rule Discounting	MAR	IC Paid	Total Amount Due
64890 (X2)	\$1,134.11	Yes	\$2,305.73 or less Requestor is seeking \$2,248.36 X 1.5 units = \$3,372.54	\$3,061.10	\$311.44
35207	\$792.86	Yes	\$1,611.95 or less Requestor is seeking \$1,552.60 X 50% = \$776.30	\$725.38	\$50.92
26037	\$591.54	Yes	\$1,202.65 or less Requestor is seeking \$1,153.51 X 50% = \$576.75	\$541.19	\$35.56

**Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due.

***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 \$491.18 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

\_\_\_\_\_  
Date

11/07/2018

### ***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.**