



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

MILLENNIUM CHIROPRACTIC

Respondent Name

STANDARD FIRE INSURANCE CO

MFDR Tracking Number

M4-20-0330-01

Carrier's Austin Representative

Box Number 05

MFDR Date Received

OCTOBER 4, 2019

REQUESTOR'S POSITION SUMMARY

"The services rendered on the above dates of service were performed and billed in accordance with the ODG and the 1996 Medical Fee Guideline, and MUST BE PAID...This patient had never had an FCE before we performed these three FCEs. They paid us the equivalent of a 1.5 hour FCE for the 10/02/18 FCE and then refused to pay for the others, in spite of the fact that the 1996 MFG allows for up to three FCEs to be performed per case."

Amount in Dispute: \$1,806.82

RESPONDENT'S POSITION SUMMARY

" Our bill audit company has determined no further payment is due."

Response Submitted By: Gallagher Bassett Services

SUMMARY OF FINDINGS

| Dates of Service | Disputed Services | Amount In Dispute | Amount Due |
|-------------------|--|-------------------|------------|
| October 2, 2018 | CPT Code 97750-FC (X16 units) Functional Capacity Evaluation (FCE) | \$496.16 | \$0.00 |
| November 13, 2018 | FCE (X12 units) | \$655.32 | \$379.26 |
| December 12, 2018 | FCE (X12 units) | \$655.32 | \$560.02 |
| TOTAL | | \$1,806.82 | \$939.28 |

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 (DWC).

Background

1. 28 Texas Administrative Code §133.307 (TAC), effective May 31, 2012 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.225, effective July 7, 2016, sets the reimbursement guidelines for FCEs.
3. 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.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment reason codes:
 - P12-Workers' compensation jurisdictional fee schedule adjustment.
 - P300-The amount paid reflects a fee schedule reduction.
 - Z710-The charge for this procedure exceeds the fee schedule allowance.
 - 45-Charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement.

Issue

Did the requestor waive the right to medical fee dispute resolution for FCE rendered on October 2, 2018?

Is the requestor entitled to reimbursement for FCEs rendered on November 13, 2018 and December 12, 2018?

Findings

1. The requestor is seeking medical fee dispute resolution for three FCEs, CPT code 97750-FC, in the amount of \$1,806.82.
2. **Date of Service October 2, 2018:**

28 TAC §133.307(c)(1) states: "Timeliness. A requestor shall timely file the request with the DWC's MFDR Section or waive the right to MFDR. The DWC shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section. (A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute." The date of service in dispute is October 2, 2018. The request for medical dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) section on October 4, 2019. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The DWC concludes that the requestor has failed to timely file this dispute with the DWC's MFDR Section; consequently, the requestor has waived the right to medical fee dispute resolution for these services.

3. **Dates of Service November 13, 2018 and December 12, 2018:**

A. According to the explanation of benefits (EOBs), the carrier denied reimbursement for the November 13, 2018 FCE based upon the fee guideline. No EOBs were submitted by either party for the December 12, 2018 FCE. The requestor submitted a Request for Reconsideration letter dated February 18, 2018 that lists all the disputed dates; therefore, the DWC finds the requestor sufficiently supported that date of service December 12, 2018 is eligible for review. The December 12, 2018 FCE will be reviewed per the fee guideline.

The applicable fee guideline for FCEs is found at 28 TAC §134.225.

28 TAC §134.225 states:

The following applies to functional capacity evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the

division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT code 97750 with modifier "FC." FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a division ordered test; a maximum of two hours for an interim test; and a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required. "

The DWC finds: The requestor wrote, "This patient had never had an FCE before we performed these three FCEs." The respondent did not refute this statement or submit any documentation to the contrary; therefore, the requestor is due reimbursement per the fee guideline.

- B. 28 TAC §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 TAC §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."

Medicare Claims Processing Manual, Chapter 5, 10.3.7-effective June 6, 2016, titled *Multiple Procedure Payment Reductions for Outpatient Rehabilitation Services*, states:

Full payment is made for the unit or procedure with the highest PE payment.

For subsequent units and procedures with dates of service prior to April 1, 2013, furnished to the same patient on the same day, full payment is made for work and malpractice and 80 percent payment is made for the PE for services submitted on professional claims (any claim submitted using the ASC X12 837 professional claim format or the CMS-1500 paper claim form) and 75 percent payment is made for the PE for services submitted on institutional claims (ASC X12 837 institutional claim format or Form CMS-1450).

For subsequent units and procedures with dates of service on or after April 1, 2013, furnished to the same patient on the same day, full payment is made for work and malpractice and 50 percent payment is made for the PE for services submitted on either professional or institutional claims.

To determine which services will receive the MPPR, contractors shall rank services according to the applicable PE relative value units (RVU) and price the service with the highest PE RVU at 100% and apply the appropriate MPPR to the remaining services. When the highest PE RVU applies to more than one of the identified services, contractors shall additionally sort and rank these services according to highest total fee schedule amount, and price the service with the highest total fee schedule amount at 100% and apply the appropriate MPPR to the remaining services.

Review of the Medicare policies finds that the multiple procedure payment reduction (MPPR) applies to the Practice Expense (PE) of certain time-based physical therapy codes when more than one unit or procedure is provided to the same patient on the same day. Medicare publishes a list of the codes subject to MPPR annually.

For 2018 the codes subject to MPPR are found in the *CY 2018 PFS Final Rule Multiple Procedure Payment Reduction Files*. Review of that list find that code 97750 is subject to MPPR policy.

The *MPPR Rate File* that contains the payments for 2018 services is found at <https://www.cms.gov/Medicare/Billing/TherapyServices/index.html>.

- MPPR rates are published by carrier and locality.
- Review of Box 32 on the CMS-1500 finds that the services were rendered in zip code 75061 which is located in Irving, Texas; therefore, the Medicare locality is "Dallas, Texas."
- The carrier code for Texas is 4412 and the locality code for Dallas is 11.

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Medicare Payment = Maximum Allowable Reimbursement (MAR).

The Division conversion factor for 2018 is 58.31.

The Medicare conversion factor for 2018 is 35.9996.

The Medicare participating amount for CPT code 97750 is \$38.85 for the first unit and \$27.90 for subsequent units.

Per TAC§134.225 "...a maximum of two hours for an interim test; and a maximum of three hours for the discharge test..."

Using the above formula, the DWC finds:

| Date | Code | No. of Units allowed per TAC§134.225 | MAR | Insurance Carrier Paid | Amount Due |
|-------------------|-------|--------------------------------------|-------------------------|------------------------|------------|
| November 13, 2018 | 97750 | 1 | \$62.93 | \$0.00 | \$62.93 |
| | | 7 | \$45.19 X7 = \$316.33 | \$0.00 | \$316.33 |
| December 12, 2018 | 97750 | 1 | \$62.93 | \$0.00 | \$62.93 |
| | | 11 | \$45.19 X 11 = \$497.09 | \$0.00 | \$497.09 |

Conclusion

The DWC finds that the requestor has waived the right to medical fee dispute resolution for the services in dispute for date of service October 2, 2018, as addressed in 28 TAC §133.307(c)(1) and (c)(1)(A). For that reason, the merits of the issues raised by the parties to this dispute for that date have not been addressed.

For the reasons stated above, the DWC finds that the requestor has established that reimbursement is due for dates of service November 13, 2018 and December 12, 2018. As a result, the amount ordered is \$939.28.

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 DWC has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The DWC hereby ORDERS the respondent to remit to the requestor the amount of \$939.28 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

| | | |
|-----------|--|------------|
| _____ | _____ | 11/08/2019 |
| Signature | Medical Fee Dispute Resolution Officer | 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 DWC within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the DWC 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 DWC. **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.