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**
ELITE HEALTHCARE NORTH DALLAS

**Respondent Name**
STATE OFFICE OF RISK MANAGEMENT

**MFDR Tracking Number**
M4-20-0812-01

**Carrier's Austin Representative**
Box Number 45

**MFDR Date Received**
DECEMBER 2, 2019

## *REQUESTOR'S POSITION SUMMARY*

"These services were reduced due to 'workers compensation jurisdictional fee schedule adjustment' which is **INCORRECT! THE DAILY MAXIMUM ALLOWANCE FOR THERAPY EXPLAINED ON THE EOB ONLY APPLIES TO MEDICARE CLAIMS**."

**Amount in Dispute:** $245.59

## *RESPONDENT'S POSITION SUMMARY*

"The Office respectfully requests the Division issue a finding and decision indicating the requestor is not entitled to additional reimbursement."
**Response Submitted By**: SORM

## *SUMMARY OF FINDINGS*

| Dates of Service | Disputed Services | Amount In Dispute | Amount Due |
|---|---|---|---|
| July 30, 2019 | CPT Code 97110-GP (X6) | $231.50 | $159.44 |
| | CPT Code 97112-GP (X2) | $14.09 | $0.00 |
| TOTAL | | $245.59 | $159.44 |

## *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, effective May 31, 2012 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, sets out the reimbursement guidelines for professional services.

3. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
   - 119-Benefit maximum for this timer period or occurrence has been reached.
   - 163-The charge for this procedure exceeds the unit value and/or the multiple procedure rules.
   - 168-Billed charge is greater than maximum unit value or daily maximum allowance for physical therapy/physical medicine services.
   - W3-Request for reconsideration.
   - 193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
   - 1014-The attached billing has been re-evaluated at the request of the provider. Based on this re-evaluation, we find our original review to be correct. Therefore, no additional allowance appears to be warranted.

**Issues**

Is the requestor entitled to additional reimbursement for physical therapy services rendered on July 30, 2019?

**Findings**

1. The requestor, Elite Healthcare North Dallas, is seeking medical fee dispute resolution for physical therapy services, CPT codes 97112-GP and 97110-GP, rendered on July 30, 2019. The requestor contends that the reimbursement was not in accordance with the fee guideline and additional reimbursement of $245.59 is due.
2. The respondent's representative, SORM, wrote that the requestor is not due additional reimbursement for the disputed services.
3. The fee guidelines for disputed services is found at 28 TAC §134.203.
4. 28 TAC §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."
5. The disputed services are described as:
   - CPT code 97110- "Therapeutic procedure, 1 or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility."
   - CPT code 97112 –"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."

   The requestor appended the "GP" modifier to 97110 and 97112. The "GP" modifier is described as "Services delivered under an outpatient physical therapy plan of care."
6. Per 28 TAC §134.203(a)(7), "Specific provisions contained in the Texas Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program. Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies."
7. 28 TAC §134.600(p)(5), requires preauthorization for "physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels: (A) Level I code range for Physical Medicine and Rehabilitation, but limited to:
   (i) Modalities, both supervised and constant attendance;
   (ii) Therapeutic procedures, excluding work hardening and work conditioning;
   (iii) Orthotics/Prosthetics Management;

(iv) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code."

The requestor wrote that payment is due because the disputed services were preauthorized. In support of their position, the requestor submitted a copy of a report from Injury Management Organization dated July 26, 2019 authorizing 6 physical therapy sessions consisting of 97110 and 97112. The DWC finds the disputed physical therapy services were preauthorized.

According to the explanation of benefits, the respondent paid $79.72 for CPT code 97110 and $104.03 for 97112 based upon "119-Benefit maximum for this time period or occurrence has been reached; 163-The charge for this procedure exceeds the unit value and/or the multiple procedure rules; and 168-Billed charge is greater than maximum unit value or daily maximum allowance for physical therapy/physical medicine services."

The respondent reduced payment for CPT codes 97110 and 97112 due to a Medicare payment policy regarding Medically Unlikely Edit (MUE). MUE's were implemented by Medicare in 2007. MUE's set a maximum number of units for a specific service that a provider would report under most circumstances for a single patient on a single date of service. Medicare developed MUE edits to detect potentially medically unnecessary services.

Although the DWC adopts Medicare payment policies by reference in applicable Rule §134.203, paragraph (a)(7) of that rule states that specific provisions contained in the Division of Workers' Compensation rules shall take precedence over any conflicting provision adopted the Medicare program.

The Medicare MUE payment policy is in direct conflict with Texas Labor Code §413.014 which requires that all determinations of medical necessity shall be made prospectively or retrospective through utilization review; and with Rule §134.600 which sets out the procedures for preauthorization and retrospective review of professional services such as those in dispute here. The DWC concludes that Labor Code §413.014 and 28 TAC §134.600 take precedence over Medicare MUE's; therefore, the respondent's denial reasons are not supported.

8. 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 2019 the codes subject to MPPR are found in CMS 1693F the *CY 2019 PFS Final Rule Multiple Procedure Payment Reduction Files.* Review of that list find that code 97110 and 97112 are subject to MPPR policy.

Here is a chart ranking the PE payment for each of the codes billed by the health care provider on July 30, 2019.

| CODE | PRACTICE EXPENSE | MEDICARE POLICY |
|---|---|---|
| 97110 | 0.4 | MPPR applies |
| 97112 | **0.47** | **Highest rank, MPPR applies to subsequent units** |

As shown above, code 97112 has the highest PE payment among the services billed by the provider that day, therefore, the reduced PE payment applies to the subsequent units of 97112 and 97110.

9. The *MPPR Rate File* that contains the payments for 2019 services is found at https://www.cms.gov/Medicare/Billing/TherapyServices/index.html.

   - MPPR rates are published by carrier and locality.
   - The services were provided in Carrollton, TX therefore, the locality is Dallas, TX.
   - The carrier code for Texas is 4412 and the locality code for Dallas is 11.

| CODE | MPPR PAYMENT |
|---|---|
| 97110 | $24.27 |
| 97112 | $27.38 |

8. 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 DWC had been using this MEI annual percentage adjustment: The 2006 DWC 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) DWC conversion factor in 2007."

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

   The 2019 DWC Conversion Factor is 59.19

   The 2019 Medicare Conversion Factor is 36.0391

Using the above formula, the DWC finds the MAR is:

| Code | Units | Medicare Payment | MAR or §134.203 (h) Lesser of MAR billed amount | Insurance Carrier Paid | Amount Due |
|---|---|---|---|---|---|
| 97110 | 6 | $24.27* | $39.86 x 6 = $239.16 | $79.72 | $159.44 |
| 97112 | 1 | $35.96 | $59.06 | $104.03 | $.00 |
| 97112 | 1 | $27.38* | $44.94 | | |

*MMPR applies

**Conclusion**

For the reasons stated above, the DWC finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is $159.44.

## *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 $159.44 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 | 12/19/2019<br>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**.