



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 INJURY CLINIC

Respondent Name

ZURICH AMERICAN INSURANCE CO

MFDR Tracking Number

M4-21-1408-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

APRIL 9, 2021

REQUESTOR'S POSITION SUMMARY

"We are requesting payment in amount of the MAR for the services provided."

Supplemental Position Summary: "Dates 06/09/2020 and 06/17/2020 represent charges for services that were preauthorized and performed...Date 06/26/2020 represents a charge for an FCE...was denied because the carrier incorrectly counted the number of FCE's performed to date for the patient."

Disputed Amount: \$1,293.60

RESPONDENT'S POSITION SUMMARY

"The carrier's position remains as stated on it's EOBs. The provider is not entitled to reimbursement."

Response Submitted By: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Rows include service dates (June 9, 2020; June 17, 2020; June 26, 2020) and a Total row.

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 (DWC).

Background

1. 28 Texas Administrative Code (TAC) §133.307, effective February 22, 2021 sets out the procedures for resolving medical fee disputes.
2. 28 TAC §134.230, effective July 17, 2016, sets out the reimbursement guidelines for return to work rehabilitation programs.
3. 28 TAC §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. 28 TAC §134.225, effective July 7, 2016, sets the reimbursement guidelines for FCEs.
5. The services in dispute were reduced or denied payment based upon reason code(s):
 - P12-Workers' compensation jurisdictional fee schedule adjustment.
 - B13-Previously paid payment for this claim/service may have been provided in a previous payment.
 - 247-A payment or denial has already been recommended for this service.
 - 112-Payment adjusted as not furnished directly to the patient and/or not documented.
 - 16-Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate.
 - 193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.

Issues

Is the requestor entitled to reimbursement for work hardening program rendered on June 9 and 17, 2020 and the FCE rendered on June 26, 2020?

Findings

1. The requestor is seeking medical fee dispute resolution for reimbursement of \$1,293.60 for work hardening program rendered on June 9 and 17, 2020 and the FCE rendered on June 26, 2020.
2. The respondent's position that denial stands for the disputed work hardening program based upon the reason given on EOBs. A review of the submitted EOBs does not sufficiently explain the basis for denial; therefore, payment is recommended per the fee guideline.
3. The fee guideline for work hardening program is found in 28 TAC §134.230.
4. To determine the appropriate reimbursement for the work hardening program, the DWC refers to the following statute:
 - 28 TAC §134.230(1) states "Accreditation by the CARF is recommended, but not required. (A) If the program is CARF accredited, modifier "CA" shall follow the appropriate program modifier as designated for the specific programs listed below. The hourly reimbursement for a CARF accredited program shall be 100 percent of the maximum allowable reimbursement (MAR). (B) If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80 percent of the MAR."
 - 28 TAC §134.230(3) states, "For division purposes, Comprehensive Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Hardening. (A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT code 97545 with modifier "WH." Each additional hour shall be billed using CPT code 97546 with modifier "WH." CARF accredited programs shall add "CA" as a second modifier. (B) Reimbursement shall be \$64 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes."

5. The DWC reviewed the submitted billing and finds the requestor billed for a non-CARF accredited work hardening program. The following table reflects the DWC's findings:

CODE	No. of Hours	MAR	No of Dates	IC PAID	AMOUNT DUE
97545	2	\$64.00 X 80% = \$51.20 X 2 = \$102.40	2	\$0.00	\$204.80
97546-WH	6	\$64.00 X 80% = \$51.20 X 6 hours = \$307.20	2	\$0.00	\$614.40

6. The respondent denied reimbursement for the FCE based upon reason codes "P12," "112," and "16."
 7. The applicable fee guideline for FCEs is found at 28 TAC §134.225.
 8. 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 requestor billed for eight (8) units of 9775-FC. A review of the submitted report supports billing 8 units for a total of two (2) hours. Therefore, the respondent's denial based upon "112" and "16" is not supported.

The respondent did not support denial based upon the fee guideline. No documentation was submitted to support the requestor exceeded the number of tests or the length of time to perform the test; therefore, the respondent's denial is not supported.

9. 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."

On the disputed dates of service, the requestor billed CPT code 97550-FC (X8). The multiple procedure rule discounting applies to the disputed service.

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.

The *MPPR Rate File* that contains the payments for 2020 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 76164 which is located in Fort Worth, Texas; therefore, the Medicare locality is "Fort Worth, Texas."
- The carrier code for Texas is 4412 and the locality code for Fort Worth is 28.
- The Medicare participating amount for CPT code 97750 at this locality is \$35.48 for the first unit, and \$26.18 for subsequent units.

The DWC conversion factor for 2020 is 60.32.

The Medicare conversion factor for 2020 is 36.0896.

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

Using the above formula, the MAR is \$59.30 for the first unit, and \$43.76 for the subsequent units, for a total of \$365.60. The respondent paid \$0.00. The DWC finds reimbursement of \$365.60 is due.

Conclusion

For the reasons stated above, the DWC finds that the requestor has established that reimbursement is due. As a result, the amount ordered is \$1,184.80.

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 \$1,184.80 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

5/11/2021
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