Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name
MVP SPECIALIST SURGERY CENTER

Respondent Name
DEEP EAST TEXAS SELF INSURANCE FUND

MFDR Tracking Number
M4-21-1806-01

Carrier's Austin Representative
Box Number 44

MFDR Date Received
JUNE 8, 2021

REQUESTOR'S POSITION SUMMARY

"Please review enclosed documents to support separate reimbursement for primary codes and implant codes 63090, 22556, 22610, L8699 (X6) & A4649."

Supplemental Position Summary dated July 13, 2021: "According to the Federal Register, Medicare will not pay for procedures identified with an EE payment designated (procedures requiring overnight stay, blood, long anesthesia time, surgery time .2hrs, etc.) if performed on a Medicare beneficiary in an ASC setting. Nevertheless, these procedures can still be performed on **non-Medicare beneficiaries** in an ASC setting. Per the 28 Texas Administrative Code §§ 134.1 (e) – (f) & 134.204(d)(3), when there is no negotiated or contracted amount, fair and reasonable medical reimbursement for health care based on nationally recognized published studies (i.e. Fir Health) shall be made."

Amount in Dispute: $166,041.09

RESPONDENT'S POSITION SUMMARY

"Payment is not owed because Medicare prohibits the services from being performed in an ASC setting."

"For the additional reasons set forth below, the Division should find that Requestor is not entitled to payment. Respondent has received and considered the supplemental argument filed by Requestor on 7/13/21. The Requestor misstates the applicable law. The Division has addressed this issue many times…The Findings and Decision in those cases are attached at Exhibit A….Rule 134.402(i) controls reimbursement in this case, just as it controlled in those cases."

Responses Submitted by: Stone Loughlin Swanson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
June 29, 2020	Ambulatory Surgical Care (ASC) for CPT Code 63090	$46,052.32	$0.00
	ASC for CPT Code 22556	$39,269.48	$0.00
	ASC for CPT Code 22325	$33,812.10	$0.00

	ASC for CPT Code 22610	$29,745.00	$0.00
	ASC for HCPCS Code L8699 (X6)	$19,612.19	$0.00
	ASC for HCPCS Code A4649	$550.00	$0.00
TOTAL		$166.041.09	$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 (DWC).

Background

1. 28 Texas Administrative Code §133.307, effective February 22, 2021, sets out the procedures for resolving a medical fee dispute.
2. 28 TAC §134.402, effective August 31, 2008, sets out the reimbursement guidelines for ambulatory surgical care services.
3. 28 TAC §133.10, effective April 1, 2014, sets out the required health care provider billing procedures.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
   - 97-Payment adjusted because the benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
   - 985-Service is not allowable under Medicare's ASC guidelines.
   - P12-Workers' compensation jurisdictional fee schedule adjustment.
   - 4915-The charge for the services represented by the revenue code are included/bundled into the total facility payment and do not warrant a separate payment or the payment status indicator determines the service is packaged or excluded from payment.

Issues

Is the requestor due reimbursement for ASC services rendered on June 29, 2020?

Findings

1. The requestor is seeking medical fee dispute resolution in the amount of $166,041.09 for ASC services rendered on June 29, 2020.
2. The respondent denied reimbursement for CPT Codes 63090, 22556, 22325, and 22610 based upon reason codes "985-Service is not allowable under Medicare's ASC guidelines," and "P12-Workers' compensation jurisdictional fee schedule adjustment."

   The respondent wrote, "Payment is not owed because Medicare prohibits the services from being performed in an ASC setting."
3. The requestor disagrees with the denial of payment stating, "Medicare will not pay for procedures identified with an EE payment designated (procedures requiring overnight stay, blood, long anesthesia time, surgery time >2hrs, etc.) if performed on a Medicare beneficiary in an ASC setting. Nevertheless, these procedures can still be performed on **non-Medicare beneficiaries** in an ASC setting."
4. The fee guidelines for disputed services are found in 28 TAC §134.402.
   - 28 TAC §134.402(d) states,

     For coding, billing, and reporting, of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare payment policies in effect on the date a service is provided with any additions or exceptions specified in this section."
   - 28 TAC §134.402(f)(1)(A) states,

     The reimbursement calculation used for establishing the MAR shall be the Medicare ASC reimbursement amount determined by applying the most recently adopted and

effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective Payment System reimbursement formula and factors as published annually in the *Federal Register*. Reimbursement shall be based on the fully implemented payment amount as in ADDENDUM AA, ASC COVERED SURGICAL PROCEDURES FOR CY 2008, published in the November 27, 2007 publication of the *Federal Register*, or its successor.

A review of CMS ASC fee schedule, Addendum AA, ASC Covered Surgical Procedures for CY 2020 finds that code 63090, 22556, 22325, and 22610 are not listed.

- 28 TAC §134.402(i) states,

  If Medicare prohibits a service from being performed in an ASC setting, the insurance carrier, health care provider, and ASC may agree, on a voluntary basis, to an ASC setting as follows:
  (1) The agreement may occur before, or during, preauthorization.
  (2) A preauthorization request may be submitted for an ASC facility setting only if an agreement has already been reached and a copy of the signed agreement is filed as a part of the preauthorization request.
  (3) The agreement between the insurance carrier and the ASC must be in writing, in clearly stated terms, and include:
  (A) the reimbursement amount;
  (B) any other provisions of the agreement; and
  (C) names, titles and signatures of both parties with dates.
  (4) Copies of the agreement are to be kept by both parties. This agreement does not constitute a voluntary network established in accordance with Labor Code §413.011(d-1).

The DWC finds 28 TAC §134.402(i) applies in this case. The respondent preauthorized the services to be performed at the ASC; therefore, the denial based upon "985" is not supported.

5. The requestor also wrote regarding reimbursement, "when there is no negotiated or contracted amount, fair and reasonable medical reimbursement for health care based on nationally recognized published studies (i.e. Fir Health) shall be made."

   The DWC finds 28 TAC §134.402(i) applies in this case. The requestor is seeking an alternative methodology for reimbursement under 28 TAC §134.1(e). 28 TAC §134.402(i) clearly states that "The agreement may occur before, or during preauthorization, and must include "A. the reimbursement amount." 28 TAC §134.402(i) does not provide for the reimbursement amount to be reached after preauthorization in medical fee dispute resolution. The DWC finds because the requestor did not submit a copy of an agreement signed by both parties regarding the reimbursement amount, reimbursement cannot be determined or recommended.

6. The respondent denied reimbursement for HCPCS codes L8699 and A4649 based upon reason codes "97-Payment adjusted because the benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated," and "4915-The charge for the services represented by the revenue code are included/bundled into the total facility payment and do not warrant a separate payment or the payment status indicator determines the service is packaged or excluded from payment."

   The requestor is seeking separate reimbursement for the implantables billed with HCPCS codes L8699 and A4649.

   28 TAC §133.10(f)(1)(W) states,

   All information submitted on required paper billing forms must be legible and completed in accordance with this section. The parenthetical information following each term in this section refers to the applicable paper medical billing form and the field number corresponding to the medical billing form. (1)The following data content or data elements are required for a complete professional or non-institutional medical bill related to Texas workers' compensation health care: (W) supplemental information (shaded portion of CMS-1500/field 24d - 24h) is required when the provider is requesting separate reimbursement for surgically implanted devices or when additional information is necessary to adjudicate payment for the related service line."

A review of the submitted medical bill finds the requestor did not indicate on fields 24d-24h a request for separate reimbursement for the implantables. Therefore, the respondent's denial is supported. As a result, the requestor is not due separate reimbursement for codes L8699 and A4649.

Conclusion

For the reasons stated above, the DWC 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 DWC has determined that the requestor is entitled to $0.00 reimbursement for the disputed services.

Authorized Signature

		08/02/2021
Signature	Medical Fee Dispute Resolution Officer	Date
		08/02/2021
Signature	Director of Medical Fee Dispute Resolution	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 TAC §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 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 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 DWC. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 TAC §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.