TDI Division of Workers' Compensation
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Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name
Robert Zuniga, DC

Respondent Name
Indemnity Insurance Co. of North America

MFDR Tracking Number
M4-22-0642-01

Carrier's Austin Representative
Box Number 15

DWC Date Received
December 2, 2021

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
September 27, 2021	CPT Code 97750-FC (X16) Functional Capacity Evaluation (FCE)	$937.92	$709.97
September 28, 2021	CPT Code 99213	$156.11	$156.11
	Total	$1,094.03	$866.08

Requestor's Position

"the treating doctor does not require medical authorization and is necessary."

Amount in Dispute: $1,094.03

Respondent's Position

The Austin carrier representative for Indemnity Insurance Co. of North America is Downs & Stanford, PC. Downs & Stanford, PC received a copy of this medical fee dispute on December 7, 2021. Rule §133.307(d)(1) states that if the division does not receive the response within 14 calendar days of the dispute notification, then the division may base its decision on the available information

As of today, no response has been received from the carrier or its representative. We therefore base this decision on the information available as authorized under §133.307(d)(1).

Findings and Decision

Authority

This medical fee dispute is decided according to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC).

Statutes and Rules

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

2. 28 TAC §134.225 sets the reimbursement guidelines for FCEs.

3. 28 TAC §134.203 sets out the fee guidelines for professional services.

Denial Reasons

The insurance carrier reduced the payment for the disputed services with the following claim adjustment codes:

- P12-Workers Compensation state fee schedule adjustment.
- 790-This charge was reimbursed in accordance with the Texas medical fee guideline.
- D58-Reimbursemnt is not recommended a medical necessiry/appropriateness was not substantiated per Utilization Review.
- D00-Based on further review, no additional allowance is warranted.
- W3-In accordance with TDI DWC rule 134.804, this bill has been identified as a request for reconsideration or appeal.

Issues

1. Is Indemnity Insurance Co. of North America's denial based on reason code D58 supported?

2. Is Dr. Robert Zuniga entitled to reimbursement for CPT code 97550-FC (X16)?

3. Is Dr. Robert Zuniga entitled to reimbursement for CPT code 99213?

Findings

1. The requestor is seeking medical fee dispute resolution in the amount of $1,094.03 for CPT codes 97750-FC (X16) and 99213.

   Based upon the submitted explanation of benefits, the respondent denied reimbursement for the disputed services based upon "D58-Reimbursemnt is not recommended a medical necessiry/appropriateness was not substantiated per Utilization Review."

28 TAC §133.307(d)(2)(I) requires the respondent to submit documentation "If the medical fee dispute involves medical necessity issues, the insurance carrier must attach documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning General Standards of Utilization Review)."

The respondent did not submit any documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning General Standards of Utilization Review) to support denial based upon "D58". The DWC finds the disputed services will be reviewed per the fee guideline.

2. The 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. "

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 Texas Administrative Code §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 (X16). 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 2021 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 78504 which is located in McAllen, Texas; therefore, the Medicare locality is "Rest of Texas."
- The carrier code for Texas is 4412 and the locality code for Rest of Texas is 99.
- The Medicare participating amount for CPT code 97750 at this locality is $33.44 for the first unit, and $24.77 for subsequent units.

The DWC conversion factor for 2021 is 61.17

The Medicare conversion factor for 2021 is 34.8931.

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 $58.62 for the first unit, and $43.42 for the subsequent units, for a total of $709.97. The respondent paid $0.00. The difference between MAR and amount paid is $709.97.

3. The fee guideline for CPT code 99213 is found at 28 TAC §134.203.

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."

CPT code 99213 is described as, "Office or other outpatient visit for the evaluation and management of an established patient, which requires a medically appropriate history and/or examination and low level of medical decision making. When using time for code selection, 20-29 minutes of total time is spent on the date of the encounter."

The division finds the submitted report supports billing code 99213; therefore, reimbursement is recommended per the fee guideline.

As stated above, to determine the MAR the disputed service is applicable to 28 TAC §134.203(c)(1) and 28 TAC §134.203(c)(2) .

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

- The DWC conversion factor for 2021 is 61.17.
- The Medicare conversion factor for 2021 is 34.8931.
- Review of Box 32 on the CMS-1500 finds that the services were rendered in zip code 78504 which is located in McAllen, Texas; therefore, the Medicare locality is "Rest of Texas."
- The carrier code for Texas is 4412 and the locality code for Rest of Texas is 99.
- The Medicare participating amount for CPT code 99213 at this locality is $89.05.

Using the above formula, the MAR is $156.11. The respondent paid $0.00. The difference between MAR and amount paid is $156.11.

Conclusion

The outcome of this medical fee dispute is based on the evidence presented by the requestor and the respondent at the time of adjudication. Though all evidence may not have been discussed, it was considered.

DWC finds the requester has established that reimbursement of $866.08 is due.

Order

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to reimbursement for the disputed services. It is ordered that Indemnity Insurance Co. of North America must remit to Dr. Robert Zuniga $866.08 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

		03/09/2022
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 under 28 TAC §133.307, which applies to disputes filed on or after **June 1, 2012**.

A party seeking review must submit DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)* and follow the instructions on the form. You can find the form at www.tdi.texas.gov/forms/form20numeric.html. DWC must receive the request within **20 days** of when you receive this decision. You may fax, mail, or personally deliver your request to DWC using the contact information on the form or the field office handling the claim. If you have questions about DWC Form-045M, please call CompConnection at 1-800-252-7031, option 3 or email CompConnection@tdi.texas.gov.

The party seeking review of the MFDR decision must deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with DWC. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** with any other required information listed in 28 TAC §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, opción 3 o correo electronico CompConnection@tdi.texas.gov.