TDI Division of Workers' Compensation
PO Box 12050 | Austin, TX 78711 | 800-252-7031 | tdi.texas.gov/wc

Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name
JORGE LUIS NIETO, DC

Respondent Name
SENTRY CASUALTY COMPANY

MFDR Tracking Number
M4-22-0991-01

Carrier's Austin Representative
Box Number 19

DWC Date Received
January 25, 2022

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
September 9, 2021	99213 and 99080-73	$178.14	$178.14
	Total	$178.14	$178.14

Requestor's Position

"This was denied payment AGAIN ,due to 'treatment medically unnecessary, and based on peer review,'. This is incorrect. TDI also provides that adjusters cannot make medical necessity decisions as it is a violation of their license issued by the Texas Department of Insurance. The patient was treated for compensable areas and the patient is entitled to reasonable medical care as stipulated in Texas law as related to the original injury."

Amount in Dispute: $178.14

Respondent's Position

"This includes extent of injury and medical necessity of the service in question. Accordingly, the Provider's request for Medical Fee Dispute Resolution should be dismissed until the extent of injury and medical necessity issues have been resolved. The medical necessity issue is resolved through the IRO Process whereas the extent of injury issue is resolved through the Hearings Process. It is only after they are resolved that the provider is entitled to submit a DWC-60 with respect to those same services."

Response Submitted by: Flahive, Ogden & Latson

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 (TAC) §133.307 sets out the procedures for resolving medical fee disputes.
2. Texas Labor Code, Chapter 413 sets out the rights and responsibilities related to medical dispute resolution.
3. 28 TAC §19.2005 sets out the standards of utilization review.
4. 28 TAC §133.305 sets out the procedures for resolving medical disputes.
5. 28 TAC §134.203 sets out the fee guideline for professional medical services.
6. 28 TAC §129.5, sets out the procedure for reporting and billing work status reports.

Denial Reasons

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

- 283 - BASED ON A PEER REVIEW, PAYMENT IS DENIED BECAUSE THE TREATMENT(S)/ SERVICE(S) IS MEDICALLY UNREASONABLE/UNNECESSARY.
- 216 - BASED ON THE FINDINGS OF A REVIEW ORGANIZATION.
- W3 - THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION.
- 350 – BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.

Issues

1. Did the insurance carrier raise a new denial reason or defense after the filing of the DWC-60?
2. Is the Insurance Carrier's denial reason for medical necessity supported?
3. Is the Requestor entitled to reimbursement for CPT Code 99213?
4. Is the Requestor entitled to reimbursement for CPT Code 99080-73?
5. Is the Requestor entitled to reimbursement?

Findings

1. The requestor seeks reimbursement for CPT Code 99213 and 99080-73 rendered on September 9, 2021. The insurance carrier's position summary states, "…the Provider's request for Medical Fee Dispute Resolution should be dismissed until the extent of injury and medical necessity issues have been resolved."

   Review of the insurance carrier's response finds new denial reasons or defenses raised that were not presented to the requestor before the filing of the request for medical fee dispute resolution.

   Rule §133.307(d)(2)(B) requires that upon receipt of the request for medical fee dispute resolution, the respondent shall provide any missing information not provided by the requestor and known to the respondent, including: a paper copy of all initial and appeal EOBs related to the dispute, as originally submitted to the health care provider… related to the health care in dispute not submitted by the requestor or a statement certifying that the respondent did not receive the health care provider's disputed billing prior to the dispute request.

Review of the submitted information finds insufficient documentation to support an EOB was presented to the health care provider giving notice of the extent of injury denial reason or defenses raised in the insurance carrier's response to MFDR.

Rule §133.307(d)(2)(F) requires that:

> The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.

Pursuant to Rule §133.307(d)(2)(F), the insurance carrier's failure to give notice to the health care provider of specific codes or explanations for reduction or denial of payment as required by Rule §133.240 , the DWC finds the respondent has raised new denial reasons or defenses. The carrier failed to give notice to the health care provider during the medical bill review process or before the filing of this dispute. Consequently, the division concludes the insurance carrier has waived the right to raise a new denial reason or defense during dispute resolution. Any such new defenses or denial reasons will not be considered in this review

2. The requestor seeks reimbursement for CPT code 99213 and 99080-73 rendered on September 9, 2021. The insurance carrier denied the services in dispute with denial reason codes 216 and 283 (descriptions provided above.)

   The DWC finds that the insurance carrier did not present supporting documentation to the DWC, as required by 28 TAC §133.307 (d)(2)(I). Specifically, the insurance carrier did not support that it conducted a utilization review and presented an adverse determination to the Requestor as required by 28 TAC §19.2005.

   The DWC concludes that the issue of medical necessity is not supported and the services in dispute are eligible for review.

3. The requestor seeks reimbursement for CPT code 99213 which is subject to 28 TAC §134.203(b)(1). The rule states in pertinent part, "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules."

   28 TAC §134.203 states in pertinent part, "(c) 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..."

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

- The 2021 DWC Conversion Factor is 61.17
- The 2021 Medicare Conversion Factor is 34.8931
- Per the medical bills, the services were rendered in Carrollton, TX; therefore, the Medicare locality is "Dallas."
- The Medicare Participating amount for CPT code(s) 99213 at this locality is $93.06.
- Using the above formula, the DWC finds the MAR is $163.14.
- The respondent paid $0.00.
- Reimbursement of $163.14 is recommended for date(s) of service September 9, 2021.

4. CPT code 99080-73 is defined as "Special reports such as insurance forms, more than the information conveyed in the usual medical communications or standard reporting form."

   28 TAC §134.239 states, "When billing for a work status report that is not conducted as a part of the examinations outlined in §134.240 and §134.250 of this title, refer to §129.5 of this title."

   28 TAC §129.5(i)(1) states "Notwithstanding any other provision of this title, a doctor may bill for, and a carrier shall reimburse, filing a complete Work Status Report required under this section or for providing a subsequent copy of a Work Status Report which was previously filed because the carrier, its agent, or the employer through its carrier, asks for an extra copy. The amount of reimbursement shall be $15. A doctor shall not bill in excess of $15 and shall not bill or be entitled to reimbursement for a Work Status Report which is not reimbursable under this section. Doctors are not required to submit a copy of the report being billed for with the bill if the report was previously provided. Doctors billing for Work Status Reports as permitted by this section shall do so as follows: (1) CPT code "99080" with modifier "73" shall be used when the doctor is billing for a report required under subsections (d)(1), (d)(2), and (f) of this section."

   28 TAC §129.5 (d)(1) and (2) states "The doctor shall file the Work Status Report: (1) after the initial examination of the employee, regardless of the employee's work status; (2) when the employee experiences a change in work status or a substantial change in activity restrictions."

   A review of the submitted work status report meets the requirements of 28 TAC §129.5. The DWC finds the requestor supported billing CPT code 99080-73 in accordance with 28 TAC §129.5 (d)(2). As a result, reimbursement of $15.00 is recommended.

5. The DWC finds that the requestor is entitled to a total recommended amount of $178.14.

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.

The DWC finds the requester has established that reimbursement of $178.14 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 the Respondent must remit to the Requestor $178.14 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

		February 18, 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.