

## Medical Fee Dispute Resolution Findings and Decision

### General Information

**Requestor Name**

MARCUS P. HAYES, DC

**Respondent Name**

ZURICH AMERICAN INSURANCE COMPANY

**MFDR Tracking Number**

M4-22-1516-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

March 23, 2022

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
December 30, 2021	97750-FC x 8 units	\$496.00	\$362.58
	<b>Total</b>	\$496.00	\$362.58

### Requestor's Position

"As stated in my request for reconsideration, a FCE does not require pre-authorization as defined by Rule 134.600 because this is an examination and not treatment. Therefore, AI&FATC requests Gallagher Bassett to remit the balance due of \$496.00 for said procedure performed on said patient on said date."

**Amount in Dispute:** \$496.00

### Respondent's Position

The Austin carrier representative for Zurich American Insurance Company is Flahive Ogden & Latson. Flahive Ogden & Latson was notified of this medical fee dispute on March 29, 2022. 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 TAC §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 TAC §134.225, effective July 7, 2016, sets the reimbursement guidelines for FCEs.

### Denial Reasons

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

- 5721 - TO AVOID DUPLICATE BILL DENIAL FOR ALL RECONSIDERATIONS/ ADJUSTMENTS/ ADDITIONAL PAYMENT REQUESTS SUBMIT A COPY OF THIS EOR OR CLEAR NOTATION.
- 90438 & 197 - PAYMENT DENIED/REDUCED FOR ABSENCE OF PRECERTIFICATION/ AUTHORIZATION.
- 3264 - NOT ALL DOS HAVE BEEN AUTHORIZED

### Issues

1. Is the Insurance Carrier's denial reason(s) supported?
2. Is the Requestor entitled to reimbursement for CPT Code 97750-FC?

### Findings

1. The requestor seeks reimbursement for CPT Code 97750-FC x 8 units rendered on December 30, 2021. The insurance carrier denied/reduced the disputed service with denial reduction codes indicated above.

The DWC notified the insurance carrier of the DWC060 request on March 29, 2022 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).

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."

Per 28 TAC §134.225 the injured employee is allowed a maximum of three FCEs for each compensable injury. The insurance carrier did not submit documentation to support that the number of FCE's were exceeded and therefore requiring preauthorization. As a result, the DWC finds that the insurance carrier's denial reason is not supported, and the requestor is therefore entitled to reimbursement for the FCE.

2. 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..."

28 TAC §134.203(b)(1) states, "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."

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, 10.7-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>.

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

- MPPR rates are published by carrier and locality.
  - The disputed date of service is December 30, 2021.
  - The 2021 DWC Conversion Factor is 61.17
  - The 2021 Medicare Conversion Factor is 34.8931
  - The services were rendered in zip code 78230, which is "Rest of Texas."
  - The Medicare participating amount for CPT code 97750 at this locality is \$33.44 for the first unit, and \$24.77 for subsequent units.
  - Using the above formula, the DWC finds the MAR is \$58.62 for the first unit and \$43.42 for subsequent units.
  - $\text{MAR } \$58.62 + \$303.96 (\$43.42 \times 7) = \$362.58$
  - The respondent paid \$0.00.
  - Reimbursement of \$362.58 is recommended.
3. The DWC finds that the requestor is therefore entitled to reimbursement in the amount of \$362.58. Therefore, this amount is recommended.

### 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 \$362.58 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 \$362.58 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

### Authorized Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

June 9, 2022  
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](http://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](mailto: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 electrónico [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).