



## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**

ASHLEY FERGUSON, FNPC

**Respondent Name**

LIBERTY INSURANCE CORPRATION

**MFDR Tracking Number**

M4-23-0440-01

**Carrier's Austin Representative**

Box Number 01

**DWC Date Received**

October 17, 2022

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
November 19, 2021 and December 10, 2021	99213 x 2	\$46.00	\$46.00
<b>Total</b>		\$46.00	\$46.00

### Requestor's Position

"According to the EOB, the carrier did not properly reimburse CPT code 99213 on the claim for DOS 12/10/2021. When the claim was processed, CPT code 99213, was only reimbursed \$92.00. This amount was less than the, agreed upon amount for Texas Workers' Comp."

**Amount in dispute:** \$46.00

### Respondent's Position

"We have again reviewed payment for the services of November 19, 2021, and December 10, 2021 by Ashley Ferguson, NP and determined that reimbursement was issued according to the guidelines provided by the Texas Medical Fee Schedule. No additional payment is due as paid correctly for, Licensed Non-Physician Practitioner."

**Response Submitted by:** Liberty Mutual Insurance Company

## 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. 28 TAC §134.203 sets out the fee guideline for professional medical services.
3. Texas Insurance Code (TIC) 1451.104 allows for different reimbursement for medical doctors and physician assistants.

### Denial Reasons

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

- 252 – The recommended allowance is based on the value for services performed by a licensed non-physician practitioner.
- 876 – Fee schedule amount is equal to the charge.

### Issues

1. What services are in dispute?
2. How are the disputed services reimbursed under the Texas Workers' Compensation system?
3. Is the Requestor entitled to additional reimbursement?

### Findings

1. The requestor seeks additional reimbursement for CPT Code 99213 rendered on November 19, 2021 and December 10, 2021. The insurance carrier issued a partial payment of \$92.00 for each disputed date of service and denied the remaining charge with denial reason codes, indicated above.

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."

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."

2. The requestor billed \$115.00, and the insurance carrier issued a payment in the amount of \$92.00, which is 80% of the billed amount. The disputed CPT code was rendered by a nurse practitioner (NP). The insurance carrier's reduction of payment is based on Medicare's non-physician reimbursement policies. The DWC will now consider if 80% reimbursement of the billed amount applies to NP's.

28 TAC [§134.203](#) Medical Fee Guideline for Professional Services, states,

(a) (5) "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.

(b) 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."

Chapter 12 of the [Medicare Claims Processing Manual](#) Physician/Nonphysician Practitioners "120 - Nurse Practitioner (NP) and Clinical Nurse Specialist (CNS) Services Payment Methodology (Rev. 2656, Issuance: 02-07-13, Effective: 02-19-13, Implementation: 02-19-13). See chapter 15, sections 200 and 210 of the Medicare Benefit Policy Manual, pub. 100- 02, for coverage policy for NP and CNS services.

A. General Payment In general, NPs and CNSs are paid for covered services at 80 percent of the lesser of the actual charge or 85 percent of what a physician is paid under the Medicare Physician Fee Schedule. There is a separate payment policy for paying for NP and CNS assistant-at surgery services. See section 120.1 of this chapter."

Texas Insurance Code [Sec. 1451.104](#) states in part:

(c) Notwithstanding Subsection (a), a health insurance policy may provide for a different amount of payment or reimbursement for scheduled services or procedures performed by an advanced practice nurse, nurse first assistant, licensed surgical assistant, or physician assistant if the methodology used to compute the amount is the same as the methodology used to compute the amount of payment or reimbursement when the services or procedures are provided by a physician.

A physician is paid for CPT 99213 at the Medicare rate plus a DWC multiplier. Reimbursing a NP at 80 percent of the actual charge is not the same methodology used for physician reimbursement and is contrary to TIC 1451.104(c). The DWC finds that the requestor is therefore entitled to 85% of the Medicare Physician Fee Schedule.

3. 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... when performed in an office setting, the established conversion factor to be applied is \$52.83... (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 zip code 78666; therefore, the Medicare locality is "Rest of Texas."
- The Medicare Participating amount for CPT code 99213 at this locality is \$89.05.
- 85% of the CMS Fee Schedule = Medicare Participating amount of \$75.69.
- Using the above formula, the DWC finds the MAR is \$136.61.
- The respondent paid \$92.00.
- The requestor seeks an additional payment of \$23.00, for each disputed date of service. Applicable 28 TAC §134.203(h) states that the total reimbursement is the lesser of the maximum allowable reimbursement (MAR) and the billed amount, as a result the requestor is entitled to  $\$23.00 \times 2 = \$46.00$ . The DWC finds that the requestor is therefore entitled to an additional payment amount of \$46.00.

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 additional reimbursement of \$46.00 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 \$46.00 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	December 5, 2022 Date
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**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).