



Medical Fee Dispute Resolution Findings and Decision General Information

Requestor Name

Marcus Hayes, D.C.

Respondent Name

Liberty Insurance Corp.

MFDR Tracking Number

M4-23-1383-01

Carrier's Austin Representative

Box Number 1

DWC Date Received

February 13, 2023

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
12/14/2022	97750-FC 10 units	\$566.28	\$0.00

Requestor's Position

"... Payment was reduced due to: 309 The charge for this procedure exceeds the fee schedule allowance. Regarding the reduction: If you refer to the claim form submitted, the number of units billed is clearly indicated as "10". However, only 1 unit was reimbursed. Therefore, AI&FATC requests Liberty Mutual reconsider and remit payment for the additional 9 units and for the balance due of \$566.28 for said procedure performed on said patient on said date."

Amount in Dispute: \$566.28

*Note that the following is a supplemental position statement from a letter to the division from Marcus Hayes,D.C., dated March 4, 2023:

"Attached you will find additional payment by the carrier in the amount of \$416.79 as well as \$0.74 in interest. However, the carrier reduced payment due to:

163 The charge for this procedure exceeds the unit value and/or the multiple procedure rules.
B13 Previously paid. Payment for this claim/service may have been provided in a previous payment... Again, the DIVISION, not Medicare, sets forth specific criteria that must be met in order to qualify as a FCE per Texas Administrative Code. Therefore, the FCE is not subject to the Medicare payment provision of a multiple procedure payment reduction for selected therapy services. The MAR for 97750 is \$62.92 for this region. Therefore, correct reimbursement for the 12/14/2022 FCE

should have been \$629.20 (\$480.45 remitted). Therefore, AI&FATC requests Liberty Mutual remit the balance due of \$148.75.”

Amended Amount in Dispute: \$148.75

Respondent's Position

“We base our payments on the Texas Fee Guidelines and the Texas Department of Insurance Division of Workers' Compensation Acts and Rules. This is not a network claim. The bills have been reviewed and adjusted for payments. The provider billed 97750 with 10 units. The first unit for 97750 was paid at \$62.92 and each additional unit was reimbursed with the multiple payment reduction applied in the amount of \$46.31 per unit. Copies of EOBs are submitted for your review.”

Response Submitted by: Liberty Mutual Insurance

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. 28 TAC §134.210 applied to fee guidelines for division-specific services.
4. 28 TAC §134.225 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:

- 309 – The charge for this procedure exceeds the fee schedule allowance.
- 163 – The charge for this procedure exceeds the unit value and/or the multiple procedure rules.

Issues

1. Is Marcus Hayes, D.C. entitled to additional reimbursement?

Findings

1. Dr. Hayes is seeking additional reimbursement for a functional capacity evaluation performed on December 14, 2022. The examination is identified as a division-specific service with billing code 97750-FC.

28 TAC §134.225 states: "The following applies to functional capacity evaluations (FCEs) ... 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."

Per 28 TAC §134.203 (b)(1), parties are required to apply Medicare payment policies, including its coding, billing, correct coding initiatives (CCI) edits, modifiers, and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules to workers' compensation coding, billing, reporting, and reimbursement of professional medical services.

28 TAC §§134.203 (a)(7) and 134.210 (a) state that specific provisions contained in the Texas Labor Code or division rules shall take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program. However, no such conflict regarding billing or reimbursement was found that applies to a division-specific functional capacity evaluation. Therefore, Medicare reimbursement rules are applied to the examination in question.

Per [Medicare Claims Processing Manual \(cms.gov\)](https://www.cms.gov/medicare-claims-processing-manual), Chapter 5, 10.7, effective February 6, 2019:

Medicare applies a multiple procedure payment reduction (MPPR) to the practice expense (PE) payment of select therapy services. The reduction applies to the HCPCS codes contained on the list of "always therapy" services ...

Many therapy services are time-based codes, i.e., multiple units may be billed for a single procedure ...

Full payment is made for the unit or procedure with the highest PE payment ... 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.

Procedure code 97550 is classified as "always therapy" in the 2022 Therapy Code List and Dispositions found in the [Annual Therapy Update | CMS](#) and has a value of "5" on the MFSD. Therefore, the MPPR applies to the reimbursement of this code.

On the disputed date of service, the requestor billed CPT code 97550-FC X 10 units.

As described above, the multiple procedure discounting rule applies to the disputed service.

The MPPR Rate File that contains the payments for 2022 services is found at <https://www.cms.gov/Medicare/Billing/TherapyServices/index.html>.

To determine the MAR the following formula is used:

$(\text{DWC Conversion Factor} / \text{Medicare Conversion Factor}) \times \text{Medicare Payment} = \text{MAR}$.

- MPPR rates are published by carrier and locality.
- The disputed date of service is December 14, 2022.
- The disputed service was rendered in zip code 77581, locality 09.
- The Medicare participating amount for CPT code 97750 at this locality is \$34.86 for the first unit, and \$25.66 for subsequent units.

- The 2022 DWC Conversion Factor is 62.46
- The 2022 Medicare Conversion Factor is 34.6062
- Using the above formula, the DWC finds the MAR is \$479.74.
- The respondent paid \$479.71 (plus .74 interest reported per requester)
- No additional reimbursement is recommended.

The division finds that the requestor has not established that additional reimbursement is due.

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 division finds that no additional reimbursement is due.

Order

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to \$0.00 additional reimbursement for the disputed service.

Authorized Signature

		April 27, 2023
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 electrónico CompConnection@tdi.texas.gov.