

Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Marcus Hayes, D.C.

Respondent Name

Liberty Insurance Corp.

MFDR Tracking Number

M4-23-1498-01

Carrier's Austin Representative

Box Number 01

DWC Date Received

February 24, 2023

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
November 9, 2022	Functional Capacity Evaluation 97750-FC x 8 units	\$116.27	\$0.00

Requestor's Position

An FCE is billed and reimbursed in accordance with 28 Texas Administrative Code 134.203 (c) (1); however, an FCE is a Division-specific code with a Division-specific modifier (97750-FC) defined as a comprehensive evaluation focusing on measuring the patient's functional abilities (potential for work). CPT code 97750 (physical performance tests/measurements) is classified as an "always therapy" code used to evaluate the patient's performance of a specific activity/group of activities (to assess physical capabilities). 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. The 11/09/2022 FCE consisted of 8 units, therefore, the MAR for the 11/09/2022 FCE is \$503.36.

Amount in Dispute: \$116.27

Respondent's Position

The provider billed 97750 with 8 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 \$4631 per unit. Total payment issued \$387.09 Is appropriate, No additional payment is due.

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 §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 TAC §134.203 sets out the fee guidelines for professional medical services.
3. 28 TAC §134.210 applied to fee guidelines for division-specific services.
4. 28 TAC §134.225 sets out the fee guidelines for functional capacity evaluations.

Denial Reasons

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

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

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 November 9, 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 \(cms.gov\)](#), 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.

Per the MFSD, the following information is used to calculate the Medicare payment for procedure code 97750 on November 9, 2022:

- Per the submitted medical bills, the service was rendered in zip code 77581 which is in Medicare locality 0441209.
- The Work RVU was 0.450 with GPCI adjustment of 1.032.
- The PE RVU was 0.520 with GPCI adjustment of 1.023. Subsequent units are calculated with PE RVU 0.260 with GPCI adjustment of 1.026.
- The MP RVU was 0.020 with GPCI adjustment of 0.550.
- The Medicare Participating Amount for CPT code 97750 at this locality is \$62.92 for the first unit and subsequent units is \$25.47.

28 TAC §134.203 (c)(1) and (2) states that DWC conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index to the previous year's conversion factors, and shall be effective January 1st of the new calendar year. To determine the MAR for the first unit, the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) x Medicare Participating Amount.

- The 2022 DWC Conversion Factor is \$62.46
- The 2022 Medicare Conversion Factor is \$34.6062

The MAR for the first unit is \$62.92. The MAR for each subsequent unit is \$45.96. For eight total units, the MAR is \$384.66. The insurance carrier paid \$387.09. No additional reimbursement 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.

DWC finds the requester has not established that additional reimbursement is due.

Order

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

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	April 14, 2023 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. 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.