



## Medical Fee Dispute Resolution Findings and Decision

### General Information

**Requestor Name**

Marcus Hayes, D.C.

**Respondent Name**

Safety National Casualty Corp.

**MFDR Tracking Number**

M4-23-1517-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

February 27, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
December 20, 2022	Functional Capacity Evaluation 97750-FC x 8 units	\$503.36	\$387.09

### Requestor's Position

The 12/20, 2022 FCE was [the injured employee's] third FCE. [The injured employee's] first FCE was performed on 10/26/2022 and ... second FCE was performed on 11/23/2022. Therefore, AI&FATC requests that ESIS reconsider and remit the balance due of \$503.36 for said procedure performed on said patient on said date.

**Amount in Dispute:** \$503.36

### Respondent's Position

It has been determined that ESIS Med Bill Impact will stand on the original recommendation of \$0.

Claimant already billed for 3 FCE's in 2022. The dates of service on these were 06/07/2022 provided by ICH Healthcare, 10/26/2022 and 11/23/2022 provided by Dr. Hayes.

**Response Submitted by:** ESIS

## 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 §134.225 sets out the fee guidelines for division-specific functional capacity evaluations.

### Denial Reasons

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

- 150 – PT time parameters or fee schedule allowance exceeded.
- 119 – Benefit maximum for this time period or occurrence has been reached.
- P12 – Workers compensation jurisdictional fee schedule adjustment.
- N435 – Exceeds number/frequency approved/allowed within time period without support documentation.

### Issues

1. Is Safety National Casualty Corp.'s denial reason supported?
2. Is Marcus Hayes, D.C. entitled to additional reimbursement?

### Findings

1. Dr. Hayes is seeking reimbursement for a division-specific functional capacity evaluation billed with procedure code 97750-FC. The insurance carrier denied the disputed service stating that it "exceeds number/frequency approved/allowed within time period without support documentation."

28 TAC §134.225 states, in relevant part,

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."

The insurance carrier argued that the claimant had already had three FCEs. "The dates of

service on these were 06/07/2022 provided by ICH Healthcare, 10/26/2022 and 11/23/2022 provided by Dr. Hayes." No evidence was provided to support that three division-specific functional capacity evaluations billed with procedure code 97750-FC in accordance with 28 TAC §134.225 were submitted to the insurance carrier.

DWC finds that Safety National Casualty Corp.'s denial reason is not supported.

2. Because the insurance carrier failed to support its denial of payment for the services in question, DWC finds that Dr. Hayes is entitled to reimbursement.

Per 28 TAC §134.225,

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.

Review of the submitted documentation finds that the documentation requirements of 28 TAC §134.225 were met.

28 TAC §134.203 (c) states:

- To determine the [maximum allowable reimbursement] 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 ...
  - (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 ...

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 97750 is classified as "always therapy" in the 2022 Therapy Code List and Dispositions found at [Annual Therapy Update | CMS](#) and has a value of "5" on the Medicare Fee Schedule Database (MFSD). Therefore, the MPPR applies to the reimbursement of this code.

To determine the MAR, the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) x Medicare Participating Amount.

- The DWC conversion factor for 2022 is 62.46.
- The Medicare conversion factor for 2022 is 34.6062.
- Per the submitted medical bills, the service was rendered in zip code 77581 which is in Medicare locality 0441209.

The Medicare participating amount for CPT code 97750 is \$34.86 for the first unit and \$25.66 for subsequent units. The MAR is calculated as follows:

- $(62.46/34.6062) \times \$34.86 = \$62.92$  for the first unit.
- $(62.46/34.6062) \times \$25.66 = \$46.31$  for each subsequent unit.

The total MAR for eight units is \$387.09. 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.

DWC finds the requester has established that additional reimbursement of \$387.09 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 Safety National Casualty Corp. must remit to Marcus Hayes, D.C. \$387.09 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

\_\_\_\_\_  
April 28, 2023  
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).