



## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**

Marcus Hayes, D.C.

**Respondent Name**

Old Republic Insurance Co.

**MFDR Tracking Number**

M4-23-1849-01

**Carrier's Austin Representative**

Box Number 44

**DWC Date Received**

March 28, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
02/16/2023	97750-FC, 10 units	\$245.04	\$0.00

### Requestor's Position

"As stated in my request for reconsideration, Regarding '163': 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 payment reduction is not supported... Regarding '600' and '119': TDI-DWC Rule 134.203 (g) states, '...A maximum of 3 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 the modifier "FC". FCEs shall be reimbursed in accordance with (rule) 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.' [patient name] 02/16/2023 FCE was his initial FCE and up to 16 units are allowed for initial FCEs... The 02/16/2023 FCE consisted of 10 units. Sedgwick remitted \$404.96 and correct reimbursement should've been \$650.00. Therefore, AI&FATC requests that Liberty Mutual remit the balance due of \$245.04 for said procedure performed on said date on said claimant."

**Amount in Dispute:** \$245.04

**Requester's Supplemental Response dated April 9, 2023:** "On 03/29/2023, the carrier remitted an additional \$96.72 (see attached). However, the carrier again incorrectly reduced the amount

due for the same reasons the dispute was filed for in the first place: 163 The charge for this procedure exceed the unit value and/or the multiple procedure rules. My position remains the same and request Sedgwick to remit the balance due of \$148.32.”

### **Respondent's Position**

The Austin carrier representative for Old Republic Insurance Co. is White Espey PLLC. The representative was notified of this medical fee dispute on April 4, 2023. Per 28 Texas Administrative Code §133.307 (d)(1), if the DWC does not receive the response within 14 calendar days of the dispute notification, then the DWC may base its decision on the available information. As of today, no response has been received from the insurance carrier or its representative. We will base this decision on the information available.

**Response Submitted by:** N/A

### **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 the payment for the disputed services with the following claim adjustment codes:

- 163 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE UNIT VALUE AND/OR THE MULTIPLE PROCEDURE RULES.
- 600 - ALLOWANCE BASED ON MAXIMUM NUMBER OF UNITS ALLOWED ACCORDING TO THE FEE SCHEDULE AND/OR SERVICE CODE DESCRIPTION OR REGULATIONS.
- 119 - BENEFIT MAXIMUM FOR THIS TIME PERIOD OR OCCURRENCE HAS BEEN REACHED.
- P12 - WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
- N600 - Adjusted based on the applicable fee schedule for the region in which the service was rendered.
- W3 - BILL IS A RECONSIDERATION OR APPEAL.
- 1002 - Due to an error in processing the original bill, we are recommending further payment be made for the above noted procedure.
- 2008 - ADDITIONAL PAYMENT MADE ON APPEAL/RECONSIDERATION.

## Issues

1. Is Marcus Hayes, D.C. entitled to additional reimbursement for 10 units of 97750-FC rendered on February 16, 2023?

## Findings

1. Dr. Hayes is seeking reimbursement for a functional capacity evaluation (FCE) performed on February 16, 2023. The examination is identified as a division-specific service with billing code 97750-FC. The service reimbursement was reduced by the insurance carrier due to reason 163, defined above.

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.

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 2023 services is found at [www.cms.gov/Medicare/Billing/TherapyServices/index.html](http://www.cms.gov/Medicare/Billing/TherapyServices/index.html).

To determine the maximum allowable reimbursement (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 February 16, 2023
- The disputed service was rendered in zip code 77581, locality 09, carrier 4412.
- The Medicare participating amount for CPT code 97750 in 2023 at this locality is \$34.73 for the first unit, and \$25.28 for subsequent units.
- The 2023 DWC Conversion Factor is 64.83
- The 2023 Medicare Conversion Factor is 33.8872
- Using the above formula, the DWC finds the MAR is \$501.71
- The respondent paid \$404.96 on March 3, 2023, and an additional \$96.72 on March 21, 2023, for a total payment of \$501.68.
- 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.

The division finds that the requestor 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 additional reimbursement for the disputed service.

### **Authorized Signature**

_____	_____	_____ <u>May 31, 2023</u>
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](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).