



## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**  
ROBERT ZUNIGA, DC

**Respondent Name**  
HARTFORD UNDERWRITERS' INSURANCE  
COMPANY

**MFDR Tracking Number**  
M4-23-3022-01

**Carrier's Austin Representative**  
Box Number 47

**DWC Date Received**  
August 2, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
September 14, 2022	CPT Code 97750-FC (8 units) Functional Capacity Evaluation (FCE)	\$424.88	\$370.27
	<b>Total</b>	\$424.88	\$370.27

### Requestor's Position

"Our office received an explanation of review for date of service: 09/14/2022 with explanation codes: \*90223 – fee schedule adjustment \*P12 – fee schedule \*296 – service exceeds maximum reimbursement guidelines. The functional capacity evaluation for [injured employee] has not been previously paid... The MAR is \$53.11 per unit. Our office billed for 8 units; therefore, \$53.11 x 8 = \$424.88."

**Amount in Dispute:** \$424.88

### Respondent's Position

"The provider submitted documentation that supports the billing of an FCE exam and not a PPE exam, The provider has met all the components of the FCE exam and therefore must adhere to the billing requirements as outlined below under 134.204 (g) and append the required modifier "FC", the provider has appended the modifier "GP" in error. As you are aware Texas is a no downcode state and for the reason the providers billing of 97750-GP was appropriately denied as the provider failed to append the required modifier of "FC". By not appending the required modifier "FC", the provider is able to circumvent the FCE limitations."

**Response Submitted by:** Gallagher Bassett

## 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 §134.225 sets the reimbursement guidelines for FCEs.
3. 28 TAC §134.203 sets out the fee guidelines for professional services.

### Denial Reasons

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

- 90563 & 193 – Original payment decision is being maintained. Upon review it was determined that this claim was processed properly.
- 90223& P12 – Workers' compensation jurisdictional fee schedule adjustment.
- 298 – Service exceeds maximum reimbursement guidelines.

### Issues

1. Are the insurance carrier's denial reasons supported?
2. Is the requestor entitled to reimbursement?

### Findings

1. The requestor seeks reimbursement for CPT Code 97750-FC in the amount of \$424.88 rendered September 14, 2022.

According to the explanation of benefits, the carrier denied payment for the disputed FCE based upon the denial reasons indicated above.

The insurance carrier states, "The provider submitted documentation that supports the billing of an FCE exam and not a PPE exam, The provider has met all the components of the FCE exam and therefore must adhere to the billing requirements as outlined below under 134.204 (g) and append the required modifier 'FC'." A review of the initial and reconsideration medical bills document that the requestor billed for CPT Code 97750-FC. A review of the explanation of benefits (EOBs) support that the insurance carrier reviewed CPT Codee 97750-FC.

A review of the medical records provided to MDR, do not contain EOBS or medical bills to support the carrier's assertion that the requestor billed for CPT Code 97750-GP.

The requestor charged for and documented CPT Code 97750-FC, according to a review of the medical bills and EOBS. As a result, the insurance company's reasons for denial are not supported. The DWC finds that the requestor is entitled to reimbursement for the disputed service.

2. The requestor billed CPT Code 97750-FC rendered on September 14, 2022. The fee guideline for FCEs is found at 28 TAC §134.225.

28 TAC §134.225 states:

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." 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. "

28 TAC §134.203(c)(1) states "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, 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."

28 TAC §134.203(c)(2) states "The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. The 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. The following hypothetical example illustrates this annual adjustment activity if the Division had been using this MEI annual percentage adjustment: The 2006 Division conversion factor of \$50.83 (with the exception of surgery) would have been multiplied by the 2007 MEI annual percentage increase of 2.1 percent, resulting in the \$51.90 (with the exception of surgery) Division conversion factor in 2007."

On the disputed dates of service, the requestor billed CPT code 97550-FC (8 units). The multiple procedure rule discounting applies to the disputed service.

*Medicare Claims Processing Manual* Chapter 5, 10.3.7-effective June 6, 2016, titled *Multiple Procedure Payment Reductions for Outpatient Rehabilitation Services*, states:

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

For subsequent units and procedures with dates of service prior to April 1, 2013, furnished to the same patient on the same day, full payment is made for work and malpractice and 80 percent payment is made for the PE for services submitted on professional claims (any claim submitted using the ASC X12 837 professional claim format or the CMS-1500 paper claim form) and 75 percent payment is made for the PE for services submitted on institutional claims (ASC X12 837 institutional claim format or Form CMS-1450).

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.

To determine which services will receive the MPPR, contractors shall rank services according to the applicable PE relative value units (RVU) and price the service with the highest PE RVU at 100% and apply the appropriate MPPR to the remaining services.

When the highest PE RVU applies to more than one of the identified services, contractors shall additionally sort and rank these services according to highest total fee schedule amount, and price the service with the highest total fee schedule amount at 100% and apply the appropriate MPPR to the remaining services.

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

- In 2022, the disputed service was rendered.
- MPPR rates are published by carrier and locality.
- Review of Box 32 on the CMS-1500 finds that the services were rendered in zip code 78504; the Medicare locality is "Rest of Texas."
- The Medicare participating amount for CPT code 97750 at this locality is \$33.16 for the first unit, and \$24.57 for the subsequent 7 units.
- The DWC conversion factor for 2022 is 62.46.
- The Medicare conversion factor for 2022 is 34.6062.

To determine the MAR the following formula is used: (DWC Conversion Factor/Medicare Conversion Factor) X Medicare Payment = Maximum Allowable Reimbursement (MAR).

- Using the above formula, the MAR is \$59.85 for the first unit, and \$44.35 for the subsequent 7 units, for a total of \$370.27.
- The respondent paid \$0.00.
- The requestor seeks \$424.88.
- The Requestor is entitled to reimbursement in the amount of \$370.27. 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.

The DWC finds the requester has established that reimbursement of \$370.27 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, \$370.27 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

\_\_\_\_\_  
November 13, 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 managing 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).