

Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Jeffrey Gibberman, M.D.

Respondent Name

Indemnity Insurance Co. of North America

MFDR Tracking Number

M4-24-0554-01

Carrier's Austin Representative

Box Number 15

DWC Date Received

November 3, 2023

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
November 2, 2022	Neuromuscular Testing and Supplies	\$2,645.00	\$0.00

Requestor's Position

"Denial reason is for timely filing. We utilize a clearinghouse for our workers compensation claims. Attached to this appeal you will see a confirmation page that we attempted to send in a timely manner. This is having been established to constitute proof."

Amount in Dispute: \$2,645.00

Respondent's Position

"The services at issue were performed on 11-02-2022, which required the Request to be filed with the Division no later than 11-02-2023. As documented by the Division date stamp, the Request was received on 11-03-2023, or late. The Provider failed to timely submit the Request for Medical Fee Dispute Resolution and has waived the right to reimbursement ...

"Without waiving the foregoing, the Carrier contends the Provider is not entitled to reimbursement. The Provider contends they timely submitted a properly coded bill to the Carrier, however the e-billing included in the Provider's supporting documentation shows Liberty Mutual as the payer. The billing was not submitted to the proper Carrier until 10-04-2023, more than 95

days after the date of service. The Provider has submitted no documentation to support when it was notified of the proper carrier. The Carrier timely issued a denial, and contends the Provider is not entitled to additional reimbursement.”

Response Submitted by: Constitution State Services

Findings and Decision

Authority

This medical fee dispute is decided according to [Texas Labor Code \(TLC\) §413.031](#) and applicable rules of the Texas Department of Insurance, Division of Workers’ Compensation (DWC).

Statutes and Rules

1. [28 Texas Administrative Code \(TAC\) §102.3](#) sets out the guidelines for calculation of time.
2. [28 TAC §133.20](#) sets out the procedures for submitting a medical bill.
3. [28 TAC §133.307](#) sets out the procedures for resolving medical fee disputes.
4. [TLC §408.027](#) sets out the requirements for submitting medical bills.
5. [TLC §408.0272](#) sets out the exceptions to untimely medical bill filing.

Denial Reasons

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

- 29 – The time limit for filing has expired.
- 4271 – Per TX Labor Code Sec. 408.027, providers must submit bills to payors within 95 days of the date of service.

Issues

1. Did Jeffrey Gibberman, M.D. forfeit the right to medical fee dispute resolution for the date of service in question?
2. Is Indemnity Insurance Co. of North America’s denial based on timely filing supported?

Findings

1. Dr. Gibberman submitted this dispute for resolution in accordance with 28 TAC §133.307. Dr. Gibberman is seeking reimbursement for neuromuscular testing performed on November 2, 2022, and related supplies.

Per 28 TAC §133.307(c)(1), the health care provider must request medical fee dispute resolution within one year from the date of service, except if a related compensability, extent

of injury, or liability dispute exists; or a dispute regarding medical necessity has been filed. If these exceptions apply, a request for medical fee dispute resolution must be filed within 60 days after the date the requestor receives the final decision.

28 TAC §102.3(a) states, "Due dates and time periods under this Act shall be computed as follows:

- (1) computing a period of days. In counting a period of time measured by days, the first day is excluded and the last day is included.
- (2) computing a period of months. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month."

The date that computation began for this date of service is November 3, 2022. The DWC received the medical fee dispute resolution request on November 3, 2023. The DWC finds that Dr. Gibberman submitted this request for medical fee dispute resolution timely and has not forfeited his right to review.

2. With few exceptions, TLC §408.027 and 28 TAC §133.20(b) require submission of medical bills not later than 95 days from the date of service. TLC §408.0272 states,

(b) Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if:

- (1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027(a), erroneously filed for reimbursement with:
 - (A) an insurer that issues a policy of group accident and health insurance under which the injured employee is a covered insured;
 - (B) a health maintenance organization that issues evidence of coverage under which the injured employee is a covered enrollee; or
 - (C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title; or
- (2) the commissioner determines that the failure resulted from a catastrophic event that substantially interfered with the normal business operations of the provider.

(c) Notwithstanding Subsection (b), a health care provider who erroneously submits a claim for payment to an entity described by Subdivision (1) of that subsection forfeits the provider's right to reimbursement for that claim if the provider fails to submit the claim to the correct workers' compensation insurance carrier within 95 days after the date the provider is notified of the provider's erroneous submission of the claim.

(d) Notwithstanding any other provision of this section or Section 408.027, the period for submitting a claim for payment may be extended by agreement of the parties.

No evidence was received to support the fact that Dr. Gibberman submitted the initial medical bill to the insurance carrier within 95 days. Dr. Gibberman failed to provide satisfactory evidence to support one of the allowed exceptions applied to the bill in question, or that an agreement had been reached with the insurance carrier to extend the time limit for filing.

DWC finds that Indemnity Insurance Co. of North America's denial based on timely filing is supported reimbursement for the examination in question is not 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 requestor has not established that 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

February 6, 2024

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 three 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 tres o correo electronico CompConnection@tdi.texas.gov.