

MDR Tracking #M5-05-2020-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 03-22-05.

Per Rule 123.308(e)(1) dates of service 03-19-04 were not timely filed and are not eligible for review.

The IRO reviewed therapeutic exercises, neuromuscular re-education, gait training, analysis of clinical data, x-ray exam of lower spine-whole procedure, office visit-established patient, hot/cold pack therapy rendered from 03-29-04 through 09-29-04 that were denied based upon "V".

The IRO determined that the office visits **were not** medically necessary. The IRO determined that the remainder of the services, therapeutic exercises, neuromuscular re-education, gait training, analysis of clinical data, x-ray exam of lower spine-whole procedure, and hot/cold pack therapy **were** medically necessary.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the **majority** of issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order. The amount of reimbursement due from the carrier for the medical necessity issues equals **\$11,599.52 (this calculation does not include the hot/cold pack therapy as this is a bundled service code and considered an integral part of a therapeutic procedure(s))**.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 04-20-05, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

CPT code 99358-52 dates of service 05-05-04, 06-16-04, 08-11-04, 09-09-04 and 09-16-04 are not valid for Medicare with the 52 modifier and will not be a part of the review.

CPT code 97530 date of service 03-29-04 denied with denial code "F" (Fee Guideline MAR reduction). A payment of \$30.10 has been made by the carrier. The MAR per Rule 134.202(c)(1) is \$37.58 (\$30.06 X 125%). Additional reimbursement in the amount of **\$7.48 (\$37.58 minus carrier payment of \$30.10)**.

CPT code 97110 date of service 04-05-04 denied with denial code "V" (unnecessary medical treatment per peer review). This service is reviewed as a fee issue due to a partial payment being made by the carrier in the amount of \$184.95. Recent review of disputes involving CPT Code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one." Therefore, consistent with the general obligation set forth in Section

413.016 of the Labor Code, the Medical Review Division has reviewed the matters in light all of the Commission requirements for proper documentation. Additional reimbursement not recommended.

CPT code 97110 date of service 09-07-04 denied with denial code "N" (not appropriately documented). . Recent review of disputes involving CPT Code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one." Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division has reviewed the matters in light all of the Commission requirements for proper documentation. Reimbursement not recommended.

CPT code 99455 date of service 04-07-04 denied with denial code "V" (unnecessary medical treatment per peer review). Per Rule 134.202(E)(6)(B)(iii) this service is a required report and not subject to an IRO review. The carrier made a payment of \$33.81. Additional reimbursement in the amount of **\$31.19 (\$65.00 billed minus carrier payment of \$33.81)** is recommended. A Compliance and Practices violation will be issued due to the carrier being in violation of Rule 134.202(E)(6)(B)(iii).

CPT code 99080-73 dates of service 04-30-04 and 05-26-04 denied with a "V" for unnecessary medical treatment based on a peer review. The TWCC-73 is a required report per Rule 129.5 and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Reimbursement is recommended in the amount of **\$30.00 (\$15.00 X 2 DOS)**. A Compliance and Practices violation will be issued due to the carrier being in violation of Rule 129.5.

Review of CPT code 97112 date of service 07-08-04 revealed that neither party submitted a copy of an EOB. Per Rule 133.307(e)(2)(B) the requestor did not provide convincing evidence of carrier receipt of the providers request for an EOB. No reimbursement recommended.

CPT code 97116 date of service 09-07-04 denied with denial code "N" (not appropriately documented). The requestor did not submit documentation for review. No reimbursement recommended.

CPT code 97112 date of service 09-07-04 denied with denial code "N" (not appropriately documented). The requestor did not submit documentation for review. No reimbursement recommended.

CPT code 99090 date of service 09-07-04 denied with denial code "N" (not appropriately documented). The requestor did not submit documentation for review. No reimbursement recommended.

This Findings and Decision is hereby issued this 31<sup>st</sup> day of May 2005.

Medical Dispute Resolution Officer  
Medical Review Division

## ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees for dates of service 04-07-04 through 09-29-04 totaling \$11,668.19 in accordance with the Medicare program reimbursement methodologies effective August 1, 2003 per Commission Rule 134.202(c), plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order.

This Order is hereby issued this 31<sup>st</sup> day of May 2005.

Director Medical Dispute Resolution  
Medical Review Division

Enclosure: IRO Decision



7600 Chevy Chase, Suite 400  
Austin, Texas 78752  
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Fax: (800) 580-3123

### NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** May 25, 2005

**To The Attention Of:** TWCC  
7551 Metro Center Drive, Suite 100, MS-48  
Austin, TX 78744-16091

**RE: Injured Worker:** \_\_\_\_\_  
**MDR Tracking #:** M5-05-2020-01  
**IRO Certificate #:** 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the

physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

**Submitted by Requester:**

- Approximately 900 Pages of Documentation
- Chart Notes
- MRI Reports
- TWCC Forms
- New Patient Evaluation Reports
- Referral Notes
- Medication Prescriptions
- Peer Reviews
- Peer Review Rebuttal Letters
- Table of Disputed Services
- UOB's
- Headfoot 1500's
- Exercise Notes
- Referral Reports

**Submitted by Respondent:**

- Paramedic Evaluations
- Surgical Reports
- Patient Summaries
- Peer Reviews

**Clinical History**

According to the supplied documentation, the claimant sustained an injury on \_\_\_ while employed as a housekeeper. Claimant apparently injured her low back while lifting multiple large, heavy bags of garbage. Claimant reported hearing a popping sound in her back, which was associated with immediate pain. Claimant underwent treatment in therapy, which apparently failed. On 11/5/2003, Paul Vaughn, M.D. performed a 360° lumbar fusion at L4/5. In February of 2004, claimant began active therapy with Mark Lanning, D.C. The claimant continued to have pain. It was told by several physicians that the second surgery could potentially be necessary. Active therapy continued. Therapy in notes continued beyond the dates in service of question.

**Requested Service(s)**

CPT codes 97110 therapeutic exercises, 97112 neuromuscular re-education, 97116 gait training, 99090-52 analysis of clinical data, 72100-WP x-ray exam of lower spine, whole procedure, 99214 office visit, established patient, 97010 hot/cold pack for dates of service of 3/29/2004 to 9/29/2004.

## **Decision**

I agree with the insurance carrier that the 99214 office visit was not medically necessary, a maximum code of 99212 would have been seen as reasonable. I disagree with the insurance carrier and I agree with the treating providers that the remainder of services in dispute between 3/29/2004 through 9/29/2004 is medically necessary.

## **Rationale/Basis for Decision**

According to the supplied documentation, the claimant sustained a lumbar injury on \_\_\_\_\_. When conservative measures failed, the claimant underwent a lumbar fusion at L4/5 on 11/5/2003. In February, 2004 the claimant was released from her treating surgeon to begin therapy. Rehabilitation consisting of passive and active care is seen as reasonable and medically necessary to treat the compensable claim. Passive therapy was used in the beginning stages of care. Over time, and as the fusion became solid, a more aggressive therapy approach would be seen as reasonable and necessary. Documentation supports that this is the direction the treating chiropractor was progressing towards. After reference of Rehabilitation for the Post Surgical Patient (pages 168 – 169), the therapy in question is seen as necessary to continue to strengthen and rehabilitate the claimant's lumbar spine. With the extensive surgery involved and the amount of time the claimant was inactive due to pain prior to the surgery, a lengthy amount of therapy was needed to rehabilitate the claimant's compensable injury. The therapeutic exercises, neuromuscular re-education and gait training would be seen as reasonable and in-line with current treatment protocols. The documentation does not support the necessity of the 99214 evaluation code, but a 99212 would be seen as reasonable.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 25<sup>th</sup> day of May 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder