



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)
7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645
(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

RICKY MCSHANE, DO

Respondent Name

STANDARD FIRE INSURANCE COMPANY

MFDR Tracking Number

M4-17-0062-01

Carrier's Austin Representative

Box Number 05

MFDR Date Received

September 8, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The EOR/Denials state that the rendering/billing provider, Dr. Ricky McShane, is not on the 'Approved Doctor List.' . . . We have contacted the Texas Division of Workers Compensation and were told by a Healthcare Specialist that the 'Approved Doctor List' was discontinued in 2007."

Amount in Dispute: \$240.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Please see the EOB(s) and the reduction rationale(s) stated therein. Also note that this is a network claim. Network rules require the provider to submit an appeal with the network. The provider does not show evidence that that was done. Nevertheless, the carrier will review and may issue payment per fee guidelines."

Response Submitted by: Flahive, Ogden & Latson, Attorneys At Law, P.C.

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: December 28, 2015, Evaluation and Management Services 99213, Work Status Report 99080, Professional Medical Services J1040, 96372, \$240.00, \$180.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

- 1. 28 Texas Administrative Code §133.307 sets out procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203 sets out fee guidelines for professional medical services.
3. 28 Texas Administrative Code §134.1 sets out general provisions regarding medical reimbursement.
4. 28 Texas Administrative Code §126.8 establishes the division's former Approved Doctor List.

5. 28 Texas Administrative Code §129.5 sets guidelines for the filing of and payment for work status reports.
6. 28 Texas Administrative Code §133.240 sets out provisions regarding medical payments and denials.
7. Labor Code §413.011 sets out general provisions regarding reimbursement policies and guidelines.
8. Labor Code §413.031 entitles health care providers to a review of services if payment is disputed and grants the division the role to adjudicate payment in resolving disputes over the amount of payment due for such services.
9. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - B7 – THIS PROVIDER WAS NOT CERTIFIED/ELIGIBLE TO BE PAID FOR THIS PROCEDURE/SERVICE ON THIS DATE OF SERVICE.
  - 811 – CHARGES DENIED BECAUSE ON THIS DATE OF SERVICE, PROVIDER WAS NOT ON THE APPROVED DOCTOR LIST.

### **Issues**

1. Is this dispute eligible for medical fee dispute resolution?
2. Are the disputed services subject to a contract?
3. Are the insurance carrier's denial reasons supported?
4. What is the recommended reimbursement for the disputed work status reports?
5. What is the recommended reimbursement for the disputed evaluation and management services?
6. Is the requestor entitled to additional reimbursement?

### **Findings**

1. The respondent asserts that "note that this is a network claim. Network rules require the provider to submit an appeal with the network. The provider does not show evidence that that was done."

Review of records held by the division finds no notification to the division that the insurance carrier has enrolled the injured employee in a certified workers' compensation health care network (HCN) established in accordance with Insurance Code Chapter 1305. The response does not include any documentation to support that the injured employee is enrolled in a certified HCN. The respondent does not state that the employee is enrolled in a certified HCN on the explanation of benefits. Review of the submitted documentation finds no information to support that the health care provider had been presented such information prior to the filing of a medical fee dispute request.

The respondent did not submit a copy of the alleged network rules—or any documentation supporting that the health care provider was bound by such rules. The respondent did not explain or provide documentation to support that the health care provider was under any contractual, statutory or regulatory obligation to follow network procedures or rules before submitting a request to the division for medical fee dispute resolution.

28 Texas Administrative Code §133.307(d)(2)(F) states that "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

As the respondent has not presented any information to the requestor regarding a certified HCN, the Division concludes the respondent has waived the right to raise any such defense. Newly raised denial reasons or defenses shall not be considered in this review.

Furthermore, 28 Texas Administrative Code §133.240(f)(15) requires that the paper form of an explanation of benefits shall include the "workers' compensation health care network name (if applicable)"

Review of the submitted explanation of benefits (EOB) finds that the field indicating "PPO Network" includes the notation "First Health Pend and Transmit;" however, no information was present to indicate that this is the name of a certified workers compensation health care network. No indication was found on the EOB that the injured employee is enrolled in a certified health care network (HCN) established in accordance with Insurance Code Chapter 1305. The insurance carrier has thus failed to meet the medical bill processing requirements of §133.240(f)(15).

Moreover, the insurance carrier's EOB states that: "Insurance carrier payment to the health care provider shall be according to Commission medical policies and fee guidelines in effect on the date(s) of service(s)." The insurance carrier failed to give to the doctor any plain language notice on the EOB that a network was involved. The insurance carrier further failed to advise the provider on the EOB of any rights or restrictions under the alleged network rules. To the extent that the EOB fails to mention any network, network rules, medical policies

or fee guidelines—and instead states that payment “shall be according to commission [now division] medical policies and fee guidelines”—the respondent has waived the right to assert a network or such rules and may not now raise the defense that any network medical policies or network fee guidelines should apply.

Based on the information presented for review, and information known to the division, the division concludes the respondent has failed to support that the injured employee is enrolled in a certified HCN. Moreover, even were the injured employee enrolled in a certified HCN, the insurance carrier did not include the name of the alleged network on the EOB in accordance with the medical bill processing requirements of Rule §133.240(f)(15) and has waived the right to waive such a new defense pursuant to §133.307(d)(2)(F).

Labor Code §413.031(a)(1) states that a health care provider is entitled to a review of a medical service provided if a health care provider is “denied payment or paid a reduced amount for the medical service rendered.”

Labor Code §413.031(c) further states that “in resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment given the relevant statutory provisions and commissioner rules.”

The Texas Workers’ Compensation Act entitles health care providers to a review of medical services if payment is denied. The Act further grants the division authority to resolve such disputes and adjudicate such payments. For these reasons, the division has jurisdiction to review the disputed medical fee issues.

2. The explanation of benefits states, “First Health P&T THIS BILL WAS REVIEWED IN ACCORDANCE WITH YOUR FIRST HEALTH CONTRACT.”

28 Texas Administrative Code §134.203(g) states that “When there is a negotiated or contracted amount that complies with Labor Code §413.011, reimbursement shall be the negotiated or contracted amount that applies to the billed services.”

No copy of the alleged contract was presented for review. No negotiated or network discounts were applied on the EOBs. No information was presented to support the insurance carrier had access to a contractual fee arrangement with the health care provider consistent with the requirements of Labor Code §413.011. The division therefore finds the disputed services are not subject to a contract between the parties to this dispute.

3. The insurance carrier denied payment for the disputed services with claim adjustment reason codes:
  - 811 – CHARGES DENIED BECAUSE ON THIS DATE OF SERVICE, PROVIDER WAS NOT ON THE APPROVED DOCTOR LIST.
  - B7 – THIS PROVIDER WAS NOT CERTIFIED/ELIGIBLE TO BE PAID FOR THIS PROCEDURE/SERVICE ON THIS DATE OF SERVICE.

The Commission [now the division] Approved Doctor List, as found in former 28 Texas Administrative Code §126.8, no longer exists; per Rule §126.8(c), that section was no longer effective on or after September 1, 2003.

The respondent did not submit a copy of the alleged approved doctor list—or documentation that the health care provider was not approved on the date of service—to support the insurance carrier’s denial reasons.

For the above reasons the division finds that the insurance carrier’s denial reason code 811 – “CHARGES DENIED BECAUSE ON THIS DATE OF SERVICE, PROVIDER WAS NOT ON THE APPROVED DOCTOR LIST,” is not supported.

Furthermore, according to division consent order DWC-12-0089, dated May 30, 2012, this provider was removed as a *designated* doctor (and would not re-credential to apply to be on the designated doctor list). Additionally, he was deprived of the right to certify maximum medical improvement and/or assign impairment ratings in the workers’ compensation system for a period of one year. That one year duration has since elapsed and the doctor may now certify maximum medical improvement and/or assign impairment ratings. Although this provider may not be designated by a treating doctor to perform required medical examinations or perform designated doctor duties, no such services are in dispute.

As the services in dispute are not designated doctor services, the carrier’s denial reason B7 – “THIS PROVIDER WAS NOT CERTIFIED/ELIGIBLE TO BE PAID FOR THIS PROCEDURE/SERVICE ON THIS DATE OF SERVICE” is not supported.

Based on the preponderance of the information presented by the parties, the insurance carrier’s denial reasons are not supported. The division finds the medical provider was not ineligible or disqualified from performing the disputed services on the dates of service. Accordingly, the disputed services will be reviewed for payment according to applicable division rules and fee guidelines.

4. This dispute regards, in part, payment for a work status report, billed under procedure code 99080, with reimbursement subject to the provisions of 28 Texas Administrative Code §129.5(i), which states that “The amount of reimbursement shall be \$15.” This amount is recommended.
5. This dispute further regards professional medical services with reimbursement subject to the provisions of 28 Texas Administrative Code §134.203(c), which requires that:

To determine the MAR [Maximum Allowable Reimbursement] 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. For Surgery when performed in a facility setting, the established conversion factor to be applied is \$66.32.
- (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.

The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by a conversion factor. The MAR is calculated by substituting the Division conversion factor. The applicable Division conversion factor for calendar year 2015 is \$56.20.

Reimbursement is calculated as follows:

- For procedure code 99203, service date December 28, 2015, the relative value (RVU) for work of 1.42 multiplied by the geographic practice cost index (GPCI) for work of 1.019 is 1.44698. The practice expense (PE) RVU of 1.48 multiplied by the PE GPCI of 1.006 is 1.48888. The malpractice RVU of 0.15 multiplied by the malpractice GPCI of 0.955 is 0.14325. The sum of 3.07911 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$173.05. Per §134.203(h), reimbursement is the lesser of the MAR or the provider's usual and customary charge. The lesser amount is \$140.00.
  - Procedure code J1040, service date December 28, 2015, has a status indicator of E, which denotes codes excluded from the Physician Fee Schedule by regulation. CMS does not determine a price or relative value for this service. Per §134.203(f), reimbursement is provided in accordance with 28 Texas Administrative Code §134.1 regarding fair and reasonable reimbursement. The insurance carrier allowed \$0.00. Review of the information submitted by the requestor finds insufficient documentation to support a different payment amount from that determined by the insurance carrier; therefore, additional payment is not recommended.
  - For procedure code 96372, service date December 28, 2015, the relative value (RVU) for work of 0.17 multiplied by the geographic practice cost index (GPCI) for work of 1.019 is 0.17323. The practice expense (PE) RVU of 0.53 multiplied by the PE GPCI of 1.006 is 0.53318. The malpractice RVU of 0.01 multiplied by the malpractice GPCI of 0.955 is 0.00955. The sum of 0.71596 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$40.24. Per §134.203(h), reimbursement is the lesser of the MAR or the provider's usual and customary charge. The lesser amount is \$25.00.
6. The total allowable reimbursement for the services in dispute is \$180.00. The insurance carrier has paid \$0.00. The amount due to the requestor is \$180.00.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$180.00.

**ORDER**

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$180.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____	<u>Grayson Richardson</u>	<u>October 31, 2016</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 in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**