



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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**MEDICAL FEE DISPUTE RESOLUTION
FINDINGS AND DECISION**

GENERAL INFORMATION

Requestor Name

Preston Surgery Center

Respondent Name

East Texas Educational Insurance Assn

MFDR Tracking Number

M4-17-2593-01

Carrier's Austin Representative Box

BOX 17

Fee Dispute Request Received

May 2, 2017

Response Submitted by:

Downs & Stanford PC

REQUESTOR POSITION SUMMARY

No position statement submitted.

RESPONDENT

The respondent's positions are not to be considered. See Rule 28 Texas Administrative Code §133.307(d)(2)(F). No denial reasons were presented to Preston Surgery Center before the filing of this medical fee dispute. East TX Educational Ins Assn failed to issue an explanation of benefits for the service in dispute within the timeframe specified in Texas Labor Code 408.027(b) and corresponding 28 Texas Administrative Code §133.240.

SUMMARY OF REQUEST AND DIVISION ORDER

Disputed Date of Service	Disputed Service	Disputed Amount	Division Order
September 22, 2016	64493, 64493, 64493, 64494, 64494	\$33,801.00	\$4,496.12
November 11, 2016	64493, 64494, 64495, 64495		
December 9, 2016	64635, 64636, 64636		

AUTHORITY

Texas Labor Code §413.031 (c). In resolving disputes over the amount of payment due for medically necessary services for treatment of the compensable injury, the role of the medical fee dispute resolution program is to adjudicate the payment given the relevant statutory provisions and commissioner rules.

Rule 28 Texas Administrative Code §133.307 sets out the process for medical fee dispute resolution for non-network care. Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §408.0281 and §408.0284.

Background

Work Comp Carrier's Obligation to Respond to a Medical Bill

It is the duty of the workers' compensation insurance carrier **or an agent acting on the carrier's behalf** to pay, reduce, or deny a complete medical bill within 45 days from the date of receipt. A carrier's 45-day deadline to make or deny payment is **not extended** as a result of an audit under 28 Texas Administrative Code §133.230, or as a result of a pending request for additional documentation.¹

Further, the insurance carrier **shall** notify the health care provider of its final action² by issuing an explanation of benefits (EOB) and shall include on its EOB any bill reductions, denial reasons, and defenses in the form and manner required by 28 TAC §133.240.³

Carrier's Failure to Present Denial Reasons and Defenses

Under Rule §133.307, the division only reviews those denial reasons and defenses presented by the carrier to the health care provider prior to the date the request for MFDR was filed. Any denial reasons or defenses raised by the carrier after the filing of the dispute are not considered in the review of the medical fee dispute.⁴

Findings

The provider, Preston Surgery Center, presented evidence sufficient to support that it requested payment from East TX Educational Assn for medical services provided to a covered injured employee. East TX Educational Assn did not pay, reduce, or deny the complete medical bill in 45 days. Due to East TX Educational Ass's failure to take final action and timely issue an EOB at any time. The provider filed for medical fee dispute resolution (MFDR).

1. *Did East TX Educational Assn timely present denial reasons to the provider before the filing of this fee dispute?*

No evidence was presented by East TX Educational Assn or its agent to support that it responded to the complete medical bill within 45 days.

Because no defenses were presented to the provider before the filing of this medical fee dispute, all the defenses raised by East TX Educational Assn in its response to the medical fee dispute are new defenses and will not be considered in this review. 28 TAC 133.307(d)(2)(F).

East TX Educational Assn failed to present any defenses that conform with the requirements of 28 TAC §133.240 and 133.250 discussed above.

Absent any evidence that East TX Educational Assn or an agent acting East TX Educational Assn's behalf timely presented any defenses to the provider that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the Division finds that the medical services are eligible for reimbursement.

¹28 Texas Administrative Code §133.240 (a)

² 28 Texas Administrative Code §133.2 (6) Final action on a medical bill-- (A) sending a payment...(B) denying a charge on the medical bill.

³ 28 Texas Administrative Code §133.240 (e) The insurance carrier shall send the explanation of benefits in accordance with the elements required by §133.500 and §133.501...if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form.

⁴ 28 Texas Administrative Code §133.307 (d)(2)(F) The carrier's 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.

2. What is the total reimbursement for the service in dispute?

28 Texas Administrative Code 134.402 (d) states,

For coding, billing, and reporting, of facility services covered in this rule, Texas workers’ compensation system participants shall apply the Medicare payment policies in effect on the date a service is provided with any additions or exceptions specified in this section.

The applicable Medicare payment policy is at www.cms.gov, Medicare Claims Processing Manual, Chapter 14, Section 40.2 that states in pertinent part,

*For dates of service on or after January 1, 2008, the ASC payment rates are **geographically wage adjusted based on the wage index for the CBSA**. Beginning January 1, 2008 CMS calculates and makes available to the contractors CBSA-specific ASC payment rates for services subject to geographic adjustment. The wage index values for urban and rural areas that CMS applies to all non-acute providers are used in the calculation of the ASC wage adjusted payment rates. With the implementation of the ASC revised payment system, the labor related portion of the payment rate is 50 percent and the remaining non-labor related portion is 50 percent.*

The applicable DWC fee guideline is found at 134.402 (f)(1)(A) and states in pertinent part,

The reimbursement calculation used for establishing the MAR shall be the Medicare ASC reimbursement amount determined by applying the most recently adopted and effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective Payment System reimbursement formula and factors as published annually in the Federal Register. Reimbursement shall be based on the fully implemented payment amount as in ADDENDUM AA, ASC COVERED SURGICAL PROCEDURES FOR CY 2008, published in the November 27, 2007 publication of the Federal Register, or its successor. The following minimal modifications apply:

(1) Reimbursement for non-device intensive procedures shall be:

(A) The Medicare ASC facility reimbursement amount multiplied by 235 percent;

Review of Addendum AA found at www.cms.gov, found;

Date of service September 22, 2016

- CPT Code 64493 -RT, LT has a payment indicator of G2, “based on OPPS relative payment weight and is **subject to multiple procedure discount**”
- 64494 – RT, LT has a payment indicator of N1 “package service/item; no separate payment made”

Date of service November 11, 2016

- CPT Code 64493 - LT has a payment indicator of G2 (as above)
- CPT Code 64494 – LT has a payment indicator of N1 (as above)
- CPT Code 64495 – LT, LT -XS has a payment indicator of N1 (as above)

Date of service December 9, 2016

- CPT Code 64635 – RT has a payment indicator of G2 (as above)
- CPT Code 64636 – RT (2 units) has a payment indicator of N1 (as above)

	Column 1	Column 2	Column 3	Column 4		
Date of service	CPT Code	Medicare payment rate	Geographically adjusted (divide by 2)	Multiplied by wage index 0.9847	Total of column 2 and 3	Multiplied by 235%
September 22, 2016	64493 RT	\$459.71	$\$459.71 \div 2 = \229.86	$\$229.86 \times 0.9847 = \226.34	$\$229.86 + \$226.34 = \$456.20$	$\$456.20 \times 235\% = \$1,072.07$

September 22, 2016	64493 LT	$\$459.71 \div 2 = \229.86 based on multiple procedure discount	$\$229.86 \div 2 = \114.93	$\$114.93 \times 0.9847 = \113.17	$\$114.93 + \$113.17 = \$228.10$	$\$228.10 \times 235\% = \536.04
September 22, 2016	64494 RT	PACKAGED				
September 22, 2016	64494 LT	PACKAGED				
November 11, 2016	64493 LT	$\$459.71$	$\$459.71 \div 2 = \229.86	$\$229.86 \times 0.9847 = \226.34	$\$229.86 + \$226.34 = \$456.20$	$\$456.20 \times 235\% = \$1,072.07$
November 11, 2016	64494 LT	PACKAGED				
November 11, 2016	64495 LT	PACKAGED				
November 11, 2016	64495 LT XS	PACKAGED				
December 9, 2016	64635 RT	$\$778.70$	$\$778.70 \div 2 = \389.35	$\$389.35 \times 0.9847 = \383.39	$\$389.35 + \$383.39 = \$772.74$	$\$772.74 \times 235\% = \$1,815.94$
December 9, 2016	64636 RT	PACKAGED				
December 9, 2016	64636 RT	PACKAGED				
					Total	\$4,496.12

3. The total allowable reimbursement for the services in dispute is \$4,496.12. This amount is recommended.

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 \$4,496.12.

DIVISION ORDER

The division has determined that the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$4,496.12, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

May 14, 2019
Date

RIGHT TO APPEAL

Either party to this medical fee dispute may seek review of this division decision. To appeal, submit form division Form-045M titled ***Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)*** found at <https://www.tdi.texas.gov/forms/form20numeric.html>.

Follow the instructions on pages 3 and 4. The request must be received by the division within twenty days of your receipt of this decision. This decision becomes final if the request for review of this decision is not submitted within twenty days.

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.

If you have questions about the division Form-045M, please call CompConnection at 1-800-252-7031, Option 3 or you may email your question to CompConnection@tdi.texas.gov

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, Option 1.