



Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

ERWIN A. CRUZ, MD

Respondent Name

TEXAS MUTUAL INSURANCE COMPANY

MFDR Tracking Number

M4-23-3118-01

Carrier's Austin Representative

Box Number 54

DWC Date Received

August 9, 2023

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
October 5, 2022	92537, 92540, and 92546	\$333.45	\$78.81
	Total	\$333.45	\$78.81

Requestor's Position

"WORK COMP TREATMENT/SERVICES INCORRECT REDUCTION."

Amount in Dispute: \$333.45

Respondent's Position

"Texas Mutual claim [claim number] and ERWIN CRUZ MD are participants in the WorkWell, TX Network. Rule 133.305(a)(4). . ." Because this is network health care, Rule 133.307 does not apply, therefore DWC MDR has no jurisdiction."

Response Submitted by: Texas Mutual Insurance Company

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](#)) [§133.305](#) sets out the procedures for resolving medical disputes.
2. [28 TAC §133.307](#) sets out the procedures for resolving medical fee disputes.
3. [28 TAC §127.10](#) sets out the procedures for designated doctors.
4. [Chapter 1305.003](#) sets limitation on applicability of Texas Insurance Code Chapter 1305.
5. [Texas Labor Code §408.0041](#) grants the Division of Workers' Compensation the authority to order designated doctor examinations.
6. [28 TAC §134.203](#) sets out the fee guideline for professional medical services.
7. [28 TAC §134.250](#) sets out the fee guidelines for examinations to determine maximum medical improvement and impairment rating.

Denial Reasons

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

- A16 – THE REIMBURSEMENT FOR HEALTH CARE SERVICES ARE SUBJECT TO WORKWELL, TX CONTRACTS, A CERTIFIED WC HCN (INS CODE CH.1305)
- CAC-P12 – WORKERS COMPENSAION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
- CAC-W3 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
- CAC-131 – CLAIM SPECIFIC NEGOTIATED DISCOUNT.
- CAC-193 – ORIGINAL PAYMENT DECISION IS BEING MAINTAINED. UPON REVIEW, IT WAS DETERMINED THAT THIS CLAIM WAS PROCESSED PROPERLY.
- CAC-97 – THE BENEFIT FOR THIS SERVICE IS INCLUDED IN THE PAYMENT/ALLOWANCE FOR ANOTHER SERVICE/PROCEDURE THAT HAS ALREADY BEEN ADJUDICATED.
- DC4 – NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER RECONSIDERATION.
- DC5 – THIS BILL WAS PROCESSED IN ACCORDANCE WITH YOUR WORKWELL, TX NETWORK CONTRACT. FOR QUESTIONS CALL (888) 532-5246.
- 350 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
- 641 – THE MEDICALLY UNLIKELY EDITS (MUE) FROM CMS HAS BEEN APPLIED TO THIS PROCEDURE CODE.
- 790 – THIS CHARGE WAS REIMBURSED IN ACCORDANCE TO THE TEXAS MEDICAL FEE GUIDELINE.

Issues

1. Did the requestor submit documentation to support the claim that the disputed services were provided in support of a DDE?
2. What rules apply to the reimbursement of CPT Codes 92537, 92540, and 92546?
3. Is the requestor entitled to additional reimbursement?

Findings

1. The requestor seeks reimbursement for CPT Codes 92537, 92540, 92536 rendered on October 5, 2022 to an injured worker enrolled in a certified healthcare network. A review of the documentation included with the DWC060 finds that the requestor is also enrolled in the same network.

A review of the documentation finds that the disputed services were rendered in support of a designated doctor examination (DDE).

Pursuant to 28 TAC §127.10(c)(4)(A-B) states, "(c) Additional testing and referrals. The designated doctor must perform additional testing when necessary to resolve the issue in question. The designated doctor must also refer an injured employee to other health care providers when the referral is necessary to resolve the issue in question, and the designated doctor is not qualified to fully resolve it... (4) Any additional testing or referrals required for the evaluation of an injured employee under a certified workers' compensation network under Insurance Code Chapter 1305 or a political subdivision under Labor Code §504.053(b): (A) are not required to use a provider in the same network as the injured employee; and (B) are not subject to the network or out-of-network restrictions in Insurance Code §1305.101 (relating to Providing or Arranging for Health Care)."

Texas Insurance Code Chapter 1305 contains a provision which limits applicability of certain 1305 Network requirements when they adversely affect powers granted to the division under the Labor Code.

Texas Insurance Code §1305.003 titled LIMITATIONS ON APPLICABILITY states that:

- (a) This chapter [TIC 1305] does not affect the authority of the division of workers' compensation of the department to exercise the powers granted to the division under Title 5, Labor Code, that do not conflict with this chapter [TIC 1305].

Texas Labor Code §408.0041 grants the division the exclusive authority to order a designated doctor to examine any injured employee and resolve questions or disputes over the injured employee's medical condition. 28 TAC §127.10 in turn authorizes designated doctors to make referrals when necessary to resolve the question(s) the designated doctor was ordered to address.

Because the testing was performed as a result of a designated doctor referral, and because this is a power that is granted exclusively to the division under the Labor Code, the appropriate remedy for review of a medical fee dispute over a referral exam is the division's medical fee dispute resolution process. The Division finds that TMIC's position is unsupported.

2. The requestor seeks reimbursement for testing performed in support of a DDE rendered on October 5, 2022. The insurance carrier issued a payment in the amount of \$446.57 and reduced the remaining charges due to claim specific negotiated discount. As indicated above, the network contract does not apply to the disputed services, as a result, the DWC will apply to medical fee guideline in determining the appropriate reimbursement amount due to the requestor.

28 TAC §134.203(b)(1) states, "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules."

The description for CPT code 92537 is, "aloric vestibular test with recording, bilateral; bithermal (ie, one warm and one cool irrigation in each ear for a total of four irrigations)."

The description for CPT code 92540 is, "Basic vestibular evaluation, includes spontaneous nystagmus test with eccentric gaze fixation nystagmus, with recording, positional nystagmus test, minimum of 4 positions, with recording, optokinetic nystagmus test, bidirectional foveal and peripheral stimulation, with recording, and oscillating tracking test, with recording."

The description for CPT code 92546 is, "Sinusoidal vertical axis rotational testing."

3. The requestor seeks additional reimbursement for CPT codes 92537, 92540 and 92546 x 2 units.

Per 28 TAC §134.203 sets out the guidelines for the services in dispute.

28 TAC §134.203 states in pertinent part, "(c) 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. 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..."

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

- The 2022 DWC Conversion Factor is 62.46
- The 2022 Medicare Conversion Factor is 34.6062
- A review of the medical bills finds that the services were rendered in zip code 77042, therefore, "Houston" is the Medicare locality.

- The Medicare Participating amount for CPT code 92537 at this locality is \$43.06.
- Using the above formula, the DWC finds the MAR is \$77.72.
- The requestor seeks \$13.12
- The respondent paid \$66.06.
- Reimbursement of \$11.66 is recommended.

- The Medicare Participating amount for CPT code 92540 at this locality is \$116.38.
- Using the above formula, the DWC finds the MAR is \$210.05.
- The requestor seeks \$35.58
- The respondent paid \$178.54.
- Reimbursement of \$31.51 is recommended.

- The Medicare Participating amount for CPT code 92546 at this locality is \$131.65.
- Using the above formula, the DWC finds the MAR is \$237.61.
- The requestor seeks \$284.75
- The respondent paid \$201.97.
- Reimbursement of \$35.64 is recommended.

The DWC finds that due to the reasons indicated above, the requestor is entitled to a total reimbursement amount of \$78.81. 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 additional reimbursement is due.

Order

Under Texas Labor Code §§413.031 and 413.019, the DWC has determined the requestor is entitled to \$78.81 reimbursement for the disputed services. It is ordered that the respondent must remit to the requestor the amount of \$78.81, plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TC §134.120.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

March 13, 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 3 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 prefiera 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.