



Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Andrew Brylowski, M.D.

Respondent Name

General Motors, LLC

MFDR Tracking Number

M4-25-0867-01

Carrier's Austin Representative

Box Number 47

DWC Date Received

December 16, 2024

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
July 17, 2024 – August 2, 2024	96116-51-59	\$188.52	\$0.00
	96121-51-59	\$1,843.20	\$0.00
	96137-51-59	\$695.10	\$0.00
Total		\$2,726.82	\$0.00

Requestor's Position

"96116-51-59, 96121-51-59: Please note that 2 (TWO) HCFA CMS 1500 invoices are attached in combined format for the correct billing of multiple CPT codes necessary for the COMPREHENSIVE FORENSIC INDEPENDENT MEDICAL EXAMINATION from a neuropsychiatric point of view.

"Please note that 2 Texas Administrative Code rules (TAC) apply:

TAC §127.10 - General procedures for Designated Doctor Examinations:

"(c) Additional testing and referrals. The designated doctor shall perform additional testing when necessary to resolve the issue in question. The designated doctor shall 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 the issue in question.

(1) Any additional testing or referral required for the evaluation is not subject to preauthorization

requirements.

(2) Payment for additional testing or referrals that the designated doctor has determined are necessary under this subsection must not be denied prospectively or retrospectively, regardless of any potential disagreements about medical necessity, extent of injury, or compensability.

(3) Any additional testing or referrals required for the evaluation are subject to the requirements of §180.24 of this title (relating to Financial Disclosure).

(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).

AND 28 TAC §42.15 also applies.

(4) Billing by report--The billing procedure to be used by a health care provider when:

(A) no procedural definition and/or dollar value is established in the board's fee guidelines for the treatment or service rendered; or

(B) when the provider determines that the procedural definition and/or dollar value established in the fee guidelines does not adequately describe the treatment or service rendered. (See §42.145 of this title (relating to Billing.))

"Please note there is no procedural definition established in the fee (Medicare) guidelines for a COMPREHENSIVE FORENSIC INDEPENDENT MEDICAL EXAMINATION.

"Amount Due: \$2,031.72

96116: \$188.52

96121: \$1,843.20

"**96137-51-59:** Physical and neuro-behavioral examination along with diagnostic interview and additional testing that was forensically medically necessary for this examination such as neuropsychiatric testing and measures, blood work, imaging studies, etc. A history and diagnostic interview along with a review of medical records and collateral information that was available was done ... Neuropsychiatric testing interpretation, report preparation, as well as a review of medical records were accomplished.

"This process involved approximately 12 hours of staff and physician time. Neuropsychiatric testing administration and interpretation, report preparation, review of medical records, literature search, AMA guides 4th edition, MDGuidelines, ODG, DSM 5, and other specialty guideline search as necessary were accomplished on July 16, 2024, July 17, 2024, July 18, 2024 July 22, 2024, July 23, 2024, July 29, 2024, July 30, 2024, July 31, 2024, August 3, 2024, August 4, 2024, August 5, 2024 and October 1, 2024. This process involved approximately 21 hours of physician time. Total hours for evaluation, forensic measure ordering, interpretation, and integration, neuropsychiatric testing supervision, scoring, and interpretation, urine drug evaluation and interpretation, literature and guideline search and integration with report integration of this information in addition to the routine designated doctor issues was approximately 26 hours.

Amount due: \$695.10"

Total Amount in Dispute: \$2,726.82

Respondent's Position

"Dr. Brylowski's bill is for services that are time-based codes; however, Dr. Brylowski did not document the specific time it took to complete each evaluation. Although Dr. Brylowski documents the overall time it took for the totality of all of the testing, he is required to document the amount of time he spent on each time-based CPT code individually, not in aggregate. Dr. Brylowski failed to outline each individual time-based code; therefore, no further reimbursement is owed."

Response submitted by: BURNS ANDERSON JURY & BRENNER, L.L.P.

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 \(TAC\), Section 41](#) sets out the procedures for administration of workers' compensation claims with dates of injury prior to January 1, 1991.
2. [28 TAC §127.10, effective April 30, 2023, 48 TexReg 2123](#), sets out the procedures for designated doctor examinations.
3. [28 TAC §133.307](#) sets out the procedures for resolving medical fee disputes.
4. [28 TAC §134.203](#) sets out the fee guidelines for professional medical services.
5. [28 TAC §134.250, effective July 7, 2016, 41 TexReg 4839](#), sets out the fee guidelines for examinations to determine maximum medical improvement with dates of service prior to June 1, 2024.

Denial Reasons

- 589 – The documentation received does not support the level of service billed. Please adjust the level of service billed or provide additional documentation to support the service billed.
- 16 - Claim/service lacks information or has submission/billing error(s) which is needed for adjudication.
- N706 – Missing documentation.

- 1001 - Based on the corrected billing and/or additional information/documentation now submitted by the provider, we are recommending further payment to be made for the above noted procedure code.
- 1014 - The attached billing has been re-evaluated at the request of the provider. Based on this re-evaluation, we find our original review to be correct. Therefore, no additional allowance appears to be warranted.
- 16 – The recommended allowance is based on multiple x-ray examinations performed during the same visit.
- 2005 – No additional reimbursement allowed after review of appeal/reconsideration.
- 2008 – Additional payment made on appeal/reconsideration.
- 292 – This procedure code is only reimbursed when billed with the appropriate initial base code.
- 309 – The charge for this procedure exceeds the fee schedule allowance.
- 86 – Service performed was distinct or independent from other services performed on the same day.
- 906 – In accordance with clinical based coding edits (National correct coding initiative/outpatient code editor), component code comprehensive medicine, evaluation and management services procedure (90000-99999) has been disallowed.
- 107 – Claim/service denied because the related or qualifying claim/service was not previously paid or identified on this claim.
- 193 - Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
- 97 – Payment adjusted because the benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
- P12 – Workers' compensation jurisdictional fee schedule adjustment.
- W3 – Bill is a reconsideration or appeal.

Issues

1. What are the applicable rules for reviewing the testing services in this dispute?
2. Is Dr. Brylowski entitled to reimbursement for procedure codes 96116 and 96121?
3. Is Dr. Brylowski entitled to reimbursement for the procedure code 96137?
4. Is Dr. Brylowski entitled to additional reimbursement for the disputed date of service?

Findings

1. The procedure codes in question are considered professional medical services. DWC will review these services for reimbursement in accordance with relevant rules.

Dr. Brylowski indicated that reimbursement should be evaluated based on rules found in "TAC §127.10."

While he referenced an older version of Chapter 127, Section 10, DWC finds that this rule in effect for the dates of service in question states in Subsection (c), in relevant part, "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.

- (1) Any additional testing or referrals required for the evaluation are not subject to preauthorization requirements.
- (2) Payment for additional testing or referrals that the designated doctor has determined are necessary under this subsection must not be denied prospectively or retrospectively, regardless of any potential disagreements about medical necessity, extent of injury, or compensability.
- (3) Any additional testing or referrals required for the evaluation are subject to the requirements of §180.24 of this title (relating to Financial Disclosure).
- (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).

DWC reviewed the explanations of benefits submitted and found that the insurance carrier did not deny payment based on medical necessity, preauthorization requirements, extent of injury, compensability, or network status. Therefore, this rule is not applicable to the dispute in question.

Dr. Brylowski also referenced "28 TAC §42.15." It is important to note that the Texas Administrative Code, Title 28, Chapters 41 through 69 are applicable only to claims with dates of injury prior to January 1, 1991. Therefore, they do not pertain to the claim that is the subject of this dispute.

Dr. Brylowski further states that "there is no procedural definition established in the fee (Medicare) guidelines for a COMPREHENSIVE FORENSIC INDEPENDENT MEDICAL EXAMINATION." The documentation submitted to DWC fails to demonstrate how the services

in question are substantively different from the defined services as billed. For this reason, DWC must review the services in question based on the fee guidelines that are applicable to those services.

Reimbursement policies for professional services are found in 28 TAC §134.203, which states, in relevant part: "(b) 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."

Reimbursement fee guidelines for professional services are addressed in 28 TAC §134.203(c), which states in relevant part: "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 ...
- (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 ..."

2. Dr. Brylowski is seeking reimbursement for procedure code 96116 which is defined as "Neurobehavioral status exam (clinical assessment of thinking, reasoning, and judgment, [e.g., acquired knowledge, attention, language, memory, planning, and problem solving, and visual spatial abilities]), by physician or other qualified health care professional, both face-to-face time with the patient and time interpreting test results and preparing the report; first hour. Behavioral exam with interpretation and report. Usually involves clinical assessment of skills in acquired knowledge, attention, memory, visual spatial abilities, language, or planning. The physician or psychologist evaluates aspects of thinking, reasoning, and judgment to evaluate a patient's neurocognitive abilities. These codes apply to each hour of examination time and must include face-to-face time with the patient and time spent interpreting test results and preparing a report. Report 96116 for the initial hour and 96121 for each additional hour."

Dr. Brylowski billed one unit of procedure code 96116 with appended modifiers 51 and 59. He also billed 12 units of timed add-on code 96121 with modifiers 51 and 59. On the same date and medical bill, Dr. Brylowski billed procedure code 90792-51-59.

[Medicare's CCI manual Chapter XI](#), Section M.1 states, "Neurobehavioral status exam (CPT codes 96116 and 96121) shall not be reported when a mini-mental status examination is performed. CPT codes 96116 and 96121 shall not be reported with psychiatric diagnostic examinations (CPT codes 90791 or 90792). CPT codes 96116 and 96121 may be reported with

other psychiatric services or E&M services only if a complete neurobehavioral status exam is performed. If a mini-mental status examination is performed by a physician, it is included in the E&M service.”

DWC reviewed Medicare’s CCI edits for this procedure code and found that an edit conflict exists between procedure code 90792 and 96116, with procedure code 90792 as the primary code. No modifier is allowed to override this edit. Therefore, reimbursement cannot be recommended for CPT code 96116. Because disputed timed procedure code 96121 is an add-on code for timed procedure code 96116, no reimbursement can be recommended for CPT code 96121. The insurance company has already paid for CPT code 90792; thus, it is uncontested.

3. Dr. Brylowski is seeking additional reimbursement for procedure code 96137, which is a timed add-on code to procedure code 96136, billed on the same disputed date and medical bill together.

Procedure code 96136, which is defined as, “Psychological or neuropsychological test administration and scoring by physician or other qualified health care professional, two or more tests, any method; first 30 minutes. A physician, other qualified health care professional, or technician administers and scores two or more psychological or neuropsychological tests by any method ... neuropsychological testing consists of a series of tests in thinking, reasoning, judgment, and memory to evaluate the patient’s neurocognitive abilities. Report 96136 for the initial 30 minutes of time by a physician or other qualified health care professional and 96137 for each additional 30 minutes.” Disputed procedure code 96137 is a timed add-on code for procedure code 96136.

Medicare’s CCI manual Chapter XI, Section M.2 states, “The psychiatric diagnostic interview examination (CPT codes 90791, 90792), psychological/neuropsychological testing (CPT codes 96136-96146), and psychological/ neuropsychological evaluation services (CPT codes 96130-96133) must be distinct services if reported on the same date of service. CPT Professional instructions permit physicians to integrate other sources of clinical data into the report that is generated for CPT codes 96130-96133. Since the procedures described by CPT codes 96130-96139 are timed procedures, providers/suppliers shall not report time for duplicating information (collection or interpretation) included in the psychiatric diagnostic interview examination and/or psychological/neuropsychological evaluation services or test administration and scoring.”

Dr. Brylowski billed for 12 units of procedure code 96137. A review of the medical report submitted does not list the start and end time to support the number of hours billed for add-on timed procedure code 96137; therefore, Dr. Brylowski is not entitled to additional reimbursement for this code as defined.

4. Dr. Brylowski is seeking additional reimbursement in the total amount of \$2,726.82 for the services in dispute. For reasons outlined in findings number two and three above, DWC finds that Dr. Brylowski is not entitled to additional reimbursement for CPT codes 96121, 96116, and 96137 rendered July 17, 2024, through August 2, 2024.

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 additional reimbursement is due.

Order

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to additional reimbursement in the amount of \$0.00 for the services in dispute

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

February 11, 2025

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 electrónico CompConnection@tdi.texas.gov.