



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

Memorial Compounding RX

Respondent Name

Old Republic Insurance Co

MFDR Tracking Number

M4-16-1064-01

Carrier's Austin Representative

Box Number 44

MFDR Date Received

December 21, 2015

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The attached bills were denied by the carrier stating preauthorization was not obtained."

Amount in Dispute: \$477.24

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "the mediation bupivacaine appears to not be an FDA approved drug since it is not on the drug formulary. Respondent contends preauthorization was required for this component of the compound medication."

Response Submitted by: Downs ♦ Stanford

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 14, 2015	Gabapentin, Amitriptyline HCL, Amantadine, Flurbiprofen, Bupivacaine HCL	\$477.24	\$477.24

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

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.500 defines closed formulary.
- 28 Texas Administrative Code §134.503 sets out the pharmacy reimbursement guidelines.
- 28 Texas Administrative Code §134.530 sets out requirements for use of the closed formulary for claims not subject to certified networks.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 91 – Dispensing fee adjustment

- 791 – This item is reimbursed as a Brand-name prescribed drug
- D20 – Previously denied by adjuster with PBM

Issues

1. Are the insurance carrier's reasons for denial or reduction of payment supported?
2. Is the respondent's position statement supported?
3. What is the rule applicable to reimbursement?
4. Is the requestor entitled to additional reimbursement?

Findings

1. This dispute is related to the five prescription drugs Gabapentin USP, Amitriptyline HCL, Amantadien HCL, Flurbiprofen, and Bupivacaine HCL. The insurance carrier denied disputed services with claim adjustment reason code D20 – "Previously denied by adjuster with PBM."

28 Texas Administrative Code §134.530 (d) states,

Treatment guidelines. Except as provided by this subsection, the prescribing of drugs shall be in accordance with §137.100 of this title (relating to Treatment Guidelines), the division's adopted treatment guidelines.

(1) Prescription and nonprescription drugs included in the division's closed formulary and recommended by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(2) Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(3) Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier in accordance with subsection (g) of this section.

28 Texas Administrative Code §134.500 (3) states in relevant part,

(3) Closed formulary--**All available Food and Drug Administration (FDA) approved prescription** and nonprescription drugs prescribed and dispensed for outpatient use...

Review of FDA Approved Drug products at <http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm> finds all of these medications listed as an FDA approved drug and are therefore subject to the rules pertaining to a Closed formulary.

28 Texas Administrative Code §134.530(g) states,

Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity in accordance with §133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill) and §133.240 of this title (relating to Medical Payments and Denials), and applicable provisions of Chapter 19 of this title.

(1) Health care, including a prescription for a drug, provided in accordance with §137.100 of this title is presumed reasonable as specified in Labor Code §413.017, and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a).

(2) In order for an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that are recommended by the division's adopted treatment guidelines, §137.100 of this title, the denial must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established under Labor Code §413.017.

The insurance carrier's denial reason is not supported as insufficient evidence was found to support a Retrospective Review as described in Rule 134.530 (g) was found. The disputed services will therefore be reviewed per applicable Division rules and fee guidelines.

2. The respondent in their states in their position, "Respondent contends preauthorization was required for this component of the compound medication.

28 Texas Administrative Code §134.530 (b) states,

Preauthorization for claims subject to the Division's closed formulary.

(1) Preauthorization is only required for:

(A) drugs identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;

(B) any compound that contains a drug identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates; and

(C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a)

Review of the FDA approval for Bupivacaine makes the medication subject to the rules of the closed formulary. 28 Texas Administrative Code §134.530 (d) (1), "Prescription and nonprescription drugs included in the division's closed formulary and recommended by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization." The respondent's position is not supported. The services in dispute will be reviewed per applicable fee guidelines.

3. 28 Texas Administrative Code §134.503 (c) states,

The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

(1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

(A) Generic drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;

(B) Brand name drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;

(C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection;

Medication	Quantity	AWP per unit	Maximum Allowable Reimbursement
Gabapentin USP	3	\$59.85	\$59.85 x 3 units = \$179.55
Amitriptyline HCL	2	\$18.24	\$18.24 x 2 units = \$36.48
Amantadine HCL	5	\$24.225	\$24.225 x 5 units = \$121.13
Flurbiprofen	5	\$23.60	\$23.60 x 5 units = \$118.00
Bupivacaine HCL	1	\$45.60	\$45.60 x 1 unit = \$45.60
Compounding dispensing fee	1		\$15.00
		Total	\$515.76

4. The total maximum allowable is \$515.76. The requestor is seeking \$477.24. 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 \$477.24.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$477.24 plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

Authorized Signature

	Peggy Miller	January , 2016
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.