



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

Injured Workers Pharmacy, LLC

Respondent Name

State Office of Risk Management

MFDR Tracking Number

M418-2170-01

Carrier's Austin Representative

Box Number 45

MFDR Date Received

February 21, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "A Medical Fee Dispute Resolution request has been submitted for date of service 7/5/2017, as the carrier has refused to pay the medication due to, 'precertification/authorization/notification absent.' We have submitted a reconsideration, advising that this medication does not require precertification and included a letter of medical necessity written by the prescribing doctor. Our reconsideration was denied, citing the same inappropriate denial."

Amount in Dispute: \$69.35

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The prescription for Divalproex Sodium nor is the brand name Depakote listed on the Division's Drug formulary as a 'Y' status medication therefore, the Office will maintain our denial for 197 - Payment denied/reduced for absence of precertification/authorization."

Response Submitted by: State Office of Risk Management

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: July 5, 2017, Divalproex Sodium DR 250 mg Tablets, \$69.35, \$69.35

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 the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
3. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.

4. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 197 – Precertification/authorization/notification absent.
 - W3 – Additional payment made on appeal/reconsideration.

Issues

1. Is the insurance carrier’s reason for denial of payment supported?
2. Is Injured Workers Pharmacy, LLC entitled to reimbursement for the disputed drug?

Findings

1. Injured Workers Pharmacy, LLC (IWP) is seeking reimbursement for Divalproex Sodium DR 250 mg tablets dispensed on July 5, 2017. State Office of Risk Management (SORM) denied the drug with claim adjustment reason code 197 – “PRECERTIFICATION/AUTHORIZATION/NOTIFICATION ABSENT.”

28 Texas Administrative Code §134.530(b)(2) states that 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).

In a rebuttal statement, SORM asserted that “The Office has researched the ODG Closed Formulary where it did not find Divalproex Sodium nor is the brand name Depakote listed on the Division’s Drug formulary under the class of Anti-Epilepsy medications.” The division finds that Divalproex Sodium DR is **not** identified with a status of “N” in the applicable edition of the *ODG/Appendix A*. Therefore, IWP was not required to seek preauthorization under provision (a).

The submitted documentation does not support that Divalproex Sodium DR is identified as a compound, as defined in 28 Texas Administrative Code §134.500, containing a drug identified with a status of “N” in the applicable edition of the *ODG/Appendix A*. Therefore, IWP was not required to seek preauthorization under provision (b).

SORM did not assert that Divalproex Sodium DR was considered investigational or experimental as defined in Labor Code §413.014(a). Therefore, the preauthorization requirement was not triggered under provision (c).

The division finds that Divalproex Sodium DR was not excluded from the division’s closed formulary as defined in 28 Texas Administrative Code §134.500. Because the disputed drug was not excluded from the division’s closed formulary, it did not require preauthorization. The division concludes that SORM’s denial reason is not supported.

2. Because SORM’s denial reason was not supported, IWP is eligible for reimbursement as follows:

28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

- (c) 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 per unit) x (number of units) x 1.25) + \$4.00 dispensing fee per prescription = reimbursement amount** [emphasis added];

- (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; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The division finds that the reimbursement for the disputed drugs is calculated as follows:

- Divalproex Sodium DR 250 mg tablets $(1.7427 \times 30 \times 1.25) + \$4.00 = \$69.35$

The total reimbursement amount is \$69.35. 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 \$69.35.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$69.35, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

Signature	Laurie Garnes Medical Fee Dispute Resolution Officer	May 10, 2018 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *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. **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.