



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 Pharmacy

Respondent Name

Technology Insurance Company

MFDR Tracking Number

M418-2785-01

Carrier's Austin Representative

Box Number 17

MFDR Date Received

April 2, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The medications do not require preauthorization therefore do not need a retrospective review."

Amount in Dispute: \$702.68

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Respondent maintains it's position in the denial that the compound medication required preauthorization because, compound medications constitute a new, non-approved and non-recognized drug and is considered investigations/experimental."

Response Submitted by: Downs-Stanford, P.C.

SUMMARY OF FINDINGS

| Dates of Service | Disputed Services | Amount In Dispute | Amount Due |
|------------------|-------------------------|-------------------|------------|
| October 14, 2017 | Pharmaceutical Compound | \$702.68 | \$702.68 |

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 §133.240 sets out the procedures for payment or denial of a medical bill.
- 28 Texas Administrative Code §133.305 sets out the procedures for resolving medical disputes.
- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
- 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
- 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.

7. 28 Texas Administrative Code, Chapter 19 sets out the requirements for utilization review.
8. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - P4 – Workers’ compensation claim adjudicated as non-compensable. This payer not liable for claim or service/treatment.
 - 39 – Services denied at the time authorization/pre-certification was requested.

Issues

1. Is this dispute subject to dismissal based on compensability?
2. Is Technology Insurance Company’s denial of payment based on preauthorization supported?
3. Is Memorial Compounding Pharmacy (Memorial) eligible for reimbursement of the disputed compound?

Findings

1. Memorial is seeking reimbursement for a compound dispensed on October 14, 2017. Technology Insurance Company denied the compound, in part, based on compensability or extent of injury. A dispute regarding the relatedness of a service to the compensable injury must be resolved prior to a request for medical fee dispute.¹

The insurance carrier did not maintain this denial on a subsequent explanation of benefits dated December 21, 2017. Downs-Stanford, P.C. also made no argument in its position statement related to this denial reason.²

The respondent is required to attach a copy of any related Plain Language Notice (PLN) if the medical fee dispute involves compensability or extent of injury.³ Review of the submitted documentation finds that Downs-Stanford, P.C. failed to attach a copy of a related PLN on behalf of Technology Insurance Company to support a denial based on compensability or extent of the compensable injury.

The Texas Department of Insurance, Division of Workers’ Compensation (DWC) concludes that the dispute in question is not subject to dismissal as this denial reason was not sufficiently supported.

2. The insurance carrier also denied the disputed compound based on preauthorization. Preauthorization is only required for:
 - drugs identified with a status of “N” in the current edition of the ODG Appendix A;
 - any compound that contains a drug identified with a status of “N” in the current edition of the ODG Appendix A; and
 - any investigational or experimental drug.⁴

The DWC finds that the compound in question does not contain an ingredient identified with a status of “N” in the current edition of the ODG, Appendix A.

Downs-Stanford, P.C. argued on behalf of Technology Insurance Company that “compound medications constitute a new, non-approved and non-recognized drug and is considered investigations/experimental.”

The determination of a service’s investigational or experimental nature is determined on a case by case basis through utilization review.⁵ Utilization review, includes a prospective, concurrent, or **retrospective review to determine the experimental or investigational nature** of health care services.⁶

The DWC finds **no evidence** that the insurance carrier engaged in a prospective or retrospective utilization review to establish that the specific compound considered in this review is investigational or experimental.

¹ 28 Texas Administrative Codes §§133.305(b) and 133.307(c)(1)(B)(i)

² 28 Texas Administrative Code §133.307(d)(2)(E)

³ 28 Texas Administrative Code §133.307(d)(2)(H)

⁴ 28 Texas Administrative Code §134.530(b)(2)

⁵ Texas Insurance Code §19.2005(b)

⁶ Texas Insurance Code §4201.002(13)

Because the insurance carrier failed to perform utilization review on the compound considered in this dispute, the requirement for preauthorization based on a premise that the compound is investigational or experimental **is not triggered** in this case. The insurance carrier’s preauthorization denial for this reason is therefore not supported.

3. Because the insurance carrier failed to support its denial of reimbursement, Memorial is entitled to reimbursement in accordance with applicable rules and laws.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately.⁷ Each ingredient is listed below with its reimbursement amount.⁸ The calculation of the total allowable amount is as follows:

| Drug | NDC | Generic(G) /Brand(B) | Price /Unit | Units Billed | AWP Formula | Billed Amt | Lesser of AWP and Billed |
|-----------------|-------------|-------------------------|-------------|-----------------|----------------|--------------|-----------------------------|
| Baclofen | 38779038809 | G | \$35.63 | 5.4 | \$240.50 | \$190.78 | \$190.78 |
| Amantadine | 38779041105 | G | \$24.23 | 3 | \$90.84 | \$72.69 | \$72.69 |
| Gabapentin | 38779246109 | G | \$59.85 | 3.6 | \$269.33 | \$204.66 | \$204.66 |
| Bupivacaine | 38779052405 | G | \$45.60 | 1.2 | \$68.40 | \$54.72 | \$54.72 |
| Amitriptyline | 38779018904 | G | \$18.24 | 1.8 | \$41.04 | \$32.83 | \$32.83 |
| Ethoxy Diglycol | 38779190301 | G | \$0.34 | 4.2 | \$1.80 | \$1.44 | \$1.44 |
| Versapro Cream | 38779252903 | B | \$3.20 | 40.8 | \$142.31 | \$130.56 | \$130.56 |
| Fee | NA | NA | NA | NA | \$15.00 | \$15.00 | \$15.00 |
| | | | | | | Total | \$702.68 |

The total reimbursement is therefore \$702.68. 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 \$702.68.

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 \$702.68, 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

October 15, 2018
Date

⁷ 28 Texas Administrative Code §134.502(d)(2)

⁸ 28 Texas Administrative Code §134.503(c)

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.