



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

American Casualty Co of Reading PA

MFDR Tracking Number

M4-18-4355-01

Carrier's Austin Representative

Box Number 57

MFDR Date Received

July 17, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The above claimant received medication and the carrier still has not acknowledged receipt of service. The original bill was submitted and received to carrier on 10/20/2017 ... The reconsideration was submitted and received by the carrier on 03/30/2018 and then denied by the carrier."

Amount in Dispute: \$566.53

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Rule 134.600 governs preauthorization. Rule 134.600 (a)(7) defines Preauthorization as the prospective approval obtained from the insurance carrier (carrier) by the requestor or injured employee (employee) prior to providing the health care treatment or services (health care) ... The Carrier asserts that Provider failed to obtain requisite preauthorization. Compound medication constitutes a new, non-approved and non-recognized drug and is considered investigational/experimental. Because the compound medication was investigational or experimental in nature and was not accepted as the prevailing standard of care, it required preauthorization."

Response Submitted by: Law Offices of Brian J Judis

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: October 14, 2017, Pharmacy Services - Compounds, \$566.53, \$566.53

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 §133.240 sets out the general medical provisions for medical payments and denials.

2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
6. 28 Texas Administrative Code §19.2009 sets out the notice of determinations made in utilization review.
7. 28 Texas Administrative Code §19.2010 sets out the requirements prior to issuing adverse determination.
8. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 1 (50) – These are non-covered services because this is not deemed a medical necessity
 - 1 (197) – Precertification/authorization/notification absent

Issues

1. Is American Casualty Co of Reading PA's reason for denial of payment supported?
2. Is Memorial Compounding Pharmacy entitled to reimbursement for the compound in question?

Findings

1. Memorial is seeking reimbursement for compounds dispensed on October 14, 2017.

American Casualty Co of Reading PA denied the disputed drugs with claim adjustment reason code 1 (50) – These are non-covered services because this is not deemed a medical necessity and 1 (197) - Precertification/authorization/notification absent.”

28 Texas Administrative Code §133.305(b) requires that “If a dispute regarding...medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding...medical necessity shall be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and §408.021.”

28 Texas Administrative Code §133.240(q) states that the insurance carrier is required to comply with 28 Texas Administrative Codes §19.2009 and 19.2010 when denying payment based on an adverse determination.

Review of the submitted documentation finds that Law Office of Brian J Judis provided no evidence to support that American Casualty Co of Reading PA performed a utilization review as required by 28 Texas Administrative Codes §134.240 and 19.2009.

28 Texas Administrative Code §134.540(b) states that preauthorization is **only** required for:

- 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;
- 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
- 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).

The division finds that the compound in question does not include a drug identified with a status of “N” in the current edition of the ODG, *Appendix A*. American Casualty Co of Reading PA failed to articulate any arguments to support its denial for preauthorization. Therefore, the division concludes that the compound in question did not require preauthorization and American Casualty Co of Reading PA's denial of payment for this reason is not supported.

Law Office of Brian J Judis, on behalf of American Casualty Co of Reading PA argued that “The Carrier asserts that Provider failed to obtain requisite preauthorization. Compound medication constitutes a new, non-approved and non-recognized drug and is considered investigational/experimental. Because the compound medication was investigational or experimental in nature was not accepted as the prevailing standard of care, it required preauthorization.”

The determination of a service’s investigational or experimental nature is not subject to the *Official Disability Guidelines* (ODG). Instead, it is determined on a case by case basis as a utilization review pursuant to Texas Insurance Code §4201.002. Further, Texas Insurance Code §4201.002(13) states that utilization review, in relevant part, “includes a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services.”

The division found **no evidence** that American Casualty Co of Reading PA engaged in a prospective or retrospective utilization review (UR) as required by Texas Insurance Code §4201.002 in order to establish that the following compound is investigational or experimental in nature:

Compound Cream in Dispute	
Ingredient	Amount
Meloxicam	0.18 gm
Flurbiprofen	4.8 gm
Tramadol HCl	6.0 gm
Cyclobenzaprine HCl	1.8 gm
Bupivacaine HCl	1.2 gm

Because American Casualty Co of Reading PA failed to perform UR on the above listed compound, the requirement for preauthorization under §134.540(b)(2) **is not triggered** in this case. American Casualty Co of Reading PA’s preauthorization denial is therefore not supported.

Absent any evidence that American Casualty Co of Reading PA presented other defenses to Memorial before medical fee dispute resolution that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division finds that the compounds in question are eligible for reimbursement.

2. 28 Texas Administrative Code §134.503 applies to the compounds 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 \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; 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 compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Drug	NDC	Generic(G)) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Meloxicam	3877927460 1	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Flurbiprofen	3877903620 9	G	\$36.58	4.8	\$219.48	\$175.58	\$175.58
Tramadol HCL	3877923740 9	G	\$36.30	6	\$272.25	\$217.80	\$217.80
Cyclobenzaprin e HCL	3877903950 9	G	\$46.33	1.8	\$104.24	\$83.39	\$83.39
Bupivacaine HCL	3877905240 5	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
						Total	\$566.53

The total reimbursement is therefore \$566.53. This amount is recommended.

Conclusion

The outcome of each independent medical fee dispute relies upon the relevant evidence presented by the requestor and the respondent at the time of adjudication. Though all the evidence in this dispute may not have been discussed, it was considered.

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 \$566.53, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

Date

9/7/2018

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.