



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 Zurich Insurance Company

MFDR Tracking Number

M4-19-0761-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

October 12, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "These medication due not require preauthorization therefore do not need a retrospective review."

Amount in Dispute: \$283.42

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This claimed fee dispute is not ripe for adjudication as the extent of injury/relatedness dispute has not been resolved"

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 1, 2018	Tizanidine HCl 4 mg Tablets	\$145.41	\$113.89
February 1, 2018	Gabapentin 300 mg Capsules	\$138.01	\$104.64
Total		\$283.42	\$218.53

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 §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
3. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 197 Payment denied for absence of precertification/authorization.

- 5264 – Payment is denied-service not authorized.
- W3 – Additional payment made on appeal/reconsideration.
- 219 – Based on extent of injury
- 216 – Based on the findings of a review organization.
- 193 – Original payment decision is being maintained. Upon review, it was determined that tis claim was processed properly.
- 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.

Issues

1. Is this dispute subject to dismissal based on extent of injury?
2. Is this dispute subject to dismissal based on medical necessity?
3. Is the insurance carrier’s denial of payment based on preauthorization supported?
4. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the drug in question?

Findings

1. The insurance carrier denied the disputed drugs, in part, based on the extent of the compensable injury. A dispute regarding extent of injury must be resolved prior to a request for medical fee dispute.¹

The respondent is required to attach a copy of any related Plain Language Notice (PLN) if the medical fee dispute involves extent of injury. Review of the submitted documentation finds that American Zurich Insurance Company (Zurich) failed to provide a copy of a related PLN to the division to support a denial based on extent of injury.

Therefore, the dispute considered here is not subject to dismissal based on this denial reason.

2. Zurich also denied the disputed drugs, in part, based on medical necessity.

If a dispute regarding medical necessity exists, the medical necessity dispute must be resolved prior to a request for medical fee dispute resolution.² A medical necessity denial of a medical bill must be based on an adverse determination by a utilization review agent.³

The submitted documentation includes a report dated December 15, 2017, as support for utilization review of the disputed compound. This report does not support that the insurance carrier performed a utilization review of the drug in question for the following reasons⁴:

- The document does not include a description for filing a complaint with the Texas Department of Insurance,
- The document does not include information describing the processes for filing an appeal,
- The document itself includes the statement, “This opinion does not constitute per se a recommendation for specific claims or administrative functions to be made or enforced.”

For these reasons, the insurance carrier’s denial is not sufficiently supported. This dispute is not subject to dismissal based on medical necessity.

3. The insurance carrier also denied the disputed drugs based, in part, based on preauthorization. Preauthorization is only required for:
 - drugs identified with a status of “N” in the current edition of the ODG Appendix A⁵;

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

² 28 Texas Administrative Code §133.305(b)

³ 28 Texas Administrative Code §133.240(q), 28 Texas Administrative Codes §§19.2009 and 19.2010

⁴ 28 Texas Administrative Code §19.2009(b)

⁵ *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*

- 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.⁶

The division finds that the drugs in question are not identified with a status of “N” in the applicable edition of the ODG, *Appendix A*. Therefore, these drugs do not require preauthorization per 28 TAC §134.530(b)(2)(A).

The submitted documentation does not support that the drugs in question constitute compound drugs. Therefore, these drugs do not require preauthorization per 28 TAC §134.530(b)(2)(B).

The submitted documentation does not support that the disputed drugs are experimental or investigational. Therefore, these drugs do not require preauthorization per 28 TAC §134.530(b)(2)(C).

The division concludes that the Zurich’s denial of payment of the disputed drugs based on preauthorization is not supported.

4. Because the insurance carrier failed to support its denial of payment, Memorial is entitled to reimbursement for the drugs in question.

The reimbursement considered in this dispute is calculated as follows⁷:

- Tizanidine HCl 4 mg tablets: $(1.46524 \times 60 \times 1.25) + \$4.00 = \$113.89$
- Gabapentin 300 mg capsules: $(1.3418 \times 60 \times 1.25) + \$4.00 = \$104.64$

The total reimbursement is therefore \$218.53. 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 \$218.53.

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 \$218.53, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Laurie Garnes	March 22, 2019
Signature	Medical Fee Dispute Resolution Officer	Date

⁶ 28 Texas Administrative Code §134.540(b)
⁷ 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.