



# 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**

New Hampshire Insurance Co

**MFDR Tracking Number**

M4-19-0853-01

**Carrier's Austin Representative**

Box Number 5

**MFDR Date Received**

October 16, 2018

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The Texas labor Code Section 408.027 (b) requires that the carrier must pay, reduce, deny or determine to audit the health provider's claim no later than the 45<sup>th</sup> day after the date of receipt by the carrier. Memorial did not receive any correspondence as per rule..."

**Amount in Dispute:** \$702.68

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The issue of extent of injury/relatedness has been joined, and the disputed services have not yet been determined to be related to the compensable injury."

**Response Submitted by:** Flahive, Ogden & Latson

### SUMMARY OF FINDINGS

| Dates of Service | Disputed Services             | Amount In Dispute | Amount Due |
|------------------|-------------------------------|-------------------|------------|
| May 14, 2018     | Pharmacy Services - Compounds | \$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 §133.307 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.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 197 – "Precertification/authorization/notification absent"

## Issues

1. Did the insurance carrier raise a new issue?
2. Is the insurance carrier's reason for denial of payment supported?
3. Is the requestor entitled to reimbursement for the compound in question?

## Findings

1. The respondent states in their position statement, "...the disputed services have not yet been determined to be related to the compensable injury." 28 TAC 133.307 (d) (2) (F) states in pertinent part,

The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.

Based on the above, the new denial/defense will not be considered in this review.

2. The requestor is seeking reimbursement of \$702.68 for a compound dispensed May 14, 2018. The insurance carrier denied the disputed compound with claim adjustment reason code 197 – "Precertification/authorization/notification absent."

For the dates of service in dispute the applicable rule is 28 TAC §134.530(b)(2) which 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).

DWC finds that the compound rendered on the date of service in question does not include a drug identified with a status of "N" in the current edition of the ODG, *Appendix A*. Therefore, DWC concludes that the compound in question did not require preauthorization and the insurance carrier's denial of payment for this reason is not supported. Therefore, the disputed compound will be reviewed for reimbursement.

3. 28 TAC §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

| Ingredient         | NDC         | Price/<br>Unit | Total<br>Units | AWP Formula<br>§134.503(c)(1) | Billed Amt<br>§134.503<br>(c)(2) | Lesser of<br>(c)(1) and<br>(c)(2) |
|--------------------|-------------|----------------|----------------|-------------------------------|----------------------------------|-----------------------------------|
| Baclofen           | 38779038809 | \$35.63        | 5.4            | \$240.50                      | \$190.78                         | \$190.78                          |
| Amantadine         | 38779041105 | \$24.23        | 3              | \$90.84                       | \$72.69                          | \$72.69                           |
| Gabapentin         | 38779246109 | \$59.85        | 3.6            | \$269.33                      | \$204.66                         | \$204.66                          |
| Bupivacaine        | 38779052405 | \$45.60        | 1.2            | \$68.40                       | \$54.72                          | \$54.72                           |
| Amitriptyline      | 38779018904 | \$18.24        | 1.8            | \$41.04                       | \$32.83                          | \$32.83                           |
| Ethoxy Diglycol    | 38779190301 | \$0.34         | 4.2            | \$1.80                        | \$1.44                           | \$1.44                            |
| Versapro Cream     | 38779252903 | \$3.20         | 40.8           | \$142.31                      | \$130.56                         | \$130.56                          |
| Compounding<br>Fee | NA          | \$15.00        | 1              | N/A                           | \$15.00                          | \$15.00                           |
|                    |             |                |                |                               | \$702.68                         | \$702.68                          |

The total reimbursement is \$702.68. This amount is recommended.

### **Conclusion**

For the reasons stated above, DWC 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 DWC has determined the requestor is entitled to additional reimbursement for the disputed services. DWC 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**

|           |  |                   |
|-----------|--|-------------------|
|           |  | November 28, 2018 |
| 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 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.**