



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 CO

MFDR Tracking Number

M4-19-0872-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

October 15, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The above claimant received medication and the carrier still has not acknowledged receipt of service. Reimbursement should be made to the provider if the claim has been submitted within the 95th day after the date on which the health care service was rendered."

Amount in Dispute: \$566.53

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "An Explanation of Benefit (EOB) was sent to the provider on 8/18/18 denying payment due to an absence of precertification/authorization."

Response Submitted by: Law Office of Marc A Notzon PC

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
May 14, 2018	Pharmacy Services – Compound	\$566.53	\$557.41

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 §134.540 sets out the closed formulary requirements for claims subject to certified networks.
5. Texas Insurance Code, Chapter 4201 provides requirements related to utilization review.

6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
- 197 – Payment denied/reduced for absence of precertification/authorization

Issues

1. Is the insurance carrier’s reason for denial of payment supported?
2. Did American Zurich Insurance Co raise a new defense pursuant to 28 Texas Administrative Code §133.307?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement of the disputed services?

Findings

1. Memorial is seeking reimbursement of \$566.53 for a compound dispensed on May 14, 2018. American Zurich Insurance Co denied the disputed service with claim adjustment reason code 197 – “Payment denied/reduced for absence of precertification/authorization.” 28 Texas Administrative Code §134.540(b) states that preauthorization is **only** required for:
 - (1) 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;
 - (2) 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
 - (3) 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).

Provision §134.540(b)(1) preauthorization requirement is not discussed in this dispute because it was not asserted by either party in this dispute and is not applicable to the compound in question.

While not asserted by American Zurich Insurance Co, Memorial was not required to seek preauthorization pursuant to §134.540(b)(2) because none of the compounded ingredients have a status of "N" in the current edition of the ODG/Appendix A.

Law Office of Marc A Notzon PC, on behalf of American Zurich Insurance Co, argued that “The Carrier maintains its dispute of the four medications for the following reasons:

1. Failure to request and obtain preauthorization for a compound formulation that is investigational or experimental.”

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 Zurich Insurance Co 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 Zurich Insurance Co 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 Zurich Insurance Co’s preauthorization denial is therefore not supported.

Absent any evidence that American Zurich Insurance Co 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. In its position statement, Law Office of Marc A Notzon PC argued on behalf of American Zurich Insurance Co, "The Carrier's Utilization Review Agent (URA) notified the Treating Doctor, Dr Sparrow that the medications were denied by the Physicain Advisor as not medically necessary ... She determined that the request for the four medications were not medically necessary." and "The Carrier field a PLN 11 disputing the extent of injury on 4/24/18 and accepting compensability of a right knee strain only."

28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant 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."

Review of the submitted documentation finds that American Zurich Insurance Co failed to present a medical necessity and extent injury denial to Memorial in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The division concludes that this defense presented in American Zurich Insurance Co's position statement shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F)

3. 28 Texas Administrative Code §134.503 applies to the services 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 compounds in dispute were 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). Reimbursement is calculated as follows:

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Meloxicam	38779274601	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Flurbiprofen	38779036209	G	\$36.58	4.8	\$219.48	\$175.58	\$175.58
Tramadol HCL	38779237409	G	\$36.30	6	\$272.25	\$217.80	\$217.80
Cyclobenzaprine HCL	38779039509	G	\$46.33	1.8	\$104.25	\$83.39	\$83.39
Bupivacaine HCL	38779052405	G	\$45.60	1.2	\$68.40	\$45.60	\$45.60
						Total	\$557.41

The total allowable reimbursement for the compound in dispute is \$557.41. 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 \$557.41.

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 \$557.41, 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

11/28/2018

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.