



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

Harris County

MFDR Tracking Number

M4-19-1527-01

Carrier's Austin Representative

Box Number 21

MFDR Date Received

November 15, 2018

REQUESTOR'S POSITION SUMMARY

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

Amount in Dispute: \$583.89

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "... the medications were determined not medically necessary upon retrospective review ... Because Requestor failed to obtain preauthorization, Respondent is not liable for the cost of the medication..."

Response Submitted by: Thornton, Biechlin, Reynolds & Guerra

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: April 28, 2018, Compound Medication, \$583.89, \$583.89

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 (DWC).

Background

- 1. 28 Texas Administrative Code §133.240 sets out the procedures for payment or denial of a medical bill.
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. The insurance carrier denied payment based on preauthorization and medical necessity.

Issues

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

Findings

1. Memorial is seeking reimbursement for a compound dispensed on April 28, 2018. The insurance carrier processed and denied the disputed compound, in part, based on medical necessity. Per submitted explanation of benefits (EOB) dated May 9, 2018, the pharmacy bill was originally received by the insurance carrier on or before May 4, 2018. This EOB does not include a denial based on medical necessity.

An EOB dated September 27, 2018, denying the compound based on medical necessity is more than 45 days after the date the original complete bill was received.¹

The insurance carrier has the obligation to dispute whether a treatment was medically necessary within 45 days after receiving a complete medical bill.² The DWC notes that the insurance carrier failed to provide evidence that a denial for medical necessity was presented to Memorial within 45 days from the date it received the complete pharmacy bill.

Therefore, the DWC finds that the dispute in question is not subject to dismissal based on this denial reason.

2. The insurance carrier 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 A³;
 - 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

Thornton, Biechlin, Reynolds & Guerra argued on behalf of the insurance carrier that "the medication requires preauthorization under Rule 134.530(b)(1) because it included Meloxicam, which is an 'N' drug in the Division's pharmacy closed formulary in capsule form."

Review of the ODG, Appendix A finds that the brand name formulation of Meloxicam, Vivlodex, has a status of "N" with no generic equivalents. The compound ingredient sought by Memorial, NDC 38779274601, is found to be a generic form of Meloxicam, which carries a status of "Y" in the ODG, Appendix A. The compound in question does not contain an ingredient identified with a status of "N" in the current edition of the ODG, Appendix A.

The determination of a service's investigational or experimental nature is determined on a case by case basis through utilization review.⁵ Thornton, Biechlin, Reynolds & Guerra provided 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 Code §133.240(a)

² "A carrier has up to forty-five days from the date it receives a complete medical bill to dispute whether that treatment was necessary." State Office of Risk Management v. Lawton, 295 S.W.3d 646 (Tex. 2009), <https://caselaw.findlaw.com/tx-supreme-court/1388209.html>

³ ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary

⁴ 28 Texas Administrative Code §134.530(b)(1)

⁵ Texas Insurance Code §19.2005(b)

Because the insurance carrier failed to perform utilization review on the disputed compound, 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 is therefore not supported.

3. Because the insurance carrier failed to sufficiently support its denial of reimbursement, Memorial is entitled to reimbursement.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately.⁶ Each ingredient is listed below with its reimbursement amount.⁷ 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
Flurbiprofen	38779036209	G	\$36.58	6	\$274.35	\$219.48	\$219.48
Meloxicam	38779274601	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Mefenamic Acid	38779066906	G	\$123.60	1.8	\$278.10	\$222.48	\$222.48
Baclofen	38779038809	G	\$35.63	3	\$133.61	\$106.89	\$106.89
						Total	\$583.89

The total reimbursement is therefore \$583.89. 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 \$583.89.

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. The DWC hereby ORDERS the respondent to remit to the requestor \$583.89, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

_____	Laurie Garnes	December 18, 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 DWC 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.

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

⁷ 28 Texas Administrative Code §134.503(c)