



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 RX

Respondent Name

XL Specialty Insurance Company

MFDR Tracking Number

M419-1530-01

Carrier's Austin Representative

Box Number 19

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: \$566.53

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "As the treatment was for non-compensable conditions, Memorial is not entitled to medical fee dispute resolution ... The Requestor did not request and receive preauthorization for this investigational or experimental compound formulation, or for this compound that is not included in Division's Closed Formulary."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 26, 2017	Compound Medication	\$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 (DWC).

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.
- 28 Texas Administrative Codes §§134.530 and 134.540 sets out the closed formulary requirements, effective January 17, 2011, 35 TexReg 11344.
- The insurance carrier denied reimbursement for the disputed compound based on preauthorization.

Issues

1. Did Memorial Compounding Rx (Memorial) forfeit its right to medical fee dispute resolution?
2. Did XL Specialty Insurance Company raise a new defense in its response?
3. Is the insurance carrier's reason for denial of payment supported?
4. Is Memorial entitled to reimbursement for the compound in question?

Findings

1. Medical fee disputes are required to be submitted to the DWC within one year from the date of service, unless the dispute involves compensability, extent of injury, liability, medical necessity, or a refund. The date of service for this dispute is July 26, 2017. The DWC received the dispute on November 15, 2018. This is one year after the date of service.

However, Proclamation 41-3682¹ from Texas Governor Greg Abbott, dated August 23, 2017, declared a state of emergency for 60 counties, including Harris county, due to damage from Hurricane Harvey.

In response to this declaration, DWC Commissioner Ryan Brannon issued Bulletin B-0020-17,² dated August 29, which stated that the deadlines for medical benefit disputes were tolled as of the date of the bulletin. The Commissioner's Bulletin B-0042-17, lifted the tolled date, effective January 10, 2018.

Because the requestor is in Harris county, it was subject to the bulletin tolling its time for submission of this medical fee dispute. The DWC concludes that Memorial did not forfeit its right to medical fee dispute resolution.

2. In its position statement, Flahive, Ogden & Latson, on behalf of the insurance carrier, argued that "As the treatment was for non-compensable conditions, Memorial is not entitled to medical fee dispute resolution."

The response from the insurance carrier is required to address only the denial reasons presented to the requestor before the request for medical fee dispute resolution (MFDR) was filed with the Texas Department of Insurance, Division of Workers' Compensation (DWC). Any new denial reasons or defenses raised shall not be considered in this review.³

The submitted documentation does not support that a denial based on relatedness was provided to Memorial before this request for MFDR was filed. Therefore, the DWC will not consider this argument in the current dispute review.

3. Memorial is seeking reimbursement for a compound dispensed on July 26, 2017. The insurance carrier denied the disputed compound based on preauthorization. Preauthorization for this date of service is only required for:

- drugs identified with a status of "N" in the current edition of the ODG Appendix A⁴;
- 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.⁵

The compound in question does not contain a drug with a status of "N" in the current edition of the ODG Appendix A.

Flahive, Ogden & Latson argued that "The Requestor did not request and receive preauthorization for this investigational or experimental compound formulation, or for this compound that is not included in Division's Closed Formulary."

¹ <https://www.sos.texas.gov/texreg/pdf/backview/0802/0802gov.pdf>

² <https://www.tdi.texas.gov/bulletins/2017/b-0020-17.html>

³ 28 TAC §133.307 (d)(2)(F)

⁴ *ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary*

⁵ 28 Texas Administrative Codes §§134.530 (b)(1) 134.540 (b)

The determination of a service’s investigational or experimental nature is determined on a case by case basis through utilization review.⁶ Utilization review, includes a prospective, concurrent, or **retrospective review to determine the experimental or investigational nature** of health care services.⁷

The preamble relating to the adoption of relevant pharmacy rules clearly states that the DWC intended for the **ingredients** of the compound to drive preauthorization requirements, not compounds as a class.⁸ The compound in question does not contain an ingredient identified with a status of “N” in the current edition of the ODG, Appendix A.

Flahive, Ogden & Latson 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.

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.

4. Because XL Specialty Insurance Company failed to support its denial reason for the service in this dispute, the DWC finds that 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.⁹ Each ingredient is listed below with its reimbursement amount.¹⁰ 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
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	38779237409	G	\$36.30	6	\$272.25	\$217.80	\$217.80
Cyclobenzaprine	38779039509	G	\$46.33	1.8	\$104.25	\$83.39	\$83.39
Bupivacaine	38779052405	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

For the reasons stated above, the DWC finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$566.53.

⁶ Texas Insurance Code §19.2005 (b)

⁷ Texas Insurance Code §4201.002 (13)

⁸ The Division initially considered requiring preauthorization for all compound drugs. However, with stakeholder feedback and, in the interest of curbing the expense of numerous preauthorization requests, the Division reconsidered and adopts a more measured approach as specified in the proposal, which is requiring preauthorization only for those compounds that contain an “N” drug. The Division notes that an insurance carrier has the ability to conduct retrospective utilization review for all compounds not containing an “N” drug so that insurance carriers have the ability to only pay for medically necessary care.

[http://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=T&app=2&p_dir=F&p_rloc=231643&p_tloc=98652&p_ploc=78924&pg=6&p_reg=201006879&ti=&pt=&ch=&rl=&z_chk=53523](http://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=T&app=2&p_dir=F&p_rloc=231643&p_tloc=98652&p_ploc=78924&pg=6&p_reg=201006879&ti=&pt=&ch=&rl=&z_chk=53523)

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

¹⁰ 28 Texas Administrative Code §134.503(c)

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

Authorized Signature

	Laurie Garnes	February 27, 2020
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 DWC 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.