



# 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**

Indemnity Insurance Company of North America

**MFDR Tracking Number**

M4-19-2651-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

January 14, 2019

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Memorial Compounding Pharmacy is requesting Reconsideration based on the amendment of Rule 134.500 that indicates that all prescription written/dispensed or refilled prior to the effective date 07/01/2018 will not be impacted by the rule change. This compound has been proven to be effective and it not the first line of therapy or care based on patient's date of injury."

**Amount in Dispute:** \$522.85

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The 7/25/18 compounded medication was denied as not medically necessary following completion of a retrospective medical necessity review."

**Response Submitted by:** Liberty Mutual Insurance

#### SUMMARY OF FINDINGS

| Dates of Service | Disputed Services   | Amount In Dispute | Amount Due |
|------------------|---------------------|-------------------|------------|
| July 25, 2018    | Compound Medication | \$522.85          | \$0.00     |

#### 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 §133.240 sets out the procedures for payment and denial of medical bills.
- 28 Texas Administrative Code §133.305 sets out the procedures for resolving medical disputes.
- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Codes §§134.530(b)(1)(B) and (C) set out preauthorization requirements for compounds not subject to certified health care networks.
- 28 Texas Administrative Code §§134.540(b)(2) and (3) set out preauthorization requirements for compounds

subject to certified health care networks.

6. Texas Insurance Code, Chapter 19 sets out the requirements for utilization review.
7. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 203 – Peer review has determined – payment for treatment has not been recommended due to the lack of medical necessity. Peer review has provided its findings to the provider in prior documentation.

### Issues

1. Is this dispute subject to dismissal based on medical necessity?
2. Is reimbursement due for the service in dispute?

### Findings

1. Per explanation of benefits dated September 5, 2018, the insurance carrier denied the disputed compound 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.<sup>1</sup> A medical necessity denial of a medical bill must be based on an adverse determination by a utilization review agent.<sup>2</sup>

The submitted documentation includes a report dated August 21, 2018, as support for utilization review of the disputed compound. This report does not support that the insurance carrier performed a utilization review of the compound in question for the following reasons<sup>3</sup>:

- 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, in and of itself, does not constitute a determination for the purposes of utilization review. Any approvals or denials regarding the appropriateness of care or medical necessity must be processed formally through utilization review as outlined in Title 28 TAC Chapter 19, Subchapter U.”

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

2. Memorial asserts that preauthorization was not required for the compound in dispute. This compound was dispensed on July 25, 2018. Applicable amended Rule at 28 TAC 134.530 (b)(1)(C) states, in pertinent part, that preauthorization is **only** required for any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018.

According to the adoption preamble, new section (b)(1)(C) **DOES NOT APPLY** to prescriptions for compounded drugs written before July 1, 2018, and refills for those prescriptions. Therefore, for compounds dispensed on or after July 1, 2018, a copy of the physician’s initial prescription is necessary for the DWC to make an informed decision about whether preauthorization is required.

On July 16, 2019, the DWC submitted a request for additional information to Memorial. The request sought “the initial and any subsequent prescription(s) that pertain to the dispensed medications” in dispute. Memorial was given a deadline of July 23, 2019, to provide the requested information. Memorial failed to provide the prescription. Therefore, the decision will be based on the information available.

Memorial has failed to provide prescription evidence sufficient to support its assertion that preauthorization was not required. Memorial has therefore failed to meet its burden to prove that reimbursement is due.

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<sup>1</sup> 28 Texas Administrative Code §133.305(b)

<sup>2</sup> 28 Texas Administrative Code §133.240(q), 28 Texas Administrative Codes §§19.2009 and 19.2010

<sup>3</sup> 28 Texas Administrative Code §19.2009(b)

**Conclusion**

For the reasons stated above, the DWC finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Section 413.031, the division hereby determines the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

**Authorized Signature**

|           |  |               |
|-----------|--|---------------|
|           | Laurie Garnes                          | July 29, 2019 |
| 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.**