



# 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**

Houston ISD

**MFDR Tracking Number**

M4-19-3767-01

**Carrier's Austin Representative**

Box Number 44

**MFDR Date Received**

April 11, 2019

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The above patient was prescribed medication and the carrier received and processed the bill. Carrier denied the claim and the provider submitted a request for **reconsideration**. The request for reconsideration in accordance with Rule 133.250 was submitted to the carrier but claim was processed and denied again."

**Amount in Dispute:** \$310.32

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "There was no pre-authorization received from the provider for these experimental compounds ... There is no medical necessity for these medications 8 years after the initial date of injury and 5 years after the surgery."

**Response Submitted by:** Novare LLC

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 23, 2018	Gabapentin 300 mg Capsules	\$137.34	\$103.80
October 23, 2018	Tizanidine HCL 4 mg Tablets	\$189.37	\$168.84
Total		\$310.32	\$272.64

#### 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 §133.305 sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.503 sets out the fee schedule for pharmaceutical services.
4. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to

certified networks.

5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 50 – These are non-covered services because this is not deemed a ‘medical necessity’ by the payer.
  - P12 – Workers’ compensation jurisdictional fee schedule adjustment.
  - 4282 – Drugs identified with a status of “Y” in the current edition of the “Official Disability Guidelines Treatment in Workers’ Comp” (ODG)/Appendix A, “ODG Workers’ compensation drug formulary” identify a drug that can dispensed without preauthorization. The allowance has been determined in according to the pharmacy fee guidelines.
  - 285 – Please refer to the note above for a detailed explanation of the reduction.
  - Notes: “This claim had a date of injury of 2011 and a surgery in 2014. There is no medical necessity for these medications 8 years after the initial date of injury and 5 years after the surgery. Please submit charges to the patient’s personal insurance.”

### **Issues**

1. Is the dispute in question subject to dismissal due to 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 drugs dispensed on October 23, 2018. Houston ISD denied the disputed drugs, in part, based on medical necessity.

Medical necessity disputes must be resolved prior to submission of a medical fee dispute.<sup>1</sup> The insurance carrier is required to perform a utilization review before a denial based on medical necessity, including giving the health care provider – in this case, Memorial – an opportunity to discuss the treatment in question.<sup>2</sup>

The respondent is required to submit documentation to support a denial based on lack of medical necessity.<sup>3</sup> The insurance carrier provided no evidence to support that it performed a utilization review on the drugs in question to determine medical necessity.<sup>4</sup> This denial reason is not supported.

2. Submitted documentation supports that the insurance carrier also denied the disputed drugs based on preauthorization. Preauthorization is only required for:
  - drugs identified with a status of “N” in the current edition of the ODG Appendix A<sup>5</sup>;
  - 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.<sup>6</sup>

The DWC finds that the drugs in question are not identified with a status of “N” in the applicable edition of the ODG, *Appendix A*. Therefore, these drugs do not require preauthorization per 28 TAC §134.530(b)(2)(A).

The submitted documentation does not support that the drugs in question constitute compound drugs. Therefore, these drugs do not require preauthorization per 28 TAC §134.530(b)(2)(B).

The submitted documentation does not support that the disputed drugs are experimental or investigational. Therefore, these drugs do not require preauthorization per 28 TAC §134.530(b)(2)(C).

The DWC concludes that the insurance carrier’s denial of payment of the disputed drugs based on preauthorization is not supported.

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

<sup>2</sup> 28 Texas Administrative Code §133.240(q)

<sup>3</sup> 28 Texas Administrative Code §133.307(d)(2)(l)

<sup>4</sup> 28 Texas Administrative Codes §§134.240 and 19.2009

<sup>5</sup> *ODG Treatment in Workers’ Comp* (ODG) / Appendix A, *ODG Workers’ Compensation Drug Formulary*

<sup>6</sup> 28 Texas Administrative Code §134.530(b)(1)

3. Because the insurance carrier failed to support its denial of payment for the disputed drugs, Memorial is entitled to reimbursement.

The reimbursement considered in this dispute is calculated as follows<sup>7</sup>:

- Gabapentin 300 mg capsules:  $(1.3307 \times 60 \times 1.25) + \$4.00 = \$103.80$
- Tizanidine HCl 4 mg tablets:  $(1.46524 \times 90 \times 1.25) + \$4.00 = \$168.84$

The total reimbursement is therefore \$272.64. 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 \$272.64.

### **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 \$272.64, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

_____	Laurie Garnes	July 16, 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.**

<sup>7</sup> 28 Texas Administrative Code §134.503(c)