



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

INJURED WORKERS PHARMACY LLC

Respondent Name

UNIVERSITY HEALTH SYSTEM

MFDR Tracking Number

M4-20-1693-01

Carrier's Austin Representative

Box Number 16

MFDR Date Received

March 9, 2020

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Based on the diagnosis in which treatment is prescribed, the medications being shipped are all 'Y' status drugs per the Texas Formulary. With that being said, the medications do not require authorization prior to shipping."

Amount in Dispute: \$17,707.92

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "First, it should be noted that the Request for Medical Fee Dispute Resolution, as to the date of service 02/19/19, was not timely filed pursuant to DWC Rule 133.307(c), and as such, the Division does not have jurisdiction to determine eligibility for this date of service ... While the initial EOB did list 'lack of preauthorization' as a reason for disputing the bills, the reconsideration EOB, which was not attached, but is included herein, identified a denial code of 219 – 'based on extent of injury.' Additionally, the attached emails document correspondence between the Requestor and Respondent's agent, wherein additional documentation regarding the need for this medication for the accepted diagnosis was requested, but not approved.

Lastly, it should be noted that the requested reimbursement does not seem to hold true to the spirit of DWC Rule 134.503. In this instance, the Requestor billed \$4,426.98 for a 30 day supply (300 units) of the medication at issue (Diclofenac Sodium gel). However, in other instances involving the same self-insured, and seeking the same amount of the same medication, the Requestor only billed in the \$200-\$210 range"

Response Submitted by: Adami, Shuffield, Mask & Burns

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 19, 2019	Diclofenac Sodium 3% Gel – 68462035594	\$4,426.98	\$0.00
March 15, 2019	Diclofenac Sodium 3% Gel – 68462035594	\$4,426.98	\$4,426.98
April 15, 2019	Diclofenac Sodium 3% Gel – 68462035594	\$4,426.98	\$4,426.98
May 9, 2019	Diclofenac Sodium 3% Gel – 68462035594	\$4,426.98	\$4,426.98
Total		\$17,707.92	\$13,280.94

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 §133.210 sets out the requirements for documentation.
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 guidelines for pharmaceutical services.
4. 28 Texas Administrative Code §134.530 sets out the preauthorization requirements for pharmaceutical services.
5. The insurance carrier timely denied payment for the disputed drug based on preauthorization.

Issues

1. Did the requestor forfeit its right to medical fee dispute resolution for the dates of service in question?
2. Did the insurance carrier raise a new defense in its response?
3. Is the insurance carrier's denial of payment based on preauthorization supported?
4. Is the requestor entitled to the requested reimbursement for the disputed drugs?

Findings

1. *Did the requestor forfeit its right to medical fee dispute resolution for the dates of service in question?*

Injured Workers' Pharmacy is seeking reimbursement for drugs dispensed on the following dates of service:

- February 19, 2019
- March 15, 2019
- April 15, 2019
- May 9, 2019

The health care provider must request medical fee dispute resolution within one year from the date of service, except if a related compensability, extent of injury, or liability dispute exists; or a dispute regarding medical necessity has been filed.¹ If these exceptions apply, a request for medical fee dispute resolution must be filed within 60 days of the final adjudication of the disputed issue.

The DWC received the medical fee dispute resolution request on March 9, 2020. This is more than one year after date of service February 19, 2019. The DWC found no evidence to support that final adjudication of an

¹ 28 TAC §133.307 (c)(1)

exception applied to this date of service. Injured Workers' Pharmacy has waived its right to medical fee dispute resolution for February 19, 2019.

The DWC finds that dates of service March 15, 2019, through May 9, 2019, are eligible for review in this dispute.

2. *Did the insurance carrier raise a new defense in its response?*

In its position statement, Adami, Shuffield, Mask & Burns, on behalf of the insurance carrier, argued that "While the initial EOB did list 'lack of preauthorization' as a reason for disputing the bills, the reconsideration EOB, which was not attached, but is included herein, identified a denial code of 219 – 'based on extent of injury.'"

Review of the submitted documentation finds an explanation of benefits that denied date of service March 15, 2019, based on preauthorization. The submitted documentation also included an explanation of benefits dated June 4, 2019, that denied all disputed dates of service based on preauthorization. Injured Workers Pharmacy LLC also included an explanation of benefits dated October 16, 2019, which denied all the disputed dates of service based on preauthorization.

The insurance carrier included an explanation of benefits dated March 5, 2020, which denied all the disputed dates of service based on the extent of injury. The great weight of evidence supports that Injured Workers Pharmacy LLC submitted its request for medical fee dispute on or about March 3, 2020.

The response from the insurance carrier is required to address only the denial reasons presented to the health care provider before to the request for medical fee dispute resolution (MFDR) was filed with the DWC and the other party. Any new denial reasons or defenses raised shall not be considered in this review.²

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

3. *Is the insurance carrier's denial of payment based on preauthorization supported?*

In documentation submitted to the DWC, Adami, Shuffield, Mask & Burns included copies of an email conversation arguing that "the Carrier does not cover this medication at such an inflated unit price without preauthorization."

Preauthorization for pharmaceutical services is only required for:

- drugs identified with a status of "N" in the current edition of the ODG Appendix A³;
- any prescription drug created through compounding prescribed before July 1, 2018 that contains a drug identified with a status of "N" in the current edition of the ODG Appendix A, and any updates;
- any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and
- any investigational or experimental drug.⁴

A drug's price is not included in the reasons for preauthorization requirements. Therefore, this argument is not supported.

No evidence was presented to support that the drug in question was investigational or experimental. The insurance carrier's preauthorization denial is therefore not supported.

Based on the evidence presented, the DWC agrees with the requestor that the drug is not identified with a status of "N" in the current edition of the ODG Appendix A. Therefore, the insurance carrier's denial based on preauthorization is not supported.

² 28 TAC §133.307 (d)(2)(F)

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

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

4. *Is the requestor entitled to the requested reimbursement for the disputed drugs?*

Because University Health System failed to support its denial reason for the service in this dispute, the DWC finds that Injured Worker’s Pharmacy, LLC is entitled to reimbursement.

The reimbursement per date of service considered in this dispute is calculated as follows⁵:

- Diclofenac Sodium 3% Gel: $(11.7946 \times 300 \times 1.25) + \$4.00 = \$4,426.98$

The total allowable reimbursement for the dates of service considered in this dispute is \$13,280.94. 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 \$13,280.94.

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 \$13,280.94, 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

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.

⁵ 28 TAC §134.503 (c)