



## Medical Fee Dispute Resolution Findings and Decision

### General Information

**Requestor Name**

Memorial Wellness Pharmacy

**Respondent Name**

Starr Indemnity & Liability Co.

**MFDR Tracking Number**

M4-23-2586-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

June 9, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
January 9, 2023	Diclofenac Sodium 1% Gel NDC 21922000909	\$115.85	\$76.94

### Requestor's Position

"The explanation of benefits indicates that carrier paid **\$107.89** and not the full amount of **\$315.98**. This claim should be processed with the full amount billed as per **Administrative Labor Code 134.503(c)**."

**Amount in Dispute:** \$115.85

### Respondent's Position

"This bill is for diclofenac gel. Carrier has denied coverage for this topical drug for the use in this compensable injury. According to the ODG, Diclofenac sodium topical gel, 1% is indicated for the relief of the pain of osteoarthritis of joints amenable to topical treatment, such as the knees and those of the hands. Diclofenac sodium topical gel, 1% has not been evaluated for use on the injuries for which it was prescribed. Neither the Requestor nor the prescribing provider sought and obtained *voluntary* certification from the Carrier for this application."

**Response Submitted by:** Flahive, Ogden & Latson

## Findings and Decision

### Authority

This medical fee dispute is decided according to [Texas Labor Code \(TLC\) §413.031](#) and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC).

### Statutes and Rules

1. [28 Texas Administrative Code \(TAC\) §133.307](#) sets out the procedures for resolving medical fee disputes.
2. [28 TAC §134.500](#) defines the terms used in workers' compensation regulation of pharmaceutical reimbursement.
3. [28 TAC §134.503](#) sets out the fee guidelines for pharmaceutical services.
4. [28 TAC §134.530](#) sets out the preauthorization requirements for pharmaceutical services.
5. [28 TAC §134.600](#) sets out preauthorization guidelines for medical services.
6. [TLC §408.028](#) sets out the requirements for workers' compensation regulation of pharmaceutical reimbursement.

### Denial Reasons

The insurance carrier denied payment for the disputed drug with the following claim adjustment codes:

- D2(P12) – The charge for the over-the-counter medication exceeds the retail price.
- D3(P12) – The charge for the prescription drug is greater than the maximum reimbursement for a generic drug.
- HE75 – Prior Authorization required to process this bill.

### Issues

1. Is Starr Indemnity & Liability Co.'s denial based on preauthorization supported?
2. Is Memorial Wellness Pharmacy entitled to additional reimbursement?

### Findings

1. Memorial Wellness Pharmacy is seeking reimbursement for Diclofenac Sodium 1% Gel dispensed on January 9, 2023. Starr Indemnity & Liability Co. denied payment for lack of preauthorization.

TLC §408.028 requires the commissioner, by rule, to "adopt a closed formulary under Section 413.011." 28 TAC §134.500 defines the closed formulary as follows:

- “(3) Closed formulary – All available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but excludes:
- (A) drugs identified with a status of “N” in the current edition of the *Official Disability Guidelines Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;
  - (B) 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 Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;
  - (C) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and
  - (D) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).”

DWC finds that Diclofenac Sodium 1% Gel is included in the closed formulary. 28 TAC §134.530(b)(1) requires preauthorization only for drugs not included in the closed formulary.

DWC finds that Diclofenac Sodium 1% Gel is not identified with a status of “N” in the applicable edition of the ODG, *Appendix A*. Therefore, this drug does not require preauthorization for this reason. The submitted documentation does not support that the disputed drug is a compound. Therefore, this drug does not require preauthorization for this reason. The submitted documentation does not support that the disputed drug is experimental or investigational. Therefore, this drug does not require preauthorization for this reason.

In its position statement, the insurance carrier argued that “According to the ODG, Diclofenac sodium topical gel, 1% is indicated for the relief of the pain of osteoarthritis of joints amenable to topical treatment, such as the knees and those of the hands. Diclofenac sodium topical gel, 1% has not been evaluated for use on the injuries for which it was prescribed.”

Per 28 TAC §134.530(d)(2) relating to treatment guidelines for pharmaceutical services, “Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.” For this reason, this argument for requiring preauthorization is not supported.

In its position statement, the insurance carrier also argued that “Neither the Requestor nor the prescribing provider sought and obtained *voluntary* certification from the Carrier for this application.” 28 TAC §134.600 states,

- “(r) The requestor and insurance carrier may voluntarily discuss health care that does not require preauthorization or concurrent utilization review under subsections (p) and (q) of this section respectively.
- (1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

- (2) The insurance carrier may certify health care requested. The carrier and requestor shall document the agreement. Health care provided as a result of the agreement is not subject to retrospective utilization review of medical necessity.
- (3) If there is no agreement between the insurance carrier and requestor, health care provided is subject to retrospective utilization review of medical necessity."

Because this provision is **voluntary**, it confers no requirement to request preauthorization. Therefore, this argument is invalid.

DWC concludes that the insurance carrier's denial of payment based on preauthorization is not supported.

2. Because the insurance carrier's denial of payment is not supported, Memorial Wellness Pharmacy is entitled to reimbursement.

The reimbursement considered in this dispute is calculated according to 28 TAC §134.503(c)(a), with relevant formula for generic drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee per prescription} = \text{reimbursement amount}$ .

- Diclofenac Sodium 1% Gel:  $(0.5835 \times 100 \times 1.25) + \$4.00 = \$76.94$

The total allowable reimbursement for the drug in question is \$76.94. This amount is recommended.

### Conclusion

The outcome of this medical fee dispute is based on the evidence presented by the requestor and the respondent at the time of adjudication. Though all evidence may not have been discussed, it was considered.

DWC finds the requestor has established that additional reimbursement of \$76.94 is due.

### **Order**

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to reimbursement for the disputed services. It is ordered that Starr Indemnity & Liability Co. must remit to Memorial Wellness Pharmacy \$76.94 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

July 28, 2023  
\_\_\_\_\_  
Date

## Your Right to Appeal

Either party to this medical fee dispute has a right to seek review of this decision under 28 TAC §133.307, which applies to disputes filed on or after **June 1, 2012**.

A party seeking review must submit DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)* and follow the instructions on the form. You can find the form at [www.tdi.texas.gov/forms/form20numeric.html](http://www.tdi.texas.gov/forms/form20numeric.html). DWC must receive the request within **20 days** of when you receive this decision. You may fax, mail, or personally deliver your request to DWC using the contact information on the form or the field office handling the claim. If you have questions about DWC Form-045M, please call CompConnection at 1-800-252-7031, option three or email [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).

The party seeking review of the MFDR decision must deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with DWC. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** with any other required information listed in [28 TAC §141.1 \(d\)](#).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, opción tres o correo electronico [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).