

## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**

Memorial Wellness Pharmacy

**Respondent Name**

XL Specialty Insurance Co.

**MFDR Tracking Number**

M4-23-2914-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

July 17, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
12/20/2022	NDC: 21922-0009-09 Diclofenac Sodium 1% Gel 100 units	\$115.85	\$76.94
<b>Total</b>		<b>\$115.85</b>	<b>\$76.94</b>

### Requestor's Position

"Memorial did not receive any correspondence as per Rule 133.2S0(a) after the submission of the original bill. Memorial then submitted a Request for Reconsideration. The Request for Reconsideration was submitted and received by the carrier on 03/09/2023. The carrier denied the bill based on PRODUCT/SERVICE NOT COVERED. These medications do not require preauthorization therefore do not need a retrospective review... The service billed has a "Y" code therefore does not require preauthorization."

**Amount in Dispute:** \$115.85

### Respondent's Position

"This bill is for diclofenac topical gel. Carrier has denied coverage for this topical drug for the use in this compensable injury, involving ... 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..."

**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 §134.503](#) sets out the fee guidelines for pharmaceutical services.
3. [28 TAC §134.520](#) applies the closed formulary to DWC claims with dates of injury September 1, 2011, and forward.
4. [28 TAC §134.500\(3\)](#) defines the closed formulary as it relates to pharmaceutical benefits for injured workers.
5. [28 TAC §134.530](#) and [134.540](#) set out the preauthorization requirements for pharmaceutical services.

### Denial Reasons

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

- HE70 – Product/Service not covered.

### Issues

1. What rules apply to the disputed service?
2. Is the insurance carrier's denial reason supported?
3. Is the requestor entitled to reimbursement?

### Findings

1. The requestor, Memorial Wellness Pharmacy, seeks reimbursement for 100 units of Diclofenac Sodium 1% Gel dispensed on December 20, 2022. DWC finds that the following rules apply to the disputed pharmacy service.

28 TAC §134.520 establishes that the closed formulary shall apply to DWC claims with a date of injury on or after September 1, 2011. DWC finds that this dispute involves a claim with a date of injury after September 1, 2011, and therefore the closed formulary shall apply.

28 TAC §134.500(3) defines the closed formulary as "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..."

DWC finds that the drug in question is not excluded from the closed formulary in accordance with the above definition as it is not identified with a status of "N" in the current edition of the ODG Appendix A, it is not identified as a compound drug, nor is it an experimental or investigational drug.

Per 28 TAC §134.530(b)(1) and §134.540(b) which sets out requirements for the preauthorization of prescription drugs, preauthorization is only required for:

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

DWC finds that the drug in question was not identified with a status of "N" in the applicable edition of the ODG, Appendix A for the date of service reviewed in this dispute. Therefore, this drug did not require preauthorization for this reason.

The submitted documentation does not support that the disputed drug was a compound. Therefore, the drug did not require preauthorization for this reason.

The submitted documentation does not support that the disputed drug was experimental or investigational. Therefore, the drug did not require preauthorization for this reason.

2. The insurance carrier denied reimbursement for 100 units of the disputed drug Diclofenac Sodium 1% Gel, stating only that the product/service is not covered.

In accordance with 28 TAC §134.520 and 28 TAC §134.500(3), described in the finding above, DWC finds that the disputed drug is covered within the closed Workers' Compensation Drug Formulary. In accordance with 28 TAC §134.530(b)(1) and §134.540(b) DWC finds that the drug in dispute did not require preauthorization.

DWC finds that the insurance carrier's denial reason based on "Product/Service not covered", is not supported.

3. Because the insurance carrier's denial reason is not supported, DWC finds that the requestor is entitled to reimbursement. Therefore, the service in dispute will be reviewed per applicable fee guideline.

DWC Rule 28 TAC §134.503 (c) states the insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of the billed amount or the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

- Generic drugs: ((AWP per unit) x (number of units) x 1.25) + \$4.00 dispensing fee per prescription = reimbursement amount.

Drug	NDC	Generic (G)/ Brand (B)	Price/Unit	AWP Formula	Billed Amount	Lesser of AWP or Billed Amount
Diclofenac Sodium 1% Gel x 100 u	21922000909	G	\$0.58350	\$76.94	\$115.85	\$76.94

DWC finds that the requestor is entitled to reimbursement in the amount of \$76.94 for disputed date of service, December 20, 2022.

Conclusion

The outcome of each independent medical fee dispute relies on the relevant evidence the requestor and respondent present at the time of adjudication. Although all the evidence in this dispute may not have been discussed, it was considered.

The DWC finds the requestor has established that reimbursement is due in the amount of \$76.94.

**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 the Respondent, XL Specialty Insurance Co., must remit to the Requestor, Memorial Wellness Pharmacy, the amount of \$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

\_\_\_\_\_  
September 8, 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 3, 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 512-804-4812.