



# 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**

Zurich American Insurance Company

**MFDR Tracking Number**

M4-18-1036-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

December 11, 2017

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "These medications do not require preauthorization therefore do not need a retrospective review."

**Amount in Dispute:** \$747.11

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The attached EOBs and Adverse Determination reflect the disputed bill was denied based upon medical necessity ... The requestor did not request and receive preauthorization for this investigational or experimental compound formulation."

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

### SUMMARY OF FINDINGS

| Dates of Service | Disputed Services       | Amount In Dispute | Amount Due |
|------------------|-------------------------|-------------------|------------|
| April 17, 2017   | Pharmaceutical Compound | \$747.11          | \$747.11   |

### 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**

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
- 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
- 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
- The insurance carrier denied payment based on medical necessity and the absence of preauthorization.

## Issues

1. Is this dispute subject to dismissal based on medical necessity?
2. Is the insurance carrier's reason for denial of payment supported?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the compound in question?

## Findings

1. Memorial is seeking reimbursement for a compound dispensed on April 17, 2017. Per explanation of benefits dated May 15, 2017, the insurance carrier denied the disputed compound, in part, based on an adverse determination of 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 an adverse determination of medical necessity, including giving the health care provider – in this case, Memorial – an opportunity to discuss the treatment in question.<sup>2</sup>

Flahive, Ogden & Latson submitted a document on behalf of Zurich American Insurance Company (Zurich), dated August 4, 2017, to support its denial of the disputed compound. The Texas Department of Insurance, Division of Workers' Compensation (DWC) finds that the submitted document does not support that the insurance carrier performed a utilization review addressing the compound in question as Flahive, Ogden & Latson provided no evidence that Memorial was given an opportunity to discuss the compound prior to the insurance carrier's denial based on an adverse determination of medical necessity.<sup>3</sup>

The DWC concludes that this dispute is not subject to dismissal based on medical necessity.

2. The insurance carrier also denied the disputed compound based on the absence of preauthorization. Preauthorization is only required for:

- drugs identified with a status of "N" in the current edition of the ODG Appendix A<sup>4</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>5</sup>

The compound in question does not contain an ingredient identified with a status of "N" in the current edition of the ODG, Appendix A.

Flahive, Ogden & Latson, on behalf of the insurance carrier, argued that "Compound medications constitute a new, non-approved and non-recognized drug and is considered investigational/experimental."

The determination of a service's investigational or experimental nature is determined on a case by case basis through utilization review.<sup>6</sup> Utilization review, includes a prospective, concurrent, or **retrospective review to determine the experimental or investigational nature** of health care services.<sup>7</sup>

Flahive, Ogden & Latson provided **no evidence** that the insurance carrier engaged in a prospective or retrospective utilization review to establish that the specific compound considered in this review is investigational or experimental.

Because the insurance carrier failed to perform utilization review on the disputed compound, the requirement for preauthorization based on a premise that the compound is investigational or experimental **is not triggered** in this case. The insurance carrier's preauthorization denial is therefore 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 §19.2009(b)

<sup>4</sup> *ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary*

<sup>5</sup> 28 Texas Administrative Code §134.540(b)

<sup>6</sup> Texas Insurance Code §19.2005(b)

<sup>7</sup> Texas Insurance Code §4201.002(13)

3. Because the insurance carrier failed to sufficiently support its denial of reimbursement, Memorial is entitled to reimbursement.

The compound in dispute was billed by listing each **drug** included in the compound and calculating the charge for each drug separately.<sup>8</sup> Each ingredient is listed below with its reimbursement amount.<sup>9</sup> The calculation of the total allowable amount is as follows:

| Drug            | NDC         | Generic(G)<br>/Brand(B) | Price /Unit | Units<br>Billed | AWP<br>Formula | Billed Amt   | Lesser of AWP<br>and Billed |
|-----------------|-------------|-------------------------|-------------|-----------------|----------------|--------------|-----------------------------|
| Meloxicam       | 38779274601 | G                       | \$194.67    | 0.18            | \$43.80        | \$35.04      | \$35.04                     |
| Flurbiprofen    | 38779036209 | G                       | \$36.58     | 6               | \$274.35       | \$210.90     | \$210.90                    |
| Baclofen        | 38779038809 | G                       | \$35.63     | 3               | \$133.61       | \$102.60     | \$102.60                    |
| Mefenamic Acid  | 3877900669  | G                       | \$123.60    | 1.8             | \$278.10       | \$222.48     | \$222.48                    |
| Bupivacaine     | 38779052405 | G                       | \$45.60     | 1.2             | \$68.40        | \$48.02      | \$48.02                     |
| Ethoxy Diglycol | 38779190301 | G                       | \$0.34      | 3               | \$1.28         | \$1.03       | \$1.03                      |
| Versapro Cream  | 38779252903 | B                       | \$3.20      | 44.82           | \$156.33       | \$112.05     | \$112.05                    |
| Fee             | NA          | NA                      | NA          | NA              | \$15.00        | \$15.00      | \$15.00                     |
|                 |             |                         |             |                 |                | <b>Total</b> | <b>\$747.12</b>             |

Memorial is seeking reimbursement of \$747.11. 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 \$747.11.

**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 \$747.11, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Laurie Garnes  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
November 9, 2018  
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 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>8</sup> 28 Texas Administrative Code §134.502(d)(2)

<sup>9</sup> 28 Texas Administrative Code §134.503(c)