



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

City of Houston

MFDR Tracking Number

M4-18-4269-01

Carrier's Austin Representative

Box Number29

MFDR Date Received

July 12, 2018

REQUESTOR'S POSITION SUMMARY

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

Amount in Dispute: \$583.89

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This request for MFDR contains an unresolved adverse determination of medical necessity."

Response Submitted by: Stone Loughlin Swanson

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: November 28, 2017, Compound Medication, \$583.89, \$583.89

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 §133.240 sets out the procedures for payment or denial of a medical bill.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. The insurance carrier denied payment based on medical necessity and preauthorization.

## Issues

1. Is this dispute subject to dismissal based on 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 a compound dispensed on November 28, 2017. The insurance carrier processed and denied the disputed compound, in part, based on medical necessity. Per submitted explanation of benefits (EOB) dated January 3, 2018, the pharmacy bill was originally received by the insurance carrier on or before December 11, 2017. This EOB did not raise a denial of medical necessity.

Submitted EOB dated May 2, 2018, denying the compound based on medical necessity is more than 45 days after the date the original complete bill was received.<sup>1</sup>

The insurance carrier has the obligation to dispute whether a treatment was medically necessary within 45 days after receiving a complete medical bill.<sup>2</sup> The DWC notes that the insurance carrier failed to provide evidence that a denial for medical necessity was presented to Memorial within 45 days from the date it received the complete pharmacy bill. Therefore, the DWC finds that the dispute in question is not subject to dismissal based on this denial reason.

2. The insurance carrier also denied the disputed compound 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>3</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>4</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.

The determination of a service's investigational or experimental nature is determined on a case by case basis through utilization review.<sup>5</sup> Stone Loughlin Swanson 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.

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>6</sup> Each ingredient is listed below with its reimbursement amount.<sup>7</sup> The calculation of the total allowable amount is as follows:

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<sup>1</sup> 28 Texas Administrative Code §133.240(a)

<sup>2</sup> "A carrier has up to forty-five days from the date it receives a complete medical bill to dispute whether that treatment was necessary." State Office of Risk Management v. Lawton, 295 S.W.3d 646 (Tex. 2009), <https://caselaw.findlaw.com/tx-supreme-court/1388209.html>

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

<sup>4</sup> 28 Texas Administrative Code §134.530(b)(1)

<sup>5</sup> Texas Insurance Code §19.2005(b)

<sup>6</sup> 28 Texas Administrative Code §134.502(d)(2)

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

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Flurbiprofen	38779036209	G	\$36.58	6	\$274.35	\$219.48	\$219.48
Meloxicam	38779274601	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Mefenamic Acid	38779066906	G	\$123.60	1.8	\$278.10	\$222.48	\$222.48
Baclofen	38779038809	G	\$35.63	3	\$133.61	\$106.89	\$106.89
						Total	\$583.89

The total reimbursement is therefore \$583.89. 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 \$583.89.

***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 \$583.89, 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

\_\_\_\_\_  
December 18, 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.**