



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

New Hampshire Insurance Company

MFDR Tracking Number

M4-18-5169-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

August 24, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The carrier has received the attached bill and has not processed according to Texas Labor Code 408.027."

Amount in Dispute: \$645.94

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The issue of extent of injury/relatedness has been joined, and the disputed services have not yet been determined to be related to the compensable injury ... 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
February 27, 2018	Cyclobenzaprine 10 mg tablets	\$90.26	\$44.95
February 27, 2018	Compound Medication	\$555.68	\$555.68
Total		\$645.94	\$600.63

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 §133.240 sets out the procedures for payment or denial of medical bills.
- 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.

6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 197 – Payment denied/reduced for absence of precertification/authorization.
 - 5264 – Payment is denied-service not authorized.
 - 216 – Based on the findings of a review organization.
 - 193 – Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
 - 1014 – The attached billing has been re-evaluated at the request of the provider. Based on this re-evaluation, we find our original review to be correct. Therefore, no additional allowance appears to be warranted.

Issues

1. Did the insurance carrier raise a new defense in its response?
2. Is this dispute subject to dismissal due to medical necessity?
3. Is the insurance carrier's reason for denial of payment supported?
4. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the compound in question?

Findings

1. Memorial is seeking reimbursement for Cyclobenzaprine 10 mg tablets and a compound dispensed on February 27, 2018. In its position statement, Flahive, Ogden & Latson, on behalf of the insurance carrier, argued that the compound was denied for the extent of the compensable injury.

The response from the insurance carrier is required to address only the denial reasons presented to the requestor before the medical fee dispute resolution (MFDR) was filed with the Texas Department of Insurance, Division of Workers' Compensation (DWC). Any new denial reasons or defenses raised shall not be considered in this review.¹

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

2. The insurance carrier processed and denied the disputed compound, in part, based on medical necessity. Per submitted explanation of benefits dated March 19, 2018, the pharmacy bill was originally received by the insurance carrier on March 9, 2018. This explanation of benefits did not raise the issue of medical necessity.

Explanation of benefits dated June 1, 2018, denying the compound based on medical necessity is more than 45 days after the date the original complete bill was received.²

The insurance carrier has the obligation to dispute whether a treatment was medically necessary within 45 days after receiving a complete medical bill.³ The DWC notes that the insurance carrier failed to present evidence of a denial for medical necessity 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.

3. 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 A⁴;
 - any compound that contains a drug identified with a status of "N" in the current edition of the ODG Appendix A; and

¹ 28 Texas Administrative Code §133.307(d)(2)(F)

² 28 Texas Administrative Code §133.240(a)

³ "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>

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

- any investigational or experimental drug.⁵

The DWC finds that Cyclobenzaprine 10 mg tablets is not identified with a status of “N” in the current edition of the ODG, Appendix A.

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 “The requestor did not request and receive preauthorization for this investigational or experimental compound formulation.”

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

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.

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

The reimbursement for the drugs considered in this dispute is calculated as follows⁸:

- Cyclobenzaprine 10 mg tablets: $(1.092 \times 30 \times 1.25) + \$4.00 = \$44.95$

The compound in dispute was billed by listing each **drug** included in the compound and calculating the charge for each drug separately.⁹ Each ingredient is listed below with its reimbursement amount.¹⁰ The calculation of the total allowable amount is as follows:

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Baclofen	38779038809	G	\$35.63	5.4	\$240.50	\$190.78	\$190.78
Amantadine	38779041105	G	\$24.23	3	\$90.84	\$72.69	\$72.69
Gabapentin	38779246109	G	\$59.85	3.6	\$269.33	\$204.66	\$204.66
Bupivacaine	38779052405	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Amitriptyline	38779018904	G	\$18.24	1.8	\$41.04	\$32.83	\$32.83
						Total	\$555.68

The total reimbursement is therefore \$600.63. 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 \$600.63.

ORDER

⁵ 28 Texas Administrative Code §134.540(b)

⁶ Texas Insurance Code §19.2005(b)

⁷ Texas Insurance Code §4201.002(13)

⁸ 28 Texas Administrative Code §134.503(c)

⁹ 28 Texas Administrative Code §134.502(d)(2)

¹⁰ 28 Texas Administrative Code §134.503(c)

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 \$600.63, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Laurie Garnes	November 29, 2018
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 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.