



Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Proxima Rx

Respondent Name

Indemnity Insurance Co. of North America

MFDR Tracking Number

M4-25-0692-01

Carrier's Austin Representative

Box Number 15

DWC Date Received

November 20, 2024

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
May 23, 2024	65162091838	\$357.50	\$357.50

Requestor's Position

"The original claim was denied for **PREAUTHORIZATION ABSENT**. An **appeal** was submitted to and received by the carrier on **09/05/2024**. The appeal was denied by the carrier. The carrier cited new denial reasons under **PATIENT NOT COVERED**."

Amount in Dispute: \$357.50

Respondent's Position

"Respondent denied payment for the prescription of Lidocaine ointment 5% for lack of preauthorization. Currently, only Lidocaine 5% patches (brand name Lidoderm) and 1.8% patches (brand name ZTlido) are Y drugs and are the only two forms of Lidocaine included on Appendix A ...

"In conclusion, as Lidocaine ointment 5% is not listed on Appendix A, preauthorization is required."

Response Submitted by: Downs-Stanford, P.C.

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 \(TAC\) §133.305](#) sets out the procedures for resolving medical disputes.
2. [28 TAC §133.307](#) sets out the procedures for resolving medical fee disputes.
3. [28 TAC §134.501](#) effective April 22, 2018, 43 TexReg 2275 defines pharmaceutical terms as used prior to November 28, 2024.
4. [28 TAC §134.503](#) effective October 23, 2011, 36 TexReg 6949 sets out the fee guidelines for pharmaceutical services before November 28, 2024.
5. 28 TAC §§[134.530](#) and [134.540](#) effective April 22, 2018, 43 TexReg 2275 set out the preauthorization requirements for pharmaceutical services before November 28, 2024.

Denial Reasons

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

- 70 – Drug not covered on formulary
- 197 – Precertification/authorization/notification/pre-treatment absent.
- 65 – Patient not covered

Issues

1. Is the insurance carrier's denial based on compensability supported?
2. Is the insurance carrier's denial based on preauthorization supported?
3. Is Proxima Rx entitled to reimbursement for the drug in question?

Findings

1. Proxima Rx is seeking reimbursement for Lidocaine ointment 5% dispensed on May 23, 2024. Per explanation of benefits dated September 27, 2024, the insurance carrier denied payment stating, "Patient not covered."

28 TAC §§133.305(b) and 133.307(c)(1)(B)(i) state that a dispute regarding compensability must be resolved prior to a request for medical fee dispute.

Per 28 TAC §133.307(d)(2)(H), the respondent is required to attach a copy of any related Plain Language Notice (PLN) if the medical fee dispute involves compensability or liability.

DWC found no evidence that an unresolved issue of compensability exists for the claim that is the subject of this dispute. This denial reason is not supported.

2. The insurance carrier also denied the disputed drug based on lack of preauthorization, arguing that because "Lidocaine ointment 5% is not listed on Appendix A, preauthorization is required."

28 TAC §134.501(3) defines the closed formulary as "... 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)." [emphasis added]

DWC finds that Lidocaine ointment 5% is a prescription drug approved by the FDA and does not meet any of the criteria for exclusion, therefore, it is subject to the DWC closed formulary as defined.

Per 28 TAC §§134.530(b)(1) and 134.540(b), for claims subject to the DWC closed formulary, preauthorization is **only** required for drugs that are **excluded** from the formulary. There is no exclusion for FDA approved drugs that are not found on the ODG/Appendix A, and the appendix is not an exhaustive list of all FDA approved drugs. A drug's absence from the ODG/Appendix A does not create a requirement to obtain preauthorization.

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

3. Because the insurance carrier failed to support its denial of payment, Proxima Rx is entitled to reimbursement.

The reimbursement considered in this dispute is calculated according to 28 TAC §134.503(c)(1)(A), with relevant formula for generic drugs: ((AWP per unit) x (number of units) x 1.25) + \$4.00 dispensing fee per prescription = reimbursement amount.

Lidocaine ointment 5%: $(8.46501 \times 35 \times 1.25) + \$4.00 = \$374.34$

The total allowable amount for the drug in question is \$374.34. Proxima Rx is seeking \$357.50. 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 reimbursement of \$357.50 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 Indemnity Insurance Co. of North America must remit to Proxima Rx \$357.50 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

May 7, 2025
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. 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.

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 electrónico CompConnection@tdi.texas.gov.