



# 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**

Sentry Insurance A Mutual Company

**MFDR Tracking Number**

M4-17-1518-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

January 23, 2017

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The attached bills have been denied by the carrier stating preauthorization. The reconsideration was denied after reconsideration."

**Amount in Dispute:** \$1,335.94

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Carrier maintains that reimbursement is not owed because the provider failed to obtain preauthorization."

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

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
June 14, 2016	Pharmacy Services - Compounds	\$1,335.94	\$1,335.94

#### 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.

#### **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 reduced payment for the disputed services with the following claim adjustment codes:
  - 197 – Precertification/authorization/notification absent

- W3 – Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly

**Issues**

1. Is the carrier’s reason for denial of payment supported?
2. Is the requestor entitled to reimbursement for the compound in question?

**Findings**

1. The requestor is seeking reimbursement of \$1,335.94 for a compound dispensed on June 14, 2016. The carrier denied the disputed compound with claim adjustment reason code 197 – “Precertification/authorization/notification absent.”

28 Texas Administrative Code §134.530(b)(2) states that preauthorization is **only** required for:

- drugs 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;
- any compound 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; and
- 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).

The division finds that the compound in question does not include a drug identified with a status of “N” in the current edition of the ODG, *Appendix A*.

Flahive, Ogden & Latson, on behalf of Sentry Insurance A Mutual Company, argued that “Compounded topical medications of the type provided in this case are considered “investigational or experimental” and must be preauthorized prior to service.”

The determination of a service’s investigational or experimental nature is determined on a case by case basis as a utilization review pursuant to Texas Insurance Code §4201.002. Further, Texas Insurance Code §4201.002(13) states that utilization review, in relevant part, “includes a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services.”

The division found **no evidence** that the carrier engaged in a prospective or retrospective utilization review (UR) as required by Texas Insurance Code §4201.002 in order to establish that the following compound is investigational or experimental in nature:

Ingredient	Compound Cream In Dispute	
	Prescription Number	Amount
Flurbiprofen	4182571	4.8
Bupivacaine	4182571	1.2
Ethoxy Diglycol	4182571	3
Versapro Cream	4182571	45.02
Meloxicam	4182571	0.18
Tramadol	4182571	6
Cycliobenzaprine	4182571	1.8
Ethoxy Diglycol	6514928	4.2
Baclofen	6514928	5.4
Versapro Cream	6514928	40.8
Amitriptyline	6514928	1.8
Gabapentin	6514928	3.6
Amantadine	6514928	3
Bupivacaine	6514928	1.2

Because Sentry Insurance A Mutual Company failed to perform UR on the above listed compound, the requirement for preauthorization under §134.530(b)(1)(C) is **not triggered** in this case. The carrier’s preauthorization denial is therefore not supported.

Absent any evidence that the carrier presented other defenses to requestor before medical fee dispute resolution that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division finds the compounds in question are eligible for reimbursement.

2. 28 Texas Administrative Code §134.503 applies to the compounds in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
  - (1) 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:
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
  - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
    - (A) health care provider; or
    - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Flurbiprofen	38779036209/ Generic	\$36.58	4.8	\$232.63	\$175.58	\$175.58
Bupivacaine	38779052405/ Generic	\$45.60	1.2	\$61.00	\$54.72	\$54.72
Ethoxy Diglycol	38779252903/ Generic	\$0.342	3	\$5.28	\$1.02	\$1.02
Versapro Cream	38779252903/ Generic	\$3.20	45.02	\$160.96	\$144.06	\$144.06
Meloxicam	38779274601/ Generic	\$194.67	0.18	\$247.34	\$35.04	\$35.04
Tramadol	38779237409/ Generic	\$36.30	6	\$276.25	\$217.80	\$217.80
Cyclobenzaprine	38779039509/ Generic	\$46.332	1.8	\$119.83	\$83.39	\$83.39
Compounding Fee	NA	\$15.00	1		\$15.00	\$15.00
Ethoxy Diglycol	38779190301/ Generic	\$0.342	4.2	\$5.71	\$1.44	\$1.44

Baclofen	38779038809/ Generic	\$35.63	5.4	\$226.69	\$184.68	\$184.68
Versapro Cream	38779252903/ Generic	\$3.20	40.8	\$147.01	\$102.00	\$102.00
Compounding Fee	NA	\$15.00	1		\$15.00	\$15.00
Amitriptyline	38779018904/ Generic	\$18.24	1.8	\$49.60	\$31.63	\$31.63
Gabapentin	38779246109/ Generic	\$59.85	3.6	\$303.25	\$188.10	\$188.10
Amantadine	38779041105/ Generic	\$24.225	3	\$94.84	\$38.46	\$38.46
Bupivacaine	38779052405/ Generic	\$45.60	1.2	\$61.00	\$48.02	\$48.02
					Total	\$1,335.94

The total reimbursement is \$1,335.94. 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 \$1,335.94.

***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$1,335.94, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
Date

May 24, 2018

***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 division 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.**