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
American Casualty Company of Reading PA

MFDR Tracking Number
M4-18-2411-01

Carrier's Austin Representative
Box Number 57

MFDR Date Received
March 6, 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: $555.68

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Compound medications constitute a new, non-approved and non-recognized drug and is considered investigational/experimental. Because the compound medication was investigational or experimental in nature and was not accepted as the prevailing standard of care, it required preauthorization … The Carrier obtained a medical peer review opinion regarding, among other things, reasonable and necessary future medical care to treat the effects of the compensable injury."

Response Submitted by: Brian J. Judis

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 15, 2018	Pharmacy Services – Compound	$555.68	$555.68

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

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
3. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
4. 28 Texas Administrative Code §134.540 sets out the closed formulary requirements for claims subject to certified networks.

5. Texas Insurance Code, Chapter 4201 provides requirements related to utilization review.
6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
   - 197 – Precertification/authorization/notification absent.
   - Notes: "This medication has been identified as a compound drug. As an investigational or experimental drug under Texas Labor Code 413.014(a), this medication required preauthorization prior to fulfillment."
   - 193 – Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
   - Notes: "We are unable to recommend an additional allowance since this claim was paid in accordance with the state's fee schedule guidelines, First Health Bill Review's usual and customary policies, and/or was reviewed in accordance with the provider's contract with First Health."

Issues

1. Did the insurance carrier raise a new defense pursuant to 28 Texas Administrative Code §133.307?
2. Is the insurance carrier's reason for denial of payment supported?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement of the disputed services?

Findings

1. In its position statement, Brian J. Judis argued on behalf of American Casualty Company of Reading PA (American Casualty), "The Carrier obtained a medical peer review opinion regarding, among other things, reasonable and necessary future medical care to treat the effects of the compensable injury."

   28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

   Review of the submitted documentation finds that American Casualty failed to present a medical necessity denial to Memorial in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The division concludes that this defense presented in Brian J. Judis' position statement shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Memorial is seeking reimbursement for a compound dispensed on August 15, 2017. American Casualty denied the disputed service with claim adjustment reason code 197 – "Precertification/authorization/ notification absent," adding, "This medication has been identified as a compound drug. As an investigational or experimental drug under Texas Labor Code 413.014(a), this medication required preauthorization prior to fulfillment."

   28 Texas Administrative Code §134.540(b) states that preauthorization is **only** required for:

   (1) 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;
   (2) 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
   (3) 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).

   Provision §134.540(b)(1) preauthorization requirement is not discussed in this dispute because it was not asserted by either party in this dispute and is not applicable to the compound in question.

   While not asserted by American Casualty, Memorial was not required to seek preauthorization pursuant to §134.540(b)(2) because none of the compounded ingredients have 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 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 American Casualty 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:

Compound Cream in Dispute	
Ingredient	Amount
Baclofen	5.4 gm
Amantadine HCl	3.0 gm
Gabapentin USP	3.6 gm
Bupivacaine HCl	1.2 gm
Amitriptyline HCl	1.8 gm

Because American Casualty failed to perform UR on the above listed compound, the requirement for preauthorization under §134.540(b)(2) **is not triggered** in this case. American Casualty's preauthorization denial is therefore not supported.

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

3. 28 Texas Administrative Code §134.503 applies to the compound 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: ((AWP per unit) x (number of units) x 1.25) + $4.00 dispensing fee per prescription = reimbursement amount;
        (B) Brand name drugs: ((AWP per unit) x (number of units) x 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 were 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). Reimbursement is calculated as follows:

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)
Baclofen	38779038809 Generic	$35.63	5.4 gm	$240.50	$190.78	$190.78
Amantadine HCl	38779041105 Generic	$24.225	3.0 gm	$90.84	$72.69	$72.69

Gabapentin USP	38779246109 Generic	$59.85	3.6 gm	$269.33	$204.66	$204.66
Bupivacaine HCl	38779052405 Generic	$45.60	1.2 gm	$68.40	$54.72	$54.72
Amitriptyline HCl	38779018904 Generic	$18.24	1.8 gm	$41.04	$32.83	$32.83
					Total	$555.68

The total allowable reimbursement for the compound in dispute is $555.68. This amount is recommended.

Authorized Signature

	Laurie Garnes	April 12, 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 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.