



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)
7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645
(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Memorial Compounding Pharmacy

Respondent Name

Commerce & Industry Insurance

MFDR Tracking Number

M4-17-3191-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

June 30, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "I am seeking reconsideration on this bill that has not been paid or processed by
AIG. The bill was received on 02/03/17 per bill review. This bill is still pending the adjuster approval. Memorial
Compounding Pharmacy has not received any type of correspondence or explanation of benefits in regards to this
date of service. The carrier has failed to audit the bill in accordance with rule 133.230(b)(1)(2). I am now
requesting reconsideration of this bill."

Amount in Dispute: \$602.67

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The carrier maintains its denial for the date of service in question. According
to peer review(s) and post DD RME from Dr. Charles Xeller and a peer review from Dr. Alan Mirasol, the
medication(s) in dispute are not medically reasonable and necessary for the work related injury. 'NSAID is not
supported for long term use beyond two weeks. The use of topical medication is indicated when the patient has
intolerance to oral medications which is not documented in the medical records."

Response Submitted by: AIG

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: January 16, 2017, Pharmacy Services - Compound, \$602.67, \$602.67

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 §102.4 establishes the rules for non-division communications.

3. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
4. 28 Texas Administrative Code §133.10 defines the requirements for submitting a complete pharmaceutical bill.
5. 28 Texas Administrative Code §133.240 sets out the requirements for payment or denial of a medical bill.
6. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
7. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
8. The documentation submitted to the division does not include explanations of benefits.

Issues

1. Did Memorial Compounding Pharmacy (Memorial) submit a pharmaceutical bill to Commerce & Industry Insurance in accordance with 28 Texas Administrative Code §133.10?
2. Did Commerce & Industry Insurance take final action to pay, reduce, or deny the disputed services?
3. Is Memorial entitled to additional reimbursement?

Findings

1. Memorial is seeking reimbursement of \$62.67 for a compound drug dispensed on January 16, 2017. In its position statement, Memorial argued that “Memorial Compounding Pharmacy has not received any type of correspondence or explanation of benefits in regards to this date of service.”

The division finds that the submitted documentation includes a Statement of Pharmacy Services (DWC066) for the services in question, as required by 28 Texas Administrative Code §133.10. Box 28 of the DWC066 lists the prescription number for the service in question.

The division concludes that Memorial submitted a pharmaceutical bill to Commerce & Industry Insurance on February 03, 2017.

2. According to Texas Labor Code Sec. 408.027(b), SORM was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Sentries. Corresponding 28 Texas Administrative Code §133.240(a) required SORM to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

Final action on a medical bill—

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

Commerce & Industry Insurance was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

Memorial argued in its position statement that “Memorial Compounding has not received any correspondence with explanation of review or benefits. An insurance carrier cannot extend or delay payment pending additional information in accordance with Rule 133.240(a). The bills were processed on DWC066 submitted certified mail. I have reviewed the AIG portal and the provider bill inquiry indicated that claim was received and being audited.”

Commerce & Industry Insurance failure to timely issue an explanation of benefits to Memorial creates a waiver of defenses that Commerce & Industry Insurance raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] 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...

Absent any evidence that Commerce & Industry Insurance raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Commerce & Industry Insurance position statement shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

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 \text{ per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((AWP \text{ 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)
Compounding Fee	NA	NA	1	\$15.00	\$15.00	\$15.00
Versapro Cream	38779252903 Brand	\$3.20	43.68 gm	$\$3.20 \times 43.68 \times 1.09 = \152.36	\$109.20	\$109.20
Ethoxy Diglycol	38779190301 Generic	\$0.34	3.6 gm	$\$0.34 \times 3.6 \times 1.25 = \1.54	\$1.23	\$1.23
Bupivacaine HCL	38779052405 Generic	\$45.60	1.2 gm	$\$45.60 \times 1.2 \times 1.25 = \68.40	\$48.02	\$48.02
Flurbiprofen	38779036209 Generic	\$36.58	4.8 gm	$\$35.68 \times 4.8 \times 1.25 = \219.48	\$168.72	\$168.72
Amantadine HCL	38779041105 Generic	\$24.22	4.8 gm	$\$24.22 \times 4.8 \times 1.25 = \145.32	\$61.58	\$61.58
Amitriptyline	38779018904 Generic	\$18.24	2.4 gm	$\$18.24 \times 2.4 \times 1.25 = \54.72	\$42.17	\$42.17
Gabapentin	38779246109 Generic	\$59.85	3 gm	$\$59.85 \times 3 \times 1.25 = \224.44	\$156.75	\$156.75
Total						\$602.67

The total reimbursement is therefore \$602.67. 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 \$602.67.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$602.67, 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

11/30/2017
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 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 with the Division. **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.