



# 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**

Accident Fund Insurance Company of America

**MFDR Tracking Number**

M4-18-2226-01

**Carrier's Austin Representative**

Box Number 6

**MFDR Date Received**

February 27, 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:** \$687.68

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Preauthorization ... was required pursuant to paragraph (p)(6) of Rule 134.600 because the compound medication was investigational and experimental."

**Response Submitted by:** Stone Loughlin Swanson

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 27, 2017	Pharmacy Service - Compound	\$687.68	\$687.68

#### 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**

- 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.
- 22 Texas Administrative Code §291.33 sets out the operational standards for pharmacies.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 75 – Prior authorization required

**Issues**

1. Is the carrier’s reason for denial of payment supported?
2. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the compound in question?

**Findings**

1. Memorial is seeking reimbursement for a compound dispensed on July 27, 2017. The carrier denied the disputed compound with claim adjustment reason code 75, indicating that the compound required preauthorization.

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*.

Stone Loughlin Swanson, on behalf of Accident Fund Insurance Company of America, argued that “Preauthorization ... was required pursuant to paragraph (p)(6) of Rule 134.600 because the compound medication was investigational and experimental.”

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:

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
Ethoxy Diglycol	4.2 ml
Versapro Cream	40.8 gm

Because Accident Fund Insurance Company of America 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.

The insurance carrier also argued in its position statement that “the Provider is not entitled to reimbursement because it has not shown that it timely billed for the medication or requested reconsideration.”

Review of documentation submitted by Memorial finds explanations of benefits dated August 13, 2017, and December 13, 2017, referencing the same unique identification number required under 22 Texas Administrative Code §291.33(c)(7). The insurance carrier failed to provide documentation to support its assertion relating to timely billing or request for reconsideration.

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 that the compound in question is eligible for reimbursement.

2. 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)
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
Ethoxy Diglycol	38779190301 Generic	\$0.342	4.2 ml	\$1.80	\$1.44	\$1.44
Versapro Cream	38779252903 Generic	\$3.20	40.8 gm	\$163.20	\$130.56	\$130.56
Compound Fee	NA	NA	NA	\$15.00	\$15.00	\$15.00
					Total	\$702.68

The total reimbursement is therefore \$702.68. Memorial is seeking \$687.68. 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 \$687.68.

***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 \$687.68, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

	Laurie Garnes	July 13, 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.**