



# 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**

Zurich American Insurance Co

**MFDR Tracking Number**

M4-18-2527-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

March 12, 2018

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The carrier denied the reconsideration based on lack of preauthorization or preauthorization was absent. These medications do not require preauthorization therefore do not need a retrospective review."

**Amount in Dispute:** \$798.06

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The Requestor did not request and receive preauthorization for this investigational or experimental formulation. The respondent is not be liable for payment. Texas Labor Code §413.014(d)."

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

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 27, 2017	Pharmacy Services - Compounds	\$798.06	\$798.06

### 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 §134.503 sets out the fee guidelines for pharmaceutical services.
- The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 39 – Services denied at the time authorization/pre-certification was requested

**Issues**

1. Is the carrier’s position and denial supported?
2. What rule is applicable to reimbursement?

**Findings**

1. The requestor is seeking reimbursement of \$798.06 for a compound dispensed July 27, 2017. The respondent states, “The Requestor did not request and receive preauthorization for this investigational or experimental formulation.”

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.”

DWC found no evidence that the insurance 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.

Because the respondent failed to perform UR on the services in dispute, 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, DWC finds that the compounds in question are eligible for reimbursement. The fee schedule amount is found below.

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: ((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

Ingredient	NDC	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	\$36.58	6	\$274.35	\$219.48	\$219.48
Meloxicam	38779274601	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Mefenamic acid	38779066906	\$123.60	1.8	\$278.10	\$222.48	\$222.48
Baclofen	38779038809	\$35.63	3	\$133.61	\$106.89	\$106.89
Bupivacaine	38779052405	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Ethoxy Diglycol	38779190301	\$0.34	3	\$1.28	\$1.03	\$1.03
Versapro Cream	38779252903	\$3.20	44.82	\$156.33	\$143.42	\$143.42
Compounding Fee		\$15.00	1	n/a	\$15.00	\$15.00
						\$798.06

The total reimbursement is \$798.06. This amount is recommended.

**Conclusion**

The outcome of each independent medical fee dispute relies upon the relevant evidence presented by the requestor and the respondent at the time of adjudication. Though all the evidence in this dispute may not have been discussed, it was considered.

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 \$798.06.

***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 \$798.06, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

		November , 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.**