



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

Trumbull Insurance Company

MFDR Tracking Number

M4-18-2674-01

Carrier's Austin Representative

Box Number 47

MFDR Date Received

March 26, 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: \$726.62

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Our investigation found the following ... Topical analgesics, compounded ... largely experimental in use with few randomized controlled trials to determine efficacy or safety ... The Overall Decision on the case is Non-Certified."

Response Submitted by: The Hartford

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 22, 2017	Pharmacy Services - Compounds	\$726.62	\$726.62

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 §133.240 sets out the requirements for payment, reduction, or denial of medical bills.
- 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.

6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 75 – Prior authorization required
 - P2 – Not a work related injury/illness and thus not the liability of the workers' compensation carrier.

Issues

1. Did Trumbull Insurance Company (Trumbull) raise a new defense in its response statement?
2. Is this dispute subject to dismissal for liability?
3. Is Trumbull's denial of payment based on preauthorization supported?
4. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the compound in question?

Findings

1. Memorial is seeking reimbursement for a compound dispensed on August 22, 2017. In its position statement, The Hartford argued on behalf of Trumbull, "The Overall Decision on the case is Non-Certified."

The dispute response is required to address only those issues raised before the request for medical fee dispute resolution (MFDR).¹

Submitted documentation fails to support that Trumbull presented a medical necessity denial to Memorial² before the date that a request for MFDR was filed. The division finds that this defense raised in The Hartford's position statement constitutes a new defense. This new defense shall not be considered for review.
2. Trumbull submitted an explanation of benefits dated February 13, 2018, with claim adjustment reason code, P2 – "Not a work related injury/illness and thus not the liability of the workers' compensation carrier."

The division notes that Trumbull failed to present a denial for liability within 45 days from the date it received the complete pharmacy bill.³ Therefore, the division finds that this dispute is not subject to dismissal based on liability.

3. Per the submitted explanation of benefits dated September 13, 2017, Trumbull denied the compound in question with claim adjustment reason code 75, indicating that prior authorization was required.

Preauthorization is **only** required for:

- drugs identified with a status of "N";
- any compound that contains a drug identified with a status of "N"; and
- any investigational or experimental drug.⁴

The division finds that the compound in question does not include a drug identified with a status of "N".

The Hartford argued that "Topical analgesics, compounded [are] largely experimental in use with few randomized controlled trials to determine efficacy or safety."

Determination of a service's investigational or experimental nature is made on a case by case basis as a utilization review (UR).⁵

The division found **no evidence** that the carrier performed a prospective or retrospective UR to determine that the following compound is investigational or experimental in nature:

¹ 28 Texas Administrative Code §133.307(d)(2)(F)

² 28 Texas Administrative Code §133.240

³ State Office of Risk Management v. Lawton, 295 S.W.3d 646 (Tex. 2009), <https://caselaw.findlaw.com/tx-supreme-court/1388209.html>

⁴ 28 Texas Administrative Code §134.530(b)(2)

⁵ Texas Insurance Code §4201.002

Compound In Dispute	
Ingredient	Amount
Meloxicam	0.18 gm
Flurbiprofen	4.8 gm
Tramadol HCL	6.0 gm
Cyclobenzaprine HCL	1.8 gm
Bupivacaine HCL	1.2 gm
Ethoxy Diglycol	3.0 ml
Versapro Cream	45.02 gm

Because Trumbull failed to perform UR on the above listed compound, the requirement for preauthorization based on the allegation that it is experimental or investigational **is not triggered** in this case. Trumbull's preauthorization denial is not supported.

4. The division concludes that Trumbull's denial reasons are not supported. Consequently, the compound in question is eligible for reimbursement.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately.⁶ Each ingredient is listed below with its reimbursement amount.⁷ The calculation of the total allowable amount is 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)
Meloxicam	38779274601 Generic	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Flurbiprofen	38779036209 Generic	\$36.58	4.8	\$219.48	\$175.58	\$175.58
Tramadol	38779237409 Generic	\$36.30	6	\$272.25	\$217.80	\$217.80
Cyclobenzaprine	38779039509 Generic	\$46.332	1.8	\$104.25	\$83.39	\$83.39
Bupivacaine HCL	38779052405 Generic	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Ethoxy Diglycol	38779190301 Generic	\$0.342	3.0	\$1.28	\$1.03	\$1.03
Versapro Cream	38779252903 Brand Name	\$3.20	45.02	\$157.03	\$144.06	\$144.06
Compound Fee	NA	NA	NA	\$15.00	\$15.00	\$15.00
					Total	\$726.62

The total reimbursement is therefore \$726.62. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that reimbursement is due. As a result, the amount ordered is \$726.62.

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 \$726.62, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

⁶ 28 Texas Administrative Code §134.502(d)(2)

⁷ 28 Texas Administrative Code §134.503(c)

Authorized Signature

Signature

Laurie Garnes

Medical Fee Dispute Resolution Officer

July 18, 2018

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.