



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

State Office of Risk Management

MFDR Tracking Number

M4-18-4254-01

Carrier's Austin Representative

Box Number 45

MFDR Date Received

July 10, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "... Memorial Compounding Pharmacy has met the requirements to receive reimbursement."

Amount in Dispute: \$555.68

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Since custom compounds are created without specific clinical testing they could be considered investigational as there are no supporting studies to show the efficacy of this specific topical compound for the compensable injury, the Office found there were no certified preauthorization's obtained for the compound medications ...

The office received a request for reconsideration for date of service 12/14/2017 on 4/27/2018 at which time the Office submitted a request for retrospective review to our Utilization Review Agent to determine if medication was within ODG. The URA determined on 5/10/2018 there is no medical indication for compound medications at this time."

Response Submitted by: State Office of Risk Management

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 14, 2017	Pharmaceutical 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

- 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.

3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
6. Texas Insurance Code, Chapter 4201 provides requirements related to utilization review.
7. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 15 – Payment adjusted because the submitted authorization number is missing, invalid, or does not apply to the billed services or provider.
 - 293 – This procedure requires prior authorization and none was identified.
 - 50 – These are non-covered services because this is not deemed a ‘medical necessity’ by the payer.
 - W3 – Additional payment made on appeal/reconsideration.
 - 216 – Based on the findings of a review organization.

Issues

1. Is this dispute subject to dismissal based on medical necessity?
2. Is the insurance carrier’s reason for denial of payment supported?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement of the disputed compound?

Findings

1. Memorial is seeking reimbursement for a compound dispensed on December 14, 2017. Per submitted explanation of benefits and State Office of Risk Management (SORM)’s position statement for this dispute, the pharmacy bill was originally received by the insurance carrier on December 21, 2017. SORM denied the compound based on medical necessity and findings of a review organization on May 15, 2018. This date is more than 45 days after the date the bill was received.¹

The division notes that SORM failed to present a denial for medical necessity within 45 days from the date it received the complete pharmacy bill.² Therefore, the division finds that this dispute is not subject to dismissal based on liability.

2. SORM also denied the disputed compound, in part, for lack of preauthorization. 28 Texas Administrative Code §134.530(b)(1) states that preauthorization is **only** required for:
 - (A) 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;
 - (B) any compound that contains **a drug identified with a status of “N”** [emphasis added] in the current edition of the *ODG Treatment in Workers’ Comp* (ODG) / Appendix A, *ODG Workers’ Compensation Drug Formulary*, and any updates; and
 - (C) 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 §134.530(b)(1)(A) preauthorization requirement is not discussed in this dispute because it was not asserted by either party and is not applicable to the compound in question.

Memorial was not required to seek preauthorization pursuant to §134.530(b)(1)(B) because none of the compounded ingredients have a status of “N” in the current edition of the ODG/Appendix A, which does not address method of delivery.

The determination of a service’s investigational or experimental nature is determined on a **case by case basis** as a utilization review (UR) pursuant to Texas Insurance Code §4201.002. Further, Texas Insurance Code

¹ 28 Texas Administrative Code §133.240(a)

² State Office of Risk Management v. Lawton, 295 S.W.3d 646 (Tex. 2009), <https://caselaw.findlaw.com/tx-supreme-court/1388209.html>

§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 SORM 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 SORM 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. SORM’s preauthorization denial is therefore not supported.

Absent any evidence that SORM 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 compound in question is eligible for reimbursement.

3. 28 Texas Administrative Code §134.503 applies to the services 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: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP 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 compounds 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:

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Baclofen	38779038809	G	\$35.63	5.4	\$240.50	\$190.78	\$190.78
Amantadine	38779041105	G	\$24.23	3	\$90.84	\$72.69	\$72.69
Gabapentin	38779246109	G	\$59.85	3.6	\$269.33	\$204.66	\$204.66
Bupivacaine	38779052405	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Amitriptyline	38779018904	G	\$18.24	1.8	\$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.

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 \$555.68.

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 \$555.68, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Laurie Garnes	August 8, 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.