



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

Zurich American Insurance Co

MFDR Tracking Number

M4-18-0644-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

November 10, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Memorial Compounding has fulfilled the required rule to receive reimbursement."

Amount in Dispute: \$489.98

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This bill was originally forwarded for review, audit and payment. It appears that due to a system error, the bill was never processed. The Carrier has again initiated the review and audit process and will supplement this Response upon completion of that task. ...The Requestor did not request and receive preauthorization for this investigational or experimental compound formulation (nor even describe the formulation). The Respondent is not liable for payment."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
May 28, 2017	Tramadol 100%	\$489.98	\$489.98

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 §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.10 defines the requirements for submitting a complete pharmaceutical bill.
4. 28 Texas Administrative Code §133.240 sets out the requirements for payment or denial of a medical bill.

5. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
6. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
7. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
8. Texas Labor Code §408.027 sets out provisions related to payment of health care providers
9. The documentation submitted to the division does not include explanations of benefits

Issues

1. Did Zurich American Insurance Co take final action to pay, reduce, or deny the disputed services?
2. Is Memorial Compounding Pharmacy entitled to reimbursement for the compound in question?

Findings

1. According to Texas Labor Code Sec. 408.027(b), Zurich American Insurance Co was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial Compounding Pharmacy. Corresponding 28 Texas Administrative Code §133.240(a) required Zurich American Insurance Co 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.

Memorial Compounding Pharmacy submitted a USPS tracking document indicating that USPS tracking number 70142120000424816101 on June 13, 2017, was “Delivered, To Agent, Schaumburg, IL 60196.” This evidence supports that Zurich American Insurance Co received a pharmaceutical bill for the services in dispute on or about June 13, 2017. Zurich American Insurance Co 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 Compounding Pharmacy, 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...

Zurich American Insurance Co argued in its position statement that “The Requestor did not request and receive preauthorization for this investigational or experimental compound formulation (nor even describe the formulation). The Respondent is not liable for payment.”

Zurich American Insurance Co’s failure to timely issue an explanation of benefits to Memorial Compounding Pharmacy creates a waiver of defenses that Zurich American Insurance Co 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 Zurich American Insurance Co raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Zurich

American Insurance Co's 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).

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 \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)
Tramadol	38779237409/ Generic	\$36.30	60	\$2,726.50	\$489.98	\$489.98
					Total	\$489.98

The total reimbursement is \$489.98. 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 \$489.98.

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 \$489.98, 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

February 7, 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.