



# 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 Company

**MFDR Tracking Number**

M4-18-2537-01

**Carrier's Austin Representative Box**

BOX 19

**Fee Dispute Request Received**

March 12, 2018

**Response Submitted by:**

Flahive Ogden & Latson

#### REQUESTOR POSITION SUMMARY

"The carrier has received the attached bill and has not processed according to Texas Labor Code 408.027."

#### RESPONDENT POSITION SUMMARY

"The Carrier has confirmed that Memorial first submitted its bill to its PBM and that the bill the subject of this request was paid in accordance with Memorial's contract with the PBM, OPTUM/Catamaran, by bulk check number 71520244."

#### SUMMARY OF REQUEST AND DIVISION ORDER

Disputed Date of Service	Disputed Service	Disputed Amount	Division Order
September 30, 2017	Compound Medication	\$798.06	\$798.06

#### AUTHORITY

Texas Labor Code §413.031 (c). In resolving disputes over the amount of payment due for medically necessary services for treatment of the compensable injury, the role of the medical fee dispute resolution program is to adjudicate the payment given the relevant statutory provisions and commissioner rules.

Rule at 28 Texas Administrative Code §133.307 sets out the process for medical fee dispute resolution applicable to requestors, respondents, and the Texas Department of Insurance, Division of Workers' Compensation (DWC).

#### **Background**

##### *Medical Bill Processing*

Statutory timeframes are set for both submission of a medical bill, and payment, reduction or denial of a medical bill. See Texas Labor Code, Section 408.027. Specifically, it is the health care provider's duty to file a complete<sup>1</sup> medical bill within 95 days, while it is the workers' compensation insurance carrier's duty to pay, reduce, or deny a complete medical bill within 45 days from the date of receipt. An insurance carrier's 45-day deadline to make or

<sup>1</sup> 28 Texas Administrative Code §133.2(4) Complete medical bill--A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter ... or as specified for electronic medical bills in §133.500 of this chapter ...

deny payment is not extended as a result of an audit under 28 Texas Administrative Code §133.230, or as a result of a pending request for additional documentation.<sup>2</sup>

Further, the insurance carrier shall notify the health care provider of its final action<sup>3</sup> by issuing an explanation of benefits (EOB) and shall include on its EOB any bill reductions, denial reasons, and defenses in the form and manner required by 28 TAC §133.240.<sup>4</sup> No provision permits the insurance carrier to delay its final action past 45 days on a complete medical bill. Additionally, no provision excuses the insurance carrier from issuing an explanation of benefits to the billing provider that includes any denial reasons or defenses associated with reduction or denial of a medical bill.

### *Insurance Carrier's Failure to Timely Present Denial Reasons and Defenses*

Under Rule §133.307, the DWC only reviews those denial reasons and defenses presented by the carrier prior to the date the request for MFDR was filed. Any denial reasons or defenses raised by the carrier after the filing of the dispute are not considered in the review.<sup>5</sup>

### **Findings**

Memorial Compounding Pharmacy in this case requested payment from Zurich American Insurance Company for a compound medication provided to a covered injured employee. Zurich American Insurance Company submitted a copy of a bulk check as evidence that the pharmacy benefit manager, on behalf of the insurance carrier. However, it failed to include documentation to indicate that the bill considered in this dispute was included in that bulk payment.

The DWC concludes that Zurich American Insurance Company did not pay, reduce, or deny the complete medical bill in 45 days. Due to Zurich American Insurance Company's failure to take final action and issue an EOB required under the DWC's administrative rule 28 TAC §133.240, Memorial then asked for reconsideration and requested an EOB as required.<sup>6</sup> Zurich American Insurance Company did not respond to the request for reconsideration. The provider then filed for medical fee dispute resolution (MFDR).

1. *Did Zurich American Insurance Company timely present any denial reasons to the provider before the filing of this fee dispute?*

In its position statement, Zurich American Insurance Company confirmed that it received a complete medical bill.

No evidence was presented by Zurich American Insurance Company to support that it responded to the complete medical bill within 45 days; nor did Zurich American Insurance Company present any evidence to support that it responded to the request for reconsideration and request for an EOB. Zurich American Insurance Company therefore failed to present **any** denial reasons or defenses to Memorial before the filing of this medical fee dispute.

All the defenses raised by Zurich American Insurance Company in its response to the medical fee dispute are new defenses and will not be considered in this review. 28 TAC 133.307(d)(2)(F).

Because Zurich American Insurance Company failed to present any defenses that conform with the requirements of 28 TAC §§133.240 and 133.250 discussed above, the DWC finds that the disputed compound is eligible for reimbursement.

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<sup>2</sup>28 Texas Administrative Code §133.240(a).

<sup>3</sup> 28 Texas Administrative Code §133.2 (6) Final action on a medical bill-- (A) sending a payment...(B) denying a charge on the medical bill.

<sup>4</sup> 28 Texas Administrative Code §133.240 (e) The insurance carrier shall send the explanation of benefits in accordance with the elements required by §133.500 and §133.501...if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form.

<sup>5</sup> 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.

<sup>6</sup> 28 Texas Administrative Code §133.250

2. *What is the total reimbursement for the service in dispute?*

Rule 28 Texas Administrative Code §134.503 applies to the reimbursement of compounds. Compounds are reimbursed by calculating the total allowable amount for each drug listed on the bill separately, then adding a \$15 compounding fee.<sup>7</sup> The listing of drugs included in the compound are found on the medical bill.<sup>8</sup>

The calculation of the total allowable amount is as follows:

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Flurbiprofen	38779036209	G	\$36.58	6	\$274.35	\$219.48	\$219.48
Meloxicam	38779274601	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Mefenamic Acid	38779066906	G	\$123.60	1.8	\$278.10	\$222.48	\$222.48
Baclofen	38779038809	G	\$35.63	3	\$133.61	\$106.89	\$106.89
Bupivacaine	38779052405	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Ethoxy Diglycol	38779052405	G	\$0.34	3	\$1.28	\$1.03	\$1.03
Versapro Cream	38779252903	B	\$3.20	44.82	\$156.33	\$143.42	\$143.42
Fee	NA	NA	NA	NA	\$15.00	\$15.00	\$15.00
						Total	\$798.06

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

**Decision**

For the reasons stated above, the DWC finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$798.06.

***DIVISION ORDER***

The DWC has determined the requestor is entitled to additional reimbursement for the disputed services. The DWC 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**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Laurie Garnes  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
September 27, 2019  
Date

***RIGHT TO APPEAL***

Either party to this medical fee dispute may seek review of this DWC decision. To appeal, submit DWC Form-045M titled ***Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)*** found at <https://www.tdi.texas.gov/forms/form20numeric.html>.

Follow the instructions on pages 3 and 4. The request must be received by the DWC within twenty days of your receipt of this decision. This decision becomes final if the request for review of a this decision is not timely made.

<sup>7</sup> 28 Texas Administrative Code §134.503(c)

<sup>8</sup> 28 Texas Administrative Code §134.502(d)(2)

The request may be faxed, mailed or personally delivered to the DWC using the contact information listed on the form or to the field office handling the claim.

If you have questions about the division Form-045M, please call CompConnection at 1-800-252-7031, Option 3 or you may email your question to [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov)

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, Option 1.