



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 Company

MFDR Tracking Number

M4-18-3033-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

April 23, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The original bill was submitted to carrier (VIA CERTIFIED MAIL) ON 10/21/2017 ... Memorial did not receive any correspondence as per rule so we submitted a Request for Reconsideration ... The request was submitted and received by the carrier on 12/07/2017 still with no response."

Amount in Dispute: \$583.89

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The requestor has not shown itself entitled to reimbursement as the treatment is for conditions unrelated to the compensable injury..."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: October 14, 2017, Compound Medications, \$583.89, \$583.89

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 §134.502 sets out the procedures for pharmaceutical benefits.
3. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
- 1 - A dispensing fee is not applicable to the allowance or payment of the medication.
- 3 - Charge for pharmaceuticals exceed the fees established by the fee schedule.
- 91 - Dispensing fee adjustment.

- P12 – Workers’ compensation jurisdictional fee schedule adjustment.
- 5535 – Treatment/service is not related to the compensable workers’ compensation claim.
- 5539 – We previously notified your facility that the necessity of the service was being disputed.
- 5572 – Per peer review, these services are not authorized.

Issues

1. Is this dispute subject to dismissal based on relatedness?
2. Is this dispute subject to dismissal based on medical necessity?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to additional reimbursement?

Findings

1. Memorial is seeking reimbursement for a compound dispensed on October 14, 2017. Zurich American Insurance Company (Zurich) denied the compound, in part, based on relatedness to the compensable injury. A dispute regarding the relatedness to the compensable injury must be resolved prior to a request for medical fee dispute.¹

The respondent is required to attach a copy of any related Plain Language Notice (PLN) if the medical fee dispute involves compensability or liability. Review of the submitted documentation finds that Flahive, Ogden & Latson failed to attach a copy of a related PLN on behalf of the insurance carrier to support a denial based on relatedness to the compensable injury.

The dispute in question is not subject to dismissal as this denial reason was not sufficiently supported.

2. The insurance carrier also denied the compound in question based on medical necessity.

If a dispute regarding medical necessity exists, the medical necessity dispute must be resolved prior to a request for medical fee dispute resolution.² A medical necessity denial of a medical bill must be based on an adverse determination by a utilization review agent.³

The submitted documentation includes a report dated September 26, 2017, as support for utilization review of the disputed compound. This report does not support that the insurance carrier performed a utilization review of the drug in question for the following reasons⁴:

- The document does not indicate or support that the health care provider – in this case, Memorial Compounding Pharmacy – was notified of the utilization review findings, or that Memorial was afforded a reasonable opportunity to discuss the billed compound,
- The document does not include a description for filing a complaint with the Texas Department of Insurance,
- The document does not include information describing the processes for filing an appeal,
- The document itself includes the statement, “In and of itself, this opinion does not constitute a recommendation for specific claims or administrative functions to be made or enforced.”

For these reasons, the insurance carrier’s denial is not sufficiently supported. This dispute is not subject to dismissal based on medical necessity.

3. Because the insurance carrier failed to sufficiently support its denial of reimbursement, Memorial is entitled to reimbursement.

¹ 28 Texas Administrative Codes §§133.305(b) and 133.307(c)(1)(B)(i)

² 28 Texas Administrative Code §133.305(b)

³ 28 Texas Administrative Code §133.240(q), 28 Texas Administrative Codes §§19.2009 and 19.2010

⁴ 28 Texas Administrative Code §19.2009(b)

The compound in dispute was billed by listing each **drug** included in the compound and calculating the charge for each drug separately.⁵ Each ingredient is listed below with its reimbursement amount.⁶ 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
						Total	\$583.89

The total reimbursement is therefore \$583.89. 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 Texas Department of Insurance, Division of Workers' Compensation (DWC) finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$583.89.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), 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 \$583.89, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Laurie Garnes	October 30, 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.

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

⁶ 28 Texas Administrative Code §134.503(c)