



# 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 RX

**Respondent Name**

ZURICH AMERICAN INSURANCE CO

**MFDR Tracking Number**

M4-18-4881-01

**Carrier's Austin Representative Box**

BOX 19

**Fee Dispute Request Received**

AUGUST 13, 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

"In this case, Memorial dropped the bill to paper and sent directly to the Carrier. That did not relieve Memorial from pursuing payment under its PBM contract."

#### SUMMARY OF REQUEST AND DIVISION ORDER

| Disputed Date of Service | Disputed Service    | Disputed Amount | Division Order |
|--------------------------|---------------------|-----------------|----------------|
| January 29, 2018         | Compound Medication | \$726.62        | \$726.62       |

#### 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 28 Texas Administrative Code §133.307 sets out the process for medical fee dispute resolution for non-network care. Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §408.0281 and §408.0284.

#### **Background**

##### Work Comp Carrier's Obligation to Respond to a Medical Bill

It is the duty of the workers' compensation insurance carrier **or an agent acting on the carrier's behalf** to pay, reduce, or deny a complete medical bill within 45 days from the date of receipt. A carrier's 45-day deadline to make or 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>1</sup>

<sup>1</sup>28 Texas Administrative Code §133.240 (a)

Further, the insurance carrier **shall** notify the health care provider of its final action<sup>2</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>3</sup>

### Carrier's Failure to Present Denial Reasons and Defenses

Under Rule §133.307, the division only reviews those denial reasons and defenses presented by the carrier to the health care provider 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 of the medical fee dispute.<sup>4</sup>

### Findings

The provider, MEMORIAL COMPOUNDING RX, presented evidence sufficient to support that it requested payment from Zurich American Insurance Co for a compound medication provided to a covered injured employee. Zurich American Insurance Co did not pay, reduce, or deny the complete medical bill in 45 days. Due to Zurich American Insurance Co's failure to take final action and timely issue an EOB, the provider then asked for reconsideration and requested an EOB as required.<sup>5</sup> Zurich American Insurance Co did not respond to the request for reconsideration. The provider then filed for medical fee dispute resolution (MFDR).

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

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

Because no defenses were presented to the provider before the filing of this medical fee dispute, all the defenses raised by Zurich American Insurance Co 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).

Zurich American Insurance Co failed to present any defenses that conform with the requirements of 28 TAC §133.240 and 133.250 discussed above. Absent any evidence that Zurich American Insurance Co or an agent acting on Zurich American Insurance Co's behalf timely presented any defenses to the provider that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the Division finds that the compound is eligible for reimbursement.

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

Rule 28 Texas Administrative Code §134.503 applies to the reimbursement on 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>6</sup> The listing of drugs included in the compound are found on the medical bill.<sup>7</sup>

The calculation of the total allowable amount is as follows:

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<sup>2</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>3</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>4</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>5</sup> 28 Texas Administrative Code §133.250

<sup>6</sup> 28 Texas Administrative Code §134.503 (c)

<sup>7</sup> 28 Texas Administrative Code §134.502 (d)(2)

| Drug            | NDC         | Generic(G) /Brand(B) | Price /Unit | Units Billed | AWP Formula | Billed Amt   | Lesser of AWP and Billed |
|-----------------|-------------|----------------------|-------------|--------------|-------------|--------------|--------------------------|
| Meloxicam       | 38779274601 | G                    | \$194.67    | 0.18         | \$43.80     | \$35.04      | \$35.04                  |
| Flurbiprofen    | 38779036209 | G                    | \$36.58     | 4.8          | \$219.48    | \$175.58     | \$175.58                 |
| Tramadol        | 38779237409 | G                    | \$36.30     | 6            | \$272.25    | \$217.80     | \$217.80                 |
| Cyclobenzaprine | 38779039509 | G                    | \$46.33     | 1.8          | \$104.24    | \$83.39      | \$83.39                  |
| Bupivacaine     | 38779052405 | G                    | \$45.60     | 1.2          | \$68.40     | \$54.72      | \$54.72                  |
| Ethoxy Diglycol | 38779190301 | G                    | \$0.34      | 3            | \$1.28      | \$1.03       | \$1.03                   |
| Versapro Cream  | 38779252903 | B                    | \$3.20      | 45.02        | \$157.03    | \$144.06     | \$144.06                 |
| Fee             | NA          | NA                   | NA          | NA           | \$15.00     | \$15.00      | \$15.00                  |
|                 |             |                      |             |              |             | <b>Total</b> | <b>\$726.62</b>          |

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

### **Decision**

For the reasons above, the division finds that reimbursement is due. As a result, the amount ordered is \$726.62.

### ***DIVISION ORDER***

The division has determined that 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.

### **Authorized Signature**

|           |  |                    |
|-----------|--|--------------------|
| Signature | Medical Fee Dispute Resolution Officer | 02/28/2019<br>Date |
|-----------|--|--------------------|

### ***RIGHT TO APPEAL***

Either party to this medical fee dispute may seek review of this division decision. To appeal, submit form division 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 division within twenty days of your receipt of this decision. This decision becomes final if the request for review of this decision is not submitted within twenty days.

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.

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.