



# 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**

M4-19-0427-01

**Carrier's Austin Representative Box**

Number 19

**Fee Dispute Request Received**

September 27, 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

"Memorial should send its bill directly to the PBM ... In this case, Memorial dropped the bill to paper and sent directly to the Carrier."

#### SUMMARY OF REQUEST AND DIVISION ORDER

Disputed Dates of Service	Disputed Service	Disputed Amount	Division Order
April 17, 2018	Compound Medication	\$702.68	\$702.68

#### 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 Division.

#### **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 insurance carrier's duty to pay, reduce, or deny a **complete**

<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 ....

medical bill within 45 days. No provision permits the insurance carrier to delay its final action on a **complete** medical bill, nor is there a provision that permits the insurance carrier not to respond at all.

The division notes that an insurance 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>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>

### **Findings**

The provider in this case requested payment from Zurich American Insurance Company (Zurich) for a compound medication provided to a covered injured employee. Zurich did not pay, reduce, or deny the complete medical bill in 45 days. Due to Zurich's failure to issue an EOB required under the DWC's administrative rule 28 TAC §133.240, the provider then asked for reconsideration and requested an EOB as required.<sup>5</sup> Zurich did not respond to the request for reconsideration. The provider then filed for medical fee dispute resolution (MFDR).

In a medical fee dispute, the DWC only reviews those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the DWC and the other party. Any new denial reasons or defenses raised are not considered.<sup>6</sup> For that reason, the division first discusses whether the carrier timely presented defenses for denial of payment for the medical bill in dispute.

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

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

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

No defenses were presented to the provider before the filing of this medical fee dispute. All the defenses raised by Zurich 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 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 compound cream 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>7</sup> The listing of drugs included in the compound are found on the medical bill.<sup>8</sup>

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<sup>2</sup>28 Texas Administrative Code §133.240(a) regarding final action on a medical bill.

<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 §133.250 regarding reconsideration of a medical bill

<sup>6</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>7</sup> 28 Texas Administrative Code §134.503(c) regarding pharmaceutical fee guidelines

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

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
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
Ethoxy Diglycol	38779190301	G	\$0.34	4.2	\$1.80	\$1.44	\$1.44
Versapro Cream	38779252903	B	\$3.20	40.8	\$142.31	\$130.56	\$130.56
Fee	NA	NA	NA	NA	\$15.00	\$15.00	\$15.00
						<b>Total</b>	<b>\$702.68</b>

The total reimbursement is therefore \$702.68. This amount is recommended.

### **Decision**

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 \$702.68.

### ***DIVISION ORDER***

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 \$702.68, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

	Laurie Garnes	January 30, 2019
Signature	Medical Fee Dispute Resolution Officer	Date

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

Either party to this medical fee dispute may seek review of this Division decision. To appeal, submit form 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 division 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.

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 DWC 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.