



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

M4-19-0730-01

Carrier's Austin Representative Box

BOX 19

Fee Dispute Request Received

October 11, 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."

SUMMARY OF REQUEST AND DIVISION ORDER

Disputed Date of Service	Disputed Service	Disputed Amount	Division Order
April 28, 2018	Compound	\$555.68	\$555.68

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 28 Texas Administrative Code §133.307 sets out the process for medical fee dispute resolution applicable to requestors, respondents, and the division.

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 complete¹ medical bill within 95 days. 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. An insurance carrier's 45-day deadline to make or deny payment is **not extended** as a result of an audit under 28 Texas

¹ 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

Administrative Code §133.230, or as a result of a pending request for additional documentation.²

Further, the insurance carrier shall notify the health care provider of its final action³ 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 §133.240.⁴ No provision permits the insurance carrier to delay its final action past 45 days on a **complete** medical bill. Additionally, no provision excuses the carrier from issuing an explanation of benefits to the billing provider when it pays, reduces, or denies a complete medical bill.

Carrier's Failure to Timely Present Denial Reasons and Defenses

Under Rule §133.307, the division 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, including medical necessity defenses, are not considered in the review.⁵

Findings

The provider, MEMORIAL COMPOUNDING RX, provided sufficient evidence 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.⁶ 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?*

The provider provided evidence to sufficiently support that it billed the carrier or an agent of the carrier. No evidence was presented by Zurich American Insurance Co to support that it responded to the complete medical bill within 45 days; nor did Zurich American Insurance Co 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.

In response to Zurich American Insurance Co assertion that "the adjudication of medical necessity under Rule 133.308 does not require the insurance of an EOB," we refer the respondent to SOAH 454-13-2593.m4, in which the carrier argued that it could raise a medical necessity defense "despite the deadlines in the rules." The ALJ in that case disagreed and stated:

The ALJ finds no precedent for such a contention and concludes that Carrier was obligated to comply with the deadlines in the applicable rules or else risk waiving its right to dispute the [medical] bills. While the Texas Labor Code sets out the statutory scheme (including the parameters for reimbursement), authority was vested in the Texas Workers' Compensation Commission to establish procedures for implementing the statutory scheme. It did so, and the applicable rules it adopted set out timelines for resolving such matters. Carrier did not comply with those deadlines.

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

²28 Texas Administrative Code §133.240 (a)

³ 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.

⁴ 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.

⁵ 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.

⁶ 28 Texas Administrative Code §133.250

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 including medical necessity denials 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.⁷ The listing of drugs included in the compound are found on the medical bill.⁸

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
						Total	\$555.68

The total reimbursement is therefore \$555.68. This amount is recommended.

Decision

For the reasons above, the division finds that reimbursement is due. As a result, the amount ordered is \$555.68.

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 \$555.68, 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

Date

2/11/2019

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***

⁷ 28 Texas Administrative Code §134.503 (c)

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

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 division Form-045M, please call CompConnection at 1-800-252-7031, Option 3 or you may email your question to 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.