



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 Co

MFDR Tracking Number

M4-19-1796-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

November 28, 2018

Response Submitted By:

Flahive Ogden & Latson

REQUESTOR'S POSITION SUMMARY

"Memorial Compounding has fulfilled the required rule to receive reimbursement."

RESPONDENT

The respondent's positions are not to be considered. See Rule 28 Texas Administrative Code §133.307(d)(2)(F). No denial reasons were presented to Memorial Compounding Pharmacy before the filing of this medical fee dispute. Zurich American Insurance Co failed to issue an explanation of benefits within the timeframe specified in Texas Labor Code 408.027(b) and corresponding 28 Texas Administrative Code §133.240.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
July 12, 2018	Compound Medication	\$726.62	\$0.00
July 12, 2018	Gabapentin 300 mg Capsules	\$177.26	\$153.70
July 12, 2018	Cyclobenzaprine 10 mg Tablets	\$155.78	\$126.85
Total		\$1059.66	\$280.55

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 (f)(2) authorizes the division to raise issues in the MFDR process as appropriate.
2. 28 Texas Administrative Codes §134.530(b)(1)(B) and (C) set out preauthorization requirements for compounds not subject to certified health care networks.
3. 28 Texas Administrative Code §§134.540(b)(2) and (3) set out preauthorization requirements for compounds subject to certified health care networks.

Issues

1. Is reimbursement due for the compound in dispute?
2. Is reimbursement due for the tablets and the capsules in dispute?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement?

Findings

1. The division may raise issues pursuant to 28 TAC §133.307 (f)(2). Such an action is appropriate in this case because of a rule change that specifically pertains to compounded medications dispensed on or after July 1, 2018.

The compound in dispute was dispensed on July 12, 2018. Applicable amended Rule at 28 TAC 134.530 [non-network] or 28 TAC 134.540 [network] state, in pertinent part, that preauthorization is required for any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018.

The new preauthorization requirement **DOES NOT APPLY** to prescriptions for compounded drugs written before July 1, 2018, and refills for those prescriptions. A copy of the physician's initial prescription is therefore necessary for the division to make an informed decision about whether any compound should be paid. The division requested the initial and any subsequent prescription(s) that pertain to the service in dispute. Memorial was given a minimum of 14 days to provide the requested information. Memorial failed to provide the prescription.

Memorial has failed to provide prescription evidence sufficient to support its assertion that preauthorization was not required for the compound in dispute. No reimbursement is due for the compound in dispute.

2. 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.¹

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.²

The provider, Memorial, presented evidence to support that it requested payment from Zurich American Insurance Co for Gabapentin 300 mg capsules and Cyclobenzaprine 10 mg tablets provided to a covered injured employee. No evidence was presented that Zurich American Insurance Co paid, reduced, or denied 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.³ Zurich American Insurance Co did not respond to the request for reconsideration. 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.⁴

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

¹28 Texas Administrative Code §133.240 (a)

² 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.

³ 28 Texas Administrative Code §133.250

⁴ 28 Texas Administrative Code §133.307(d)(2)(F)

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 medications are eligible for reimbursement.

3. Rule 28 Texas Administrative Code §134.503 applies to the reimbursement for medications. The calculation of the total allowable amount is as follows:

- Gabapentin 300 mg capsules: $(1.3307 \times 90 \times 1.25) + \$4.00 = \$153.70$
- Cyclobenzaprine 10 mg tablets: $(1092 \times 90 \times 1.25) + \$4.00 = \$126.85$

The total reimbursement is therefore \$280.55. This amount is recommended.

Decision

For the reasons above, the division finds that reimbursement is due. As a result, the amount ordered is \$280.55.

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 \$280.55, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

_____	Laurie Garnes	April 11, 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 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 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.