



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 COMPANY

MFDR Tracking Number

M4-20-0833-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

December 5, 2019

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The above claimant received Medication as prescribed by referral provider. Bill for date of service 08/09/2019 still has not been processed by the carrier. All bills are required to be processed within 45 days of receipt by the carrier as per Texas Labor Code 408.027 (b). Memorial Compounding Pharmacy has not received any correspondence with explanation of review or benefits... Please process the bills for RECONSIDERATION and remit payment according to Rule 28 Texas Administrative Code 134.503 @ [sic]."

Amount in Dispute: \$105.79

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Carrier believes this bill has been paid and is investigating this request and the PBM's response. The Carrier will file a supplemental response upon final investigation."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF DISPUTED SERVICE(S)

Date(s) of Service	Disputed Service(s)	Amount in Dispute	Amount Due
August 9, 2019	Ibuprofen 800 mg	\$105.79	\$64.37

FINDINGS AND DECISION

Texas Labor Code (TCL) §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.

Texas Administrative Code (TAC) §133.307 sets out the process for medical fee dispute resolution for non-network care.

Background

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

No denial reasons were presented to Memorial Compounding Pharmacy before the filing of this medical fee dispute. Zurich American Insurance Company failed to issue an explanation of benefits for the service in dispute within the timeframe specified in Texas Labor Code 408.027(b) and corresponding 28 Texas Administrative Code §133.240.

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 TAC §133.230, or as a result of a pending request for additional documentation.¹

Further, the insurance carrier **shall** notify the health care provider of its final action² 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 §133.240.³

Carrier's Failure to Present Denial Reasons and Defenses

Under 28 TAC §133.307, the DWC 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.⁴ As a result, the respondent's positions are not to be considered pursuant to 28 TAC §133.307(d)(2)(F).

Findings

The DWC finds that the requestor, MEMORIAL COMPOUNDING PHARMACY, presented documentation to support that it requested payment from Zurich American Insurance Company for medications provided to a covered injured employee. Zurich American Insurance Company did not pay, reduce, or deny the complete medical bill in 45 days. Due to Zurich American Insurance Company's failure to take final action and timely issue an EOB, the provider then asked for reconsideration and requested an EOB as required.⁵ Zurich American Insurance Company did not respond to the request for reconsideration. The provider then filed for medical fee dispute resolution (MFDR).

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

No evidence was presented by Zurich American Insurance Company or its agent to support that it responded to the complete medical bill within 45 days; nor did Zurich American Insurance Company or its agent present any evidence to support that it responded to the request for reconsideration and request for an EOB. Zurich American Insurance Company 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 Company 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 Company 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 Company or an agent acting on Zurich American Insurance Company's behalf timely presented any defenses to the provider that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the DWC finds that the medications are eligible for reimbursement.

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

Rule 28 TAC §134.503 applies to the reimbursement for medications. The medications in dispute are listed on the bill separately.⁶

The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

(1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

(A) Generic drugs: $(\text{AWP per unit}) \times (\text{number of units}) \times 1.25 + \4.00 dispensing fee per prescription = reimbursement amount.

¹ 28 TAC §133.240 (a) An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation

² 28 TAC §133.2 (6) Final action on a medical bill-- (A) sending a payment...(B) denying a charge on the medical bill.

- ³ 28 TAC §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.
- ⁴ 28 TAC §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.
- ⁵ 28 TAC §133.250
- ⁶ 28 TAC §134.503 (c)

The calculation of the total allowable amount is as follows:

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amount	Lesser of AWP and Billed
Ibuprofen 800 mg	67877032105	G	\$0.80490	60	\$64.37	\$105.79	\$64.37
Total						\$105.79	\$64.37

The total reimbursement is therefore \$64.37. This amount is recommended.

Decision

For the reasons above, the DWC finds that reimbursement is due. As a result, the amount ordered is \$64.37.

DIVISION ORDER

The DWC has determined that the requestor is entitled to additional reimbursement for the disputed services. The DWC hereby ORDERS the respondent to remit to the requestor \$64.37, plus applicable accrued interest per 28 TAC §134.130, due within 30 days of receipt of this order.

Authorized Signature

Signature	Medical Fee Dispute Resolution Auditor	February 7, 2020 Date
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RIGHT TO APPEAL

Either party to this medical fee dispute may seek review of this DWC decision. To appeal, submit 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 DWC within twenty days (20) of your receipt of this decision. This decision becomes final if the request for review of this decision is not submitted within twenty days (20).

The request may be faxed, mailed or personally delivered to the DWC 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

Si prefieres hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031.