



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

M4-20-2921-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

August 14, 2020

Response Submitted By:

Flahive, Ogden & Latson

REQUESTOR'S POSITION SUMMARY

"Memorial Compounding Pharmacy has not received any correspondence with explanation of review or benefits. An insurance carrier cannot extend or delay payment pending additional information in accordance with Rule 133.240(a). The bills were processed on DWC066 submitted FAX CONFIRMATION 05/05/2020. I have attached the FAX CONFIRMATION for your review. The above claim was submitted within the 95-day time frame as described by Rule 133.250. If claims are not processed accordingly, I will submit any and correspondence proving receipt of this bill and forcing Texas Department of Insurance to rule on our behalf."

RESPONDENT'S POSITION SUMMARY

"The Carrier has not been able to locate all the documents relevant to this bill and is working with its bill review vendor to locate that documentation. The Carrier will supplement this bill upon completion of its investigation."

SUMMARY OF DISPUTED SERVICE(S)

Date(s) of Service	Disputed Service(s)	Amount in Dispute	Amount Due
April 29, 2020	ACETAMINOPHEN/COD #3 TABLETMCK	\$72.00	\$22.12

FINDINGS AND DECISION

Texas Labor Code (TLC) §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

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

Findings

The DWC finds that the requestor, MEMORIAL COMPOUNDING PHARMACY, presented sufficient documentation to support that it requested payment from Zurich American Ins Company of Illinois for medications provided to a covered injured employee. Zurich American Ins Company of Illinois did not pay, reduce, or deny the complete medical bill in 45 days. Due to Zurich American Ins Company of Illinois'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 Ins Company of Illinois did not respond to the request for reconsideration. The provider then filed for medical fee dispute resolution (MFDR).

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

No evidence was presented by Zurich American Ins Company of Illinois or its agent to support that it responded to the complete medical bill within 45 days; nor did Zurich American Ins Company of Illinois or its agent present any evidence to support that it responded to the request for reconsideration and request for an EOB. Zurich American Ins Company of Illinois 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 Ins Company of Illinois 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 Ins Company of Illinois 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 Ins Company of Illinois or an agent acting on Zurich American Ins Company of Illinois'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
ACETAMINOPHEN/COD #3 TABLETMCK	00406-0484- 10	G	\$0.48331	30	\$22.12	\$72.00	\$22.12
Total						\$72.00	\$22.12

The total reimbursement is therefore \$22.12. This amount is recommended.

Decision

For the reasons above, the DWC finds that reimbursement is due. As a result, the amount ordered is \$22.12.

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 \$22.12, 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

November 5, 2020
Date

RIGHT TO APPEAL

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