



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

INDEMNITY INSURANCE COMPANY

MFDR Tracking Number

M4-21-1316-01

Carrier's Austin Representative

Box Number 15

MFDR Date Received

March 31, 2021

Response Submitted by:

Downs Stanford, PC

REQUESTOR'S POSITION SUMMARY

"The above claimant received medication and the carrier still has not acknowledged receipt of service ... Memorial did not receive any correspondence as per rule, so we submitted a Request for Reconsideration."

RESPONDENT'S POSITION SUMMARY

"The Carrier has submitted the bill in dispute for review, and an additional payment is currently being made. A copy of the payment will be provided once issued."

SUMMARY OF DISPUTED SERVICE(S)

| Date(s) of Service | Disputed Service(s) | Amount in Dispute | Amount Due |
|--------------------|------------------------|-------------------|------------|
| December 17, 2020 | Prescribed Medications | \$623.29 | \$355.48 |

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

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 Requestor seeks reimbursement for prescribed medications rendered on December 17, 2020. The insurance carrier in their response to MFDR, submitted a copy of an EOB to support that reimbursement was rendered to the requestor for the Meloxicam and Hydrocodone/Acetaminophen. The requestor in a response to MFDR dated June 28, 2021 indicate that payment was received for the medication identified on the EOB however, they continue to pursue reimbursement for the medication that was not paid by the insurance carrier. The DWC will therefore review the medication that was not paid by the insurance in this dispute.

Neither the respondent nor the requestor submitted copies of EOBs for Omeprazole and Gabapentin rendered on December 17, 2020. Review of the submitted documentation finds that the requestor, MEMORIAL COMPOUNDING PHARMACY, presented sufficient documentation to support that it requested payment from Indemnity Insurance Company for medications provided to a covered injured employee. Indemnity Insurance Company did not pay, reduce, or deny the complete medical bill in 45 days. Due to Indemnity 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. Indemnity Insurance Company did not respond to the request for reconsideration. The provider then filed for medical fee dispute resolution (MFDR).

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

No evidence was presented by Indemnity Insurance Company or its agent to support that it responded to the complete medical bill within 45 days; nor did Indemnity Insurance Company or its agent present any evidence to support that it responded to the request for reconsideration and request for an EOB. Indemnity Insurance Company therefore failed to present any denial reasons or defenses to the provider before the filing of this medical fee dispute.

Indemnity 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 Indemnity Insurance Company or an agent acting on Indemnity 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.

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

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 |
|--------------|-------------|-------------------------|-------------|-----------------|----------------|------------------|-----------------------------|
| Omeprazole | 62175011843 | G | \$3.37338 | 60 | \$257.00 | \$259.90 | \$257.00 |
| Gabapentin | 50228017705 | G | \$2.51950 | 30 | \$98.48 | \$133.09 | \$98.48 |
| Total | | | | | | \$392.99 | \$355.48 |

The total reimbursement is therefore \$355.48. This amount is recommended.

Decision

For the reasons above, the DWC finds that reimbursement is due. As a result, the amount ordered is \$355.48.

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 \$355.48, 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 _____ Date July 20, 2021

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.