



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

Zurich American Insurance Company

MFDR Tracking Number

M4-17-3179-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

June 29, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Memorial Compounding has not received any correspondence with explanation of review or benefits."

Amount in Dispute: \$616.59

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Carrier has been unable to document receipt of this bill, and is continuing to search its records to determine if any EOBs have previously been issued in response. Nevertheless, the Carrier has currently place the bill in place in line for expedited bill review and will file a Supplemental Response as soon as possible."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due. Row 1: January 16, 2017, Pharmacy Service - Compound, \$616.59, \$616.59

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 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §102.4 establishes the rules for non-division communications.
3. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
4. 28 Texas Administrative Code §133.10 defines the requirements for submitting a complete pharmaceutical bill.
5. 28 Texas Administrative Code §133.240 sets out the requirements for payment or denial of a medical bill.

6. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
7. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
8. The documentation submitted to the division does not include explanations of benefits.

### Issues

1. Did Memorial Compounding Pharmacy (Memorial) submit a pharmaceutical bill to Zurich American Insurance Company (Zurich) in accordance with 28 Texas Administrative Code §133.10?
2. Did Zurich take final action to pay, reduce, or deny the disputed compound?
3. Is Memorial entitled to additional reimbursement for the compound in question?

### Findings

1. Memorial is seeking reimbursement of \$616.59 for a compound drug dispensed on January 16, 2017. In its position statement, Flahive, Ogden & Latson argued on behalf of Zurich that “The Carrier has been unable to document receipt of this bill.”

Memorial asserted that, “The bills were processed on DWC066 submitted via certified mail and fax ... I attached proof of submission with the certified return receipt dated and signed on 01/31/2017 as well as the fax transmission on 03/28/2017.”

The division finds that the submitted documentation includes the following:

- a signed certified mail receipt with a postal stamp certifying delivery on January 31, 2017, and
- a fax confirmation page dated March 28, 2017.

28 Texas Administrative Code §102.4(h) states,

Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on:

- (1) the date received, if sent by fax, personal delivery or electronic transmission or,
- (2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.

The division concludes that Memorial submitted a pharmaceutical bill to Zurich on or about January 26, 2017, and on March 28, 2017.

2. According to Texas Labor Code Sec. 408.027(b), Zurich was required to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the pharmacy bill from Memorial. Corresponding 28 Texas Administrative Code §133.240(a) required Zurich to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45<sup>th</sup> day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

Final action on a medical bill—

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

Memorial submitted a USPS certified mail receipt was delivered on January 31, 2017, at the address listed on the receipt. This evidence supports that Zurich received a pharmaceutical bill for the services in dispute on or about January 31, 2017. Zurich was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the pharmacy bill from Memorial, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45<sup>th</sup> day** [emphasis added] after the insurance carrier received a complete medical bill...

- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
- (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

Absent any evidence that Zurich raised any defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that Zurich failed to take final action to pay, reduce, or deny the compound in question. The compound will be reviewed in accordance with applicable fee guidelines.

3. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:
- (c) 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;
- (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
- (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
- (A) health care provider; or
- (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2).

Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Tramadol HCl	38779237409 Generic	\$36.30	6.0 gm	$\$36.30 \times 6 \times 1.25 = \$272.25$	\$168.00	\$168.00
Cyclobenzaprine HCl	38779039509 Generic	\$46.332	1.8 gm	$\$46.332 \times 1.8 \times 1.25 = \$104.25$	\$80.37	\$80.37
Meloxicam	38779274601 Generic	\$194.67	0.18 gm	$\$194.67 \times 0.18 \times 1.25 = \$43.80$	\$35.04	\$35.04
Flurbiprofen	38779036209 Generic	\$36.58	4.8 gm	$\$36.58 \times 4.8 \times 1.25 = \$219.48$	\$168.72	\$168.72
Bupivacaine HCl	38779052405 Generic	\$45.60	1.2 gm	$\$45.60 \times 1.2 \times 1.25 = \$68.40$	\$46.02	\$46.02
Ethoxy Diglycol	38779190301 Generic	\$0.342	4.2 ml	$\$0.342 \times 4.2 \times 1.25 = \$1.80$	\$1.44	\$1.44
Versapro Cream	38779252903 Brand Name	\$3.20	40.8 gm	$\$3.20 \times 40.8 \times 1.09 = \$142.31$	\$102.00	\$102.00
Compounding Fee	NA	NA	NA	\$15.00	\$15.00	\$15.00
Total						\$616.59

The total reimbursement is therefore \$616.59. This amount is recommended.

**Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$616.59.

***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$616.59, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

	Laurie Garnes	August 25, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. 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.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**