



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

M4-18-2810-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

April 02, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The above claimant received medication and the carrier still has not acknowledged receipt of service. The original bill was submitted to carrier on 11/10/2017."

Amount in Dispute: \$492.74

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The prescribing doctor (Dr. Chen) was treating the Claimant for what the Carrier believed were non-compensable conditions. The report of Dr. Cochran explains the resolution of the Claimant's compensable injury, the inconsistencies of the current complaints with the compensable injury, and that the Claimant is being treated for non-compensable complaints related to metabolic disease. The requestor has not shown itself entitled to reimbursement as the treatment is for conditions unrelated to the compensable injury (see attached report from Dr. Chen) The Requestor is not entitled to reimbursement. If the Requestor contends the treatment is for the compensable injury, then this request should be DISMISSED in the face of that claimed unresolved relatedness dispute."

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: October 30, 2017, Pharmacy Services, \$492.74, \$400.30

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 §133.240 sets out the general medical provisions for medical payments and denials.

2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
6. 28 Texas Administrative Code §19.2009 sets out the notice of determinations made in utilization review.
7. 28 Texas Administrative Code §19.2010 sets out the requirements prior to issuing adverse determination.
8. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 216 – Based on the findings of a review organization

### **Issues**

1. Is Zurich American Insurance Co's reason for denial of payment supported?
2. Did Zurich American Insurance Co raise a new defense pursuant to 28 Texas Administrative Code §133.307
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the compound in question?

### **Findings**

1. Memorial is seeking reimbursement for drug(s) dispensed on October 30, 2017.

Zurich American Insurance Co denied the disputed drugs with claim adjustment reason code 216 – “Based on the findings of a review organization”

28 Texas Administrative Code §133.305(b) requires that “If a dispute regarding...medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding...medical necessity shall be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and §408.021.”

28 Texas Administrative Code §133.240(q) states that the insurance carrier is required to comply with 28 Texas Administrative Codes §19.2009 and 19.2010 when denying payment based on an adverse determination.

Review of the submitted documentation finds that Zurich American Insurance Co submitted a document as support for a utilization review of the disputed drug. The division concludes that the submitted documentation does not support that Zurich American Insurance Co performed a utilization review as this document does not contain the elements of a utilization review required by 28 Texas Administrative Code §19.2009.

Zurich American Insurance Co's denial reason is therefore not sufficiently supported. The disputed drug(s) will consequently be reviewed per applicable guidelines.

2. In its position statement, Flahive, Ogden & Latson argued on behalf of Zurich American Insurance Co, “The prescribing doctor (Dr. Chen) was treating the Claimant for what the Carrier believed were non-compensable conditions. The report of Dr. Cochran explains the resolution of the Claimant's compensable injury, the inconsistencies of the current complaints with the compensable injury, and that the Claimant is being treated for non-compensable complaints related to metabolic disease. The requestor has not shown itself entitled to reimbursement as the treatment is for conditions unrelated to the compensable injury (see attached report from Dr. Chen) The Requestor is not entitled to reimbursement. If the Requestor contends the treatment is for the compensable injury, then this request should be DISMISSED in the face of that claimed unresolved relatedness dispute.”

28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, “The 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.”

Review of the submitted documentation finds that Zurich American Insurance Co failed to present a compensability denial to Memorial Compounding Pharmacy in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The

division concludes that this defense presented in Flahive, Ogden & Latson’s position statement shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

3. 28 Texas Administrative Code §134.503 applies to the compounds 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:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
      - (B) Brand name drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  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 drug 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.

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Naproxen	6909708551 2	G	\$1.19	60	\$89.46	\$129.07	\$89.46
Gabapentin	4596305565 0	G	\$1.33	90	\$149.58	\$177.16	\$149.58
Omeprazole	6846203961 0	G	\$4.30	30	\$161.26	\$186.51	\$161.26
						<b>Total</b>	<b>\$400.30</b>

The total reimbursement is therefore \$400.30. This amount is recommended.

**Conclusion**

The outcome of each independent medical fee dispute relies upon the relevant evidence presented by the requestor and the respondent at the time of adjudication. Though all the evidence in this dispute may not have been discussed, it was considered.

**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 \$400.30, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

8/02/2018  
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.**