



# 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**

M4-18-3101-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

April 23, 2018

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The above claimant received medication as prescribed by referral provider. Bill for date of service 01/31/2017 still has not been process by 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 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)."

**Amount in Dispute:** \$137.28

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The Carrier has confirmed that Memorial first submitted its bill to its PBM and that the bill the subject of this request was paid in accordance with Memorial's contract with the PBM..."

**Response Submitted by:** Flahive, Ogden & Latson

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 25, 2017	Pharmacy services – Compound	\$137.28	\$99.72

#### 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 §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.

3. 28 Texas Administrative Code §134.503 sets out the reimbursement for pharmacy services.
4. No explanation of benefits were found in the documentation.

### Issues

1. Did Zurich American Insurance Co, reduce or deny the disputed services not later than the 45<sup>th</sup> day after receiving the medical bill?
2. Is the requestor entitled to additional reimbursement?

### Findings

This medical fee dispute was filed by health care provider Memorial Compounding Pharmacy on April 23, 2018. Memorial Compounding Pharmacy (Memorial) on its table of disputed services asserts that reimbursement should be made to the provider if the claim has been submitted within the 95<sup>th</sup> day after the date on which the health care services was rendered for the compound it dispensed to a covered injured employee on October 25, 2017.

1. Memorial contends that Zurich American Insurance Co o failed to “take final action on the claim within the 45 day period set forth in in TAC §133.240.” Furthermore, in its reconsideration request, Memorial also alleges that “Reimbursement should be made to the provider if the claim has been submitted within the 95<sup>th</sup> day after the date on which the health care service was rendered.”

According to Texas Labor Code Sec. 408.027 (b) American Zurich Insurance Co was required to pay, reduce or deny the disputed services not later than the 45<sup>th</sup> day after it received the medical bill from Memorial. Corresponding 28 Texas Administrative Code §133.240 also required American Zurich Insurance Co to take final action by issuing an explanation of benefits not later than the statutorily-required 45<sup>th</sup> day.

The following evidence supports that Zurich American Insurance Co initially received the medical bill for the services in dispute on November 3, 2017.

- A copy of a certified mail receipt dated November 3, 2017, number 7014 2120 0004 2483 6789 addressed to Zurich North American.

Although there is evidence that Zurich American Insurance Co received a medical bill for the service in dispute on November 3, 2017, Zurich American Insurance Co failed to timely take the following actions:

Rule §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.”

Rule §133.240 (e) The insurance carrier **shall send the explanation of benefits** 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...

Furthermore, Zurich American Insurance Co failure to timely issue an explanation of benefits to Memorial creates a waiver of defenses that Zurich American Insurance Co according to Rule §133.307 (d)(2)(F):

28 Texas Administrative Code §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 Division concludes that Zurich American Insurance Co failure to timely issue an appropriate explanation of benefits creates a waiver of any new defenses presented in its response to medical fee dispute. Absent any evidence to the contrary, the Division finds that the services in dispute are eligible for payment.

2. Rule at 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:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  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 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.

The division finds that the reimbursement for the disputed service is calculated as follows:

- Gabapentin  $(1.33 \times 60 \times 1.25) = \$99.72$

The total reimbursement amount is \$99.72. 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 Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$99.72, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director for Medical Fee Dispute Resolution

\_\_\_\_\_  
9/7/2018  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 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 with the Division. **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.**