



# 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**

American Zurich Insurance Company

**MFDR Tracking Number**

M4-18-5127-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

August 22, 2018

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The carrier has received the attached bill and has not processed according to Texas Labor Code 408.027."

**Amount in Dispute:** \$702.68

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The issue of medical necessity has been joined, and the disputed services have not yet been determined to be medically necessary and appropriate ... Memorial should send its bill directly to the PBM ... Memorial dropped the bill to paper and sent directly to the Carrier."

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

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 27, 2018	Compound Medication	\$702.68	\$702.68

#### 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 for the services in question were found in the submitted documentation.

## Issues

1. Did American Zurich Insurance Company (Zurich) pay, reduce or deny the disputed services not later than the 45<sup>th</sup> day after receiving the medical bill?
2. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the disputed services?

## Findings

1. Memorial is seeking reimbursement for a compound dispensed on February 27, 2018. Memorial contends that it “did not receive any correspondence” from Zurich regarding the billing for the services in question.

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 medical bill from Memorial. Corresponding 28 Texas Administrative Code §133.240 also required Zurich to take final action by issuing an explanation of benefits not later than the statutorily-required 45<sup>th</sup> day.

Flahive, Ogden & Latson provided no evidence that the insurance carrier took 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...

28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, “The response shall address only those **denial reasons** [emphasis added] 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** [emphasis added] in the review.”

Review of the submitted documentation finds that Zurich failed to present a denial of payment to Memorial in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The DWC concludes that any defenses presented in Flahive, Ogden & Latson’s position statement filed on behalf of Zurich shall not be considered for review because these assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Because no denial of reimbursement was presented to Memorial prior to the request for MFDR, the DWC finds that Memorial is entitled to reimbursement. Rule at 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:
  - (a) 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. Each ingredient is listed below with its reimbursement amount. The calculation of the total allowable amount is as follows:

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Baclofen	38779038809	G	\$35.63	5.4	\$240.50	\$190.78	\$190.78
Amantadine	38779041105	G	\$24.23	3	\$90.84	\$72.69	\$72.69
Gabapentin	38779246109	G	\$59.85	3.6	\$269.33	\$204.66	\$204.66
Bupivacaine	38779052405	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Amitriptyline	38779018904	G	\$18.24	1.8	\$41.04	\$32.83	\$32.83
Ethoxy Diglycol	38779190301	G	\$0.34	4.2	\$1.80	\$1.44	\$1.44
Versapro Cream	38779252903	B	\$3.20	40.8	\$142.31	\$130.56	\$130.56
Fee	NA	NA	NA	NA	\$15.00	\$15.00	\$15.00
						Total	\$702.68

The total allowable amount is \$702.68. 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 \$702.68.

**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 \$702.68, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

**Authorized Signature**

\_\_\_\_\_  
Signature

Laurie Garnes  
Medical Fee Dispute Resolution Officer

November 15, 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.**