



# 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**

M4-18-5171-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

August 24, 2018

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The above claimant received medication and the carrier still has not acknowledged receipt of service. 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."

**Amount in Dispute:** \$726.62

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The Medical Necessity Dispute is unresolved ... The Carrier denied payment based upon lack of preauthorization."

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

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 05, 2018	Pharmacy Services – Compound	\$726.62	\$726.62

### 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 submit a pharmaceutical bill to Zurich American Insurance Co (Zurich) in accordance with 28 Texas Administrative Code §133.10?
2. Did Zurich take final action to pay, reduce, or deny the disputed services?
3. Is Memorial entitled to additional reimbursement?

### **Findings**

1. This medical fee dispute was filed by health care provider Memorial Compounding Pharmacy on August 24, 2018. Memorial Compounding Pharmacy (Memorial) on its table of disputed services asserts that the claim has been submitted within the 95<sup>th</sup> day after the date on which the health care service was rendered for the compounds dispensed to a covered injured employee on March 05, 2018.

Memorial contends that Zurich 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 “has not received any correspondence with explanation of review or benefits.”

According to Texas Labor Code Sec. 408.027 (b) Zurich was required to pay, reduce or deny the disputed services not later than the 45th 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 45th day.

The following evidence supports that Zurich initially received the medical bill for the services in dispute on March 16, 2018.

- A copy of a certified mail receipt dated March 16, 2018, number 7017 1070 0000 2515 1270 addressed to Zurich North America.

Although there is evidence that Zurich received a medical bill for the service in dispute on March 16, 2018, Zurich 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 45th 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 failure to timely issue an explanation of benefits to Memorial creates a waiver of defenses that American Zurich Insurance Co raised in its response to medical fee dispute resolution.

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 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. 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.

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Meloxicam	38779274601	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Flurbiprofen	38779036209	G	\$36.58	4.8	\$219.48	\$175.58	\$175.58
Tramadol HCL	38779237409	G	\$36.30	6	\$272.25	\$217.80	\$217.80
Cyclobenzaprine HCL	38779039509	G	\$46.33	1.8	\$104.24	\$83.39	\$83.39
Bupivacaine HCL	38779052405	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Ethoxy Diglycol	38779190301	G	\$0.34	3	\$1.28	\$1.03	\$1.03
Versapro	38779252903	B	\$3.20	45.02	\$157.03	\$144.06	\$144.06
Compounding Fee	NA	NA	NA	NA	\$15.00	\$15.00	\$15.00
						Total	\$726.62

The total reimbursement is therefore \$726.62. 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 \$726.62.

***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 \$726.62, 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

\_\_\_\_\_  
10/26/2018  
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.**