**Texas Department of Insurance, Division of Workers' Compensation**
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

# MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

## PART I: GENERAL INFORMATION

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|---|---|
| Requestor's Name and Address:<br><br>THIRD PARTY SOLUTIONS. INC.<br>4225 LAKE PARK BLVD, #300<br>SALT LAKE CITY, UT 84120 | MFDR Tracking #: M4-09-2884-01<br>DW<br>Injured<br>Dat |
| Respondent Name and Representative Box:<br><br>TEXAS MUTUAL INSURANCE CO.<br>Rep Box #: 54 | Empl<br>Insurance |

## PART II: REQUESTOR'S POSITION SUMMARY AND PRINCIPAL DOCUME

Requestor's Position Summary: "For the prescription claims at issue, Texas Mutual Insurance ("Texas Mutual") paid Third Party Solution, Inc. (TPS) less than the maximum Allowable Reimbursement ("MAR") amount that TPS billed to Texas Mutual. Because Texas Mutual does not have a contract with either Third Party Solutions, Inc. (TPS) or the pharmacy that dispensed the prescriptions at issue, Texas Mutual has no legitimate basis for making a reduced payment to TPS. ...Texas Mutual's theory is that the rate established by that contract is an appropriate estimate of the dispensing pharmacy's usual and customary charge. Texas Mutual's payment practices are inconsistent with the requirements of the Division's rules. ...when a pharmacy agrees to accept a reduced contract rate for a pharmacy claim, it does so in exchange for the receipt of valuable consideration, such as a the ability to submit the claim electronically and to receive guaranteed payment on the claim within a shortened time frame. The amount one pharmacy agrees to accept to receive such substantial benefits is not a proxy for the amount that the pharmacy or any other pharmacy would be willing to accept in the absence of such a contract, and Texas Mutual cannot seriously suggest otherwise. ...neither the Texas Labor Code nor the Texas Administrative Code authorizes Texas Mutual to make payments in accord with Texas Mutual's estimate of the usual and customary charge for a drug..."

Principal Documentation:

1. DWC 60 package
2. Position Summary
3. DWC-66
4. EOB's
5. Copy of MFDR decision between TMI and Working Rx dated 8/24/07
6. Letter of Clarification from Working RX to ScripNet
7. Amount Sought: $22.52

## PART III: RESPONDENT'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

Respondent's Position Summary: "Texas Mutual intends for this response to be its initial response for all disputes listed in Attachment A. Third Party Solutions has routinely and consistently charged Texas Mutual... more for prescription drugs than the actual pharmacy charges... This occurs because presumably Third Party Solutions pays the pharmacy one rate then bills the carrier a higher rate...Apparently, Third Party Solutions made no attempt to determine the amount the pharmacy usually and customarily receives for the prescription at issue before billing Texas Mutual using the AWP + method... Third Party Solutions completely ignores subsection (a)(1) which provides that payment shall be the providers usual and customary charge...Texas Mutual did not pay the amount billed because the amount billed was not the MAR in this case...Third Party Solutions apparently believes that it can charge a higher amount for the same prescription drugs dispensed within the workers' compensation system than is charged by the same pharmacy for the same prescription drugs dispensed outside the system... Medical Fee Dispute Resolution (MFDR) has decided at least three cases in which it required the pharmacy to establish that its workers' compensation charges were the same or similar to those incurred by patients outside the workers' compensation system... In each case, the pharmacy failed to submit such proof and thus MFDR determined that no additional compensation was warranted... Third Party Solutions administration cost cannot be collected from Texas Mutual... Third Party Solutions admits it is nothing more than a processing agent... Third Party Solutions can only seek reimbursement for "health care" under Texas Labor Code, and a mark-up for administrative matters such as billing, claims research and investigation is not billing for "health care"... Third Party Solutions and its pharmacies cannot argue that the higher price to workers' comp insurers is lawful or justified on the theory that services provided to workers' comp are never "similar" to services provided to other types of patients... The pharmacy's U&C is the amount it normally charges the walk-in customers that have no insurance or are covered by private health insurance... Third Party Solutions simply states, without any support, that it is entitled to the AWP + formula price... Texas Mutual calculated the amount to be paid using a contract with a large pharmacy chain... In the absence of any information from Third Party Solutions, this is Texas Mutual's best educated estimate... The amount Texas Mutual paid was its best estimate of the supplying pharmacy's U&C for these drugs to persons outside the workers' comp system... In the absence of any evidence from the pharmacies or Third Party Solutions, and considering data available to Texas Mutual, the ScripNet contract price with the pharmacy is the best educated estimate of the pharmacy's usual and customary charge... Texas Mutual recognizes that the pharmacy's actual U&C charge may be different (higher or lower) than Texas Mutual's estimated value. However, Third Party Solutions has never provided any information to substantiate that the amount it charged Texas Mutual was in fact the pharmacy's U&C price for the drug at issue despite Texas Mutual's best evidence that it was not..."

Principal Documentation:

1. DWC 60 package
2. Position Summary
3. Excerpts from three previous MFDR decisions
4. SOAH decision on issue of whether Hassle Free Pharmacy is a health care provider
5. Affidavit of Pharmacist – request from TEXAS MUTUAL to audit pharmacy's records to determine U&C (blank affidavit)
6. 2001-2002 Third Party Plans in Texas Average Percent Off AWP

## PART IV: SUMMARY OF FINDINGS

| Dates of Service | Pharmaceuticals in Dispute | Denial Codes | Amount in Dispute | Amount Ordered |
|---|---|---|---|---|
| 11/26/2007 | ETODOLAC TAB 400MG | CAC-W10, 517, CAC-W4, 891 | $22.52 | $0.00 |
| **Total /Due:** | | | | $0.00 |

## PART V: FINDINGS

Texas Labor Code §413.011(a)-(d), titled *Reimbursement Policies and Guidelines* and 28 Texas Administrative Code (TAC) §134.503, titled *Pharmaceutical Benefits*, adopted to be effective January 3, 2002; amended to be effective March 14, 2004, set out the reimbursement guidelines for pharmaceutical services.

HEB Pharmacy

Texas Labor Code provides definitions in reference to health care provider as follows:

- §401.011(22) defines "health care provider" as a health care facility or health care practitioner.
- §401.011(20) defines "health care facility" as a hospital, emergency clinic, outpatient clinic, or other facility providing health care.
- §401.011(21) defines "health care practitioner" as an individual who is licensed to provide or render and provides or renders health care; or a non-licensed individual who provides or renders health care under the direction or supervision of a doctor.
- §401.011(19)(E) defines "health care" to include a prescription drug, medicine, or other remedy.

HEB Pharmacy is the provider in this dispute.

Third Party Solutions, Inc. (TPS)Texas Labor Code §413.0111 provides that the rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on behalf of the pharmacies under the terms and conditions agreed upon by the pharmacies.

- 28 TAC §133.2(7) defines a pharmacy processing agent (PPA) as a person or entity that contracts with a pharmacy in accordance with Labor Code §413.0111, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.
- Pursuant to 28 TAC §133.20 (d)(4), the health care provider that provided the health care shall submit its own bill, unless the health care provider is a pharmacy that has contracted with a PPA for purposes of medical bill processing, in which case the PPA may submit the bill.
- Pursuant to 28 TAC §133.20(e), a medical bill must be submitted for an amount that does not exceed the health care provider's usual and customary charge for the health care provided in accordance with Texas Labor Code §413.011 and §415.005; and in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

Third Party Solutions, Inc. is a pharmacy processing agent and the requestor in this dispute.

Agreement Between Third Party Solutions, Inc. & HEB Pharmacy

28 TAC §133.307 (b) (1) states that a qualified pharmacy processing agent, as described in Labor Code §413.0111, may be a requestor in medical fee disputes. 28 TAC §133.307 (c) (2) (H) provides that if the requestor is a pharmacy processing agent, the requestor must include:

- A signed and dated copy of an agreement between the processing agent and the pharmacy clearly demonstrating the dates of service covered by the contract; and
- A clear assignment of the pharmacy's right to participate in the MDR process.

Portions of the agreement provided between Third Party Solutions, Inc. and HEB Pharmacy indicate that the parties entered into the agreement on July 1, 1999.

The agreement between Third Party Solutions, Inc and HEB Pharmacy does not clearly assign the pharmacy's right to participate in the MDR process. In addition, the portions of the agreement provided do not clearly demonstrate the dates of service in dispute are covered by the agreement. Third Party Solutions, Inc. (TPS) did not meet the requirement as set forth by 28 TAC §133.307 (c) (2) (H).

Reimbursement

Texas Labor Code §408.028 (f) states in part "...the commissioner by rule shall adopt a fee schedule for pharmacy and pharmaceutical services that will:

(1) provide reimbursement rates that are fair and reasonable;
(2) assure adequate access to medications and services for injured workers; and
(3) minimize costs to employees and insurance carriers."

Per 28 TAC §134.503(a) (1)-(3)The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:

(1) The provider's usual and customary charge for the same or similar service;
(2) The fees established by a formula based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed; and
(3) A negotiated contract amount.

28 TAC §134.503 (a) (1) refers to the provider's usual and customary which in this case is HEB Pharmacy. Third Party Solutions, Inc. (TPS) must substantiate that the amount billed is HEB Pharmacy's usual and customary charge. On 06/03/2009, the Division requested any and all available information of the principals' or assignors' usual and customary charges for the individual pharmaceuticals for which additional reimbursement is sought. Although Third Party Solutions, Inc. (TPS) argues that the charges billed to Texas Mutual have uniformly been the providers' usual and customary charge for the same or similar service, Third Party Solutions, Inc. (TPS) did not provide documentation sufficient to substantiate that the amount billed to Texas Mutual is HEB Pharmacy's usual and customary charge for ETODOLAC TAB 400MG.

28 TAC §134.503 (a) (2) is established through a calculation based on AWP. The fee as established by the formula under §134.503(a) (2) for ETODOLAC TAB 400MG is $59.05. 28 TAC §134.503 (a) (3) is not used to establish the maximum allowable reimbursement because Third Party Solutions, Inc. (TPS) provided confirmation that no contract exists between HEB Pharmacy and Texas Mutual Insurance Company.

Therefore, the Maximum Allowable Reimbursement (MAR) for ETODOLAC TAB 400MG is the lesser of 28 TAC §134.503 (a) (1) and (2). In this case, the lesser can not be determined because Third Party Solutions, Inc. (TPS) did not submit sufficient evidence of HEB Pharmacy's' usual and customary charge for ETODOLAC TAB 400MG.

Conclusion:
Third Party Solutions, Inc. (TPS) did not clearly assign the pharmacy's right to participate in the MDR process and did not clearly demonstrate that the dates of service in dispute were covered by the contract with HEB Pharmacy as required by 28 TAC §133.307 (c) (2) (H). In addition, the requestor Third Party Solutions, Inc. (TPS) failed to sufficiently substantiate that the amount on the pharmacy bill is HEB Pharmacy's' usual and customary charge for ETODOLAC TAB 400MG. The Division concludes that Third Party Solutions, Inc. (TPS) has failed to establish that it is due additional reimbursement in the amount of $22.52. As a result, the amount ordered is $0.00.

## PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code §401.011, §408.028, §413.011(a-d), §401.0111, §413.031 and §413.0311
28 TAC §133.20 28 TAC §133.2
28 TAC §133.307
28 TAC §134.503

## PART VII: DIVISION DECISION

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code, §413.031, the Division has determined that the Requestor is entitled to $0.00 additional reimbursement.

## ORDER:

| [redacted] | [redacted] | October 8, 2009 |
|---|---|---|
| Authorized Signature | Medical Fee Dispute Resolution Officer | Date |

## PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in Division Rule 148.3(c).
Under Texas Labor Code Section 413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed $2,000. If the total amount sought exceeds $2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code Section 413.031.
**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**