



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

ENG'S PHARMACY
PO BOX 2686
STAFFORD TX 77497

Carrier's Austin Representative Box

Box Number: 19

Respondent Name

ZURICH AMERICAN INSURANCE CO

MFDR Date Received

April 1, 2010

MFDR Tracking Number

M4-10-3512-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary as Stated on the Table of Disputed Services: "no payment or EOB after 1st & 2nd attempt."

Amount in Dispute: \$672.40

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: This case involves DOS 01/20/10 and has \$802.70 in dispute according to the Requestor. Carrier did not receive these bills until the submission of the dispute. It is now processing them and will pay them in accordance with the Texas Labor Code and DWC Rules.

Response Submitted by: Flahive, Ogden & Latson, PO Drawer 13367, Austin, TX 78711

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 20, 2010	MELOXICAM 15MG TABLET	\$548.50	\$548.46
January 20, 2010	TRAMADOL HCL 50MG TABLET	\$254.20	\$254.20

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 Texas Register 3954 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.503, 29 Tex. Reg. 2346, sets out the reimbursement for the pharmaceutical services in dispute
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - EOBs were not submitted by either party.

Issues

1. Did the requestor in this dispute establish that a request for reconsideration was made?
2. How is reimbursement established for the service(s) in dispute?
3. What does §134.503(c)(3)(A) require?
4. Did the requestor support its request for additional reimbursement?

Findings

1. In accordance with 28 Texas Administrative Code 133.307(c)(2) The provider shall complete the required sections of the request in the form and manner prescribed by the Division. The provider shall file the request with the MDR Section by any mail service or personal delivery. The request shall include: (A) a copy of all medical bill(s) as originally submitted to the carrier and a copy of all medical bill(s) submitted to the carrier for reconsideration in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills); (B) a copy of each explanation of benefits (EOB) relevant to the fee dispute or, if no EOB was received, convincing documentation providing evidence of carrier receipt of the request for an EOB. Review of the documentation submitted by the requestor shows that a request for reconsideration was requested was submitted to the respondent, as referenced by the fax confirmation dated January 25, 2010.
2. Reimbursement for the service in dispute may be established by applying 28 Texas Administrative Code §134.503, effective from March 14, 2004 (29 Tex. Reg. 2346), which states, in pertinent part:
 - (a) 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 the following formulas 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.
 - (A) Generic drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee = MAR;
 - (B) Brand name drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee = MAR;
 - (C) A compounding fee of \$15 per compound shall be added for compound drugs;or
 - (3) A negotiated or contract amount.

Review of the explanation of benefits, position statements, and other documentation provided by the parties finds that: (1) no contract exists between the parties; and that (2) there are no denial codes or assertions refuting that the amount charged is the usual and customary amount. Consequently, the MAR in this medical fee dispute is established by determining the lesser of the charged amount and the AWP formula pursuant to 28 Texas Administrative Code §134.503(a)(2).

3. 28 Texas Administrative Code §134.503(a)(2) states, in pertinent part, that "The fees established by the following formulas [are] 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." The preamble to §134.503, adopted to be effective January 3, 2002, 26 Texas Register 10970, provides guidance on the requirement that the AWP must be "in effect on the day" the drug is dispensed.

COMMENT: Commenter contended that the nationally recognized pharmaceutical data is too broad. Some pharmacists use the daily AWP updates provided by First Data, some use weekly, and some use the monthly publication. Commenters recommend that the Commission specify a specific pharmaceutical reimbursement system

that insurers must use to determine the AWP of drugs. Since pricing can differ daily, this will result in uniformity of reimbursed amounts and should prevent many medical disputes. Some commenters recommend that the Commission adopt by reference First Data Bank's monthly "Price Alert" as modified for the Medicare system, as the reimbursement system publication to be used by insurers and bill review agents since it has recently been adjusted to reflect accurate and lower AWP's.

RESPONSE: The Commission disagrees with the suggestion to select one source for AWP. The Commission wishes to allow flexibility for whichever nationally recognized pharmaceutical reimbursement system the carrier selects and will monitor to determine if future changes are warranted.

COMMENT: Commenters requested clarification regarding whether AWP should be updated weekly or daily. Commenter recommends updating daily.

RESPONSE: The Commission agrees with daily updating, but disagrees that clarification is necessary. Section 134.503(a)(2) states that reimbursement is based on the average wholesale price in effect on the day the prescription drug is dispensed.

The January 3, 2002 adoption preamble establishes that the Division expects AWP prices to be updated daily. Because the requestor has the burden of proof in this medical fee dispute, it must provide evidence to support that any asserted AWP values used to calculate reimbursement pursuant to §134.503(a)(2) were in effect on the day the disputed drug was dispensed. A mere assertion of the rate in effect on the day that the drug is dispensed is not sufficient.

4. The pharmaceutical in dispute was dispensed on January 20, 2010. After thorough review of the information and documentation provided by the parties, the Division finds:
- The respondent did not provide any evidence to support the asserted AWP price or effective date.
 - The requestor did not submitted documentation to support what nationally recognized pharmaceutical reimbursement system was used to calculate reimbursement; therefore, the maximum allowable reimbursement (MAR) is therefore determined by the Division as follows:

Dates of Service	Prescription Drug	§134.503 (a)(2)	Carrier Paid	Amount Due
January 20, 2010	MELOXICAM 15MG TABLET NDC: 57664051388 90 count	$((4.83960 \times 90) \times 1.25 + \$4 = \$548.46$	\$0.00	\$548.46
January 20, 2010	TRAMADOL HCL 50MG TABLET NDC: 65162062710 240 count	$((0.83400 \times 240) \times 1.25) + \$4 = \$254.20$	\$0.00	\$254.20
				\$802.66

The total MAR for the services in dispute is \$802.66. The respondent paid a total of \$0.00; therefore the requestor is entitled to additional reimbursement in the amount of \$802.66.

Conclusion

For the reasons stated above, the division finds that the requestor has supported its request for reimbursement. As a result, the amount ordered is \$802.66.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §§413.031 and 413.019 (if applicable), the division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

Date

January 29, 2014

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **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. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing 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 §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.