



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

ADVANTAS RX

Respondent Name

DILLARD'S DEPARTMENT STORES, SELF-INSURED

MFDR Tracking Number

M4-11-1169-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

December 07, 2010

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Receipt, the pharmacy where this prescription was filled, does not have a service agreement with Dillards or a PBM to prevent payment as rendered by AdvantasRx."

Amount in Dispute: \$300.60

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "A contract was established between Receipt 73 and PTI, the carrier's agent. A copy of this agreement is attached. Through this agreement, Receipt 733 agreed to provide medications to the injured work at a contractual reimbursement rate. Receipt 73 was reimbursed according to the contractual rate. AdvantasRx now asserts that the contract does not apply...."

Response Submitted by: Flahive, Odgen & Latson, Attorneys At Law, PC

SUMMARY OF FINDINGS

Table with 4 columns: Dates of Service, Disputed Services, Dispute Amount, Amount Due. Row 1: June 9, 2010, Pharmacy Services, \$300.60, \$300.60

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 §133.4 provides for notice to health care providers of network contracts.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.503 sets out the reimbursement methodology for prescription medication.
4. Texas Labor Code §413.011 sets out general provisions regarding reimbursement policies and guidelines.
5. Texas Labor Code §413.0115 sets out requirements for certain voluntary or informal networks.
6. The submitted explanation of payment did not contain any payment reduction or denial reason codes. However, an attached letter explained that the payer "re-priced the prescription invoices to the amounts contracted through Dillard's Pharmacy Benefits Manager."

Issues

1. Are the disputed pharmaceutical services subject to a contracted fee?
2. What is the recommended payment for the services in dispute?
3. Is the requestor entitled to additional reimbursement?

Findings

1. This dispute involves a pharmacy that dispensed a prescription medication to an injured employee. The pharmacy asks for reimbursement pursuant to the methodology described in 28 Texas Administrative Code §134.503.

The respondent asserts the insurance carrier reimbursed the pharmacy for the medication according to a contracted rate set out in a network agreement between the pharmacy and the self-insured employer's pharmacy benefits manager, PTI, Pharmaceutical Technologies, Inc.

Former Texas Labor Code §413.011(d-1) states that:

An insurance carrier or the carrier's authorized agent may use an informal or voluntary network, as those terms are defined by Section 413.0115, to obtain a contractual agreement that provides for fees different from the fees authorized under the division's fee guidelines. If a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

- (1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers on the carrier's behalf; and
- (2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements established under Subsection (d-2).

Labor Code §413.011(d-2) further requires that the network, or the carrier, or the carrier's authorized agent, "shall notify each health care provider of any person that is given access to the network's fee arrangements with that health care provider within the time and according to the manner provided by commissioner rule."

Labor Code §413.011(d-3) further provides that, notwithstanding §413.011(d-1), the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if the contract . . .

- (2) does not include a specific fee schedule consistent with Subsection (d-1); and
- (3) does not: (A) clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the named insurance carrier's authorized agent; or (B) comply with the notice requirements under Subsection (d-2).

The notice requirements referenced in §413.011(d-2) are found in the division's former Rule §133.4, which requires that each "network, or the insurance carrier, or the insurance carrier's authorized agent, as appropriate, shall notify each affected health care provider of any person that is given access to the informal or voluntary network's fee arrangement with that health care provider within the time and manner provided by this section."

Upon review of the submitted information, the division finds that:

- While the address of the pharmacy location on the bill matches the address listed for a pharmacy included in the addendum to exhibit "A" in the contract between the alleged network and Recept Pharmacies, the name of the pharmacy on the bill and the Federal Employer ID number on the bill do not match the name of the contracted pharmacy location or the FEIN listed for that address in the submitted contract addendum.
- The respondent did not submit any documentation to support a contract between Dillard's (or their agent) and the network, authorizing the network to contract with health care providers on Dillard's behalf in accordance with the requirements of Labor Code §413.011(d-1)(1).
- The submitted contract does not include a specific fee schedule as required in Labor Code §413.011(d-1)(2). The contract references but does not contain any plan payment schedules.

- The division notes the submitted contract does contain an integration clause or “entire agreement” clause stating that the contract together with any exhibits, amendments, and the Network Pharmacy Manual, contain the entire agreement between the parties — but as noted above, no fee schedule or “plan payment schedules” were attached.
- The respondent did not submit any documentation to support meeting the notice requirements under Labor Code §413.011(d-2) and division Rule §133.4.
- No information was found to support that Dillard’s had been given access to the network's fee arrangements with that health care provider on the date of service.
- No information was found to support that the pharmacy had been given any notice that Dillard’s had been given access to the network's fee arrangements with that health care provider on the date of service.
- No information was found to support that that the injured employee had been given access to the network's fee arrangements with that health care provider on the date of service.
- No information was found to support that the pharmacy had been given any notice that the injured employee had been given access to the network's fee arrangements with that health care provider on the date of service.

28 Texas Administrative Code §133.4 requires that the insurance carrier is not entitled to pay a health care provider at a contracted fee negotiated by an network if:

- (1) the notice to the health care provider does not meet the requirements of Labor Code §413.011 and 28 Texas Administrative Code §133.4; or
- (2) there are no required contracts in accordance with Labor Code §413.011(d-1) and §413.0115.

As no information supporting notice meeting the requirements of Labor Code §413.011 and Rule §133.4 was found with the submitted documentation, and as the submitted contract did not include a specific fee schedule consistent with Labor Code §413.011(d-1), the division finds that the respondent has failed to meet the requirements of Rule §133.4(g), and is therefore not entitled to pay the health care provider at a contracted fee.

Per Rule §133.4(h), If the insurance carrier is not entitled to pay a health care provider at a contracted rate as outlined in §133.4(g) and as provided in Labor Code §413.011(d-1), the division fee guidelines will apply. Consequently, reimbursement for the disputed medication will be reviewed in accordance with applicable division rules and fee guidelines.

2. This disputed pharmacy service regards a dispensed prescription medication with reimbursement subject to the division’s pharmaceutical fee guideline as found in former version 28 Texas Administrative Code §134.503(a), effective March 14, 2004 (29 *Texas Register* 2346), which requires that 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: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee} = \text{MAR}$;
 - (B) Brand name drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00 \text{ dispensing fee} = \text{MAR}$;
 - (C) A compounding fee of \$15 per compound shall be added for compound drugs

Reimbursement for the disputed prescription drugs is calculated as follows:

Ingredient(s)	NDC & Type	Unit Price	Units	AWP Formula §134.503(a)(2)(A)	Billed Amount §134.503(a)(1)	Lesser of (a)(1) or (a)(2)
HYDROCODONE/ ACETAMINOPHEN	55289073760 Generic	\$1.55583	180	$(\$1.56 \times 180) \times 1.25 + \$4 =$ \$354.06	\$354.06	\$354.06

3. The total allowable reimbursement for the services in dispute is \$354.06. The insurance carrier has paid \$53.46. The amount due to the requestor is \$300.60.

Conclusion

In resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment, given the relevant statutory provisions and division rules.

The division would like to emphasize that the findings and decision in this dispute are based on the available evidence presented by the requestor and respondent at the time of review. Even though not all the evidence was discussed, it was considered.

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 \$300.60.

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 \$300.60, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Grayson Richardson	April 20, 2018
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for 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.

A party seeking review of this decision must deliver a copy of the request for hearing to all other parties in the dispute at the same time the request is filed. The request must **include a copy of this *Medical Fee Dispute Findings and Decision***, together with any other required information specified in 28 Texas Administrative Code §148.3(c), as well as a **certificate of service confirming 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.