



# 13 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](http://www.tdi.texas.gov)

### MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

#### GENERAL INFORMATION

##### Requestor Name and Address

ADVANTAS RX  
SUITE 112  
2805 PEACHTREE INDUSTRIAL BLVD  
DULUTH GA 30097

##### Respondent Name

INSURANCE CO OF THE STATE OF PA

##### Carrier's Austin Representative Box

Box Number: 19

##### MFDR Tracking Number

M4-11-4091-01

##### MFDR Date Received

JULY 13, 2011

#### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "At AdvantasRx, we determine the amount to bill using Texas Administrative Code 134.503 section (a) paragraph (2). AdvantasRx uses Medi-Span exclusively to determine AWP... The AWP used to calculate the Bill Amount is valid for the Date of Service in question."

**Amount in Dispute:** \$31.31

#### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** The insurance carrier, or its agent, did not respond to the request for medical fee dispute resolution.

#### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 14, 2011	OPANA TAB 5MG	\$13.38	\$0.00
January 14, 2011	OPANA ER TAB 10MG	\$10.77	\$0.00
January 14, 2011	ZIPSOR CAP 25MG	\$7.16	\$0.00

#### 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, emergency rule effective from January 1, 2011 and expired on June 29, 2011, 35 Texas Register 11775, sets out the reimbursement for pharmaceutical services.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - 1 – Reimbursement has been based on the average wholesale price or the generic equivalent average price plus a mark-up and dispensing fee.
  - 2, 3 – Reimbursement has been based on the average wholesale price plus a mark-up and dispensing fee.
  - 2 – This service/supply has been reconsidered. No additional reimbursement is indicated.

## **Issues**

1. Is AdvantasRx an appropriate requestor in this medical fee dispute?
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. Review of the documentation submitted finds that the agreement between the pharmacy processing agent AdvantasRx and ReCept Pharmacy clearly assigns AdvantasRx the right to participate in the MDR process. In addition, the portions of the agreement provided demonstrate that the dates of service in dispute are covered by the agreement. AdvantasRx met the requirement for a pharmacy processing agent as set forth by former 28 Texas Administrative Code §133.307(c)(2)(H), effective May 25, 2008, 33 *Texas Register* 3954. The division concludes that AdvantasRx is an appropriate requestor in this medical fee dispute.
2. Reimbursement for the service in dispute may be established by applying emergency rule 28 Texas Administrative Code §134.503, effective from January 1, 2011 through June 29, 2011, 35 Texas Register 11775. Paragraph (c) of the emergency rule states:

The reimbursement for prescription drugs shall be as follows:

- (1) A negotiated or contract amount between the insurance carrier and the pharmacy, or the pharmacy processing agent, if applicable, that is greater than the reimbursement established by paragraph (3)(A) of this subsection may be paid for prescription drugs used for an injured employee's claim at any time when it is necessary to secure health care for an injured employee;
- (2) A negotiated or contracted amount between the insurance carrier and the pharmacy, or the pharmacy processing agent, if applicable, that is less than the reimbursement established by paragraph (3)(A) of this subsection; or
- (3) In the event a negotiated or contract amount between the insurance carrier and the pharmacy, or the pharmacy processing agent does not exist, the lesser of:
  - (A) 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;
    - (i) Generic drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
    - (ii) Brand name drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
    - (iii) When compounding a single compounding fee of of \$15 per prescription shall be added to the calculated total for either subparagraph (A)(i) or (ii) of this paragraph;or
  - (B) The provider's billed amount.

No documentation was found to support the existence of a contract. Reimbursement is the lesser of the fee established by the applicable AWP formula, or the provider's billed amount pursuant to 28 Texas Administrative Code Rule §134.503(c)(3).

3. 28 Texas Administrative Code §134.503(c)(3)(A) states, in pertinent part, that "the fee established by the following formulas [is] based on the average wholesale price (AWP) as reported by a nationally

recognized pharmaceutical price guide or other publication pharmaceutical pricing data 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 latter requirement.

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(c) 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 14, 2011. After thorough review of the information and documentation provided by the parties, the Division finds:
  - The respondent did not respond to the request for medical fee dispute resolution nor did they provide any evidence to support the reimbursement made to the requestor.
  - In order to refute the carrier's payment in this medical fee dispute, the requestor alleged that a Medi-Span AWP pricing of 3.4098 per unit for OPANA TAB 5MG, 90 count, NDC number 63481061270; 4.114625 per unit for OPANA ER TAB 10MG, 60 count, NDC number 63481067470 and 2.7375 per unit for ZIPSOR CAP 25MG, 60 count, NDC number 66479059210 should be used as a basis for additional reimbursement. The requestor further alleged that "The AWP used to calculate the Bill Amount is valid for the Date of Service in question." The requestor did not provide any evidence to support the asserted Medi-Span AWP price or effective date.

The requestor in this medical fee dispute has the burden to prove that it is due additional reimbursement. No evidence was found to support the requestor's asserted AWP price, and the effective date. For that reason, the Division concludes that the requestor has failed to prove that additional reimbursement is due.

## **Conclusion**

For the reasons stated above, the division finds that the requestor has failed to support its request for additional reimbursement. As a result, the amount ordered is zero.

## ***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

---

January 13, 2013  
Date

### ***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.**