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

ADVANTAS RX
SUITE 112
2805 PEACHTREE INDUSTRIAL BLVD
DULUTH GA 30097

Carrier's Austin Representative Box
Box Number: 19

Respondent Name
INSURANCE CO OF THE STATE OF PA

MFDR Date Received
JULY 27, 2011

MFDR Tracking Number
M4-11-4324-01

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: $14.77

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Chartis has reviewed the Medical Fee Dispute Resolution Request/Response (DWC-60). In reviewing the report, it is the carrier's position that the bill was paid correctly. In calucalting the bill manually per the Fee Schedule for TX the carrier has arrived at the following: For – Nucynta: AWP 2.7086 X Qty (120) = $325.03 X (Brand Markup) 1.09 = $354.28 + Disp Fee ($4.00) = $358.28. This amount was paid per the EOR."

Response Submitted by: Chartis, 4100 Alpha Road, Ste. 700, Dallas, TX 75244

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
November 23, 2010	NUCYNTA TAB 75 MG	$14.77	$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, 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:
   - 1 – Reimbursement has been based on the average wholesale price or the generic equivalent average 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 54 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 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 per unit) x (number of units) x 1.25) + $4.00 dispensing fee = MAR;
   (B) Brand name drugs: ((AWP per unit) x (number of units) x 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 AWPs.

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 November 23, 2010. After thorough review of the information and documentation provided by the parties, the Division finds:
   - The respondent alleged that it used an AWP of 2.7086 per unit for NUCYNTA TAB 75 MG, 120 count, NDC 50458083004 as its basis for the payment issued. The respondent did not provide any evidence to support the asserted AWP price or effective date.
   - In order to refute the carrier's payment in this medical fee dispute, the requestor alleged that a Medi-Span AWP pricing of 2.8215 per unit for NUCYNTA TAB 75 MG, 120 count, NDC 50458083004 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 16, 2014 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.