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: 15

Respondent Name
ACE INSURANCE CO OF TEXAS

MFDR Date Received
DECEMBER 29, 2011

MFDR Tracking Number
M4-12-1311-01

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: $19.67

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: The insurance carrier or its agent did not submit a response to the request for medical fee dispute resolution.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 11, 2011	NUCYNTA TAB 100 MG	$19.67	$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 – (45) Charges exceed your contracted/legislated fee arrangement.
   - 2 – (W1) Workers Compensation State Fee Schedule Adjustment.
   - 999 – We are unable to recommend an additional allowance since this claim was paid in accordance with the state's fee schedule guidelines, First Health Bill Review's usual and customary policies, and/or was reviewed in accordance with the provider's contract with First Health.

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 per unit) x (number of units) x 1.25) + $4.00 dispensing fee = MAR;
         (ii) Brand name drugs: ((AWP per unit) x (number of units) x 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 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(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 11, 2011. After thorough review of the information and documentation provided by the parties, the Division finds:
   - The respondent did not submit a response to the request for medical fee dispute resolution and did not provide evidence to support the 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 3.757125 per unit for NUCYNTA TAB 100 MG, 120 count, NDC number 50458084004 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

		December 5, 2013
Signature	Medical Fee Dispute Resolution Officer	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.