



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

MEDI-PLUS PHARMACY
PO BOX 546
BARKER TX 77413-0546

Respondent Name
AMERICAN INSURANCE CO

Carrier's Austin Representative Box
Box Number: 19

MFDR Tracking Number
M4-12-2952-01

MFDR Date Received
MAY 22, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Firemans Fund has not provided any documentation to date to show how it determined Usual and Customary or what its report 'research' showed, much less how it determined fair and reasonable. Division Rule 134.503 provides that the MAR is the lesser of the provider's usual and customary charge or the amount determined by formula provided in 134.503(a)(2)... Most pharmacies participate in networks in which compensation is governed by contract for transactions subject to such contracts. We do not belong to any PBM or are not contracted with any private Insurance. Medi-Plus Pharmacy has set out to function under a unique situation that is not considered under Firemans Fund so called study of the norm U&C fee for pharmacies. Medi-Plus pharmacy on the other hand has no merchandise to profit from but gives specific service related to workers' comp. patient."

Amount in Dispute: \$209.82

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The carrier asserts that it has paid according to applicable fee guidelines and/or reduced to fair and reasonable. Further, the carrier challenges whether the charges are consistent with applicable fee guidelines."

Response Submitted by: Flahvie, Ogden & Latson, PO Drawer 201329, Austin, TX 78720

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 20, 2011	OCYCONTIN 80 MG TABLET	\$209.82	\$209.82

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 – (W1) Workers Compensation State Fee Schedule Adjustment.
 - 2 – (45) Charge exceeds fee schedule/maximum allowable or contracted legislated fee arrangement.
 - 1 – Charge for this procedure exceeds average wholesale price plus mark-up.
 - * - We are unable to recommended an additional allowance since this claim was paid in accordance with the state's fee schedule guideline, 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. How is reimbursement established for the service(s) in dispute?
2. What does §134.503(c)(3)(A) require?
3. Did the requestor support its request for additional reimbursement?

Findings

1. 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).

2. 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.

3. The pharmaceutical in dispute was dispensed on September 20, 2011. 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.
 - In order to refute the carrier's payment in this medical fee dispute, the requestor alleged that a First Data Bank AWP pricing of 13.5494 per unit for OCYCONTIN 80 MG TABLET, 90 count, NDC 59011048010, effective date of September 20, 2011 through April 3, 2012, 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 provided sufficient evidence to support the asserted First Data Bank AWP price or effective date.

The requestor submitted a copy of a re-pricing sheet supporting the asserted AWP price, and the effective date. For that reason the Division concludes that the requestor has proven that additional reimbursement is due.

Conclusion

For the reasons stated above, the Division finds that the requestor has supported its request for additional reimbursement. As a result, the amount ordered is \$209.82.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$209.82 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

January 21, 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.