



## **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**

ENGS PHARMACY LLC  
PO BOX 2686  
STAFFORD TX 77497

#### **Respondent Name**

ZURICH AMERICAN INSURANCE CO

#### **Carrier's Austin Representative Box**

Box Number: 19

#### **MFDR Tracking Number**

M4-13-3168-01

#### **MFDR Date Received**

JULY 29, 2013

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary stated in the Request for Reconsideration:** "This letter serves as the '***Request for Reconsideration***' for ***second attempt*** for submission of pharmacy bill for the above patient. Date of service in concern was listed as above, a copy of our pharmacy bill is attached. For your reference, we have also attached a copy of the ***certified mail receipt*** for the first submission."

**Amount in Dispute:** \$551.20

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The carrier asserts that it has paid according to applicable fee guidelines and changes whether the disputed 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
March 1, 2013	TIZANIDINE HCL 4 MG TABLET	\$416.10	\$0.00
March 4, 2013	HYDROCOD/APAP 10/325	\$135.10	\$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, effective January 3, 2002; amended to be effective March 14, 2004, 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:
  - EOBs were not submitted by either party.

## **Issues**

1. How is reimbursement established for the service(s) in dispute?
2. 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 October 23, 2011, which states, in pertinent part:
  - (a) Applicability of this section is as follows:
    - (1) This section applies to the reimbursement of prescriptions drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (relating to Definitions) for outpatient use in the Texas workers' compensation system, which includes claims:
      - (A) subject to a certified workers' compensation health care network as defined in §134.500 of this title;
      - (B) not subject to a certified workers' compensation health care network; and
      - (C) Subject to Labor Code §504.053(b)(2).
    - (2) This section does not apply to parenteral drugs.
  - (b) For coding, billing, reporting, and reimbursement of prescriptions drugs and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants shall apply the provisions of Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits—Guidelines for Medical Services, Charges, and payments, respectively).
  - (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescriptions drugs the lesser of:
    - (1) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed.
      - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
      - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
      - (C) When compounding, a single compound fee of \$15 per prescription shall be added to the calculated total for either paragraph (a)(A) or (B) of this subsection; or
    - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
      - (A) health care provider;

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(c)(1).

2. 28 Texas Administrative Code §134.503(c)(1) (effective October 23, 2011) states, in pertinent part, that "The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed."

The Pharmacy Fee Guideline 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)(1) 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 March 1, 2013. 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 AWP price or effective date.
  - The requestor did not provide any evidence to support the AWP price or effective date.

Because the requestor has not supported the AWP price for the prescriptions, the Division concludes that the requestor is not entitled to reimbursement.

### **Conclusion**

For the reasons stated above, the division finds that the requestor has not supported its request for reimbursement. As a result, the amount ordered is \$0.00.

### ***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**

_____	_____	March 12, 2014
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.**