

# EFFECTIVE 1/1/2011 - 6/29/2011

## 28 Texas Administrative Code

### Chapter 134 - Benefits--Guidelines for Medical Services, Charges, and Payments

#### Subchapter F - Pharmaceutical Benefits

##### **§134.503. Pharmacy Fee Guideline [~~Reimbursement Methodology~~].**

(a) Applicability of this section is as follows:

(1) This section applies to the reimbursement of prescription and nonprescription drugs that are:

(A) dispensed on or after January 1, 2011; and

(B) for outpatient use in the Texas workers' compensation system, which includes claims:

(i) subject to a certified workers' compensation health care network as defined in §134.500 of this title (relating to Definitions); and

(ii) not subject to a certified workers' compensation health care network.

(2) This section does not apply to:

(A) parenteral drugs; or

(B) claims subject to Labor Code §504.053(b)(2).

(b) For coding, billing, reporting, and reimbursement of prescription and nonprescription drugs, 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)[(a)] The [~~maximum allowable~~] reimbursement [~~(MAR)~~] for prescription drugs shall be as follows [~~the lesser of~~]:

(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; [~~The provider's usual and customary charge for the same or similar service;~~]

(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, pharmacy, or pharmacy processing agent does not exist, the lesser of:

(A) [(2)] the fee [~~The fees~~] established by the following formulas based on the average wholesale price (AWP) as reported [~~determined~~] by [~~utilizing~~] a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data [~~reimbursement system (e.g. Redbook, First Data Bank Services)~~] in effect on the day the prescription drug is dispensed;[-]

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(i) ~~[(A)]~~ Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = reimbursement amount [MAR];

(ii) ~~[(B)]~~ Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = reimbursement amount [MAR];

(iii) When compounding, a single compounding fee 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.

~~[(C) A compounding fee of \$15 per compound shall be added for compound drugs; or]~~

~~[(3) A negotiated or contract amount.]~~

(d) Reimbursement for nonprescription drugs or over-the-counter medications shall be the retail price of the lowest package quantity reasonably available that will fill the prescription.

(e) If an amount to calculate the reimbursement cannot be determined in accordance with subsections (c) or (d) of this section, reimbursement shall be determined in accordance with §134.1 of this title (relating to Medical Reimbursement).

(f) ~~[(b)]~~ When the prescribing doctor has written a prescription for a generic drug or a prescription that does not require the use of a brand name drug in accordance with §134.502(a)(3) of this title (relating to Pharmaceutical Services), reimbursement shall be as follows:

(1) the pharmacist shall dispense the generic drug as prescribed and shall be reimbursed the fee established for the generic drug in accordance with subsection (c) ~~[(a)]~~ of this section; or

(2) when an injured employee chooses to receive a brand name drug instead of the prescribed generic drug, the pharmacist shall dispense the brand name drug as requested and shall be reimbursed:

(A) by the insurance carrier, the fee established for the prescribed generic drug in accordance with subsection (c) ~~[(a)]~~ of this section; and

(B) by the injured employee, the cost difference between the fee established for the generic drug in subsection (c) of this title and the fee established for the brand name drug in accordance with subsection (c) of this section [~~§134.503(a)(2) of this title~~].

(g) ~~[(e)]~~ When the prescribing doctor has written a prescription for a brand name drug in accordance with §134.502(a)(3) of this title, reimbursement shall be in accordance with subsections (c) - (e) [~~subsection (a)]~~ of this section.

~~[(d) Reimbursement for over-the-counter medications shall be the retail price of the lowest package quantity reasonably available that will fill the prescription.]~~

~~[(e) This section applies to the dispensing of all drugs except inpatient drugs and parenteral drugs.]~~

(h) ~~[(f)]~~ Upon request by the health care provider or the division, the insurance carrier shall disclose the source of the pricing reference [~~-AWP~~] used to calculate the reimbursement.

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(i) Where any provisions of this section are determined by a court of competent jurisdiction to be inconsistent with any statutes of this state, or to be unconstitutional, the remaining provisions of this section shall remain in effect.

*This provision will become effective 1/1/2011.*

*Please see <http://www.tdi.state.tx.us/wc/rules/adopted/documents/eaorxfg1210.pdf> and <http://www.tdi.state.tx.us/wc/rules/documents/rxfgext0411.pdf> for additional information concerning the emergency adoption of this rule.*

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The following is provided as a courtesy by the Division of Workers' Compensation as a convenience to system participants. The below is the above emergency rule text for §134.503, effective **1/1/2011 – 6/29/2011**, absent the Secretary of State required reflection of editing of §134.503 as it was amended to be effective March 14, 2004, 29 TexReg 2346.

## **§134.503. Pharmacy Fee Guideline.**

(a) Applicability of this section is as follows:

(1) This section applies to the reimbursement of prescription and nonprescription drugs that are:

(A) dispensed on or after January 1, 2011; and

(B) for outpatient use in the Texas workers' compensation system, which includes claims:

(i) subject to a certified workers' compensation health care network as defined in §134.500 of this title (relating to Definitions); and

(ii) not subject to a certified workers' compensation health care network.

(2) This section does not apply to:

(A) parenteral drugs; or

(B) claims subject to Labor Code §504.053(b)(2).

(b) For coding, billing, reporting, and reimbursement of prescription and nonprescription drugs, 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 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, pharmacy, or 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:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee} = \text{reimbursement amount}$ ;

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(ii) Brand name drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = reimbursement amount;

(iii) When compounding, a single compounding fee 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.

(d) Reimbursement for nonprescription drugs or over-the-counter medications shall be the retail price of the lowest package quantity reasonably available that will fill the prescription.

(e) If an amount to calculate the reimbursement cannot be determined in accordance with subsections (c) or (d) of this section, reimbursement shall be determined in accordance with §134.1 of this title (relating to Medical Reimbursement).

(f) When the prescribing doctor has written a prescription for a generic drug or a prescription that does not require the use of a brand name drug in accordance with §134.502(a)(3) of this title (relating to Pharmaceutical Services), reimbursement shall be as follows:

(1) the pharmacist shall dispense the generic drug as prescribed and shall be reimbursed the fee established for the generic drug in accordance with subsection (c) of this section; or

(2) when an injured employee chooses to receive a brand name drug instead of the prescribed generic drug, the pharmacist shall dispense the brand name drug as requested and shall be reimbursed:

(A) by the insurance carrier, the fee established for the prescribed generic drug in accordance with subsection (c) of this section; and

(B) by the injured employee, the cost difference between the fee established for the generic drug in subsection (c) of this title and the fee established for the brand name drug in accordance with subsection (c) of this section.

(g) When the prescribing doctor has written a prescription for a brand name drug in accordance with §134.502(a)(3) of this title, reimbursement shall be in accordance with subsections (c) - (e) of this section.

(h) Upon request by the health care provider or the division, the insurance carrier shall disclose the source of the pricing reference used to calculate the reimbursement.

(i) Where any provisions of this section are determined by a court of competent jurisdiction to be inconsistent with any statutes of this state, or to be unconstitutional, the remaining provisions of this section shall remain in effect.

*This provision will become effective 1/1/2011.*

*Please see <http://www.tdi.state.tx.us/wc/rules/adopted/documents/eaorxfg1210.pdf> and <http://www.tdi.state.tx.us/wc/rules/documents/rxfext0411.pdf> for additional information concerning the emergency adoption of this rule.*