



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

MEDI-PLUS PHARMACY

Respondent Name

TEXAS PROPERTY & CASUALTY INSURANCE
GUARANTY ASSOCIATION (TPCIGA)
FOR LEGION INSURANCE COMPANY

MFDR Tracking Number

M4-12-3060-01

Carrier's Austin Representative

Box Number 50

MFDR Date Received

June 4, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Division Rule 134.503 provides that the MAR is the lesser of the provider's usual and customary charge or the amount determined by a formula provided in 134.503(a)(2)."

Amount in Dispute: \$277.28

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "TPCIGA stands by the position of our Medical Review Vendor Review Med."

Response Submitted by: Texas Property & Casualty Insurance Guaranty Association

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 8, 2011 through March 22, 2012	Prescription Drugs	\$277.28	\$183.75

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.503 sets out the Pharmacy Fee Guideline.
3. 28 Texas Administrative Code §134.506 provides for the use of the open formulary for legacy claims.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - 197 – Precertification/authorization/notification absent.
 - W1 – Workers Compensation Jurisdictional Fee Schedule Adjustment
 - W3 – Additional payment made on appeal/reconsideration

- 193 – Original payment decision is being maintained. Upon review it was determined that this claim was processed properly.

Issues

1. Is the carrier's denial for preauthorization supported?
2. Is the requestor entitled to additional reimbursement?

Findings

1. The insurance carrier denied disputed services with claim adjustment reason code 197 – "Precertification/ authorization/notification absent." 28 Texas Administrative Code Rule §134.506 titled *Outpatient Open Formulary for Claims with Dates of Injury Prior to September 1, 2011* states in pertinent part that:

(a) For claims with dates of injury prior to September 1, 2011 (for the purposes of this section, referred to as "legacy claims"), the open formulary as described in §134.500(9) of this title (relating to Definitions) remains in effect until those claims become subject to the closed formulary in accordance with §134.510 of this title (relating to Transition to the Use of the Closed Formulary for Claims with Dates of Injury Prior to September 1, 2011).

(d) Drugs included in the open formulary prescribed and dispensed for legacy claims not subject to a certified network do not require preauthorization, except as required by Labor Code §413.014.

Review of the documentation found supports that the services in dispute were not subject to preauthorization because the exceptions and conditions outlined in Rule §134.506(a) and (d) apply to the services in dispute. Furthermore, the carrier did not maintain the preauthorization denial after reconsideration of the medical bills. For those reason, the carrier's preauthorization denials are therefore not supported. The disputed services will be reviewed for reimbursement according to applicable Division rules and fee guidelines.

2. For dates of service September 8, 2011 and October 6, 2011, the provisions of former 28 Texas Administrative Code §134.503, effective March 14, 2004, 29 TexReg 2346, apply and state:
 - (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: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee} = \text{MAR}$;
 - (B) Brand name drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00 \text{ dispensing fee} = \text{MAR}$;
 - (C) A compounding fee of \$15 per compound shall be added for compound drugs; or
 - (3) A negotiated or contract amount.

For dates of service November 3, 2011 through March 22, 2012, the provisions of current 28 Texas Administrative Code §134.503, effective October 23, 2011, 36 TexReg 6949, apply and state:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) 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:
 - (A) Generic drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee per prescription} = \text{reimbursement amount}$;

- (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(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; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

Both versions of Rule §134.503 factor in an AWP based upon a nationally recognized pharmaceutical reimbursement system in effect on the day the prescription drug is dispensed. The AWP calculations are then used to apply the “lesser of” provisions in each version of Rule §134.503. Each party in this case presented its own evidence of AWP.

In order to determine which party presented the best evidence of AWP, the division considered the preamble to §134.503 adopted to be effective January 3, 2002, 26 TexReg 10970. During this initial rule adoption, system participants asked for clarification on whether AWP should be updated weekly or daily as follows:

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 Division notes that all amended versions of §134.503 have maintained the “in effect on the day” language contained in the initial adoption of §134.503, effective January 3, 2002, 26 TexReg 10970.

The division considered the following evidence of competing AWP values which each party used as its basis to calculate the AWP formula for the drugs in dispute pursuant to §134.503(a)(2).

- The requestor provided evidence of First DataBank AWP pricing effective September 8, 2011 – March 22, 2012 of \$0.46765 per unit of methocarbamol 750 MG Tablet, 60 count, NDC number 00143129205; and \$0.9092 per unit of hydrocodone/apap Tablet, 90 count, NDC 00591050305.
- The respondent provided evidence of MediSpan AWP pricing August 18, 2011 of \$0.1175 per unit of methocarbamol, 500 count, NDC number 00143129205; and failed to provide evidence to support AWP pricing for hydrocodone/apap Tablet.

Note that the respondent’s effective date for its asserted AWP price is before the dates of dispense while the respondent provided documentation with effective dates more consistent with the dates of dispense. For this reason, the division finds that the AWP provided by the requestor is the best evidence of AWP for methocarbamol. Furthermore, the division finds that the respondent presented the best evidence of AWP for hydrocodone/apap because the respondent failed to provide any supporting documentation of its asserted AWP for that drug.

The AWP price of \$0.46765 per unit of methocarbamol 750 MG Tablet, and \$0.9092 per unit of hydrocodone/apap are therefore used to calculate the AWP formula as follows pursuant to §134.503(a)(2) for the purposes of this medical fee dispute.

Dates of Service	Prescription Drug	§134.503(a) effective March 14, 2004	§134.503 (c) effective October 23, 2011	Total Allowable (lesser of)	Carrier Paid	Due
September 8, 2011 through March 22, 2012	Methocarbamol 00143129205	$((0.46765 \times 60) \times 1.25) + \$4 = \$39.06$ $\times 2 = \$78.12$	$((0.46765 \times 60) \times 1.25) + \$4 = \$39.06$ $\times 5 = \$195.30$	$\$39.06 \times 7 =$ $\$273.42$	\$89.67	\$183.75
March 22, 2012	Hydrocodone/apap 00591050305		$((0.9092 \times 90) \times 1.25) + \$4 =$ $\$106.28$	$\$106.28 \times 1$ $= \$106.28$	\$106.28	\$0.00
Total						\$183.75

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$183.75.

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 \$183.75 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 Manager	February 17, 2016 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request 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 §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.