

ADVISORY NO. 365
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TOPIC: PHARMACY FEE DISPUTES

TWCC has issued Advisory 2003-21, having to do with the usual and customary charges that pharmacies must bill. The rules require health care providers to bill the same fees to workers' compensation carriers even if they are higher than the Fee Guidelines. However, pharmacies and other HCPs should never bill workers' compensation carriers more than they bill other payers. Thus, the discussion about usual and customary addresses the already existing rule requirement. There is nothing new about it.

Carriers should reimburse the usual and customary charges according to the Pharmacy Fee Guidelines. This will result in a reduction in accordance with the reimbursement methodology prescribed in Rule 134.503.

When the amount of the reimbursement is disputed, TWCC MRD should order reimbursement in the amount of the fee guideline if it is less than the pharmacy's usual and customary charge. If the reimbursement is based upon a negotiated contract, during dispute resolution, the carrier should provide a copy of a contract between the carrier, or its pharmacy manager, and the pharmacy establishing the pharmacy's agreement to discount its charges with respect to the particular prescription in dispute.

The TWCC Advisory is attached below.

TWCC

ADVISORY 2003-21

SUBJECT: Medical Fee Disputes Involving Pharmacies and Usual and Customary Charges

The Commission has received numerous requests for Medical Dispute Resolution of a Medical Fee Dispute concerning a pharmacy's "usual and customary" (U&C) charge for the same or similar services as specified in Commission Rule 134.503(a)(1). Pharmacies are disputing payment made by one or more insurance carriers based upon the insurers' position on how to determine a pharmacy's U&C charge. The Commission's pharmacy prescription pricing rule is based, in part, on several important provisions concerning health care provider charges. First, fee guidelines are based, in part, on a provision that payment may not be in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf (Texas Labor Code Section 413.011(d)). Also, "[a] health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges" (Texas Labor Code §413.043(a)).

Parties requesting medical dispute resolution should ensure that they abide by the statute and rule references outlined above. The Commission's Medical Dispute Resolution Section has indicated that parties filing a dispute have the burden of proof to support their position for advocating additional reimbursement. The burden of proof includes production of sufficient evidence to support that the reimbursement requested is in accordance with the factors listed in §413.011(b) of the Texas Workers' Compensation Act. Medical Dispute Resolution (MDR) must evaluate these dispute requests to determine if the health care provider has billed and requested reimbursement in accordance with Commission rules especially including 134.502(d) and 134.801(g).

The Commission's Medical Dispute Resolution Section has indicated that the information and documentation described below will be important to determine whether U&C charges for the prescriptions involved in the dispute exceed the typical/most dominant U&C charges for all non-workers' compensation prescriptions for all individuals of an equivalent standard of living in Texas:

- U&C charge information for non-workers' compensation prescriptions reflect the same time periods as the dispensing dates of prescription(s) fees in dispute, and usually not outside 6 months before or after the prescription(s) in the dispute were dispensed;
- If the U&C charges vary by or within categories of customers, then each U&C charge or range of charges is provided for pharmacy prescriptions for each category or subcategory (e.g. workers' compensation customers, retail customers, and other third party payors);
- If the U&C charges vary as described above, then the estimated percentages of prescriptions filled for each category is provided (e.g. retail and third party payors excluding Medicaid);
- For any study provided relating to U&C charges, information is provided on whether the study relates to the particular pharmacy that is disputing a claim. If the study does not relate to the specific pharmacy, include the basis for reliance on any conclusion reached in the study for

application to the pharmacy that dispensed the prescription involved in the dispute. Note: The study needs to be specific in what was evaluated and how the conclusion was reached.

Note: If a party to a dispute bases its reimbursement position on Commission Rule 134.503(a)(3), concerning "negotiated or contract amounts," the party should submit sufficient information concerning the contract(s) that demonstrate that such contract(s) are between the parties in dispute, were in effect during the effective date(s) of the prescriptions involved in the dispute, and covered the type of prescriptions involved in the dispute.

MDR will consider information and documentation on "same or similar services" as specified in Commission Rule 134.503(a)(1) to include workers' compensation and non workers' compensation prescriptions for same or similar number of units dispensed for the same or similar prescription (with recommended adjustments to reflect U&C charges for the number of units dispensed for the prescription involved in the dispute). MDR also will consider information and documentation or similar prescription products with recommended adjustments to reflect the actual prescription involved in the dispute.

Any party with numerous disputes, that have already been filed or will be filed, may request in writing that MDR suspend processing for all or a specified portion of its disputes. The party should provide copies of its request to the other parties to the disputes. If the other parties confirm their agreement, the MDR will suspend further processing until one of the parties to these disputes sends written notification that the suspension should be lifted.

The Commission and MDR encourage disputing parties to attempt dispute resolution informally in all disputed cases.

Signed on this 11th day of December, 2003

Richard F. Reynolds, Executive Director

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