

SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER
28 TAC §§133.240 AND 133.250

SUBCHAPTER D. DISPUTE OF MEDICAL BILLS
28 TAC §§133.305 AND 133.308

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§133.240, 133.250, 133.305, and 133.308, concerning medical disputes for workers' compensation claims. The amendments implement House Bill (HB) 90, 88th Legislature, Regular Session (2023).

EXPLANATION. HB 90 added Labor Code §§401.027, 501.027, 501.028, and 501.029; and amended Labor Code §501.001. The proposed amendments to §§133.240, 133.250, 133.305, and 133.308 are necessary to implement the changes in HB 90 by clarifying workers' compensation coverage for authorized travel by members of the Texas military forces, ensuring that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and ensuring that DWC expedites disputes about those claims. The proposed amendments also include an update to the agency's address and nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 133.240. The amendments to §133.240 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §133.240 is necessary to ensure that the rule is consistent with HB 90.

Section 133.250. The amendments to §133.250 correct typos in existing text and add the requirement from HB 90 that an insurance carrier must accelerate and give priority to a qualifying claim for medical benefits by a member of the Texas military forces, including all required health care for the claim. Amending §133.250 is necessary to ensure that the rule is consistent with HB 90.

Section 133.305. The amendments to §133.305 add references to the definitions in Government Code §437.001 for "state active duty," "state training and other duty," and "Texas military forces." The amendments also add the requirement from HB 90 that, for a claim under Labor Code §501.028, the travel of a member of the Texas military forces to or from the member's duty location is considered to be in the course and scope of the member's employment if the member is serving on state active duty and engaged in authorized duty under written orders, or is on state training and other duty. Amending §133.305 is necessary to ensure that the rule is consistent with HB 90.

Section 133.308. The amendments to §133.308 update the address for the Managed Care Quality Assurance (MCQA) Office at the Texas Department of Insurance. The amendments also add the requirement from HB 90 that DWC will accelerate and give priority to an appeal from a denial of a qualifying claim for medical benefits made by a member of the Texas military forces, as well as to actions involving all health care required to cure or relieve the effects naturally resulting from a compensable injury. The amendments add the requirement from HB 90 that the member must notify DWC and the independent review officer that the contested case hearing or appeal involves a member of the Texas military forces. Amending §133.308 is necessary to ensure that the rule contains the current MCQA office address and that it is consistent with HB 90.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that enforcing and administering the proposed amendments will have the public benefits of reducing administrative hurdles for members of the Texas military forces with compensable injuries, and ensuring that DWC's rules conform to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, as added and amended by HB 90, and are current and accurate, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, as added and amended by HB 90, because they do not impose requirements beyond those in the statutes. HB 90 clarified workers' compensation coverage for authorized travel by members of the Texas military forces, required that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and required that DWC expedite disputes about those claims. Any cost associated with those requirements does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC

has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments implement the requirements in HB 90 and make editorial changes only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has

determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments are necessary to implement the changes in HB 90 that clarify workers' compensation coverage for authorized travel by members of the Texas military forces, ensure that insurance carriers expedite claims for medical benefits by injured members of the Texas military forces, and ensure that DWC expedites disputes about those claims. The proposed amendments do not change the people the rules affect or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on December 4, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER.

28 TAC §§133.240 AND 133.250.

STATUTORY AUTHORITY. DWC proposes amendments to §§133.240 and 133.250 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the

member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §§133.240 and 133.250 implement the changes to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, enacted by HB 90, 88th Legislature, Regular Session (2023).

TEXT.

§133.240. Medical Payments and Denials.

(a) - (o) (No change.)

(p) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the

Texas Department of Insurance to perform utilization review in accordance with Insurance Code [.] Chapter 4201 and Chapter 19 of this title.

(1) All [~~Additionally, all~~] utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in the course and scope of employment.

(2) In accordance with Labor Code §501.028(b), an insurance carrier must accelerate and give priority to a claim for medical benefits:

(A) by a member of the Texas military forces who,

(i) while on state active duty,

(ii) sustains a serious bodily injury, as defined by Penal Code

§1.07;

(B) including all health care required to cure or relieve the effects naturally resulting from a compensable injury.

(q) (No change.)

§133.250. Reconsideration for Payment of Medical Bills.

(a) - (i) (No change.)

(j) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code [.] Chapter 4201 and Chapter 19 of this title.

(1) All ~~[Additionally, all]~~ utilization review agents or registered insurance carriers who perform utilization review under this section must comply with Labor Code §504.055 and any other provisions of Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage) that relate to the expedited provision of medical benefits to first responders employed by political subdivisions who sustain a serious bodily injury in the course and scope of employment.

(2) In accordance with Labor Code §501.028(b), an insurance carrier must accelerate and give priority to a claim for medical benefits:

(A) by a member of the Texas military forces who,

(i) while on state active duty,

(ii) sustains a serious bodily injury, as defined by Penal Code §1.07;

(B) including all health care required to cure or relieve the effects naturally resulting from a compensable injury.

(k) (No change.)

SUBCHAPTER D. DISPUTE OF MEDICAL BILLS.

28 TAC §§133.305 AND 133.308.

STATUTORY AUTHORITY. DWC proposes amendments to §§133.305 and 133.308 under Labor Code §§401.027, 501.001, 501.027, 501.028, 501.029, 402.00111, 402.00116, and 402.061.

Labor Code §401.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under

written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Labor Code §501.001, as amended by HB 90, 88th Legislature, Regular Session (2023), defines "post-traumatic stress disorder," as well as "state active duty" and "Texas military forces."

Labor Code §501.027, as added by HB 90, 88th Legislature, Regular Session (2023), provides requirements for coverage for post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty as a compensable injury.

Labor Code §501.028, as added by HB 90, 88th Legislature, Regular Session (2023), requires an insurance carrier to accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which §501.028 applies. This includes all health care required to cure or relieve the effects naturally resulting from a compensable injury, defined as a serious bodily injury, as defined by Penal Code §1.07, sustained by a member of the Texas military forces while on state active duty. Section 501.028 requires DWC to accelerate, under rules adopted by the DWC commissioner, a contested case hearing requested by, or an appeal submitted by, a member of the Texas military forces to which §501.028 applies, about the denial of such a claim. Section 501.028 also requires the member to notify DWC and an independent review organization that the contested case or appeal involves a member of the Texas military forces.

Labor Code §501.029, as added by HB 90, 88th Legislature, Regular Session (2023), provides that the purpose of §501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which §501.029 applies is accelerated by an insurance carrier to the full extent authorized by current law.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §§133.305 and 133.308 implement the changes to Labor Code §§401.027, 501.001, 501.027, 501.028, and 501.029, enacted by HB 90, 88th Legislature, Regular Session (2023).

TEXT.

§133.305. MDR--General.

(a) Definitions. The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) - (11) (No change.)

(12) State active duty--As defined by §437.001, Government Code.

(13) State training and other duty--As defined by §437.001, Government Code.

(14) Texas military forces--As defined by §437.001, Government Code.

(b) - (e) (No change.)

(f) Texas Military Forces. For a claim under Labor Code §501.028, the travel of a member of the Texas military forces to or from the member's duty location is considered to be in the course and scope of the member's employment if the member is:

(1) serving on state active duty and engaged in authorized duty under written orders; or

(2) on state training and other duty.

§133.308. MDR of Medical Necessity Disputes.

(a) - (f) (No change.)

(g) Requests. A request for independent review must be filed in the form and manner prescribed by the department. The department's IRO request form may be obtained from:

(1) the department's website at <http://www.tdi.texas.gov/>; or

(2) the Managed Care Quality Assurance Office, Mail Code LH-MCQA [~~103-6A~~], Texas Department of Insurance, P.O. Box 12030 [~~149104~~], Austin, Texas 78711-2030 [~~78714-9104~~].

(h) - (t) (No change.)

(u) First Responders. In accordance with Labor Code §504.055(d), an appeal regarding the denial of a claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury involving a first responder will be accelerated by the division and given priority. The party seeking to expedite the contested case hearing or appeal must [~~shall~~] provide notice to the division and independent review organization that the contested case hearing or appeal involves a first responder.

(v) Texas Military Forces. In accordance with Labor Code §501.028, the division will accelerate and give priority to an appeal from a denial of a claim for medical benefits.

(1) This subsection applies to a claim for medical benefits made by a member of the Texas military forces who, while on state active duty, sustains a serious bodily injury, as defined by Penal Code §1.07.

(2) The division will accelerate and give priority to actions involving all health care required to cure or relieve the effects naturally resulting from a compensable injury.

(3) The member must notify the division and IRO that the CCH or appeal involves a member of the Texas military forces.

(w) ~~[(v)]~~ Enforcement. The department or the division may initiate appropriate proceedings under Chapter 12 of this title or Labor Code, Title 5 and division rules against an independent review organization or a person conducting independent reviews.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on October 23, 2023.



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