

**SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES**  
**28 TAC §133.30**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §133.30, concerning Telemedicine and Telehealth Services. Section 133.30 implements Texas Labor Code §413.011, which requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications. The amendments are adopted with a change to correct an editorial error in the proposed text published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3396). The rule will be republished.

**REASONED JUSTIFICATION.** Amending §133.30 is necessary to conform the section to Texas Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by House Bill (HB) 2056, 87th Legislature, Regular Session (2021). Section 133.30 sets billing requirements when a health care provider provides telemedicine and telehealth services.

Section 133.30 has definitions for "telemedicine services" and "telehealth services" and requires health care providers to bill for "telemedicine services" and "telehealth services" using the applicable Medicare payment policies and requirements of Chapter 133 of this title. DWC adopts the amendments that add a definition for "teledentistry services" and add Medicaid payment policies to the list of applicable payment policies that health care providers must use to bill for telemedicine, telehealth, and teledentistry services.

## **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received one written comment, no oral comments, and no requests for a hearing. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal.

**Comment on §133.30:** "OIEC supports the proposed amendments to conform with the statutory changes of Texas Occupations Code Chapter 111 as amended by the Texas Legislature under House Bill (HB) 2056 and effective September 1, 2021. OIEC also supports the Division's actions to expand access to teledentistry services. The Division's proposal should benefit the injured employees of Texas."

**Agency Response to Comment on §133.30:** DWC thanks OIEC for the comment.

## **SUBCHAPTER B.**

### **28 TAC §133.30.**

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to 28 TAC §133.30 under Labor Code §§402.00111, 402.00116, 402.061, 408.027, and 413.011; Insurance Code §§1305.003 and 1305.153; and Occupations Code §111.001.

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 Workers' Compensation Act.

Labor Code §408.027 addresses payment of health care providers. Labor Code §408.027(g) provides that, despite any other provision in Title 5, Subtitle A, Labor Code or Insurance Code Chapter 1305, §408.027 applies to health care provided through a workers' compensation health care network established under Chapter 1305. Subsection (g) also requires the commissioner to adopt rules as necessary to implement §408.027.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting.

Insurance Code §1305.003(b) states that Chapter 1305 prevails if there is a conflict between the Workers' Compensation Act and Chapter 1305 regarding:

- the provision of medical benefits for injured employees;
- the establishment and regulation of fees for medical treatments and services;
- the time frames for payment of medical bills;

- the operation and regulation of workers' compensation health care networks;
- the regulation of providers who contract with those networks; or
- the resolution of disputes about medical benefits provided through those networks.

Insurance Code §1305.153(a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group of providers.

Insurance Code §1305.153(d) states that, subject to Insurance Code §1305.153(a), billing by, and reimbursement to, contracted and out-of-network providers are subject to the requirements of the Workers' Compensation Act and DWC's applicable rules, consistent with Chapter 1305. The paragraph further states that this subsection may not be construed to require application of a rule on reimbursement if that application would negate the reimbursement amounts the network negotiated.

Occupations Code §111.001(2-a) defines "teledentistry dental service" as a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

**TEXT.**

**§133.30. Telemedicine, Telehealth, and Teledentistry Services.**

(a) This section applies to medical billing and reimbursement for telemedicine, telehealth, and teledentistry services provided on or after September 1, 2021, to injured

employees in the Texas workers' compensation system, including injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305.

(b) For the purposes of this section:

(1) "telemedicine services" means telemedicine medical services as defined in Occupations Code §111.001;

(2) "telehealth services" means telehealth services as defined in Occupations Code §111.001; and

(3) "teledentistry services" means teledentistry dental services as defined in Occupations Code §111.001.

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services);

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline); and

(3) provisions of Chapter 133 of this title.

(d) A health care provider may bill and be reimbursed for telemedicine, telehealth, or teledentistry services regardless of where the injured employee is located at the time the telemedicine, telehealth, or teledentistry services are provided.

(e) The provisions of this section take precedence over any conflicting provisions adopted or used by:

(1) the Centers for Medicare and Medicaid Services in administering the Medicare program; and

(2) the Texas Health and Human Services Commission in administering the Texas Medicaid Program.

**CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on July 31, 2023.



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Kara Mace  
General Counsel  
TDI, Division of Workers' Compensation

The commissioner adopts amendments to 28 TAC §133.30.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Commissioner's Order No. 2023-8108