

SUBCHAPTER B. Health Care Provider Billing Procedures
28 TAC §133.20 Medical Bill Submission By Health Care Provider

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance (Department), Division of Workers' Compensation (Division), adopts amendments to §133.20(b) regarding Medical Bill Submission by Health Care Provider with changes to the proposed text published in the November 7, 2008 issue of the *Texas Register* (33 TexReg 9050).

In accordance with Government Code §2001.033, this order contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rule, and the reasons why the Division agrees or disagrees with some of the comments and proposals.

Changes were made to the proposed rule text in response to public comments received.

2. REASONED JUSTIFICATION. Section 133.20(b) incorporates into Division rules the provisions of new §408.0272 of the Texas Labor Code as added by House Bill (HB) 1005, enacted by the 80th Texas Legislature, Regular Session,

effective September 1, 2007. There are no other rules or amendments anticipated in order to implement the section.

In an effort to provide billing provisions similar to those maintained in the group health system, §408.0272 provides, in pertinent part, that the time limit of 95 days for a health care provider to submit a claim for payment to the workers' compensation insurance carrier, as set forth in Labor Code §408.027(a), will not apply in three circumstances. The first circumstance is when the health care provider submits satisfactory proof to the Commissioner that the health care provider had filed for reimbursement within the 95 days but had filed with either the group accident and health insurance carrier where the injured employee is a covered insured, an HMO where the injured employee is a covered enrollee, or a workers' compensation insurance carrier other than the insurance carrier liable for payments. Section 408.0272(c) establishes that once a health care provider has been notified of the erroneous submission, the health care provider has 95 days to submit the claim for payment to the correct workers' compensation insurance carrier. The second exception is if the Commissioner determines that the failure to submit the claim during the 95 days was due to a catastrophic event that substantially interfered with the normal business operations of the health care provider. The third exception is where the parties agree to extend the period for submitting a claim for payment.

3. HOW THE SECTIONS WILL FUNCTION. The amendments to §133.20(b) update the present rule, which is currently an incomplete statement of the deadlines for health care providers to submit claims for payment and clarify the applicability of the general processes outlined in Chapter 133 (relating to General Provisions) for these exceptions. At the time §133.20(b) became effective on May 2, 2006, the exceptions in Labor Code §408.0272 had not been enacted by the Legislature. The adopted amendment includes, by reference, those new exceptions enacted by §408.0272. These exceptions pertain to "timely submission" of a health care provider's claim for payment and do not affect a workers' compensation insurance carrier's ability to review a medical service for other issues such as medical necessity, relatedness, and/or compensability.

In response to public comments received, language was added to the rule text to clarify that the health care provider had 95 days to file the medical bill with the correct workers' compensation insurance carrier from the date that the health care provider received notice that the medical bill had originally been filed incorrectly.

The added language also requires the health care provider, when filing the medical bill with the correct workers' compensation insurance carrier, to provide sufficient documentation to demonstrate why one of the exceptions under §408.0272 would apply. The documentation must show that the health care provider had timely filed the medical bill with an incorrect insurance carrier during

the initial 95 day period, that the Commissioner determined that the failure resulted from a catastrophic event that substantially interfered with the normal business operations of the health care provider, or that the delay in filing was the result of an agreement between the health care provider and the correct workers' compensation insurance carrier. Additional language was also included in the rule to clarify that the correctly filed medical bills are subject to the same billing, review, and dispute processes as they would have been if they had been initially filed correctly and that the provisions of Chapter 133 would still apply.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

Comment: Commenter offered a suggested format for the rule that restated the exceptions listed in Labor Code §408.0272 rather than use the shortened reference set forth in the proposed amendment and stated that to do so would simplify use by the system participants.

Agency Response: The Division disagrees with the recommendation to restate the entire statutory language in the rule. However, further amendments have been adopted to provide clarity.

Comment: Commenter suggested that §133.20(b) be amended to establish a procedure for the presentation of medical bills to the Division and workers' compensation insurance carriers when submitting the medical bills under one of the exceptions provided in Labor Code §408.0272. Commenter also states that

the suggested amendments would “constitute substantive changes that would require the Division to withdraw the proposed rule amendment.”

Agency Response: The Division disagrees that establishing a new procedure in the rule for the presentation of medical bills to the Division and workers' compensation insurance carriers is necessary. The Division also disagrees that a re-proposal of this rule is necessary. The Division clarifies that §408.0272 provides exceptions to the timeframe for health care providers to submit medical bills for reimbursement to workers' compensation insurance carriers, not the Division. Further, §408.0272 does not provide for a new billing and reimbursement structure for the medical bills. Medical bills submitted in accordance with §408.0272 are subject to the billing, review, and dispute processes established by Chapter 133. The exceptions set forth in §408.0272 have been in effect since September 1, 2007 and have functioned successfully since that time with the general parameters already set forth in Chapter 133. Any disputes regarding these exceptions shall be received by the Division and processed through the medical dispute process as set forth in Subchapter D. Language has been added to the adopted rule to clarify that medical bills submitted under the exceptions in §408.0272 are subject to the provisions of Chapter 133.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None

For, with changes: Service Lloyds Insurance Company and Insurance Council
of Texas

Against: None

6. STATUTORY AUTHORITY. The amendments are adopted under the Texas Labor Code §§408.027(a), 408.0271, 408.0272, 413.015, 413.031, 402.00111 and 402.061.

Section 408.027(a) sets out the deadline for health care providers to submit claims for payment to the workers' compensation insurance carrier. Section 408.0271 sets forth notice requirements for workers' compensation insurance carriers denying a medical bill and requirements for health care providers appealing those denials. Section 408.0272 sets forth the exceptions to the deadline stated in §408.027. Section 413.015 requires workers' compensation insurance carriers to pay charges for medical services as provided in the statute. Section 413.031 sets forth the provisions related to medical dispute resolution. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the

Commissioner has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

7. TEXT.

§133.20. Medical Bill Submission by Health Care Provider

(a) The health care provider shall submit all medical bills to the insurance carrier except when billing the employer in accordance with subsection (j) of this section.

(b) Except as provided in Labor Code §408.0272(b), (c) or (d), a health care provider shall not submit a medical bill later than the 95th day after the date the services are provided. In accordance with subsection (c) of the statute, the health care provider shall submit the medical bill to the correct workers' compensation insurance carrier not later than the 95th day after the date the health care provider is notified of the health care provider's erroneous submission of the medical bill. A health care provider who submits a medical bill to the correct workers' compensation insurance carrier shall include a copy of the original medical bill submitted, a copy of the explanation of benefits (EOB) if available, and sufficient documentation to support why one or more of the exceptions for untimely submission of a medical bill under §408.0272 should be applied. The medical bill submitted by the health care provider to the correct workers' compensation insurance carrier is subject to the billing, review, and

dispute processes established by Chapter 133, including §133.307(c)(2)(A)-(H) of this title (relating to MDR of Fee Disputes), which establishes the generally acceptable standards for documentation.

(c) A health care provider shall include correct billing codes from the applicable Division fee guidelines in effect on the date(s) of service when submitting medical bills.

(d) The health care provider that provided the health care shall submit its own bill, unless:

(1) the health care was provided as part of a return to work rehabilitation program in accordance with the Division fee guidelines in effect for the dates of service;

(2) the health care was provided by an unlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider shall submit the bill;

(3) the health care provider contracts with an agent for purposes of medical bill processing, in which case the health care provider agent may submit the bill; or

(4) the health care provider is a pharmacy that has contracted with a pharmacy processing agent for purposes of medical bill processing, in which case the pharmacy processing agent may submit the bill.

(e) A medical bill must be submitted:

(1) for an amount that does not exceed the health care provider's usual and customary charge for the health care provided in accordance with Labor Code §§413.011 and 415.005; and

(2) in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

(f) Health care providers shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills).

(g) Health care providers may correct and resubmit as a new bill an incomplete bill that has been returned by the insurance carrier.

(h) Not later than the 15th day after receipt of a request for additional medical documentation, a health care provider shall submit to the insurance carrier:

(1) any requested additional medical documentation related to the charges for health care rendered; or

(2) a notice the health care provider does not possess requested medical documentation.

(i) The health care provider shall indicate on the medical bill if documentation is submitted related to the medical bill.

(j) The health care provider may elect to bill the injured employee's employer if the employer has indicated a willingness to pay the medical bill(s).

Such billing is subject to the following:

(1) A health care provider who elects to submit medical bills to an employer waives, for the duration of the election period, the rights to:

(A) prompt payment, as provided by Labor Code §408.027;

(B) interest for delayed payment as provided by Labor Code §413.019; and

(C) medical dispute resolution as provided by Labor Code §413.031.

(2) When a health care provider bills the employer, the health care provider shall submit an information copy of the bill to the insurance carrier, which clearly indicates that the information copy is not a request for payment from the insurance carrier.

(3) When a health care provider bills the employer, the health care provider must bill in accordance with the Division's fee guidelines and §133.10 of this chapter (relating to Required Billing Forms/Formats).

(4) A health care provider shall not submit a medical bill to an employer for charges an insurance carrier has reduced, denied or disputed.

(k) A health care provider shall not submit a medical bill to an injured employee for all or part of the charge for any of the health care provided, except

as an informational copy clearly indicated on the bill, or in accordance with subsection (l) of this section. The information copy shall not request payment.

(l) The health care provider may only submit a bill for payment to the injured employee in accordance with:

- (1) Labor Code §413.042;
- (2) Insurance Code §1305.451; or
- (3) §134.504 of this title (relating to Pharmaceutical Expenses

Incurred by the Injured Employee).

8. CERTIFICATION. The agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2009.

Dirk Johnson
General Counsel
Texas Department of Insurance
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that §133.20(b) specified herein, concerning Medical Bill Submission by Health Care Provider, is adopted.

Rod Bordelon
Commissioner of Workers' Compensation

ATTEST:

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO. _____