

SUBCHAPTER B. Health Care Provider Billing Procedures
28 TAC §133.10

1. INTRODUCTION. The Commissioner of Workers' Compensation ("Commissioner"), Texas Department of Insurance, Division of Workers' Compensation ("Division") adopts amendments to §133.10, relating to required billing forms/formats. These amendments are adopted without changes to the proposal published in the February 15, 2008 issue of the *Texas Register* (33 TexReg 1232) as corrected in the February 29, 2008 issue of the *Texas Register* (33 TexReg 1894).

2. REASONED JUSTIFICATION. The adopted amendment to §133.10(a)(3) is necessary to correct the inaccurate reference to Subchapter F as the subchapter that governs electronic billing ("eBilling"). Subchapter G contains the rules governing eBilling.

The adopted amendment to §133.10(b) replacing the current National Council for Prescription Drug Programs ("NCPDP") Universal Claim Form ("UCF") with the Division form DWC-66 ("DWC-66") or other mutually agreed upon qualifying alternate billing form as the prescribed paper billing form for pharmacy services is necessary because the current NCPDP UCF is not effectively adaptable for use in the Texas workers' compensation system and would bring unnecessary inefficiencies and costs into that system. The current NCPDP UCF was adopted for pharmacy billing in the Texas workers'

compensation system because it is a nationally standardized pharmacy billing form that is used effectively in other healthcare delivery systems. However, prior to the NCPDP UCF's January 1, 2008 implementation date, workers' compensation system participants provided the Division with feedback indicating that unlike the DWC-66 the current NCPDP UCF is not a suitable pharmacy billing form for the Texas workers' compensation system.

The current NCPDP UCF was not specifically designed for use in the Texas workers' compensation system. When completed in accordance with its standard instructions, the NCPDP UCF does not capture all information that is necessary for pharmacy billing in Texas. To make the NCPDP UCF workable in the Texas workers' compensation system, the Division significantly modified the NCPDP UCF's standard instructions. These modified instructions, according to system participants, have made the NCPDP UCF a form that is difficult to complete accurately. For example, the NCPDP UCF does not contain a field for pharmacy benefit manager ("PBM") or pharmacy processing agent ("billing agent") information, information that is necessary in cases where a PBM or billing agent processes a pharmacy bill on behalf of a pharmacy. In order to capture this information, the Division's instructions require PBM and billing agent information to be placed in fields that describe other information. Further, when completed in accordance with the Division's instructions, the NCPDP UCF does not provide enough space for required carrier information. This necessitates very

small fonts and/or data overflow into other data fields. The Division's instructions also place required information in white spaces, nonstandard locations on the form. The difficulty in completing the NCPDP UCF accurately in accordance with the Division's instructions can lead to a significant number of incorrectly completed and rejected bills. This would bring unnecessary inefficiencies and costs into the Texas workers' compensation system.

Further, system participants have had difficulty applying optical character recognition (OCR) technology to the NCPDP UCF, as modified by the Division's instructions, because the modified NCPDP UCF requires small fonts, possible data overflow, and the placement of data in nonstandard locations. OCR technology is labor saving technology used in automated systems that process paper billing forms. The difficulty in applying OCR technology to the modified NCPDP UCF would hinder the development of these automated systems and, thus, require increased manual intervention to process this form. This would increase the labor costs associated with processing paper pharmacy bills.

The DWC-66 is a paper billing form specifically designed for pharmacy billing in the Texas workers' compensation system. This form captures all information that is necessary for pharmacy billing in that system. System participants have used the DWC-66 for pharmacy billing since 1991 and this form was the prescribed pharmacy billing form until January 1, 2008. Because the DWC-66 was the prescribed pharmacy billing form for a significant period of time,

system participants already have in place established procedures and automated systems, including automated systems that successfully apply OCR technology to the DWC-66, to process pharmacy bills submitted on the DWC-66. Readopting the DWC-66 as the prescribed billing form will prevent unnecessary inefficiencies and costs from being imposed upon the Texas workers' compensation system and will allow system participants to use their already established procedures and automated systems to process paper pharmacy bills. Further, this adopted amendment allows system participants to adopt an alternate billing form in lieu of the DWC-66 if there is a mutual agreement and the alternate billing form provides all the information required by the DWC-66. This will provide system participants with the flexibility to use other pharmacy billing forms such as other nationally standardized pharmacy billing forms that are effectively adaptable for use in the Texas workers' compensation system.

The adopted amendment to §133.10(c) is necessary in order to clarify that the current American Dental Association ("ADA") claim form is to be used by dentists to bill for dental services and not for professional medical services that use non-dental codes.

In addition to providing dental services, dentists may provide injured workers with professional medical services such as case management, certification of maximum medical improvement, and the assignment of impairment ratings. Billing for these types of professional medical services

requires the use of non-dental codes in the Healthcare Common Procedure Coding System (HCPCS). Dentists have used the current ADA claim form when billing for these types of professional medical services. Carriers reject such bills on the basis that the current ADA claim form is not the correct billing form for these types of professional medical services. The current ADA claim form was never intended to be used to bill for these types of professional medical services. The current ADA claim form is intended to be used by dentists when billing for dental services. In accordance with §133.10(a)(1), dentists are to use the standard forms used by the Centers for Medicare and Medicaid Services when billing for professional medical services that have non-dental codes. This adopted amendment clarifies the proper use of the current ADA claim form.

3. HOW THE SECTION(S) WILL FUNCTION. The adopted amendment to §133.10(a)(3) references Subchapter G as the subchapter that governs eBilling.

The adopted amendment to 133.10(b) removes the NCPDP UCF as the prescribed paper billing form for pharmacy billing and requires pharmacists and pharmacy processing agents to submit bills using the DWC-66. This adopted amendment allows pharmacists and pharmacy processing agents to submit bills using an alternate billing form in lieu of the DWC-66 if the insurance carrier approves the alternate billing form prior to submission by the pharmacist or

pharmacy processing agent and the alternate billing form provides all the information required on the DWC-66.

The adopted amendment to §133.10(c) clarifies that the current ADA claim form is to be used by dentists when billing for dental services.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

Comment: A commenter supports the amendment removing the NCPDP UCF as the required billing form for pharmacy services because this form is designed for use in the group health industry and does not translate well for use in the Texas workers' compensation system.

Agency Response: The Division agrees that the current NCPDP UCF was not developed as a workers' compensation specific billing form and is not effectively adaptable to the Texas workers' compensation system. The DWC-66 is a Texas specific workers' compensation billing form and therefore a better suited billing form for pharmacy services in Texas.

Comment: A commenter supports the amendment providing for the use of the DWC-66 or other mutually agreed upon form for pharmacy billing. Additionally, the commenter recommends modifying the medical billing rules regarding a clean claim to require a secondary generic NDC number only in cases where an injured worker requests a brand drug when a generic is prescribed by the physician rather than in all cases in which a brand drug is dispensed.

Agency Response: The commenter's request that the Division modify the medical billing rules regarding the clean claim requirements for pharmacy billing is outside the scope of this rule. However, the Division will consider the commenter's request.

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

For: PMSI

For with changes: Workers' Compensation Pharmacy Alliance (WCPA)

Against: None

6. STATUTORY AUTHORITY. These amendments are adopted under Labor Code §§413.053, 413.011, 413.0111, 408.0251, 402.00111, and 402.061.

Labor Code §413.053 provides that the Commissioner of Workers' Compensation by rule shall establish standards of reporting and billing governing both form and content. Labor Code §413.011 requires the Commissioner of Workers' Compensation to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. This section also provides that the Commissioner of Workers' Compensation may adopt rules as necessary to

implement this section. Labor Code §413.0111 provides that the rules adopted by the Commissioner of Workers' Compensation for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on behalf of the pharmacies under terms and conditions agreed on by the pharmacies. Labor Code §408.0251 provides that the Commissioner of Workers' Compensation, by rule and in cooperation with the Commissioner of Insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. This section also provides that the Commissioner of Workers' Compensation shall by rule establish criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically. 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 §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

7. TEXT.

§133.10. Required Billing Forms/Formats.

- (a) Health care providers shall submit medical bills for payment:

(1) on standard forms used by the Centers for Medicare and Medicaid Services (CMS);

(2) on applicable forms prescribed for pharmacists and dentists specified in subsections (b) and (c) of this section; or

(3) in electronic format in accordance with Subchapter G of this chapter (relating to Electronic Medical Billing, Reimbursement, and Documentation).

(b) Pharmacists and pharmacy processing agents shall submit bills using the Division form DWC-66. A pharmacist or pharmacy processing agent may submit bills using an alternate billing form if:

(1) the insurance carrier has approved the alternate billing form prior to submission by the pharmacist or pharmacy processing agent; and

(2) the alternate billing form provides all information required on the Division form DWC-66.

(c) Dentists shall submit bills for dental services using the current American Dental Association claim form.

(d) All information submitted on required billing forms must be legible and completed in accordance with Division instructions.

CERTIFICATION. This 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 _____, 2008.

Norma Garcia
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the amendments to §133.10 specified herein, concerning required billing forms/formats, are adopted.

AND IT IS SO ORDERED

ALBERT BETTS
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

Norma Garcia
General Counsel

COMMISSIONER'S ORDER NO.