

SUBCHAPTER D. TREATMENT PLANNING
28 TAC §137.300

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) renews and adopts on an emergency basis an amendment to §137.300, concerning Required Treatment Planning, to change the applicability date for required treatment planning from health care provided on or after May 1, 2007, to health care provided on or after October 1, 2007. This emergency rule is filed in accordance with Government Code §2001.0134 (c), and 1 Texas Administrative Code §91.37. Section 137.300 is part of rules adopted relating to disability management. The disability management rules include 28 Texas Administrative Code §§137.10, 137.100, 137.300, and were adopted and published in the January 12, 2007, issue of the *Texas Register* (32 TexReg 163). Section 137.300 (g) established an effective date for the implementation of the required treatment planning section of disability management rules.

Since publication of the adopted rules, workers' compensation system participants, including insurance carriers, health care providers, and associations, expressed the need for additional time to establish systems and processes to appropriately address required treatment planning. The system participants expressed a concern that delay in treatment and services may be imminent because neither the health care providers that treat injured employees nor the workers' compensation

insurance carriers that process the claims are prepared to initiate treatment planning as required under the newly adopted disability management rules. The system participants need additional time to communicate and develop treatment planning parameters that are mutually acceptable. System participants also indicated additional time is needed to determine approximately how many injured employees will require a treatment plan. Once the rule becomes effective, treatment planning may apply to many injured employees, new and existing. This could result in a significant number of treatment plans that need to be developed by the health care providers and approved by the insurance carriers. In order to avoid any lapse in an injured employee's health care, the system participants must be fully capable of implementing treatment planning.

Pursuant to §8.005(e), House Bill (HB) 7, enacted by the 79th Texas Legislature, Regular Session 2005, the Commissioner of Workers' Compensation may adopt and amend emergency rules and is not required to make the finding described by Government Code §2001.034(a).

Considering the concerns expressed, it is evident that providing workers compensation system participants with additional time to implement treatment planning into their processing systems and business operations will help facilitate a smoother transition of the treatment planning requirements in the disability management rules. It is necessary to adopt these sections on an emergency basis to change the applicability

date of §137.300 prior to May 1, 2007. This will allow the carriers and providers sufficient time to establish mutually acceptable parameters for required treatment planning and to prepare their processing systems and business practices.

2. STATUTORY AUTHORITY. The amendment is adopted on an emergency basis under Labor Code §§413.011(e), 413.011(g), 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, 402.061, as well as §8.005(e), HB 7 enacted by the 79th Legislature, Regular Session, effective September 1, 2005, and the Administrative Procedures Act, Texas Government Code §2001.034. Section 413.011(e) provides that the Commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols with specific criteria for such adoption. Section 413.011 (g) provides that the Commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, 401.011(18-a), the definition of "evidence-based medicine," 401.011(22-a), the definition of "health care reasonably required" and 401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to

employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the Division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the Commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the Commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the Division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided. Section 413.013 authorizes the Commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the

medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the Commissioner of workers' compensation 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 of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Government Code §2004.034 provides for the adoption of administrative rules on an emergency basis without notice and comment.

3. TEXT.

§137.300. Required Treatment Planning.

(a) – (f) (No change.)

(g) This section applies to health care provided on or after October ~~May~~ 1, 2007.

4. CERTIFICATION. This agency hereby certifies that this emergency adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2007.

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

IT IS THEREFORE THE ORDER of the Commissioner of the Division of Workers' Compensation, Texas Department of Insurance that the amendment to §137.300 (g), Required Treatment Planning, is adopted on an emergency basis.

AND IT IS SO ORDERED.

ALBERT BETTS
COMMISSIONER OF WORKERS'
COMPENSATION

ATTEST:

Norma Garcia
General Counsel

COMMISSIONER'S ORDER NO.