

1 Title 28. Insurance
2 Part 2. Texas Department of Insurance, Division of Workers' Compensation
3 Chapter 134. Benefits—Guidelines for Medical Services, Charges, and Payments
4 Subchapter B. Miscellaneous Reimbursement
5 Rules §134.150 and §134.155
6

7 The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new §134.150,
8 concerning reimbursement of services provided by a federal military treatment facility (FMTF), and
9 §134.155, concerning FMTF disputes. These rules are proposed as required under Senate Bill (SB) 935,
10 86th Legislature (2019). SB 935 establishes a payment obligation to prevent the balance billing of injured
11 employees in Texas, covered by a workers' compensation insurance plan, who have received treatment
12 at an FMTF.
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14 BACKGROUND AND PURPOSE

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16 Brooke Army Medical Center (BAMC), an FMTF in San Antonio, is a Level 1 trauma center and part of the
17 State of Texas trauma plan. Civilians, including injured employees, can be transported to BAMC to
18 receive emergency treatment for serious injuries. The Secretary of Defense allows BAMC to treat civilian
19 patients in order to provide ongoing training for military doctors.
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21 The admission of an injured employee to an FMTF can involve unique challenges for all parties. In most
22 instances, an injured employee is neither a member of a uniformed service nor a covered beneficiary
23 and, as such, is designated a "civilian." When care is provided to civilians, FMTFs may pursue full
24 reimbursement of all charges and may not recognize state statutory or regulatory requirements for
25 workers' compensation or group health insurance, such as certain billing, utilization review
26 requirements, and limits on reimbursement under medical fee schedules. When bills are not paid in full,

1 FMTFs are required under federal law to initiate debt collection actions. These debts may be sent to the
2 U.S. Treasury and can result in garnishment of tax returns, social security benefits, and adverse actions
3 on credit reports.

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5 Under the Texas workers' compensation system, "an employee who sustains a compensable injury is
6 entitled to all health care reasonably required by the nature of injury." Texas Labor Code §408.021(a).
7 Injured employees that received medical services at an FMTF rely on their workers' compensation
8 coverage to cover the cost of treatment for work-related injuries. In Texas' workers' compensation
9 system, injured employees do not pay the cost of medical services related to a compensable injury and,
10 as a result, workers' compensation benefits are the exclusive remedy for injured employees or their
11 legal beneficiaries.

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13 Injured employees receiving bills from an FMTF, the U.S. Treasury, or federally contracted collection
14 agencies have sought guidance from DWC on how to respond. Often, injured employees do not seek
15 assistance until they receive payment demands from collection agencies. Injured employees with bills
16 from an FMTF can see their benefits and wages garnished. Data available to DWC shows that
17 approximately 666 injured employees received health care services at BAMC between January 1, 2015,
18 and July 31, 2018, resulting in approximately \$25.3 million in charges to insurance carriers. About \$13.3
19 million has been paid and reported by insurance carriers for these services, leaving an unpaid balance of
20 about \$12 million.

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22 SB 935 provides a definition for "federal military treatment facility" and clarifies that medical care
23 provided in these facilities is exempt from certain workers' compensation-specific statutory

1 requirements. Significantly, SB 935 stipulates that, “[t]he reimbursement rates for medical services
2 provided to an injured employee by a federal military treatment facility must be the amount charged by
3 the facility as determined under 32 C.F.R. Part 220.” Labor Code §413.0112(b). Title 32, Part 220 of the
4 Code of Federal Regulations concerns the collection from third party payers of reasonable charges for
5 healthcare services by FMTFs.

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7 SB 935 also exempts the following statutes from applying to the reimbursement of charges from an
8 FMTF: Insurance Code Chapter 1305 (relating to Workers’ Compensation Health Care Networks); Labor
9 Code §408.0271 (relating to Reimbursement by Health Care Provider); Labor Code §408.0272 (relating
10 to Certain Exceptions for Untimely Submission of a Claim); Labor Code §408.028 (relating to
11 Pharmaceutical Services); Labor Code §408.0281 (relating to Reimbursement for Pharmaceutical
12 Services); Labor Code §413.011 (relating to Reimbursement Policies and Guidelines); Labor Code
13 §413.014 (relating to Preauthorization Requirements); Labor Code §413.041 (relating to Health Care
14 Provider Disclosure); and Labor Code §504.053 (relating to Election by a Political Subdivision to
15 Participate in a Workers’ Compensation Health Care Network).

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17 In addition, SB 935 exempts subsection (a) of §408.027 which requires that health care providers submit
18 a claim to an insurance carrier within 95 days of service and subsection (f) which requires that payments
19 made by an insurance carrier must comply with DWC’s fee guidelines if the service provided was out-of-
20 network or must be at a contracted rate if in-network. Section 413.031 is exempted as it relates to
21 medical fee disputes.

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23 Finally, SB 935 requires that DWC adopt rules necessary to implement §413.0112 including
24 requirements for processing bills from FMTFs as well as, “a separate medical dispute resolution process

1 to resolve disputes over charges billed directly to an injured employee by [an FMTF].” DWC proposes
2 these rules to implement SB 935.

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4 Proposed §134.150 describes procedures for reimbursing medical bills for services provided by an FMTF.
5 Subsection (a) states that this rule applies, regardless of the date of injury, to medical services provided
6 on or after January 1, 2020, in an FMTF as defined in Labor Code §413.0112(a). This provision relies on
7 the statutory definition of an FMTF and aligns the applicability date with SB 935.

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9 Subsection (b) provides that, as required by Labor Code §413.0112(b), reimbursement shall be for the
10 amount charged by an FMTF and clarifies that such charges can include interest, administrative
11 penalties, or collection fees related to medical benefits.

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13 Subsection (c) states that an FMTF is not required to comply with the health care provider billing or
14 preauthorization requirements in Chapters 133 (concerning General Medical Provisions) and 134 of this
15 title (concerning Benefits – Guidelines for Medical Services, Charges, and Payments). This statement is
16 consistent with Labor Code §413.0112(c), as added by SB 935, which exempts certain statutorily
17 required medical billing, preauthorization, network, and medical bill processing requirements for
18 medical services provided by an FMTF. Labor Code §413.0112(c), as amended by SB 935, exempts
19 several provisions of the Workers’ Compensation Act and Insurance Code as discussed above. Labor
20 Code §408.027(a) and (f) do not apply to the reimbursement of an FMTF’s charges, but the other
21 subsections continue to apply, including provisions relating to payment of a medical bill within 45 days
22 under §408.027(b). Subsection (c) of proposed rule 134.150 also requires that an insurance carrier shall
23 process a medical bill from an FMTF and shall contact the FMTF to obtain the information necessary to
24 process a medical bill. This requirement is consistent with an insurance carrier’s existing duties for

1 processing medical bills under §133.200 of this title (concerning Insurance Carrier Receipt of Medical
2 Bills from Health Care Providers).

3
4 Subsection (d) requires that an insurance carrier pay an FMTF for all services described in a single bill but
5 that an insurance carrier shall identify reimbursement for professional and institutional services
6 separately on the explanation of benefits form. This requirement is necessary to ensure that insurance
7 carriers process medical bills when, as is their customary practice an FMTF bills for both categories of
8 medical services on a single bill. Insurance carriers must distinguish the reimbursement of these services
9 on an explanation of benefits form to communicate to the FMTF and the injured employee what is being
10 paid and to facilitate an insurance carrier's medical data reporting duties under Chapter 134, Subchapter
11 I, of this title (concerning Medical Bill Reporting).

12
13 Subsection (e) provides that an insurance carrier may only deny payment of medical services provided
14 by an FMTF for reasons of medical necessity, compensability, extent, or liability. This provision provides
15 for payment of medical benefits for compensable injuries as required under the Workers' Compensation
16 Act and DWC's rules. Labor Code §409.021 requires that an insurance carrier shall promptly initiate
17 compensation under Labor Code §§409.021 - 409.024 (relating to Payment of Benefits). An insurance
18 carrier must also comply with rules 124.2 (concerning Carrier Noting and Notification Requirements) and
19 124.3 (concerning Investigation of an Injury and Notice of Denial/Dispute). This requirement also
20 affirmatively states the defenses that remain available to an insurance carrier when processing a
21 medical bill from an FMTF. It does not expand an insurance carrier's liability for payment of medical
22 benefits after a third-party recovery as addressed in Labor Code Chapter 417.

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1 Subsection (f) requires that an insurance carrier forward to DWC the first bill received from an FMTF
2 within 14 days of receipt, in the form and manner prescribed by DWC. This requirement is designed to
3 ensure that DWC receives prompt notice when an FMTF has provided medical services to an injured
4 employee so that DWC may monitor the processing of the medical bill proactively and provide
5 additional information to an injured employee concerning available DWC services. The objective of this
6 requirement, and generally of these rules, is to minimize the chance that an injured employee receives a
7 balance bill from an FMTF. Early engagement with an injured employee should also prevent the accrual
8 of unnecessary interest or collection costs.

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10 Subsection (g) requires that an insurance carrier report medical bills in accordance with Chapter 134,
11 Subchapter I, of this title and clarifies that FMTF medical bills are subject to §102.9 of this title
12 (concerning Submission of Information). In the past, DWC has experienced inconsistent compliance with
13 electronic data reporting on bills from FMTFs. The intent of this rule is to encourage insurance carriers
14 to comply with the medical bill reporting provisions of Chapter 134, Subchapter I. If the reliability of
15 medical bill reporting for FMTFs does not improve, DWC may consider obtaining necessary information
16 regarding FMTF billing through requests for information as provided under §102.9.

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18 Proposed §134.155 provides a medical dispute resolution process regarding services provided by an
19 FMTF. Subsection (a) provides that medical necessity disputes must be initiated as required under
20 §133.308 of this title (concerning Medical Dispute Resolution of Medical Necessity Disputes). This rule
21 provides that, notwithstanding the requirements of §133.308(f)(2)(B), an injured employee may initiate
22 a medical necessity dispute and that, notwithstanding §133.308(q), an insurance carrier must pay all
23 independent review organization (IRO) fees. Both provisions are necessary to ensure the prompt
24 resolution of medical disputes, a legislative goal under Labor Code §402.021, because it is unlikely that

1 an FMTF will pursue any disputes under the Texas Workers' Compensation Act (Act). Thus, an injured
2 employee who has received services at an FMTF needs the ability to initiate a medical necessity dispute
3 and, as the only party available under the Act's structure for providing benefits to injured employees, an
4 insurance carrier must pay any IRO fees. Finally, under subsection (a)(2), for all other disputes, a party
5 may request a benefit review conference as described under Chapter 141 of this title (concerning
6 Dispute Resolution – Benefit Review Conference). As provided under §140.3 of this title, DWC may
7 provide expedited benefit review conferences and hearings for resolution of disputes involving
8 compensability, liability for essential medical treatment, or other issue defined by DWC as in the best
9 interest of the workers' compensation system or its participants.

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11 Proposed §134.155(b) provides that, except as otherwise provided in this rule, an FMTF dispute will be
12 conducted in accordance with DWC's rules for dispute resolution under §133.308 of this title,
13 (concerning Medical Dispute Resolution by IRO), or Chapters 140 - 147 of this title (concerning Dispute
14 Resolution). Proposed §134.155(c) provides that a first responder may request that an FMTF dispute be
15 expedited as provided for under Labor Code §504.055 (relating to Expedited Provision of Medical
16 Benefits for Certain Injuries Sustained by First Responders in Course and Scope of Employment).

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18 FISCAL NOTE

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20 Matthew Zurek, Deputy Commissioner for Health & Safety, has determined that for each year of the first
21 five years that these proposed new rules will be in effect there will be no additional estimated cost to
22 the state and local governments expected, nor that there will be any estimated reduction in costs to the
23 state and local governments, nor that there will be any estimated loss or increase in revenue to the
24 state or local governments as a result of enforcing or administering these rules.

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PUBLIC BENEFITS AND COSTS

Mr. Zurek has determined that for each year of the first five years that these proposed new rules will be in effect there will be a more efficient provision of benefits to injured employees under the Workers' Compensation Act, Labor Code, Title 5, and that the probable economic costs to insurance carriers required to comply with the rule will be minimal. The primary benefit of the adoption of these rules will be to protect injured employees from balance billing by an FMTF. Injured employees have incurred costs when insurance carriers have denied or paid less than the FMTF's billed charges or have denied payment for an administrative error made by the FMTF or an injured employee. This has led to collection efforts by the FMTF and by the U.S. Treasury and its agents. These efforts are focused on the injured employee and have resulted in the garnishment of wages, tax refunds, and other monetary benefits. SB 935 and these implementing rules ensure that injured employees will not be responsible for charges by the FMTF for medically necessary treatments and services due to a compensable injury.

Insurance carriers are already processing medical bills impacted by the requirements of SB 935. These rules should expedite the review necessary to process a medical bill from an FMTF and reduce potential administrative costs for an insurance carrier. Medical benefit costs, however, will likely increase for insurance carriers as most administrative reasons used by insurance carriers to deny payment of these medical bills have been exempted by SB 935. Application of existing medical bill processing rules allowed insurance carriers to deny bills for medical services that otherwise met medical necessity and compensability standards.

1 As provided in Labor Code §413.0112 and as clarified in proposed §134.150(c), insurance carriers are
2 responsible for paying the amount charged by an FMTF. Individual insurance carriers are best positioned
3 to estimate the impact on their overall costs based on historic volumes and their unique claims
4 processing procedures. For example, some insurance carriers have paid the FMTF rate without question
5 while, in other instances, insurance carriers have paid the FMTF rate only after the injured employee has
6 been balance billed. Between January 2015 and July 2018, on average, insurance carriers paid 23
7 percent of billed charges. However, DWC medical billing data indicate that insurance carriers have since
8 revised their claim processing policies in anticipation of the changes made by SB 935 and these rules. As
9 a result, in calendar year 2018, insurance carriers paid approximately 80 percent of billed charges.

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11 Insurance carriers may see a slight increase in costs due to medical necessity reviews conducted by IROs.
12 Normally, the costs of a medical necessity review are paid by either the health care provider or the
13 insurance carrier. However, an FMTF health care provider is unlikely to participate in any dispute
14 process under state law. When an injured employee seeks to dispute the denial of a bill based on a lack
15 of medical necessity, an insurance carrier is the only responsible party available to fund the independent
16 review process. An IRO requires a review fee of \$460 or \$650 depending on the licensure type or the
17 specialty of the health care provider conducting the review. Due to the relatively small number of
18 medical bills generated by injured employees receiving care at FMTFs, generally on an emergency basis,
19 and the even smaller number of medical necessity disputes likely to result from these claims, the cost to
20 insurance carriers for these medical necessity reviews should be negligible. If 10 percent of an estimated
21 200 injured employees treated annually at an FMTF requested an IRO review, the total annual cost to all
22 insurance carriers would be less than \$15,000.

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1 Requiring insurance carriers to pay IRO fees is a significant benefit to injured employees who might
2 otherwise might not be able to pursue a medical necessity review regarding a bill denied by the
3 insurance carrier. Additionally, requiring insurance carriers to pay IRO fees in situations where the
4 injured employee is requesting the dispute is consistent with current statutory requirements that
5 injured employees never pay any portion of the cost of an independent review.

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7 Insurance carriers will likely incur some costs associated with reporting the first medical bills from an
8 FMTF in the form and manner prescribed by DWC. Costs to insurance carriers will depend on their
9 individual process solution to the reporting requirement. This reporting is only for the first bill from an
10 FMTF for an injured employee. The calendar year 2018 volume of 185 new injured employees indicates
11 that this requirement should not be unduly burdensome or costly. An insurance carrier may be able to
12 automate this activity as bills are received and entered into its medical bill review and payment process.
13 DWC anticipates that insurance carriers will submit information to DWC electronically through either a
14 dedicated fax number or e-mail address.

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16 This requirement will provide DWC with timely notice of an FMTF bill for an injured employee and allow
17 DWC to contact the injured employee and clarify the responsibilities of the injured employee regarding
18 the FMTF. This notice will provide the system with opportunities to engage the injured employee, avoid
19 any potential confusion regarding the FMTF billing, and reduce the likelihood of interest and penalties
20 being assessed on an unpaid medical bill. As set forth in Labor Code §402.021(b)(3) and (9), an ultimate
21 goal of the workers' compensation system is to coordinate communication in a manner that provides
22 the highest level of service and that is timely and cost-effective.

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24 GOVERNMENT GROWTH IMPACT STATEMENT

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During the first five years that these rules are in effect, the proposed rules will neither create nor eliminate a government program. Implementation of the proposed rules will not require the creation of new employee positions nor will it eliminate existing employee positions. Implementation of the proposed rules will neither require an increase nor a decrease in future legislative appropriations. The proposed rules will require neither an increase nor a decrease in fees paid to DWC. The proposed rules neither increase nor decrease the number of individuals subject to the applicability of DWC's rules.

The proposed rules will create a new regulation as required by Labor Code §413.0112(d), as amended by SB 935. The proposed rules will not expand, limit, nor repeal an existing regulation. The proposed rules will have a minor positive effect on the state economy by reducing the likelihood that injured employees may be assessed interest or other charges for delinquent payment of medical bills from an FMTF and reducing the likelihood that injured employees might have their benefits or wages garnished by the U.S. Treasury.

LOCAL EMPLOYMENT IMPACT

For each of the first five years that these rules will be in effect, the rules will not have an impact on local employment beyond a benefit of providing injured employees covered by workers' compensation insurance the assurance that they will not be responsible for charges for healthcare provided by an FMTF.

ECONOMIC EFFECT ON SMALL BUSINESSES AND RURAL COMMUNITIES

1 DWC does not anticipate that these rules will have an adverse economic effect on micro-businesses.
2 These rules primarily impact insurance carriers, and as of 2016, DWC had identified 10 insurance carriers
3 writing workers' compensation and excess workers' compensation business in Texas that met the
4 definition of a small business under Government Code §2006.001(2). These entities had total national
5 premiums of less than \$6 million, from all lines of business. Rural political subdivisions that self-insure
6 their workers' compensation responsibilities will be impacted by these rules, but beyond IRO costs,
7 these rules would not impose any new costs on self-insured rural political subdivisions.

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9 REGULATORY FLEXIBILITY ANALYSIS

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11 DWC does not find that it would be practicable to establish separate compliance or reporting
12 requirements or to exempt either insurance carriers that qualify as small businesses or self-insured rural
13 political subdivisions from these rules (design standards are inapplicable to these rules). Overall, DWC
14 anticipates a low number of injured employees receiving emergency treatment from an FMTF, about 15
15 per month. Proportionately, only a small number of these monthly claims would be likely to come from
16 self-insured rural political subdivisions. Even a smaller number of those claims may result in a medical
17 necessity dispute in which an insurance carrier may have to pay an IRO fee, few to none each year. DWC
18 finds that it would be impracticable to create separate rules for such a small, uncertain number of
19 claims. Furthermore, SB 935 was enacted so that the requirements for processing medical bills for
20 services provided by an FMTF would align with the federal regulations for collection from third-party
21 payers under 32 CFR Part 220 and in order to limit the balance billing of injured employees.

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23 INAPPLICABLE ANALYSES

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1 As these rules are necessary to implement SB 935, as provided under Labor Code §413.0112(d), a
2 statement on costs to regulated persons under Government Code §2001.0045 is not required.

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4 As these rules do not affect private real property, a takings impact analysis under Government Code
5 Chapter 2007 is not required.

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7 REQUEST FOR COMMENTS

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9 Comments may be submitted by e-mail to RuleComments@tdi.texas.gov or by mailing or delivering your
10 comments to Cynthia Guillen, Office of the General Counsel, MS-4D, Texas Department of Insurance,
11 Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. To
12 be considered, comments must be received by 5 p.m., Central time, on Monday, September 30, 2019.

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14 DWC will hold a public hearing to discuss these proposed rules on Monday, September 16, 2019, at 10
15 a.m. at the DWC central office located at 7551 Metro Center Drive, Suite 100, in Austin. DWC provides
16 reasonable accommodations for persons attending meetings, hearings, or educational events as
17 required by the Americans with Disability Act. If you need accommodations, please contact Cynthia
18 Guillen at 512-804-4275 or at RuleComments@tdi.texas.gov before 5 p.m., Central time, on Thursday,
19 September 12, 2019.

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21 STATUTORY AUTHORITY FOR RULE 134.150

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23 The proposed new rule is authorized by Texas Labor Code §§402.0011, 402.00116, 402.021, 402.061,
24 408.021, and 413.0112. Section 402.0011 provides that the commissioner of workers' compensation

1 shall exercise all executive authority under Title 5 of the Labor Code. Section 402.00116 provides that
2 the commissioner is the chief executive and administrative officer of the agency with all of the powers
3 and duties vested under the Workers' Compensation Act. Section 402.021 provides that two basic goals
4 of the Texas workers' compensation system are to ensure that each employee has access to prompt,
5 high-quality medical care and a fair and accessible dispute resolution process. Section 402.061 provides
6 that the commissioner shall adopt rules as necessary for the implementation and enforcement of the
7 Act. Section 408.021 provides that an injured employee who sustains a compensable injury is entitled to
8 all health care reasonably required by the nature of the injury. Section 413.0112 provides that the
9 reimbursement rates for medical services provided to an injured employee by an FMTF must be the
10 amount charged and requires that the commissioner adopt rules necessary to implement this section.
11 The proposed new rules support the implementation of the Workers' Compensation Act, Texas Labor
12 Code Title 5, Subtitle A.

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14 §134.150 REIMBURSEMENT OF SERVICES PROVIDED BY A FEDERAL MILITARY TREATMENT FACILITY

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16 (a) This section applies, regardless of the date of injury, to medical services provided on or after January
17 1, 2020, in a federal military treatment facility (FMTF) as defined in Labor Code §413.0112(a) (relating to
18 Reimbursement of Federal Military Treatment Facility).

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20 (b) Reimbursement for medical services provided to an injured employee shall be the amount of the
21 FMTF's charges as determined under Title 32, Code of Federal Regulations, Part 220 (concerning
22 Collection of Reasonable Charges for Healthcare Services). Additionally, charges may include interest,
23 administrative penalties, or collection fees related to medical benefits.

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1 (c) An FMTF is not required to comply with health care provider billing or preauthorization requirements
2 in Chapters 133 (concerning General Medical Provisions) and 134 (concerning Benefits - Guidelines for
3 Medical Services, Charges, and Payments) of this title. An insurance carrier shall process a medical bill
4 from an FMTF and make payment in accordance with Chapters 133 and 134, except as provided in Labor
5 Code §413.0112. The insurance carrier shall contact the FMTF to obtain any information necessary to
6 process a medical bill and document the name and telephone number of the person who supplied the
7 information.

8
9 (d) Notwithstanding the requirements of Chapter 133, an insurance carrier shall process professional
10 and institutional medical services submitted on a single bill by an FMTF. An insurance carrier shall
11 identify reimbursement for professional and institutional services separately on the explanation of
12 benefits form.

13
14 (e) The insurance carrier may only deny payment of medical services provided by an FMTF for reasons of
15 medical necessity, compensability, extent, or liability.

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17 (f) An insurance carrier shall forward to the division, within 14 calendar days of receipt, in the form and
18 manner prescribed by the division, the first medical bill for an injured employee that it receives from an
19 FMTF.

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21 (g) An insurance carrier shall report FMTF medical bills in accordance with Chapter 134, Subchapter I, of
22 this title. FMTF medical bills are subject to §102.9 of this title (concerning Submission of Information)
23 including medical bills not reported in accordance with §134.806(a)(3) (concerning Records Excluded
24 from Reporting).

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STATUTORY AUTHORITY FOR RULE 134.155

The proposed new rule is authorized by Texas Labor Code §§402.0011, 402.00116, 402.061, 408.021, 413.0112, and 504.055. Section 402.0011 provides that the commissioner of workers’ compensation shall exercise all executive authority under Title 5 of the Labor Code. Section 402.00116 provides that the commissioner is the chief executive and administrative officer of the agency with all of the powers and duties vested under the Workers’ Compensation Act. Section 402.061 provides that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Act. Section 408.021 provides that an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. Section 413.0112 provides that the reimbursement rates for medical services provided to an injured employee by an FMTF must be the amount charged and requires that the commissioner adopt rules necessary to implement this section. Section 504.055 provides for the expedited provision of medical benefits for certain injuries sustained by a first responder in the course and scope of employment. The proposed rules support the implementation of the Workers’ Compensation Act, Texas Labor Code Title 5, Subtitle A.

§134.155 FEDERAL MILITARY TREATMENT FACILITY DISPUTES

(a) Disputes over charges billed by a federal military treatment facility (FMTF):

(1) If an insurance carrier denies payment of a medical bill based on medical necessity, the medical necessity dispute shall be initiated under §133.308 of this title (concerning MDR of Medical Necessity Disputes):

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(A) Notwithstanding §133.308(f)(2)(B), an injured employee may be a requestor in a medical necessity dispute, and

(B) Notwithstanding §133.308(q), the insurance carrier shall pay all independent review organization fees.

(2) For all other disputes, a party may request a benefit review conference as described under Chapter 141 of this title (concerning Dispute Resolution - Benefit Review Conference).

(b) Except as provided in this section, an FMTF dispute will be conducted in accordance with the division's rules for dispute resolution in §133.308 or Chapters 140 - 147 of this title.

(c) In accordance with Labor Code §504.055 (relating to Expedited Provision of Medical Benefits for Certain Injuries Sustained by First Responders in Course and Scope of Employment) a request for an FMTF dispute that involves a first responder's request for payment of medical expenses will be accelerated by the division and given priority. A first responder shall provide notice to the division that the request involves a first responder.

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

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation