SUBCHAPTER G. Prospective and Concurrent Review of Health Care
28 TAC §134.650

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of §134.650 concerning Prospective Review of Medical Care Not Requiring Preauthorization. This repeal is adopted without changes to the proposal as published in the November 2, 2007, issue of the Texas Register (32 TexReg 7857).

2. REASONED JUSTIFICATION. Rule 134.650 provided a process to resolve disputes of medical necessity in which the insurance carrier had prospectively denied future medical care that did not require preauthorization under §134.600, concerning Preauthorization, Concurrent Review, and Voluntary Certification of Health Care. The repeal of this section is a result of the Division's adoption of §137.100, concerning Treatment Guidelines, which applies to health care provided on or after May 1, 2007.

The purpose of §134.650 was to address the pretreatment impasse between insurance carriers and health care providers regarding health care that did not require preauthorization, but was informally being denied in advance by insurance carriers on the basis of medical necessity and, in some instances, relatedness to the compensable injury. Section 134.650 provided a process to resolve that impasse.

Texas Labor Code §413.011(e) required the Division to adopt treatment guidelines. Subsequently, §137.100 adopted the *Official Disability Guidelines* –

Treatment in Workers' Compensation (ODG) as the treatment guideline for providing non-network health care to injured employees. Treatments and services provided within the ODG are presumed to be reasonable and reasonably required; therefore, preauthorization is not required for treatments provided within the ODG, except in certain circumstances.

Since adoption of the ODG, preauthorization is required when 1) the treatment or service is on the Division's preauthorization list, 2) the diagnosis is not included in the treatment guidelines, 3) the treatment or service is under study or not recommended in the ODG, or 4) the care exceeds the Division's treatment guidelines in frequency or duration. Treatment not addressed by, or that exceeds, the Division's treatment guidelines requires preauthorization, therefore, insurance carriers may not informally deny proposed health care in advance. If preauthorization is required and denied by the insurance carrier, the Division provides dispute resolution through the Independent Review Organization (IRO) process. Treatment that is preauthorized raises a health care provider's assurance of payment and denial of preauthorization can be appealed through the IRO process. The preauthorization and IRO processes provide remedies that were not previously available in situations where the §134.650 process was commonly used. With the ODG, preauthorization, and IRO processes in place, there is no longer a need for the process that was provided by §134.650.

3. HOW THE SECTION(S) WILL FUNCTION. The repeal of §134.650 removes the former process to resolve disputes of medical necessity in which the insurance carrier had prospectively denied future medical care that did not require preauthorization under §134.600. Rule 137.100, concerning Treatment Guidelines will continue in effect and the IRO process will serve to resolve medical necessity disputes.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

COMMENT: Commenters support the repeal of §134.650.

AGENCY RESPONSE: The Division agrees. With the ODG, preauthorization, and IRO processes in place, there is no longer a need for the dispute process that was provided by §134.650 for prospective denials of medical care.

COMMENT: Commenter requests that preauthorization be eliminated for physical and occupational therapy requests for treatment for diagnosis and number of visits that are in the ODG guidelines since the diagnosis and number of recommended visits are already a part of the guideline and it seems a waste of treatment time to go through this unnecessary bureaucracy.

AGENCY RESPONSE: The Division disagrees. This comment is outside the scope of this repeal. However, the Division clarifies that the Labor Code at §413.014 requires preauthorization of physical and occupational therapy services.

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

For: Insurance Council of Texas and Zenith Insurance Company.

Neither For or Against: One individual.

6. STATUTORY AUTHORITY. The repeal is adopted pursuant to Labor Code §§406.010, 406.031, 408.004, 408.021, 408.025, 413.013, 413.018, and 413.055, 402.0111, and 402.061. Section 406.010 authorizes the Commissioner to adopt rules regarding claims service. Section 406.031 holds an insurance carrier liable for compensation for an eligible employee's injury arising out of and in the course and scope of employment. Section 408.004 allows the Commissioner to require injured employees to submit to medical examinations to resolve questions regarding appropriate medical care and similar issues. Section 408.021 provides that the injured employee is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.025 authorizes the Commissioner to adopt requirements for reports and records that are required to be filed with the Division by health care providers. Section 413.013 allows the Commissioner to establish programs for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services. Section 413.018 provides that 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. Furthermore, the Commissioner may adopt rules and forms as necessary to implement §413.018. Section 413.055 allows the Commissioner to issue

medical interlocutory orders requiring carriers to be liable for specific future medical care. 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.

7. TEXT.

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§134.650. Prospective Review of Medical Care Not Requiring Preauthorization

8. CERTIFICATION. This agency certifies that the adopted section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on December 19, 2007.

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

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the repeal of §134.650, concerning Prospective Review of Medical Care Not Requiring Preauthorization, is adopted.

AND IT IS SO ORDERED.

ALBERT BETTS
COMMISSIONER OF WORKERS' COMPENSATION
TEXAS DEPARTMENT OF INSURANCE

ATTEST:

Norma Garcia
General Counsel

COMMISSIONER'S ORDER NO. DWC-07-0149