

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts §134.150 (concerning Reimbursement of Services Provided by a Federal Military Treatment Facility (FMTF)) and §134.155 (concerning FMTF disputes). The proposed rules were published on August 30, 2019, at 44 TexReg 4659. The rules are adopted with changes.

#### REASONED JUSTIFICATION

These rules are adopted as required under Senate Bill (SB) 935, 86th Legislature (2019). Senate Bill 935 establishes distinct payment and bill processing obligations to address the balance billing of injured employees, covered by a workers' compensation insurance plan, who have received treatment at an FMTF. Additionally, SB 935 directs DWC to develop a medical dispute resolution process for FMTF-related disputes.

Brooke Army Medical Center (BAMC), an FMTF in San Antonio, is a Level 1 trauma center and part of the State of Texas trauma plan. Civilians, including injured employees, may be transported to BAMC to receive emergency treatment for serious injuries. The Secretary of Defense allows BAMC to treat civilian patients in order to provide ongoing training for military doctors.

The admission of an injured employee to an FMTF may involve unique challenges for all parties. In most instances, an injured employee is neither a member of a uniformed service nor a covered beneficiary and, as such, is designated a “civilian.” When care is provided to civilians, FMTFs may pursue full reimbursement of all billed charges and may not recognize state statutory or regulatory requirements for workers’ compensation or group health insurance, such as certain billing and utilization review requirements and limits on reimbursement under medical fee schedules. When bills are not paid in full, FMTFs are required under federal law to initiate debt collection actions against a “civilian” patient. These federal debts may be sent to the U.S. Treasury and can result in garnishment of wages, tax refunds, and social security benefits, as well as adverse actions on credit reports.

Under the Texas workers’ compensation system, “an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of injury.” Texas Labor Code §408.021(a). Injured employees who receive medical services at an FMTF rely on their workers’ compensation coverage to insulate them from the cost of treatment for work-related injuries. In Texas’ workers’ compensation system, injured employees do not pay the cost of medical services related to a compensable injury. The costs for a compensable injury are the responsibility of an employer’s workers’ compensation insurance carrier. Consequently, workers’

compensation benefits are the exclusive remedy for injured employees or their legal beneficiaries.

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

Senate Bill 935 provides a definition for “federal military treatment facility” and clarifies that medical care provided in these facilities is exempt from certain workers’ compensation-specific statutory requirements. Significantly, SB 935 stipulates that, “[t]he reimbursement rates for medical services provided to an injured employee by a federal military treatment facility must be the amount charged by the facility as determined under 32 C.F.R. Part 220.” Labor Code §413.0112(b). Title 32, Part 220 of the Code of Federal Regulations concerns the collection from third party payers of reasonable charges for health care services by FMTFs.

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

In addition, SB 935 exempts subsection (a) of §408.027 which requires that health care providers submit a claim to an insurance carrier within 95 days of service and subsection (f) which requires that payments made by an insurance carrier must comply with DWC's fee guidelines if the service provided was out-of-network or must be at a contracted rate if in-network. Insurance carriers are still required to comply with the remaining medical bill processing requirements described in §408.027. Section 413.031 is exempted as it relates to medical fee disputes.

Finally, SB 935 requires that DWC adopt rules necessary to implement §413.0112, including rules establishing requirements for processing bills from FMTFs and “a separate medical dispute resolution process to resolve disputes over charges billed directly to an injured employee by [an FMTF].” DWC adopts these rules to implement SB 935.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE

DWC received two comments on the proposed rules. The Insurance Council of Texas and the Office of Injured Employee Counsel both commented in support.

A commenter suggested that §134.150(e) be amended to avoid confusion by using “extent of injury” in place of “extent.” DWC agrees with the suggestion, and the rule has been amended as suggested.

One commenter requested that §134.155 be amended to specifically provide an injured employee with an opportunity to request an expedited contested case hearing.

Currently, parties to a dispute, including injured employees, are entitled to request an expedited benefit review conference or contested case hearing under §140.3 (concerning Expedited Proceedings). This provision will also apply to FMTF disputes.

Section 134.155(b) specifically provides that Chapter 140 applies to FMTF disputes. No change was made in response to this comment.

A commenter requested that DWC clarify whether an injured employee, who may be a requestor in a medical necessity dispute, needs to request reconsideration in order to pursue independent review of an adverse medical necessity determination. In response to this comment, §134.155(a)(1) has been amended to provide that, notwithstanding Chapter 133, Subchapter D (concerning Dispute of Medical Bills), an injured employee is not required to request reconsideration prior to requesting medical dispute resolution.

#### STATUTORY AUTHORITY

The rules are adopted as authorized by Texas Labor Code §§402.0011, 402.00116, 402.021, 402.061, 408.021, and 413.0112. 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 402.021 provides that two basic goals of the Texas workers' compensation system are to ensure that each employee has access to prompt, high-quality medical care and to establish a fair and accessible dispute resolution process. 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. The adopted rules support the implementation of the Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

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

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

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

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

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

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

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

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

§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):

(A) Notwithstanding Chapter 133, Subchapter D, of this title (concerning Dispute of Medical Bills), an injured employee is not required to request reconsideration prior to requesting medical dispute resolution;

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

(C) 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 the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cassie Brown  
Commissioner  
Texas Department of Insurance, Division of Workers' Compensation

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Date