

**SUBCHAPTER D. Dispute and Audit of Bills by Insurance Carriers**  
**§§133.305, 133.307, and 133.308**

**1. INTRODUCTION.** The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts the repeal of §§133.305, 133.307, and 133.308, concerning medical dispute resolution (MDR). The repeal of these sections is adopted without changes to the proposal published in the June 23, 2006 issue of the *Texas Register* (31 TexReg 5042).

**2. REASONED JUSTIFICATION.** The repeal of these sections is necessary for the Division to adopt new §§133.305, 133.307, and 133.308, published elsewhere in this issue of the *Texas Register*. These new sections are necessary to: implement statutory provisions of HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005; address the merger of two agencies with similar purposes and processes; and improve efficiencies within the MDR process.

The adopted new sections govern dispute resolution of workers' compensation medical necessity and medical fee disputes. The adopted sections incorporate new processes, which simplify the administrative processing for stakeholders and allow for a more efficient and consistent method of processing and resolving medical disputes. The new sections apply to medical necessity and fee disputes filed on or after January 15, 2007.

**3. HOW THE SECTIONS WILL FUNCTION.** The repeal of these sections will allow the Division to adopt new §§133.305, 133.307, and 133.308, to implement pertinent portions of HB 7, address the merger of two agencies, and streamline the MDR process. These new adopted sections are also published in this edition of the *Texas Register*.

**4. SUMMARY OF COMMENTS.** The Division did not receive any comments on the proposal.

**5. STATUTORY AUTHORITY.** The repeal is adopted under Labor Code §§408.027(g), 408.0271, 408.031, 413.002, 413.020, 413.031, 413.032, 401.024, 402.00111, and 402.061. Labor Code §408.027(g) provides that §§408.027 and 408.0271 apply to health care provided through a workers' compensation health care network established under Insurance Code Chapter 1305 and that the commissioner of workers' compensation shall adopt rules as necessary to implement the provisions of §§408.027 and 408.0271. Section 408.0271 states that if health care services provided to an employee are determined by the carrier to be inappropriate, the carrier shall notify the provider in writing of the carrier's decision and demand a refund of the portion of payment on the claim received by the provider for the inappropriate services and the provider may appeal such a carrier's determination no later than the 45th day after the date of the carrier's request for the refund. Section 408.031(a) allows injured

employees to receive benefits under a workers' compensation health care network established under Insurance Code Chapter 1305. Section 413.002(d) provides that if the commissioner determines that an Independent Review Organization (IRO) is in violation of Labor Code Chapter 413, rules adopted by the commissioner under Chapter 413, applicable provisions of Labor Code Title 5, the commissioner or a delegated representative shall notify the IRO of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred. Section 413.020 provides the authority to adopt rules that enable the Division to charge a carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges. The section also provides that the Division may charge a provider who exceeds a fee or utilization guideline or a carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline a reasonable fee for review of health care treatment, fees, or charges. Section 413.031 specifies the processes for an IRO decision and appeal and states that the commissioner by rule shall specify the appropriate dispute resolution process for fee disputes in which a claimant has paid for medical services and seeks reimbursement. Section 413.032(a) provides that an IRO that conducts a review under Chapter 413 shall specify the minimum elements on which the IRO decision is based. Section 401.024 authorizes the commissioner to require by rule the use of facsimile or other electronic means to transmit information. 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.

**6. TEXT.**

**SUBCHAPTER D. Dispute and Audit of Bills for Insurance Carriers**

§133.305. Medical Dispute Resolution – General

§133.307. Medical Dispute Resolution of a Medical Fee Dispute

§133.308. Medical Dispute Resolution by Independent Review Organizations

**CERTIFICATION.** This agency certifies that the adopted sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on \_\_\_\_\_, 2006.

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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 §§133.305, 133.307, and 133.308, concerning MDR, is adopted.

**AND IT IS SO ORDERED.**

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ALBERT BETTS  
COMMISSIONER OF WORKERS' COMPENSATION  
TEXAS DEPARTMENT OF INSURANCE

ATTEST:

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Norma Garcia  
General Counsel

COMMISSIONER'S ORDER NO. DWC-06-0053