

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES
28 TAC §133.30

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §133.30, concerning Telemedicine and Telehealth Services. Section 133.30 implements Texas Labor Code §413.011, which requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications.

EXPLANATION. Amending §133.30 is necessary to conform the section to Texas Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by House Bill (HB) 2056, 87th Legislature, Regular Session (2021). Section 133.30 sets billing requirements when a health care provider provides telemedicine and telehealth services.

Currently, §133.30 has definitions for "telemedicine services" and "telehealth services" but does not define "teledentistry dental service." Section 133.30 requires health care providers to bill for "telemedicine services" and "telehealth services" using the applicable Medicare payment policies and requirements of Chapter 133 of this title. DWC proposes to add a definition for "teledentistry services" and to add Medicaid payment policies to the list of applicable payment policies that health care providers must use to bill for telemedicine, telehealth, and teledentistry services.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable

fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Occupations Code Chapter 111 and are providing expanded access to services and care for injured employees in Texas.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §413.011 because they do not impose requirements beyond those in the statute. Labor Code §413.011 requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimum modifications. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting. As a result, the cost associated with adopting those reimbursement methodologies, models, and values or weights does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because health care providers will continue to use the billing forms and reporting processes they currently use. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045 because proposed §133.30 is necessary to implement legislation. The proposed rule implements Labor Code §413.011 and conforms to Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by HB 2056, 87th Legislature, Regular Session (2021).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments are necessary to implement legislation and conform the amendments to Occupations Code Chapter 111 made by HB 2056, 87th Legislature, Regular Session (2021). The amendments do not impose additional costs beyond those the statutes require.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on July 24, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. DWC proposes §133.30 under Labor Code §§402.00111, 402.00116, 402.061, 408.027, and 413.011; Insurance Code §§1305.003 and 1305.153; and Occupations Code §111.001.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Workers' Compensation Act.

Labor Code §408.027 addresses payment of health care providers. Labor Code §408.027(g) provides that, despite any other provision in Title 5, Subtitle A, Labor Code or Insurance Code Chapter 1305, §408.027 applies to health care provided through a workers' compensation health care network established under Chapter 1305. Subsection (g) also requires the commissioner to adopt rules as necessary to implement §408.027.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for

Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting.

Insurance Code §1305.003(b) states that Chapter 1305 prevails if there is a conflict between the Workers' Compensation Act and Chapter 1305 regarding:

- the provision of medical benefits for injured employees;
- the establishment and regulation of fees for medical treatments and services;
- the time frames for payment of medical bills;
- the operation and regulation of workers' compensation health care networks;
- the regulation of providers who contract with those networks; or
- the resolution of disputes about medical benefits provided through those networks.

Insurance Code §1305.153(a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group of providers.

Insurance Code §1305.153(d) states that, subject to Insurance Code §1305.153(a), billing by, and reimbursement to, contracted and out-of-network providers are subject to the requirements of the Workers' Compensation Act and DWC's applicable rules, consistent with Chapter 1305. The paragraph further states that this subsection may not be construed to require application of a rule on reimbursement if that application would negate the reimbursement amounts the network negotiated.

Occupations Code §111.001(2-a) defines "teledentistry dental service" as a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

CROSS-REFERENCE TO STATUTE. Section 133.30 implements Labor Code §413.011, enacted by HB 752, 73rd Legislature, Regular Session (1993); amended by HB 2600, 77th Legislature, Regular Session (2001); Senate Bill 1572, 78th Legislature, Regular Session (2003); HB 7, 79th Legislature, Regular Session (2005); HB 2018, 79th Legislature, Regular Session (2005); HB 473, 80th Legislature, Regular Session (2007).

TEXT.

§133.30. Telemedicine, ~~and~~ Telehealth, and Teledentistry Services.

(a) This section applies to medical billing and reimbursement for telemedicine, ~~and~~ telehealth, and teledentistry services provided on or after September 1, 2021 ~~[2018]~~, to injured employees in the Texas workers' compensation system, including injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305.

(b) For the purposes of this section:

(1) "telemedicine services" means telemedicine medical services as defined in Occupations Code §111.001; ~~and~~

(2) "telehealth services" means telehealth services as defined in Occupations Code §111.001; and;

(3) "teledentistry services" means teledentistry services as defined in Occupations Code §111.001.

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, ~~and~~ telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services); ~~and~~

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline); and

(3) ~~(2)~~ provisions of Chapter 133 of this title.

(d) A health care provider may bill and be reimbursed for telemedicine, ~~[or]~~ telehealth, or teledentistry services regardless of where the injured employee is located at the time the telemedicine, ~~[or]~~ telehealth, or teledentistry services are provided.

(e) The provisions of this section take precedence over any conflicting provisions adopted or used ~~[utilized]~~ by:

(1) the Centers for Medicare and Medicaid Services in administering the Medicare program; and[-]

(2) the Texas Health and Human Services Commission in administering the Texas Medicaid Program.

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

Issued in Austin, Texas, on June 7, 2023.



Kara Mace
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TDI, Division of Workers' Compensation