

SUBCHAPTER A. COVID-19 EMERGENCY RULES 28 TAC §167.1

INTRODUCTION. The Commissioner of Workers' Compensation adopts on an emergency basis new 28 Texas Administrative Code §167.1, relating to telemedicine and telehealth services, effective immediately. The emergency adoption is necessary to ensure enhanced access to telemedicine and telehealth services in response to the COVID-19 disaster declaration.

REASONED JUSTIFICATION. On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to the spread of COVID-19. As the governor noted, it is critical to take steps to prepare for, respond to, and mitigate the spread of COVID-19. Telemedicine and telehealth services have emerged as a vital tool in combating the spread of infectious diseases because they limit physical contact between a patient, their health care provider, and other patients. Limiting person-to-person contact is key to slowing the spread of this virus. It is also critical to preserve health care provider capacity during the state's response to COVID-19. Health care providers' exposure to the virus must be reduced to the greatest extent possible. Telemedicine and telehealth could allow those who become mildly ill to continue treatment plans in some circumstances.

Texas workers' compensation allows for billing and reimbursement of certain telemedicine and telehealth services when they are available as an alternative to office-based health care. Physicians licensed in Texas provide telemedicine services. Health care professionals other than physicians, as defined in Occupations Code §111.001, provide telehealth services. 28 TAC §134.203 sets the reimbursement rates for telemedicine and

telehealth services for non-network claims. For certified network claims and claims receiving telemedicine and telehealth services under Labor Code §504.053(b)(2), reimbursement rates are determined by network contracts. 28 TAC §133.30 provides health care provider procedures for billing and reimbursement of certain telemedicine and telehealth services in the Texas workers' compensation system. Health care providers must bill for services according to Medicare payment policies and provisions in Chapters 133 and 134. Medicare policies adopted by the Division of Workers' Compensation (DWC) do not allow or pay for a full array of physical medicine and rehabilitation services when delivered through telemedicine or telehealth. Medicare also does not currently reimburse for asynchronous telemedicine services.

This emergency rule builds on the existing telemedicine and telehealth rules by creating an exception to current CMS distant site practitioner requirements. This rule allows health care providers licensed to perform physical medicine and rehabilitation services, including physical therapists, occupational therapists, and speech pathologists to bill and be reimbursed for services currently allowed under CMS telemedicine and telehealth billing codes.

Health care providers must bill for telemedicine or telehealth services using the same billing, coding, reporting, and documentation requirements used for in-person services and include a place of service code "02 – telehealth" on the bill. Services will be reimbursed at DWC's fee schedule rate or network contracted rate, whether provided in person or through telemedicine or telehealth. An originating site facility fee is not eligible for reimbursement.

An emergency rule is necessary.

Under Government Code §§2001.034 and 2001.036(a)(2), the new rule is adopted on an emergency basis, effective immediately. An imminent peril to public health, safety, or welfare requires adoption on fewer than 30 days' notice. As noted in Governor Abbott's disaster declaration, COVID-19 poses an imminent threat to public health, safety, and welfare. COVID-19 is spreading, and it is vital to prepare for, respond to, and mitigate the spread of the virus. The new rule is adopted to eliminate barriers to the expanded use of telemedicine and telehealth, which is widely recognized as an effective tool to encourage social distancing and minimize daily trips to combat the spread of COVID-19. Providing this real-time treatment will allow injured employees to continue to receive the necessary care they need to return to work while preventing in-person contact with health care providers.

Therefore, it is vital to public health, safety, and welfare that the new rule goes into effect immediately.

Under Government Code §2001.034, this emergency rule may not be in effect for more than 120 days but may be extended 60 days.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Labor Code §§402.061, 402.00111, and 413.011; Insurance Code §§1305.003 and 1305.153; and Government Code §§2001.034 and 2001.036(a)(2).

Labor Code §402.061 allows the commissioner of workers' compensation to adopt rules as necessary to implement the powers and duties of DWC under the Labor Code and other laws of this state.

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

Labor Code §413.011 authorizes the commissioner to adopt reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications as necessary to meet occupational injury requirements.

Insurance Code §1305.003 provides that the Health Care Network Act does not affect the authority of DWC to exercise powers granted under Labor Code Title 5 when the action taken does not conflict with the Act.

Insurance Code §1305.153 provides that contracted and out-of-network health care providers are subject to billing and reimbursement requirements outlined in Labor Code Title 5 and rules adopted by the commissioner of workers' compensation.

Government Code §2001.034 provides that a state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state or on a stated date less than 20 days after the filing date.

TEXT.

**SUBCHAPTER A. COVID-19 EMERGENCY RULES
28 TAC §167.1**

**§167.1. Physical Medicine and Rehabilitation Services - Telemedicine and
Telehealth Billing Procedures.**

(a) This section applies to physical medicine and rehabilitation services provided to injured employees on or after April 13, 2020, through telemedicine or telehealth services conducted by synchronous audio and video interaction between the health care provider and the injured employee in another location, including services provided under Insurance Code Chapter 1305 or Labor Code §504.053(b)(2).

(b) The services and procedures provided under this section are subject to the billing and reimbursement requirements of §133.30(b), (c), (d), and (e) of this title (relating to Telemedicine and Telehealth Services). An originating site facility fee is not eligible for reimbursement under this section.

(c) A health care provider licensed to perform physical medicine and rehabilitation services may bill and be reimbursed for these telemedicine or telehealth services using the applicable Medicare codes. Medicare's distant site practitioner requirements do not apply.

(d) Billing for services identified in this section must comply with the same billing, coding, reporting, and documentation requirements that apply under Chapters 133 and 134 of this title when these services are provided in person. The bill must include a place of service code "02 – telehealth."

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on April 13, 2020.



Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation

The commissioner adopts new §167.1 on an emergency basis, effective immediately.



Cassie Brown
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2020-6320