

**SUBCHAPTER D. DISPUTE OF MEDICAL BILLS  
28 TAC §133.307**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) proposes to amend 28 TAC §133.307 (concerning MDR of Fee Disputes) to allow health care providers and pharmacy processing agents to electronically submit requests for medical fee dispute resolution (MFDR).

**EXPLANATION.** Section 133.307 applies to a request to DWC for MFDR as authorized by the Texas Workers' Compensation Act. It was last amended in 2012. Currently, requestors can submit MFDR requests by mail and hand-delivery. Injured employees may also submit requests by fax. DWC proposes to amend §133.307 to allow electronic transmission in the form and manner described in 28 TAC §102.5 (concerning General Rules for Written Communications to and from the Commission) to increase convenience and reduce costs associated with fee disputes. As provided by §102.5(h), "Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange or any other similar method and does not include telephonic communication."

Under these amendments, electronic filing will be accepted through fax, secure file transfer protocol (SFTP), or encrypted email. About 70 percent of the requests DWC

receives by mail for MFDR are submitted by 15 entities. Moving those requests to SFTP should significantly reduce the time and costs spent managing paper mail.

Under the federal Health Insurance Portability and Accountability Act (HIPAA), health care providers are required to maintain the confidentiality of protected health information. 45 CFR §§160.103, 164.102-164.318, 164.500-164.534; *see, e.g.*, 22 TAC §§165.2 and 322.4. Health care providers are required to follow requirements or guidance from their licensing boards regarding protected health information. Health care providers can protect the security and privacy of injured employee's confidential information by using secure or encrypted email when submitting requests.

The proposed amendments to subsection (a) update the description of the rule's applicability and provide that these amendments will go into effect on February 1, 2021. This is a nonsubstantive change. The amendments retain the general rule that a dispute resolution request must be resolved in accordance with the statutes and rules in effect at the time the request was filed. The proposed amendments also delete specific reference to filings before the last amendment of this rule in 2012. This deletion does not change the effect that a dispute resolution request filed before June 1, 2012, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. Similarly,

requests filed between June 1, 2012, and February 1, 2021, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. A proposed subsection (a)(4) provides that these amendments will go into effect on February 1, 2021.

Proposed amendments to subsection (c)(1) provide that a request will be filed on the date DWC receives the request. Currently, a request is determined to have been received when the MFDR Section receives the request. This change will remove potential uncertainties and delays if a request received by mail is not promptly forwarded from DWC's mailroom to the MFDR Section. This change also will establish a uniform filing date, regardless of whether a request is submitted electronically or by mail or personal delivery.

Proposed amendments to subsections (c), (c)(2)(J)-(K), (d)(2)(B)-(D), and (d)(2)(H)-(I) delete requirements for filing paper copies. Proposed amendments to subsections (c)(2) and (4) and (d)(1) provide for electronic transmission of medical bills in a form and manner as described in 28 TAC §133.10(b) (concerning Required Billing Forms/Formats) or 28 TAC §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing).

Proposed amendments to subsection (c)(2)(K) clarify that an MFDR request filed by a health care provider or pharmacy processing agent must include each explanation of

benefits or e-remittance related to a dispute and that these are collectively referred to in this rule as "EOBs."

Proposed amendments to subsection (c)(3) remove repetitive language and divide the existing language into subparagraphs.

In addition, the proposed amendments to §133.307 include nonsubstantive editorial and formatting changes to conform to DWC's current style and to improve the rule's clarity.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Matt Zurek, deputy commissioner of Health & Safety, 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 amendments, 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, as self-insurers, will benefit from the ease and reduced cost provided by the proposed amendments.

Mr. Zurek 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, Mr. Zurek expects that administering the proposed amendments will have the public benefit of providing a more efficient filing process and will take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Mr. Zurek expects that the proposed amendments will not increase the cost to comply with the Texas Workers' Compensation Act because it does not impose requirements beyond those in the statute. Electronic filing is offered as an additional alternative and will not be required. Also, electronic filing should result in reduced costs to system participants.

**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 as the proposed amendments should reduce costs for system participants.

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 the proposed amendments do not impose a possible cost on regulated persons. In addition, the proposed amendments will reduce the burden or responsibilities imposed on system participants.

**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 not expand, limit, or repeal 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.

**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 p.m., Central time, on Monday, November 9, 2020. Send your comments to RuleComments@tdi.texas.gov or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period and separate from any comments, to RuleComments@tdi.texas.gov; or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers'

Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m. Central time, on Monday, October 2, 2020. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** DWC proposes these amendments to §133.307 under Labor Code §§402.00128, 402.021, 402.061, and 413.031.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings, take testimony directly or by deposition or interrogatory, and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021 provides that it is a basic goal of the Texas workers' compensation system that each injured employee shall have access to a fair and accessible dispute resolution process and that it is the Legislature's intent that DWC take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement the Labor Code Title 5, Subtitle A.

Section 413.031 provides for medical dispute resolution and mandates that the commissioner adopt rules to notify claimants of their rights and to specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. This section also authorizes the commissioner to prescribe by rule an alternative dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

**CROSS-REFERENCE TO STATUTE.** Section 133.307 implements the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A.

**TEXT.**

**§133.307. Medical [MDR or] Fee Dispute[s] Resolution.**

(a) Applicability. [The applicability of this section is as follows.]

[¶1] This section applies to a request to the division for medical fee dispute resolution (MFDR) as authorized by the Texas Workers' Compensation Act [~~that is filed on or after June 1, 2012~~].

(1) Dispute resolution requests must [~~filed prior to June 1, 2012, shall~~] be resolved in accordance with the statutes and rules in effect at the time the request was filed.

(2)-(3) (No change.)

(4) The 2020 amendments regarding electronic submission of dispute requests are effective February 1, 2021.

(b) (No change.)

(c) Requests. Requests for MFDR must [~~shall~~] be legible and filed in the form and manner prescribed by the division. [~~Requestors shall file two legible copies of the request with the division.~~]

(1) Timeliness. A requestor must [~~shall~~] timely file the request with the division [~~s MFDR Section~~] or waive the right to MFDR. The division will [~~shall~~] deem a request to be filed on the date the division [~~MFDR Section~~] receives the request. A decision by the division [~~MFDR Section~~] that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A)-(B) (No change).

(2) Health Care Provider or Pharmacy Processing Agent Request. [The requestor shall provide the following information and records with the request for MFDR in the form and manner prescribed by the division.] The requestor [provider] must send [shall file] the request to [with] the division [MFDR Section] in the form and manner prescribed by the division by any mail service, [or] personal delivery, or electronic transmission as described in §102.5 of this title. The request must [shall] include:

- (A)-(I) (No change.)
- (J) a [paper] copy of all medical bills[(\$)] related to the dispute, as described in §133.10 of this chapter (concerning Required Billing Forms/Formats) or §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing) as originally submitted to the insurance carrier in accordance with this chapter, and a [paper] copy of all medical bills[(\$)] submitted to the insurance carrier for an appeal in accordance with §133.250 of this chapter (concerning Reconsideration for Payment of [relating to General] Medical Bills [Provisions]);
- (K) [a paper copy of] each explanation of benefits or e-remittance (collectively "EOB") related to the dispute as originally submitted to the health care provider in accordance with this chapter or, if no EOB was received, convincing

documentation providing evidence of insurance carrier receipt of the request for an EOB;

(L)-(Q) (No change.)

(3) Subclaimant Dispute Request. ~~[The requestor shall provide the appropriate information with the request that is consistent with the provisions of §140.6 or §140.8 of this title.]~~

(A) A request made by a subclaimant under Labor Code §409.009 (relating to Subclaims) must ~~[shall]~~ comply with §140.6 of this title (concerning Subclaimant Status: Establishment, Rights, and Procedures) and submit the required documents to the ~~d[D]ivision [required thereunder]~~.

(B) A request made by a subclaimant under Labor Code §409.0091 (relating to Reimbursement Procedures for Certain Entities) must ~~[shall]~~ comply with the document requirements of §140.8 of this title (concerning Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091) and submit the required documents to the ~~d[D]ivision [required thereunder]~~.

(4) Injured Employee Dispute Request. An injured employee who has paid for health care may request MFDR of a refund or reimbursement request that has been denied. The injured employee ~~[s dispute request]~~ must ~~[shall]~~ send the request ~~[be sent]~~ to the division ~~[MFDR Section]~~ in the form and manner prescribed by the division by

mail service, personal delivery, or electronic transmission as described in §102.5 of this title [facsimile] and must [shall] include:

(A)-(l) (No change.)

(5) (No change.)

(d) Responses. Responses to a request for MFDR must [shall] be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.

(1) Timeliness. The response will be deemed timely if received by the division through [via] mail service, personal delivery, or electronic transmission as described in §102.5 of this title, [facsimile] within 14 calendar days after the date the respondent received the copy of the requestor's dispute. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

(2) Response. On [Upon] receipt of the request, the respondent must [shall] provide any missing information not provided by the requestor and known to the respondent. The respondent must [shall] also provide the following information and records:

(A) the name, address, and contact information of the respondent;

(B) [a paper copy of] all initial and appeal EOBS related to the dispute, as originally submitted to the health care provider in accordance with this chapter, related to the health care in dispute not submitted by the requestor or a statement certifying that the respondent did not receive the health care provider's disputed billing before [~~prior to~~] the dispute request;

(C) [a paper copy of] all medical bill(s) related to the dispute, submitted in accordance with this chapter if different from that originally submitted to the insurance carrier for reimbursement;

(D) [a copy of] any pertinent medical records or other documents relevant to the fee dispute not already provided by the requestor;

(E)-(G) (No change.)

(H) If the medical fee dispute involves compensability, extent of injury, or liability, the insurance carrier must [~~shall~~] attach [a copy of] any related Plain Language Notice in accordance with §124.2 of this title (concerning Insurance [~~relating to~~] Carrier Reporting and Notification Requirements).

(I) If the medical fee dispute involves medical necessity issues, the insurance carrier must [~~shall~~] attach [a copy of] documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning [~~relating to~~] General Standards of Utilization Review).

(e)-(h) (No change.)

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

Issued in Austin, Texas, on September 22, 2020.



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