

**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, telehealth, and teledentistry services. Section 133.30 implements Texas Labor Code §413.011. The DWC medical advisor recommends the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

**EXPLANATION.** The amendments to §133.30 allow a treating doctor to use telemedicine or telehealth to certify maximum medical improvement (MMI) under §§130.1 and 130.2 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment, under the following conditions. The injured employee must have been examined by the treating doctor for the condition in question at least once before the examination to certify MMI. The injured employee must consent to the examination to certify MMI by telemedicine or telehealth. The condition in question must qualify as a minor injury, such as §130.2(a)(2) of this title contemplates, that requires no additional treatment, and has resulted in no impairment. A minor injury does not require application of the AMA Guides, so under §130.1 of this title, the treating doctor is allowed to certify MMI with no impairment.

The amendments specify that such an evaluation must be billed in compliance with the MMI billing requirements in §134.250 of this title, concerning maximum medical improvement evaluations and impairment rating examinations by treating doctors. The treating doctor's billing and reimbursement are the same for an in-person MMI evaluation and a telemedicine MMI evaluation. They do not expand the scope of practice or authorize new treatments. Health care providers should refer to their licensing boards' rules for

practicing telemedicine and telehealth. The amendments do not allow a doctor to assign an impairment rating by a telemedicine or telehealth examination. The amendments are proposed to be effective for examinations conducted by treating doctors to certify MMI by telemedicine or telehealth conducted on or after January 1, 2025.

Amending §133.30 is necessary to ensure better and more convenient access to evaluations necessary to certify MMI, to ensure that more required MMI evaluations are conducted on time, and to clarify how doctors must bill and be reimbursed for MMI evaluations conducted by telemedicine or telehealth. For example, when a treating doctor treats and releases an injured employee for a minor injury, such as a scrape or a bruise, and does not anticipate that the injured employee will need additional treatment, the amendments allow the treating doctor to use telemedicine or telehealth to determine that the injured employee has reached MMI but has no permanent impairment. Treating doctors can certify MMI under current rules, and the amendments just allow them to do so by telemedicine or telehealth under specific conditions. In addition, the number of disputes from treating doctor certifications of MMI under current rules is very low. Based on medical billing data reported to DWC, treating doctors submitted over 36,000 bills in calendar year 2023 for these MMI examinations. Over 34,000 claims were associated with those bills containing CPT code 99455, and of those claims, only 259 were associated with an MMI or impairment rating dispute.

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. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work. Amending §133.30 to allow a treating doctor to

use telemedicine or telehealth to certify MMI and to ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 meets the requirements in Labor Code §413.011.

DWC invited public comments on an informal draft posted on DWC's website in July 2024 and revised the text to be more specific about the conditions under which a treating doctor may perform a telemedicine or telehealth examination to certify MMI.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Health and 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 section, 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 and state government entities are only involved in enforcing or complying with the proposed amendments when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed amendments.

Deputy Commissioner 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, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefit of ensuring better and more convenient access to evaluations necessary to certify MMI. Injured employees and health care providers will benefit from being able to attend those MMI evaluations remotely and being able to schedule them at less disruptive times, without having to

travel. The proposed amendments will also have the public benefit of ensuring that DWC's rules conform to Labor Code §413.011 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner 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 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. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and enhance a timely and appropriate return to work. As a result, any cost associated with amending §133.30 to allow a treating doctor to use telemedicine or telehealth to certify MMI and ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250 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 the proposed amendments allow a treating doctor to use telemedicine or telehealth to certify MMI and ensure that billing and reimbursement for that evaluation are consistent with the billing requirements in §134.250. They do not change the people the rule affects or impose additional costs. 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. As a result, no additional rule amendments are required under Government Code §2001.0045.

**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, 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.

DWC made these determinations because the proposed rule enhances efficiency and access to MMI evaluations by allowing a treating doctor to use telemedicine or telehealth to evaluate whether an injured employee has reached MMI. The proposed amendments do not change the people the rule affects or impose additional costs.

**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 January 13, 2025. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10 a.m., Central time, on January 8, 2025. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at [www.tdi.texas.gov/alert/event/index.html](http://www.tdi.texas.gov/alert/event/index.html).

## **SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES.**

### **28 TAC §133.30.**

**STATUTORY AUTHORITY.** DWC proposes §133.30 under Labor Code §§413.011, 413.0511, 402.00111, 402.00116, and 402.061.

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. It also requires that the commissioner's adopted medical policies or guidelines be designed to ensure the quality of medical care and achieve medical cost control, and to enhance a timely and appropriate return to work.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; review compliance with those guidelines; regulate or perform other acts related to medical benefits as required by the commissioner; and determine minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

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 Texas Workers' Compensation Act.

**CROSS-REFERENCE TO STATUTE.** Section 133.30 implements Labor Code §413.011, enacted by House Bill 752, 73rd Legislature, Regular Session (1993), and last amended in 2007.

**TEXT.**

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

(a) (No change.)

(b) For the purposes of this section:

(1) "Telemedicine [~~"telemedicine~~] services" means telemedicine medical services as defined in Occupations Code §111.001.~~;~~

(A) The term includes an examination by a treating doctor to certify maximum medical improvement (MMI), conducted on or after January 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telemedicine; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(2) "Telehealth [~~"telehealth~~] services" means telehealth services as defined in Occupations Code §111.001.~~;~~~~and~~

(A) The term includes an examination by a treating doctor to certify MMI, conducted on or after January 1, 2025, under §§130.1 and 130.2 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of

Permanent Impairment) to determine whether an injured employee has reached MMI, that meets the following conditions:

(i) the injured employee has been examined by the treating doctor for the condition in question at least once before the examination to certify MMI;

(ii) the injured employee consents to the examination to certify MMI by telehealth; and

(iii) the condition in question qualifies as a minor injury, such as §130.2(a)(2) of this title contemplates, requires no additional treatment, and has resulted in no impairment.

(B) The term does not include an examination to assign an impairment rating conducted under §130.1 of this title.

(3) "Teledentistry [~~"teledentistry]~~ services" means teledentistry dental 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, 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);

(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) MMI billing requirements in §134.250 of this title (relating to Maximum Medical Improvement Evaluations and Impairment Rating Examinations by Treating Doctors); and

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

(d) (No change.)

(e) (No change.)

**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 November 20, 2024.



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