

Subchapter G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH
CARE
28 TAC §134.600

1. INTRODUCTION. The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts on an emergency basis amendments to §134.600, concerning preauthorization, concurrent review, and voluntary certification of health care. The amendments to §134.600 are necessary to implement portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The amendments will permit expedited compliance with statutory changes to the Texas Labor Code as a result of changes to §413.014 and new §408.0042. The changes affected by HB 7 include revisions to Texas Labor Code §413.014(c) requiring health care providers to seek preauthorization and concurrent review of physical and occupational therapy, and creation of new Texas Labor Code §408.0042(d) which requires health care providers to seek preauthorization of treatments for any injury or diagnosis not accepted as compensable by the insurance carrier following a requested examination by the treating doctor. This section does not apply to networks certified under Insurance Code Chapter 1305 or political subdivisions with contractual relationships under Labor Code §504.053(b)(2). Subsection (f)(1) is amended to address Labor Code §408.0042(d). Subsection (h) is amended to add physical and occupational therapy services to the list of non-emergency health care requiring preauthorization. Physical and occupational therapy services will

require preauthorization when rendered on or after December 1, 2005. The amendments provide that preauthorization is not required for the first two physical or occupational therapy visits following the evaluation when certain conditions are met. These provisions have been included to promote the timely initiation of rehabilitation services following injury or surgery. Postponement of medically necessary rehabilitative care can lead to delays in recovery, suboptimal stay-at-work and return-to-work outcomes, and additional claim costs. Subsection (i) is amended to include physical and occupational therapy services in the list of health care requiring concurrent review. Throughout the section, the term Commission has been changed to either Division or Commissioner, as appropriate.

Pursuant to Sec. 8.005(e), HB 7, the Commissioner may adopt emergency rules and is not required to make the finding described by Government Code §2001.034(a).

2. STATUTORY AUTHORITY. The section is adopted on an emergency basis under the Labor Code §§413.014, 408.0042, 402.061, as well as Government Code §2001.034. Section 413.014(c) requires health care providers to seek preauthorization and concurrent review of physical and occupational therapy. Section 408.0042(d) requires preauthorization of treatments for any injury or diagnosis not accepted as compensable by the insurance carrier following a requested examination by the treating doctor. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce

the Texas Workers' Compensation Act. Government Code §2001.034 provides for the adoption of administrative rules on an emergency basis without notice and comment. In addition, Sec. 8.005(e) of HB 7 gives the Commissioner the authority to adopt emergency rules utilizing the procedures established in Government Code §2001.034 without making the finding described in subsection (a).

3. TEXT.

§134.600. Preauthorization, Concurrent Review, and Voluntary Certification of Health Care.

(a) The following words and terms, used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Final adjudication: the Commissioner [~~commission~~] has issued a final decision or order that is no longer subject to appeal by either party;

(4) - (6) (No change.)

(b) The carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (h) or (i) of this section, only when the following situations occur:

(A) - (C) (No change.)

(D) when ordered by the Commissioner [~~commission~~]; or

(2) per subsection (j) of this section, when voluntary certification was requested and payment agreed upon prior to providing the health care, for any health care not listed in subsection (h) of this section.

(c) - (e) (No change.)

(f) The carrier shall:

(1) approve or deny requests for preauthorization or concurrent review based solely upon the reasonable and necessary medical health care required to treat the injury, except as provided by Texas Labor Code §408.0042(d), regardless of:

(A) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(B) the carrier's liability for the injury; or

(C) the fact that the employee has reached maximum medical improvement;

(2) - (8) (No change.)

(g) (No change.)

(h) The non-emergency health care requiring preauthorization includes:

(1) - (8) (No change.)

(9) work hardening and work conditioning services provided in a facility that has not been approved for exemption by the Division [~~commission~~]. A comprehensive occupational rehabilitation program or a general occupational rehabilitation program constitutes work hardening or work conditioning,

respectively, for purposes of this section. All work hardening or work conditioning programs initiated on or after January 1, 2004 and prior to March 15, 2004, are subject to preauthorization and concurrent review. (For Division [~~commission~~] exemption approval for programs initiated on or after March 15, 2004, facilities must submit documentation of current program accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) to the Division [~~commission~~]. Division [~~Commission~~] exempted programs and non-exempted programs are subject to Division [~~commission~~] verification and audit, and upon request shall submit specified information in the form and manner prescribed by the Division [~~commission~~].);

(10) - (12) (No change.)

(13) chemical dependency or weight loss programs; [~~and~~]

(14) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care; and

(15) physical and occupational therapy services rendered on or after December 1, 2005.

(A) Physical and occupational therapy services are those services listed in the Healthcare Common Procedure Coding System (HCPCS) Level I code range for Physical Medicine and Rehabilitation, but limited to:

(i) Modalities, both supervised and constant attendance;

(ii) Therapeutic procedures, excluding work hardening and work conditioning; and

(iii) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code.

(B) Preauthorization is not required for the first two visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

(i) the date of injury, or

(ii) a surgical intervention previously approved by the insurance carrier.

(i) The health care requiring concurrent review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) work hardening or work conditioning services;

(3) investigational or experimental services or use of devices;

(4) rehabilitation programs;

(5) DME in excess of \$500 per item and TENS usage;

(6) nursing home, convalescent, residential, and home health care services; ~~and~~

(7) chemical dependency or weight loss programs; ~~and [-]~~

(8) physical and occupational therapy services.

(j) (No change.)

(k) An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims, by the Division [~~commission~~] in accordance with §408.0231(b)(4) of the Texas Labor Code and other sections of this title.

(l) The carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent review approval/denial decisions, and appeals, if any. The carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the Division [~~commission~~], the carrier shall submit such information in the form and manner prescribed by the Division [~~commission~~].

(m) (No change.)

~~[(n) The effective date of this section is March 15, 2004. Requests for preauthorization submitted prior to March 15, 2004 shall be subject to the rule in effect at the time the request was submitted.]~~

4. CERTIFICATION. This agency hereby certifies that this emergency adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

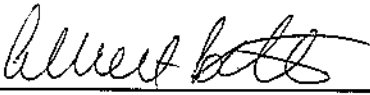
Issued at Austin, Texas, on Nov 2, 2005.



A. Kaylene Ray
Director of Legal Services

IT IS THEREFORE THE ORDER of the Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, that amendments to §134.600, concerning preauthorization, concurrent review, and voluntary certification of health care, are adopted on an emergency basis.

AND IT IS SO ORDERED.



ALBERT BETTS
COMMISSIONER OF WORKERS'
COMPENSATION
TEXAS DEPARTMENT OF INSURANCE

ATTEST:



A. Kaylene Ray
Director of Legal Services

COMMISSIONER'S ORDER NO. _____