

**Texas Department of Insurance, Division of Workers' Compensation
Informal Draft Rules Summary**

TITLE 28. INSURANCE

**PART 2. TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION**

CHAPTER 127: DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS

**SUBCHAPTER A: DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS
AMEND: §§127.1, 127.5, 127.10, and 127.20**

**SUBCHAPTER B: DESIGNATED DOCTOR CERTIFICATION, RECERTIFICATION, AND
QUALIFICATIONS**

NEW: §§127.100, 127.110, 127.120, 127.130, and 127.140

SUBCHAPTER C: DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES

NEW: §§127.200, 127.210, and 127.220

CHAPTER 130: IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

SUBCHAPTER A: IMPAIRMENT INCOME BENEFITS

AMEND: §130.6

CHAPTER 180: MONITORING AND ENFORCEMENT

SUBCHAPTER B: MEDICAL BENEFIT REGULATION

AMEND: §180.23, REPEAL: §180.21

Proposed Rules

- §127.1 – Requesting Designated Doctor Examinations (pp. 1-7)
- §127.5 – Scheduling Designated Doctor Appointments (pp. 7-9)
- §127.10 – General Procedures for Designated Doctor Examinations (pp. 9-16)
- §127.20 – Requesting a Letter of Clarification Regarding Designated Doctor Reports (pp. 16-18)

- §127.100 – Designated Doctor Certification (New) (pp. 18-22)
- §127.110 – Designated Doctor Recertification (New) (pp. 22-28)
- §127.120 - Exception to Certification as Designated Doctor for Out-of-State Doctors (New) (pg. 28)
- §127.130 – Qualification Standards for Designated Doctor Examinations (New) (pp. 28-33)
- §127.140 – Disqualifying Associations (New) (pp. 34-35)
- §127.200 – Duties of a Designated Doctor (New) (pp. 35-37)
- §127.210 – Designated Doctor Administrative Violations (New) (pp. 38-39)
- §127.220 – Designated Doctor Reports (New) (pp. 39-42)
- §130.6 – Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings (pp. 43-46)
- §180.23 – Commission Required Training for Doctors (pp. 47-51)
- §180.21 – Division Designated Doctor List (Repeal) (pp. 51-59)

Purpose

The primary purpose of these informal draft rules is to implement the statutory changes made in House Bill 2605 that affect designated doctor scheduling, certification, and qualifications. Additionally, the proposed rules seek to implement other changes necessary for the efficient administration of the designated doctor system and to clarify established Division policies not currently expressed in rule.

Highlights of the Proposed Rules

Amended §127.1

- Requires requestors to identify the workers' compensation health care network certified under Chapter 1305, Insurance Code or health care plan under Labor Code §504.053(b)(2) through which the injured employee is receiving medical benefits, if applicable.
- Requires requestors to submit a copy of their designated doctor examination request to the division and a copy of the request to each other party listed in §127.1(a). *agree*
- Specifies that the Division may deny a request for a designated doctor examination if the insurance carrier has denied the compensability of the claim and reported that denial to the Division in accordance with 28 Texas Administrative Code §124.2 (relating to Carrier Reporting and Notification Requirements), and the requested examination would not help a finder of fact resolve an element of that dispute.
- Specifies that the Division may deny a request for a designated doctor examination if the insurance carrier has denied liability for the claim under Labor Code §§409.002 or 409.004 and reported that denial to the Division in accordance with 28 Texas Administrative Code §124.2.
- Clarifies that parties may not dispute a designated doctor examination request or any information on the request until the division has either approved or denied the request.
- Makes other changes necessary to conform to statutory changes.

Amended §127.5

- Provides that the Division shall use the same designated doctor for subsequent examinations on a claim unless the division has authorized or required the designated doctor to stop providing services on the claim in accordance with §127.130.
- Clarifies that the designated doctor and the injured employees must agree to reschedule a designated doctor examination and prohibits rescheduled examinations from occurring before the schedule date of the original examination.
- Requires the designated doctor to notify the injured employee's treating doctor of a rescheduled examination.
- Requires designated doctors to notify the division no later than 21 days after the originally schedule examination if the examination could not be rescheduled to occur on a date no later than 21 days after the originally scheduled examination.
- Makes other changes necessary to conform to other rule amendments in these informal draft rules.

Amended §127.10

- Requires designated doctors, if they do not receive the medical records for an examination, to report this violation to the Division within 24 hours of not receiving the records.
- Provides that the Division, once notified, will take action necessary to ensure that the designated doctor receives the records and the examination takes place promptly afterward.
- Provides that designated doctors must review all medical records and analyses provided by the insurance carrier and injured employee's treating doctor before examining the injured employees.
- Requires designated doctors to review medical records provided by the injured employee.
- Permits designated doctors to request division approval to exceed the 15 working day deadline for submitting their reports if the doctor referred an injured employee for additional testing or to another health care provider.
- Requires designated doctors to maintain documentation of the agreement with an injured employee to reschedule an examination and documentation that doctor notified the injured employee's treating doctor of this rescheduling.
- Requires designated doctors to maintain documentation of the name(s) and credentials of any ancillary health care providers who assisted the designated doctor in performing any element of the examination under the designated doctor's supervision.
- Makes other changes necessary to conform to other rule amendments in these informal draft rules.

Amended §127.20

- Provides that parties may not ask in a request for clarification for a designated doctor to reconsider the doctor's decision or to issue a new or amended decision unless the designated doctor failed to address an issue the designated doctor was ordered to address.

Amended §127.25

- Provides that if after the insurance carrier suspends temporary income benefits under §127.25, the injured employee contacts the designated doctor within 21 days of the scheduled date of the missed examination to reschedule the examination, the designated doctor shall schedule the examination to occur as soon as possible but not later than the 21st day after the injured employee contacted the doctor.
- Provides that if after the insurance carrier suspends temporary income benefits under §127.25, the injured employee fails to contact the designated doctor within 21 days of the scheduled date of the missed examination but wishes to reschedule the examination, the injured employee must request a new examination under 28 Texas Administrative Code §127.1 (relating to Requesting a Designated Doctor Examination).
- Provides that the insurance carrier shall reinstate temporary income benefits effective as of the date the injured employee submitted to the rescheduled examination or newly scheduled examination unless the report of the designated doctor indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits.

New §127.100

- Provides the information a doctor must submit to become certified as a designated doctor.
- Provides the reasons for which the Division will deny a designated doctor's application for certification as a designated doctor.
- Provides the process through which the Division will inform a designated doctor of an approval or denial of the doctor's application and how the doctor may dispute a denial.
- Recodifies provisions of proposed repealed §180.21

New §127.110

- Provides how a designated doctor must apply for recertification both before January 1, 2013 and on or after January 1, 2013.
- Provides that the Division will not assign examinations to designated doctors within 30 days of the expiration of their certification as a designated doctor if the doctor has not provided the division the information necessary for the doctor's recertification.
- Provides the process through which a designated doctor may contest a denial of recertification.
- Recodifies provisions of proposed repealed §180.21

New §127.120

- Provides that the Division may waive any requirements of Chapter 127 for an out-of-state doctor to serve as a designated doctor in certain limited circumstances. This recodifies a similar provision in proposed repealed §180.21.

New §127.130

- Provides the qualifications a designated doctor must have to perform an initial designated doctor examination before January 1, 2013 and on or after January 1, 2013.
- Provides that the Division may, in limited circumstances, make exceptions to these qualification standards.
- Provides that designated doctors who were properly assigned to a claim shall remain assigned to that claim unless the Division authorizes or requires the designated doctor to discontinue providing services on that claim.
- Provides the reasons for which the Division may authorize a designated doctor to stop providing services on a claim on which the doctor has been previously assigned.
- Provides the reasons for which the Division shall require a designated doctor to stop providing services on a claim.
- Provides that the Division will prohibit a designated doctor from performing examination on all new or existing claims if the designated doctor has had the doctor's license suspended and that suspension was not probated or revoked by an appropriate licensing authority.

New §127.140

- Provides the definition of a disqualifying association for a designated doctor and lists examples of disqualifying associations.

- Provides that a designated doctor shall also have a disqualifying association relevant to an examination or claim if an agent of the designated doctor has an association relevant to the claim that would constitute a disqualifying association.
- Provides that designated doctors shall not perform examinations if the designated doctor has a disqualifying association relevant to that examination. Provides that designated doctors must inform the Division of a disqualifying association if the doctor learns of the disqualifying association after accepting an examination.
- Provides that if a designated doctor with a disqualifying association performs an examination, all reports produced by the designated doctor as a result of the examination shall be stripped of their presumptive weight.
- Recodifies provisions of proposed repealed §180.21.

New §127.200

- Provides for various duties imposed on designated doctors by the Division, including new requirements on ensuring the confidentiality of medical records and claim information and on designated doctor contracts with person who will perform designated doctor duties on the designated doctor's behalf.
- Provides that any person with whom the designated doctor contracts, employs, or otherwise permits to perform designated doctor duties on behalf of the designated doctor qualifies as the doctor's "agent" as that term is defined in §180.1 of this title.

New §127.210

- Provides a list of administrative violations specific to designated doctors, including providing that is an administrative violation if a designated doctor refuses two times within a 90-day period to accept or perform a division offered appointment or ordered appointment for which the doctor is qualified and that relates to a claim to which the doctor has not been previously assigned.
- Provides that designated doctor are liable for any violations committed by their agents under §127.210, Chapter 127, or any other applicable law.
- Provides that the process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Sanctions Process/Appeals/Restoration) except that suspension, revocation, or other sanction relating to a designated doctor's certification will be in effect during the pendency of any appeal.
- Recodifies provisions of proposed repealed §180.21

New §127.220

- Provides requirements for all designated doctor reports.
- Provides that if a designated doctor receives assistance from another person in preparation of the designated doctor's report, the designated doctor should also indicate on the report that the designated doctor reviewed the final version of the report.
- Recodifies provisions of amended draft informal rule §127.10.

Amended §130.6

- Provides for certain requirements that designated doctors must comply with when performing medical maximum improvement or impairment rating examinations.
- Deletes existing requirements that are no longer applicable or addressed by other rules.

Amended §180.23

- Provides provisions that govern authorization relating to certification of maximum medical improvement, determination of permanent impairment, and assignment of impairment ratings in the event that a doctor finds permanent impairment exists.
- Provides that training and testing required to be authorized under this section.
- Deletes provision no longer applicable or addressed by other rules.

Repeal §180.21

- Repeals the text of the rule in whole for recodification in other informal draft rules.