

## **TITLE 28. INSURANCE**

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

#### **CHAPTER 136: BENEFITS--VOCATIONAL REHABILITATION Title 28 TAC §136.1 and §136.2**

**1. INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (division) adopts the repeal of 28 Texas Administrative Code (TAC) §136.2, *Registry of Private Providers of Vocational Rehabilitation Services*, and amendments to 28 TAC §136.1, *Review of Employer Report of Injury*. The repealed and amended sections are adopted without changes to the proposed text published in the January 26, 2018, issue of the *Texas Register* (43 TexReg 445). No request for a public hearing was submitted to the division.

The public comment period closed on February 26, 2018, and the division received written comments from one commenter. The division made no changes in response to public comment.

In accordance with Government Code §2001.033, the division's reasoned justification for these rules is set out in this order, which includes the preamble. The following paragraphs include a detailed section-by-section description and reasoned justification of the repeal and amendments to §§136.1 and 136.2.

**2. REASONED JUSTIFICATION.** In House Bill (HB) 2112, the 85<sup>th</sup> legislature amended or repealed certain reporting and notification requirements throughout the Labor Code. HB 2112 repealed Labor Code §409.012(d), which permitted a private provider of vocational rehabilitation services to register with the division. As a result of

the repeal of Labor Code §409.012(d), the division no longer maintains a Registry of Private Providers of Vocational Rehabilitation Services, and has removed the registry from the division website. The Legislature removed Labor Code §409.012(d) and the division adopts the repeal of §136.2 to conform to the legislative repeal. The adopted amendments to §136.1 and the repeal of §136.2 are necessary to implement the legislative changes in HB 2112, which became effective June 9th, 2017.

Additionally, HB 2112 amended Labor Code §408.150 and §409.012 to substitute the “Department of Assistive and Rehabilitation Services” with “Texas Workforce Commission.”

Section 136.1 addresses **Review of Employer Report of Injury**. The division amended §136.1(b), (c)(1), and (c)(3) to replace “Texas Department of Assistive and Rehabilitative Services” with “Texas Workforce Commission.” This adopted amendment is necessary to reflect a change in the state agency tasked with providing vocational rehabilitation services to injured employees.

The division also deleted the existing text in §136.1(c)(2), which stated “a brief description of the availability of private providers registered with the division according to §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services),” and renumbered §136.1(c)(3) to §136.1(c)(2). This deletion is necessary because the division is repealing §136.2.

Section 136.2 addresses **Registry of Private Providers of Vocational Rehabilitation Services**. Section 136.2 requires the division to maintain a registry of private providers of vocational rehabilitation services. The division adopts the repeal of §136.2 to implement the legislative repeal of Labor Code §409.012(d) in HB 2112. This

adopted repeal is necessary to reflect that, as a result of HB 2112 and the repeal of Labor Code §409.012(d), the division no longer maintains a registry of private providers.

### **3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Comment:** One commenter suggests there is value to the public if there is a Registry of Private Providers of Vocational Rehabilitation Services. The commenter thinks a registry provides a quick way for the injured employee to search for options for vocational rehabilitation. The commenter wants the division to keep the registry and make it readily available.

#### **Division Response:**

The division appreciates the comment, but disagrees and declines to make the suggested changes. HB 2112 repealed the requirement that the division maintain a list of private vocational rehabilitation providers. The removal of the registry does not limit or effect the availability of vocational rehabilitation services for injured employees.

### **4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.**

#### **For:**

None.

#### **For, with changes:**

None.

#### **Against:**

None.

#### **Neither for nor against:**

One individual on behalf of himself.

### **5. STATUTORY AUTHORITY.**

Amended §136.1 is adopted under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking*; Labor Code §402.061, *Adoption of Rules*; Labor Code §408.150, *Vocational Rehabilitation*; and Labor Code §409.012, *Vocational Rehabilitation Information*.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code § 408.150 states that the division should refer an employee to the appropriate administrative agency with a recommendation for appropriate services if the division determines that an employee could be materially assisted by vocational rehab or training.

Labor Code 409.012 states that the division shall analyze each report of injury to determine whether the injured employee could be assisted by vocational rehabilitation.

## **6. TEXT.**

### **§136.1 Review of Employer Report of Injury**

(a) The division shall analyze each employer report of injury, within 30 days of its receipt, for any information indicating that the injured employee had or is likely to have:

(1) an amputation of:

(A) an arm or leg;

(B) three fingers or more; or

(C) the large toe or one-third of the foot or more;

(2) the loss of use of an arm or leg;

(3) a permanent spinal cord injury;

(4) a head injury;

(5) a heart attack or heart disease;

(6) an occupational disease;

(7) blindness or significant vision loss;

(8) severe or extensive burns;

(9) any other condition that indicates an impairment is likely; or

(10) any injury resulting in more than 30 days lost time. Such injury shall

be reviewed and a determination made as to the degree of impairment and the appropriateness of vocational rehabilitation services.

(b) Whenever the division finds facts that suggest one or more of the conditions listed in subsection (a) of this section, the division shall notify the injured employee and the Texas Workforce Commission that the division has identified an injured employee who may be assisted by vocational rehabilitation. The notice shall:

(1) be made no later than 60 days after the date the division received the employer report of injury; and

(2) contain the following information:

(A) the workers' compensation claim number assigned by the division;

(B) the address of the local office of the division assigned to manage the claim;

(C) the insurance carrier's name and division assigned identification number (if any);

(D) the name, address, and phone number of the injured employee; and

(E) the condition listed in subsection (a) of this section, that indicates that the injured employee may be assisted by vocational rehabilitation.

(c) In addition to the information required by subsection (b) of this section, the division's notice to the injured employee shall contain the following:

(1) the address and telephone number of the central office of the Texas Workforce Commission; and

(2) a statement that the division notified the Texas Workforce Commission that the injured employee may be assisted by vocational rehabilitation.

### **§136.2 Registry of Private Providers of Vocational Rehabilitation Services**

**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 \_\_\_\_\_, 2018.

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Nicholas Canaday III  
General Counsel  
Texas Department of Insurance,  
Division of Workers' Compensation

The commissioner adopts the repeal and amendments to §§136.1 and 136.2.

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W. Ryan Brannan  
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. \_\_\_\_\_

ATTEST:

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Nicholas Canaday III  
General Counsel  
Texas Department of Insurance,  
Division of Workers' Compensation