

SUBCHAPTER B. MEDICAL BENEFIT REGULATION
28 TAC §180.23

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 Texas Administrative Code (TAC) §180.23, concerning division-required training for doctors. Section 180.23 implements Labor Code §§408.023 and 408.1225, concerning doctor certification and training. DWC adopts the amendments without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8516).

REASONED JUSTIFICATION. The amendments make editorial changes, updates for plain language and agency style, and updates to conform the rule to related rules in 28 TAC Chapter 127. The amendments also make the rule easier to navigate by adding subsection headers. The purpose of the amendments is to attract and retain doctors in the maximum medical improvement (MMI) and impairment rating (IR) certification program by revising testing frequency, which reduces confusion and administrative burdens.

Amending §180.23 is necessary to remove references to recertification training requirements under 28 TAC Chapter 127 because DWC's recent amendments to Chapter 127 include a combined process for certification and renewal under §127.100. As a result, any references to recertification under §127.110 are obsolete. The amendments to §180.23 also align the testing requirements for MMI and IR certifications with the updated procedure in Chapter 127.

SUMMARY OF COMMENTS. DWC did not receive any comments on the proposed amendments to §180.23, either orally at the January 18, 2023, hearing or in writing by the January 30, 2023, deadline.

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STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §180.23 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with

the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

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.

TEXT.

§180.23. Division-Required Training for Doctors.

(a) Applicability. This section governs authorization relating to certification of maximum medical improvement (MMI), determination of permanent impairment, and

assignment of impairment ratings in the event that a doctor finds permanent impairment exists.

(b) Authorization. Full authorization to assign an impairment rating and certify MMI in an instance where the injured employee is found to have permanent impairment requires a doctor to obtain division certification by completing the division-prescribed impairment rating training and passing the test or meeting the training and testing requirements for designated doctor certification under §127.100 of this title (relating to Designated Doctor Certification). To remain certified, a doctor is required to complete follow-up training at least every two years.

(c) Training. A doctor who has not completed the required training under subsection (b) of this section but who has had similar training in the American Medical Association Guides from a division-approved vendor within the prior two years may submit the syllabus and training materials from that course to the division for review. If the division determines that the training is substantially the same as the division-required training and the doctor passes the division-required test, the doctor is fully authorized under this section. The ability to substitute training only applies to the initial training requirement.

(d) Exceptions. Notwithstanding any other provision of this section, a doctor who has not successfully completed training and testing required by this section for authorization to assign impairment ratings and certify MMI when there is permanent impairment may receive permission by exception to do so from the division on a specific case-by-case basis.

CERTIFICATION. The 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 April 4, 2023.



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The commissioner adopts the amendments to 28 TAC §180.23.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2023-7882