

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT
28 TAC §180.2

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §180.2, concerning filing a complaint. Section 180.2 implements Texas Labor Code §402.023.

EXPLANATION. The proposed amendments prevent health care providers or their agents from trying to use DWC's complaint process to collect fees instead of submitting their medical fee disputes properly through the medical fee dispute resolution (MFDR) process established by Labor Code §413.031. Under the MFDR process, health care providers have one year after the date of service to bring a fee dispute, unless an exception applies. However, some health care providers and their agents have tried to use DWC's complaint process to collect disputed fees when they fail to file a fee dispute before the MFDR deadline. To address this problem, the proposed amendments clarify that a health care provider cannot submit a complaint about a medical billing issue if the date of service for the medical billing issue was more than 12 months before the date of the complaint, unless an MFDR deadline exception applies. The restriction does not apply to a health care provider submitting a complaint under Insurance Code Chapter 1305.

The proposed amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Amending §180.2 is necessary to ensure that no health care provider or agent can use the complaint process to circumvent the MFDR filing deadline in 28 TAC §133.307(c), concerning medical fee dispute resolution. Labor Code §402.023 requires the commissioner to adopt rules about filing complaints, including how to file a complaint

and what constitutes a frivolous complaint. Labor Code §413.031 requires the commissioner to adjudicate disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury. DWC's MFDR rules, including §133.307, contain requirements for adjudicating those disputes. Amending §180.2 as proposed will prevent health care providers and their agents from using DWC's complaint process to avoid the MFDR rules that the commissioner adopted to comply with Labor Code §§402.023 and 413.031.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Compliance and Investigations Dan LaBruyere 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 sections, 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 governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner LaBruyere 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 LaBruyere expects that enforcing and administering the proposed amendments will have the public benefits of ensuring a level playing field, in which all health care providers and their agents follow the same rules for disputing medical fees. This will reduce respondents' and DWC staff's time spent on meritless complaints. The proposed amendments will also have the public benefits of ensuring that DWC's rules conform to Labor Code §§402.023 and 413.031, and 28 TAC

§133.307, and that they are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner LaBruyere expects that the proposed amendments will not increase the cost to comply with Labor Code §§402.023 and 413.031, or with 28 TAC §133.307, because they do not impose requirements beyond those in the statutes and rule. Labor Code §402.023 requires the commissioner to adopt rules about filing complaints, including how to file a complaint and what constitutes a frivolous complaint. Labor Code §413.031 requires the commissioner to adjudicate disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury. DWC's MFDR rules, including §133.307, implement those sections by providing requirements for adjudicating those disputes. Attempts to circumvent the MFDR rules by filing a complaint after having missed the MFDR deadline are counter to the statutes and rules. As a result, any cost associated with the proposed amendments is necessary to comply with the statutes and 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 ensure consistent application of the MFDR statutes and rules, and make editorial changes and updates for plain language and agency style. The proposed amendments 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 not 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 amendments ensure consistent application of the MFDR statutes and rules, and make editorial changes and updates for plain language and agency style only. They 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 p.m., Central time, on April 22, 2024. Send your comments to 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 11:00 a.m., Central time, on April 16, 2024. 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.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT.

28 TAC §180.2.

STATUTORY AUTHORITY. DWC proposes §180.2 under Labor Code §§402.023, 408.027, 413.031, 415.003, 402.00111, 402.00116, and 402.061.

Labor Code §402.023 requires the commissioner to adopt rules about the filing of a complaint under Title 5, Subtitle A of the Labor Code. The rules must, at a minimum, ensure that DWC clearly defines the method for filing a complaint and define what constitutes a frivolous complaint under Subtitle A.

Labor Code §408.027 addresses payment of health care providers in accordance with the fee guidelines or contracted network rates, and requires the commissioner to adopt rules necessary to implement the provisions of §§408.027 and 408.0271.

Labor Code §413.031 addresses medical dispute resolution. It entitles a party, including a health care provider, to a review of a medical service provided or for which authorization of payment is sought if a health care provider is denied payment or paid a reduced amount for the medical service rendered; denied authorization for the payment for the service requested or performed if authorization is required or allowed by Subtitle A or commissioner rules; ordered by the commissioner to refund a payment received; or ordered to make a payment that was refused or reduced for a medical service rendered. It also entitles a health care provider who submits a charge in excess of the fee guidelines or treatment policies to a review of the medical service to determine if reasonable medical justification exists for the deviation. It requires the commissioner to adopt rules to notify claimants of their rights for that process, and states that DWC's role is to adjudicate the payment given the relevant statutory provisions and commissioner rules. It also requires the commissioner to specify by rule the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. It allows the commissioner to prescribe by rule an alternative dispute resolution process to resolve disputes about medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

Labor Code §415.003 states that a health care provider commits an administrative violation if the person: (1) submits a charge for health care that was not furnished; (2) administers improper, unreasonable, or medically unnecessary treatment or services; (3) makes an unnecessary referral; (4) violates DWC's fee and treatment guidelines; (5) violates a commissioner rule; or (6) fails to comply with a provision of Subtitle A.

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 180.2 implements Labor Code §402.023, recodified by House Bill (HB) 752, 73rd Legislature, Regular Session (1993), and last amended by HB 2605, 82nd Legislature, Regular Session (2011).

TEXT.

§180.2. Filing a Complaint.

(a) Any person may submit a complaint to the division for alleged administrative violations, except as provided in subsection (b) of this section.

(b) A health care provider cannot submit a complaint about a medical billing issue if the date of service for the medical billing issue was more than 12 months before the date of the complaint, unless the issue qualifies for an exception to the filing deadline under §133.307(c)(1)(B) of this title, concerning medical fee dispute resolution. If the issue qualifies for an exception to the medical fee dispute resolution filing deadline under §133.307(c)(1)(B), then a health care provider cannot submit a complaint about that issue if the medical fee dispute resolution filing deadline in §133.307(c)(1)(B) has passed. This subsection does not apply to a health care provider submitting a complaint under Insurance Code Chapter 1305.

(c) [(b)] A person may submit a complaint to the division:

(1) through the division's website;

(2) by email [~~through electronic correspondence~~];
(3) through written correspondence;
(4) by fax [~~through facsimile correspondence~~]; or
(5) in person. The division will help a person submitting an in-person complaint reduce ~~and~~ the complaint [~~will be reduced~~] to writing.

(d) [(e)] A complaint submitted on the form provided by the division or in any other written format must [~~shall~~] contain the following information as applicable:

- (1) complainant's name and contact information;
- (2) name and contact information of the subject or parties of the complaint, if known;
- (3) name and contact information of witnesses, if known;
- (4) claim file information, including, but [~~is~~] not limited to, the name, address, and date of injury of the injured employee, if known;
- (5) the statement of the facts about [~~constituting~~] the alleged violation, including the dates or time period the alleged violation occurred;
- (6) the nature of the alleged violation, including [~~is~~] the specific sections of the Act and division rules alleged to have been violated, if known;
- (7) supporting documentation relevant to the allegation that may include, but [~~is~~] is not limited to, medical bills, Explanation of Benefits statements [~~Statements~~], copies [~~copy~~] of payment invoices or checks, and medical reports, as applicable;
- (8) supporting documentation for alleged fraud that may include photographs, video, audio, and surveillance recordings, and reports; and
- (9) other sources of pertinent information, if known.

(e) [(d)] Contact information may include, but [~~is~~] is not limited to, name, address, telephone number, fax [~~facsimile~~] number, email address, business name, business address, business telephone number, and websites.

(f) [(e)] A complaint must [~~shall~~] contain sufficient information for the division to investigate the complaint.

(g) [(f)] On [~~Upon~~] receipt of a complaint, the division will review, monitor, and may investigate the allegation against a person or entity who may have violated the Act or division rules.

(h) [(g)] The division will assign priorities to complaints being investigated based on a risk-based complaint investigation system that considers:

- (1) the severity of the alleged violation;
- (2) whether the [~~continued~~] noncompliance or [~~of the~~] alleged violation is ongoing;
- (3) whether a commissioner order has been violated; or
- (4) other risk-based criteria the division determines necessary.

(i) [(h)] A person commits an administrative violation if the person submits a complaint to the division that is:

- (1) frivolous, as defined in §180.1 of this title (relating to Definitions);
- (2) groundless or made in bad faith; or
- (3) done specifically for competitive or economic advantage.

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 March 8, 2024.



Kara Mace
General Counsel
TDI, Division of Workers' Compensation