



OUTREACH and OVERSIGHT

Texas Department of Insurance  
Division of Workers' Compensation

# UPDATE

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## TDI-DWC Seeking Public Comment on Proposed Rules on Designated Doctor Procedure and Requirements and Changes to DWC Form-032

**D**esignated doctors are encouraged to provide public comment on the proposed rules to implement the statutory changes made in House Bill 2605 that affect designated doctor scheduling, certification, and qualifications. Additionally, these proposed rules seek to implement other changes necessary for the efficient administration of the designated doctor system and to clarify established TDI-DWC policies not currently expressed in the rule.

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) is accepting public comment on the proposed amendments to 28 Texas Administrative Code (TAC) §§127.1, 127.5, 127.10, 127.20, 127.25, 180.23, the proposed repeal of 28 TAC §130.6 and §180.21, and proposed new 28 TAC §§127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220.

The TDI-DWC is also requesting input from designated doctors regarding the proposed changes to the DWC Form-032, *Request for Designated Doctor Examination* and new DWC Form-067, *Designated Doctor Certification Application*, and DWC Form-068, *Designated Doctor Examination Data Report*.

The rule proposal and draft DWC Form-032, DWC Form-067 and DWC Form-068 are available on the TDI website at <http://www.tdi.texas.gov/wc/rules/proposedrules/index.html>. The public comment period closes Monday, March 26, 2012 at 5 p.m. Central Standard Time.

A public hearing on these proposed rules will be held on March 26, 2012 at the TDI-DWC Central Office in Austin. The hearing will also be audio streamed via the TDI website. For additional information on the hearing, visit the TDI website at <http://www.tdi.texas.gov/wc/rules/proposedrules/documents/drdd0212m.pdf>.

## Texas Legislature Passes Law Impacting Designated Doctor Program

**I**n 2011, the 82th Texas Legislature (Regular Session) passed House Bill (HB) 2605, which continued the operation of the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) until 2017 and incorporated several recommendations of the Texas Sunset Advisory Commission. The Sunset process allows the Legislature to examine the mission and operations of a state agency to determine any necessary management changes for the agency.

Key HB 2605 changes to the TDI-DWC designated doctor program include:

- mandating development of new rules and changes to existing rules for certification, testing and training of designated doctors to assess their proficiency and ability to perform their specific statutory duties;
- mandating the development of rules requiring designated doctors to remain with case assignments unless otherwise authorized; and
- authorizing the TDI-DWC to refuse to renew designated doctor certifications.

The following is a non-exclusive list of the provisions of HB 2605, which affects designated doctor certification, examinations and compliance in the Texas Workers' Compensation system.

### Certification

- Requires the Commissioner of Workers' Compensation to develop a process by rule for the certification of designated doctors, to include standard training and testing.\*

### Examinations

- Provides that designated doctor examination assignments shall be made according to the appropriate doctor's credentials for the area of the body affected by the injury and the injured employee's diagnosis.\*
- Requires designated doctors to continue providing services related to an assigned case until the doctor is permitted to discontinue as provided TDI-DWC rule.\*
- Provides that an injured employee's treating doctor may perform a maximum medical improvement/impairment

## TDI-DWC Seeking Public Comment on Proposed Rules on Designated Doctor Procedure and Requirements and Changes to DWC Form-032 (cont.)

Any comments received during the comment period will be reviewed and considered by TDI-DWC staff when drafting the final rule for adoption by the Commissioner of Workers' Compensation and finalizing the DWC Form-032, DWC Form-067 and DWC Form-068 for use by workers' compensation system participants. ♦

### TDI-DWC Rulemaking Process

**D**esignated doctors are encouraged to participate in the workers' compensation rulemaking process by providing public comment on informal drafts and rules formally proposed by the TDI-DWC. Comments from workers' compensation system participants are a valuable part of the rule development process.

The following is a general outline of the steps in the TDI-DWC rulemaking process.

1. TDI-DWC staff develops informal draft rule based on guidance provided in the law.
2. Informal draft rules are posted to the TDI website for public comment by system participants.
3. Comments from system participants are reviewed and considered by TDI-DWC staff when preparing the formal proposal of new, amended and/or repealed rules.
4. New, amended and repealed rules are formally proposed and published in the Texas Register for public comment by system participants.
5. Comments from system participants are reviewed and considered by TDI-DWC staff when in preparing the final rule to be considered for adoption by the Commissioner of Workers' Compensation.
6. New, amended and repealed rules are adopted by the Commissioner of Workers' Compensation.
7. New, amended and repealed rules are implemented in the Texas workers' compensation system.

During their rulemaking process, all informal drafts and proposed and adopted rules are posted on the TDI website at <http://www.tdi.texas.gov/wc/rules/index.html>. Any communications about rulemaking directly affecting designated doctors will be e-mailed to designated doctors. ♦

## Texas Legislature Passes Law Impacting Designated Doctor Program (cont.)

rating (MMI/IR) examination after a designated doctor's MMI/IR examination if it is the first designated doctor's MMI/IR examination and the injured employee disagrees with the designated doctor's opinion.

### Compliance

*(The rules related to compliance were adopted on January 24, 2012 and effective on February 14, 2012.)*

- Requires the Commissioner of Workers' Compensation to prescribe by rule the procedures to be used for both announced and unannounced on-site visits.
- Requires the TDI-DWC to adopt a policy outlining the agency's complaint process and to develop procedures to formally document and analyze complaints received.
- Provides that the Commissioner of Workers' Compensation may issue emergency cease and desist orders under certain circumstances.
- Provides a clean-up of statutory language regarding violations and sanctions.

### Medical Quality Review Panel

- Requires the Commissioner of Workers' Compensation, after consultation with the TDI-DWC Medical Advisory, to adopt rules governing the composition of the Medical Quality Review Panel (MQRP) and the qualifications of MQRP members.
- Requires the Commissioner of Workers' Compensation to adopt criteria concerning the medical case review process, in consultation with the TDI-DWC Medical Advisor.
- Requires the TDI-DWC Medical Advisor to establish a Quality Assurance Panel within the MQRP to provide an additional level of evaluation in medical case review and to assist the medical advisor and the MQRP.

To view a complete copy of HB 2605 visit the Texas Legislature Online website at <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB2605>.

\*The TDI-DWC has been developing new rules and revising existing rules as required by HB 2605. Those rules are posted for comment on the TDI website at <http://www.tdi.texas.gov/wc/rules/proposedrules/index.html>

The TDI-DWC welcomes and encourages designated doctor input to ensure meaningful consideration of all issues and perspectives in the development of the rules affecting the agency's designated doctor program. ♦

# Steps for Better Examinations

A successful designated doctor examination begins before the injured employee arrives for the appointment. The following are steps to ensure that a designated doctor is properly prepared to conduct an examination.

## Step one: Ensure that all designated doctor contact information such as address, telephone number and fax number in the doctor's profile in the TXCOMP Automated System (TXCOMP) are current and correct.

- Address listed in TXCOMP: used by health care providers, including the treating doctor when sending injured employee medical records and directing the injured employee to the doctor's facility for the appointment.
- Telephone number listed in TXCOMP: used to contact the designated doctor.
- Fax number listed in the TXCOMP: used to fax the *Appointment Coordination Sheet* offering an appointment to the designated doctor. If the appointment is accepted, the DWC Form-032, *Request for Designated Doctor Examination*, is faxed to the same fax number listed in TXCOMP.

## Step two: Review the DWC Form-032, Request for Designated Doctor Examination, prior to the designated doctor examination.

The designated doctor should review the DWC Form-032 completed by the requestor, including:

- a list of all injuries determined to be compensable by TDI-DWC or accepted to be compensable by the insurance carrier;
- the injured employee's certified workers' compensation health care network (if any);
- the statutory Maximum Medical Improvement

(MMI) date (if applicable);

- the question(s) the designated doctor has been assigned to address; and
- other necessary information to perform the examination.

## Step three: Review the injured employee's medical records and any analysis provided by the treating doctor and insurance carrier, prior to the designated doctor examination.

The injured employee's medical records, and an analysis provided by the treating doctor and/or insurance carrier provides the designated doctor an understanding of the mechanism of injury, prior treatments and diagnostic testing; the injured employee's progress to recovery and ability to return to work.

If the designated doctor does not receive all or part of the injured employee's medical records at least three working days prior to the examination, the designated doctor is required to reschedule an initial examination and report this violation to the TDI-DWC. Under current TDI-DWC rules the designated doctor is required to conduct the rescheduled examination regardless of whether or not the injured employee's complete medical records have been timely received. Under the recently proposed rule amendment to 28 Texas Administrative Code §127.10, the designated doctor cannot perform the examination without the injured employee's medical records. If the doctor does not receive the medical records they are to contact the TDI-DWC for assistance in obtaining them. ♦

## TDI-DWC Seeks Designated Doctor Input on Agency Approved Training

The TDI-DWC is conducting a survey of designated doctors to determine how well the TDI-DWC-approved training prepares them to conduct examinations. The feedback from the survey will help the TDI-DWC further improve the required training.

The survey, which was sent to designated doctors via e-mail in September 2011, contains questions

focusing on designated doctors' prior experience with the TDI-DWC-approved training.

If you have not yet responded to the survey, you may take the survey at <http://survey.constantcontact.com/survey/a07e4ok105kgrqab8zm/start>. ♦

## Tips for Dispute Resolution: Designated Doctor Reports

The designated doctor is appointed by the TDI-DWC to address questions about a workers' compensation claim. Because the designated doctor does not attend the dispute proceedings as other experts might in other types of proceedings, the designated doctor report is critical to dispute resolution. As such, it is imperative that the designated doctor report comprehensively address the questions, within a reasonable degree of medical probability, using the TDI-DWC required guides and guidelines and other relevant evidence-based medicine sources of information.

### **TDI-DWC Hearing Officers offer several reporting tips that can improve designated doctor reports.**

#### **Maximum Medical Improvement (MMI)**

Certify the correct MMI date and provide an explanation for that certification. Rate permanent impairment as of the MMI date.

#### **Impairment Rating (IR)**

Include all body parts or conditions in the IR calculations and use the *American Medical Association Guide to the Evaluation of Permanent Impairment, 4th Edition (AMA Guides)* when

determining the IR and provide the proper references, range of motion findings, and/or worksheets when applicable.

#### **Testing**

When it is determined that there is a need for further diagnostic testing or other referrals in order to answer the questions ordered to be addressed, order the testing and/or make the referral, and provide an explanation for the need for the testing and/or referral and include the results in the designated doctor report.

#### **General Reporting**

Do not to provide opinions or certifications outside the scope of the questions ordered to be addressed. When addressing extent of injury questions, provide causation analysis; and in all reports reference the correct and accurate mechanism of injury.

Using these tips and giving a thorough explanation of the medical decision-making can improve designated doctor reports making them a more useful dispute resolution tool. ♦

## Designated Doctor and Impairment Rating Doctor Training Courses

The following is the schedule of training courses for designated doctors and impairment rating doctor for the first half of calendar year 2012. Additional courses will be scheduled for the second half of 2012 following the adoption of amendments to rules regarding designated doctor training.

**March 30 - 31, 2012 (Friday-Saturday)**  
**Houston Marriott South at Hobby Airport,**  
**9100 Gulf Freeway,**  
**Houston, Texas 77017**

**June 1 - 2, 2012 (Friday-Saturday)**  
**Hilton Palacio del Rio,**  
**200 South Alamo St.,**  
**San Antonio, Texas 78205**

**For more information or to register, visit the  
American Academy of Disability Evaluating Physicians website at [www.aadep.org](http://www.aadep.org)**

## Use of Referral Health Care Providers by Designated Doctors

**A**s a part of some designated doctor examinations it is necessary for the designated doctor to order additional examinations and/or testing of an injured employee by other health care providers.

A doctor providing testing or consultation services for a designated doctor are not required to be credentialed as a designated doctor or to have attended the TDI-DWC approved designated doctor training. However, they are subject to financial disclosure requirements in accordance with 28 Texas Administrative Code (TAC) §180.24. For assistance with finding referral specialists, designated doctors can use the TDI-DWC's TXCOMP Automated System (TXCOMP) at <https://txcomp.tdi.state.tx.us/twccprovidersolution/homehtml> under "Main Menu" and "Locate Doctor".

Any additional testing or referral required for the evaluation is not subject to preauthorization requirements or retrospective review requirements in accordance with the Labor Code §408.027 and §413.014, Insurance Code Chapter 1305, or Chapters 10, 19, 133, or 134 of this title (relating to Workers' Compensation Health Care Networks, Agent's Licensing, General Medical Provisions, and Benefits — Guidelines for Medical Services, Charges,

and Payments, respectively) but is subject to the requirements of §180.24 of this title (relating to Financial Disclosure).

If the referral specialist is dissatisfied with the insurance carrier's final action on the medical bill after reconsideration, the referral specialist may file a medical fee dispute and/or a complaint with the TDI-DWC as follows:

- To file a medical fee dispute, submit a DWC Form-060, *Medical Fee Dispute Resolution Request/Response*, which available for download from the TDI website at <http://www.tdi.texas.gov/forms/dwc/dwc060mfd.pdf>.
- To file a complaint visit the TDI website at <http://www.tdi.texas.gov/consumer/complfrm.html>.

For further guidance on the referral requirements, see the following state laws and TDI-DWC rules. 28 TAC §127.10(c), Texas Labor Code §408.027 and §413.014, Insurance Code Chapter 1305, and 28 TAC Chapters 10, 19, 133, or 134 (relating to Workers' Compensation Health Care Networks, Agent's Licensing, General Medical Provisions, Benefits-Guidelines for Medical Services, Charges, and Payments, respectively). 28 TAC §180.24 (relating to Financial Disclosure. 28 Texas Administrative Code §180.2, relating to filing a complaint. ♦

## Trends in Designated Doctors Appointments

The TDI-DWC Fiscal Year (FY) is September 1 to August 31.

Category	FY 2009	FY 2010	FY 2011
Reportable Injuries/Incidents <sup>1</sup>	100,102	99,116	89,191
Initial DD Appointments <sup>2</sup>	39,927	36,333	34,144
Subsequent DD Appointments <sup>3</sup>	8,231	8,720	7,869
Total Designated Doctors	1,665	1,675	1,745

<sup>1</sup>"Reportable": Injuries with at least one day of lost time, occupational disease or fatality, based upon the date of injury.

<sup>2</sup>Initial appointments: The first appointment on a particular claim assigned to a unique designated doctor. Injured employees may have multiple initial appointments if they are examined by more than one designated doctor.

<sup>3</sup>Subsequent Appointments: Other appointments on a particular claim.