

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT
28 TAC §§180.6, 180.7 and 180.10-180.18

SUBCHAPTER B. MEDICAL BENEFIT REGULATION
28 TAC §180.20 and §180.26

1. INTRODUCTION. The Commissioner of Workers' Compensation adopts the repeal of §§180.6, 180.7, 180.10 - 180.18, 180.20 and 180.26 of this title (relating to guidelines for establishing evidence of patterns of practice, the schedule of administrative penalties for violations, warning letters and the Approved Doctors List (ADL)) without changes to the proposal as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7674).

The public hearing was held and the public comment period closed on September 27, 2010.

2. REASONED JUSTIFICATION. The repeal of these sections is necessary to conform Division rules to amendments made to the Labor Code by House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). The repeal of §§180.6, 180.7, 180.10-180.12, and 180.14 - 180.18 is necessary because the rules were superseded by HB 7 amendments to Labor Code §415.021.

The repeal of §180.13 is necessary since the Division addresses warning letters in new §180.26 which is simultaneously adopted and published elsewhere in this issue of the *Texas Register*. The repeal of §180.20 is necessary because the ADL expired on September 1, 2007 pursuant to Labor Code §408.023(k) as amended by HB 7. The

repeal of §180.26 is necessary to permit the simultaneous adoption of a new §180.26 that is also published in this issue of the *Texas Register*.

3. HOW THE SECTION(S) WILL FUNCTION. The repeal of the sections will eliminate obsolete sections and allow the simultaneous adoption of §180.26 published elsewhere in this issue of the *Texas Register*.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

General: Insurance Council of Texas supports the repeal of 28 TAC §§180.6, 180.7, 180.10 - 180.18, 180.20 and 180.26.

Agency Response: The Division acknowledges and appreciates the support.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Insurance Council of Texas

Against: None

6. STATUTORY AUTHORITY.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

The repeals are adopted pursuant to Labor Code §§415.021, 402.00111, 402.00116, and 402.061. Section 415.021 authorizes the Commissioner of Workers' Compensation to assess administrative penalties that shall not exceed \$25,000 per day per occurrence. Section 402.00111 provides that the Commissioner of Workers' Compensation shall

exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Labor Code Title 5, and other laws applicable to the Division or Commissioner. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5.

SUBCHAPTER B. MEDICAL BENEFIT REGULATION

The repeals are adopted pursuant to Labor Code §§415.021, 408.023, 402.00111, 402.00116, and 402.061. Section 415.021 authorizes the Commissioner of Workers' Compensation to assess administrative penalties that shall not exceed \$25,000 per day per occurrence. Section 408.023(k) states that the requirements of Subsections (a)-(g) and Subsection (i) expire September 1, 2007. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Labor Code Title 5, and other laws applicable to the Division or Commissioner. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code.

7. TEXT.

§180.6. Evidence of Patterns of Practice.

§180.7. Date Violation Deemed to Have Occurred; Establishing Willful Violations.

§180.10. Duration and Extent of Noncompliance.

§180.11. Compliance Categories.

§180.12. Compliance Standards and Compliance Rates.

§180.13. Warning Letter Criteria; Relevant Time Period.

§180.14. General Provisions for Penalty Calculations.

§180.15. Base Penalties.

§180.16. Review Modifiers.

§180.17. Audit Modifiers.

§180.18. Applicability.

§180.20. Commission Approved Doctor List.

§180.26. Doctor and Insurance Carrier Sanctions.

8. CERTIFICATION. This agency certifies that the adopted repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 20, 2010.

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the repeal of §§180.6, 180.7, 180.10 - 180.18, 180.20 and 180.26 relating to guidelines for establishing evidence of patterns of practice, the schedule of administrative penalties for violations, warning letters and the Approved Doctors List, is adopted.

AND IT IS SO ORDERED:

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO _____