

**SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL
28 TAC §§180.64, 180.66, 180.68, 180.72, AND 180.76**

REPEAL OF 28 TAC §180.78

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §§180.64, 180.66, 180.68, 180.72, and 180.76, concerning the Medical Quality Review Panel (MQRP), under Texas Labor Code §§413.05115, 413.0512, 413.05121, and 413.05122. DWC also adopts the repeal of 28 TAC §180.78, concerning the effective date of the subchapter, because it is no longer necessary.

The amendments to §§180.64 and 180.72 are adopted without changes to the proposed text published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3171) and will not be republished. The amendments to §§180.66, 180.68, and 180.76 are adopted with minor changes to the proposed text published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3171) and will be republished.

REASONED JUSTIFICATION. Amending §§180.64, 180.66, 180.68, 180.72, and 180.76 is necessary to conform with related rules and practices, clarify the amount of notice to which a respondent is entitled before an informal settlement conference (ISC), and clarify that DWC may conduct an ISC remotely or in person. The amendments also make editorial changes for plain language and agency style.

Labor Code §413.05115 requires the commissioner to adopt criteria for the medical case review process, in consultation with the medical advisor. Labor Code §413.0512

requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires.

The MQRP assists DWC's medical advisor in conducting medical case reviews as part of the medical quality review process to ensure that injured employees in the workers' compensation system get timely, cost-effective, appropriate, medically necessary health care to help them recover and return to work. Labor Code §413.05121 requires the medical advisor to establish the Quality Assurance Panel, also referred to as arbiters, within the MQRP. Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP.

Section 180.64 concerns the MQRP application process. The amendment to subsection (g) updates the language with the current MQRP membership term of 10 years, as 28 TAC §180.62(e) provides.

Section 180.66 concerns medical case review. The amendment replaces an obsolete reference to recertification with a current reference to renewal to reflect recent amendments to 28 TAC Chapter 127 that updated the certification and renewal process.

Section 180.68 concerns the medical quality review process. The amendment to subsection (a) replaces an obsolete reference to recertification with a current reference to renewal to reflect recent amendments to 28 TAC Chapter 127 that updated the certification and renewal process.

Section 180.72 concerns conflicts of interest. The amendment to subsection (d) deletes an obsolete reference to the associate medical advisor and clarifies that, if the medical advisor must recuse himself due to a conflict of interest, the commissioner will delegate the medical advisor's duties for that case to an arbiter.

Section 180.76 concerns the rights and responsibilities of persons involved in the medical quality review process. The amendments clarify that a person subject to the medical quality review process has the right to 45 days' written notice of an ISC; that DWC may, at its discretion, conduct the ISC remotely or in person; and that the copies of documents that the person has the right to receive are documents that pertain to the substance of the case and that were given to the arbiters to review for that case. The amendments also update an obsolete reference to DWC's attorneys and contain editorial changes for plain language and agency style to make the rule easier to read.

Section 180.78 concerns a 2013 effective date for Subchapter C. That date is now long past. Repealing §180.78 is necessary to ensure that the rules in the subchapter are relevant, which reduces clutter and confusion.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments, no requests for a hearing, and no oral comments. Commenters in support of the proposal with changes were: Texas Mutual Insurance Company. One individual commented against the proposal.

Comment on §§180.66 and 180.68. A commenter recommended that the term "recertification" be replaced with "renewal" instead of being deleted in those sections.

Agency Response to Comment on §§180.66 and 180.68. DWC appreciates the comment and has made those changes.

Comment on §180.76. A commenter recommended that the section specifically state that a request to reschedule an ISC be decided by the attorney presiding over the ISC.

Agency Response to Comment on §180.76. DWC appreciates the comment and has changed the proposed text of "the division" to "the division's presiding attorney."

Comment on Unspecified Sections. A commenter stated, "I want to know when a company do not follow the instructions of their own doctors and just push hurt employees under the bus, will changing the rules do any good when they don't follow the first set."

Agency Response to Comment on Unspecified Sections. DWC appreciates the comment. The comment does not request revisions to the proposed text, but instead refers to potential compliance issues in the system. DWC may refer any potential compliance issues to the Audits and Investigations program area.

SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL
28 TAC §§180.64, 180.66, 180.68, 180.72, AND 180.76

STATUTORY AUTHORITY. DWC adopts §§180.64, 180.66, 180.68, 180.72, and 180.76 under Labor Code §§413.0511, 413.05115, 413.0512, 413.05121, 413.05122, 402.00111, 402.00116, and 402.061.

Labor Code §413.0511 requires DWC to have a medical advisor and describes the medical advisor's duties, including making recommendations about rules and policies to regulate medical matters in the workers' compensation system.

Labor Code §413.05115 requires the commissioner to adopt criteria for the medical case review process, in consultation with the medical advisor.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires.

Labor Code §413.05121 requires the medical advisor to establish the Quality Assurance Panel within the MQRP.

Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP.

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.

§180.64. MQRP Application Process.

(a) To apply to the MQRP, a person must submit an application in the form and manner required by the division demonstrating compliance with the required qualifications. The application must contain complete information as provided by subsection (b) of this section. The medical advisor and the Commissioner may select and appoint only qualified applicants to the division's MQRP but are not required to accept all applicants who meet the requirements specified in this subchapter.

(b) The division's required application form for the MQRP, at a minimum, shall include:

- (1) contact information for the health care practitioner;
- (2) information about the health care practitioner's education;
- (3) a description of the health care practitioner's license(s), certifications, and professional specialty, if any;
- (4) a description of the health care practitioner's work history and hospital or other health care practitioner affiliations;
- (5) a description of any affiliations the health care practitioner has with a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2);

(6) identification of and a description of all current and past medical review affiliations, including but not limited to an independent review organization (IRO), utilization review agent (URA), licensing board, and insurance carrier;

(7) information regarding the health care practitioner's current practice locations;

(8) disclosure regarding the health care practitioner's professional background, education, training, and fitness to perform the duties of an MQRP member, including disclosure of any disciplinary actions or other sanctions taken against the health care practitioner by any state licensing board, state or federal agency, and hospital or other health care institution, as well as disclosure of any voluntary relinquishments, drug and alcohol misuse, malpractice claims history and criminal history;

(9) a description of all ownership interests or other financial arrangements, such as salaried or contract employment, involving a person or their agent subject to the Act or a rule, order, or decision of the commissioner;

(10) an authorization for third parties to release information relevant to the verification of the information provided on the application to the division;

(11) an affirmation that all information provided in the application is accurate and complete to the best of the health care practitioner's knowledge; and

(12) an affirmation of understanding of the legal requirements, including confidentiality provisions, for MQRP members.

(c) A credentialing application for hospital credentialing may substitute for some items under subsection (b) of this section.

(d) The health care practitioner must inform the medical advisor of any changes to this information within 30 days after the change.

(e) The application shall be reviewed by the medical advisor.

(f) The medical advisor and the commissioner have the discretion to select, appoint and remove an applicant to the MQRP.

(g) Membership in the MQRP is for a term of 10 years. The acceptance letter will include the effective date and expiration date.

(h) Membership in the MQRP is not a guarantee of any number of assignments.

(i) MQRP members shall be entitled to compensation for work assigned by the medical advisor at the following hourly rates:

(1) Doctors - Medical case reviews, ad hoc work groups, or special projects: \$150 per hour.

(2) Non-Doctors - Medical case reviews, ad hoc work groups or special projects: \$100 per hour.

(3) Limits on hours. A member shall not be paid for more than:

(A) five hours for a medical case review of a single case;

(B) five hours for ad hoc work group or special project service; or

(C) 20 hours in a given calendar month.

(4) The medical advisor may approve additional hours in writing upon review of a submitted narrative report or a report of an ad hoc work group.

(5) Hearings or trial preparation.

(A) Doctors - Payment for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial: \$350 per hour.

(B) Non-doctors - Payment for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial: \$175 per hour.

(C) An MQRP member shall not be paid for more than eight hours per day for a deposition, a hearing, trial preparation or court testimony. If travel is required, the division will pay the member for travel, lodging and per diem expenses in accordance with the Texas State Travel Management Program, 34 TAC §20.301 et seq.

(6) The division may vary the above reimbursement provisions if deemed by the division to be in the best interests of the division or the State of Texas.

(j) In accordance with Labor Code §§402.083 - 402.086, 402.091, 402.092, and 413.0513, an MQRP member may not disclose confidential information, including a report or other documentation prepared by the MQRP member for the division.

(k) All reports and related documents, including electronic and non-electronic data, prepared by or furnished to the member for the MQRP, are the sole property of the division.

§180.66. Medical Case Review.

The MQRP may perform medical case review for the medical advisor. Medical case review may be performed for the purposes of the medical quality review process, designated doctor certification and renewal, performance-based oversight, or any other medical case review necessary to assist the medical advisor in performing the medical advisor's duties under the Labor Code.

§180.68. Medical Quality Review Process.

(a) The medical quality review process is medical case review initiated on the basis of complaints, plan-based audits, or monitoring as a result of a consent order and performed in accordance with criteria adopted under Labor Code §413.05115. The medical quality review process does not include medical case review performed for the purpose of:

- (1) certification and renewal of designated doctors;
- (2) performance-based oversight;
- (3) administrative violations that do not require an expert medical opinion;

or

(4) complaints about professionalism that do not require an expert medical opinion.

(b) A complaint must be documented in accordance with the provisions of §180.2 of this title (relating to Filing a Complaint).

(c) Nothing in this subchapter prevents referrals of complaints to another licensing or law enforcement authority.

§180.72. Conflict of Interest.

(a) If the selected MQRP member has a conflict of interest in a case under medical review, that member may not review the case or serve as an arbiter. If all MQRP members in a particular health care specialty field as the subject of a medical case review have conflicts of interest in a case under medical case review, and the division is unable to enter into an interagency agreement pursuant to subsection (e) of this section, then the division may refer the case to the appropriate licensing authority.

(b) A conflict of interest exists if the selected MQRP member:

(1) has a familial relationship within the third degree of affinity with any party or witness related to the case;

(2) has a relationship with the subject beyond a mere acquaintance;

(3) has ever treated the injured employee whose records are being reviewed;

(4) in regard to a particular injured employee's claim, has served as a:

(A) peer review doctor;

(B) designated doctor; or

(C) required medical examination doctor.

(5) has a financial interest in a matter as set forth in §180.24 of this title (relating to Financial Disclosure);

(6) is a medical director for an Insurance Carrier, Utilization Review Agent, or a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2). Medical directors can perform all functions of the MQRP and the QAP except performing individual medical case reviews or serving as Arbiters in a informal settlement conference (ISC); or

(7) has other issues deemed to be a conflict of interest by the medical advisor.

(c) If an MQRP member selected for a medical case review has a conflict of interest, the member must notify the medical advisor of the conflict before taking any further action on the case.

(d) If the medical advisor has a conflict of interest in a case, the medical advisor must recuse himself from the case. If the medical advisor recuses himself, the commissioner will delegate the duties of the medical advisor, including enforcement decisions and recommendations, for that particular case, to an arbiter.

(e) The division may enter into agreements with other state agencies to access, as necessary, expertise in health care specialty fields as determined by the medical advisor.

§180.76. Rights and Responsibilities of Persons Involved in the Medical Quality Review Process.

- (a) The person subject to the medical quality review process has the right:
- (1) to be notified that the person has been selected for the medical quality review process;
 - (2) to be notified of the disposition of the medical quality review process;
 - (3) to communicate with the office of the medical advisor at any time during the medical quality review process;
 - (4) to be represented by legal counsel, including legal counsel at the informal settlement conference (ISC);
 - (5) to receive written notice of an ISC at least 45 days before the ISC, including the time and place of the ISC and the nature of the allegations; and
 - (6) to an ISC in accordance with the provisions of this section. The ISC provides persons subject to the medical quality review process an opportunity to discuss and resolve their medical case review with arbiters. The division may, at its discretion, conduct an ISC remotely or in person. An ISC is available under the following conditions:

(A) The case has been referred to enforcement.

(B) The request for an ISC must be in writing.

(C) The division will notify the requester of the scheduled date of the ISC.

(D) The requester has the right to receive copies of all documents that pertain to the substance of the case and that were given to the arbiters for review for that particular case.

(E) All information the requester wishes the arbiters to consider at the ISC must be received by the division no later than 15 days before the ISC. The arbiters may refuse to consider any information not timely received by the division.

(F) The requester may request to reschedule the scheduled date of the ISC for good cause shown, in writing, as determined by the division's presiding attorney. Good cause means circumstances beyond the requester's control that reasonably prevent the requester from attending the ISC and requesting that the ISC be rescheduled any sooner.

(G) If a requester fails to attend an ISC as scheduled, the requester loses the right to an ISC. But failure to attend the ISC does not affect the requester's rights to:

(i) communicate with the office of the medical advisor as paragraph (3) of this subsection provides;

(ii) enter into a consent order with the division; or

(iii) defend an enforcement case at the State Office of Administrative Hearings.

(b) A person subject to a medical case review must:

(1) provide records and information requested from the office of the medical advisor in the format and manner specified by the division;

(2) provide the records and information within the time period specified in the request; and

(3) attach an accurate and completed business records affidavit to the request for records and information.

SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL

REPEAL OF 28 TAC §180.78

STATUTORY AUTHORITY. DWC adopts the repeal of §180.78 under Labor Code §§413.05122, 402.00111, 402.00116, and 402.061.

Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP.

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.

§180.78. Effective Date.

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 August 1, 2023.



Kara Mace
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The commissioner adopts amended 28 TAC §§180.64, 180.66, 180.68, 180.72, and 180.76; and the repeal of 28 TAC §180.78.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation