

Chapter 136 - Benefits--Vocational Rehabilitation
28 TAC §136.1 and §136.2

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §136.1 and §136.2 of this title (relating to Review of Employer Report of Injury and Registry of Private Providers of Vocational Rehabilitation Services). The amendments are adopted with no substantive changes to the proposed text published in the December 3, 2010 issue of the *Texas Register* (35 *TexReg* 10615). Section 136.1 is adopted without changes to the proposed text and will not be republished.* Section 136.2 is adopted with changes to the proposed text and will be republished. A nonsubstantive change adding the acronyms for Licensed Master Social Worker (LMSW) and Licensed Clinical Social Worker (LCSW) was made to §136.2(b)(5). A nonsubstantive change was made to §136.2(c) for clarification purposes.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble, which in turn includes the rules. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rules, and the reasons why the Division agrees or disagrees with some of the comments and recommendations.

A request for a public hearing was not received. The public comment period closed January 3, 2011.

2. REASONED JUSTIFICATION. The *Registry of Private Providers of Vocational Rehabilitation Services* (Registry) is established by Labor Code §409.012(d), which states that a private provider of vocational rehabilitation services may register with the Division.

The Commissioner is authorized to establish acceptable credentials to be on the Registry by Labor Code §409.012(e), which provides that the Commissioner may require by rule that a private provider of vocational rehabilitation services maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation claim. The Commissioner has established the list of credentials and qualifications to be on the Registry in §136.2 of this title. Under that authority, the Commissioner expands the list of acceptable credentials to provide a broader selection of vocational rehabilitation providers.

The amendments add "Licensed Master Social Worker" and "Licensed Clinical Social Worker" to the list of acceptable credentials, established by §136.2(b)(5) of this title, that an applicant must have to be on the Division's Registry. The current rule §136.2(b)(4) also requires an applicant to show education, training and experience in vocational rehabilitation.

The amendments also make nonsubstantive changes to conform to Labor Code requirements, current nomenclature, reformatting, and for clarification of terms.

The Registry is maintained by the Division and consists of providers who have applied to be on the Registry and have documented their qualifications. Individuals may apply to the Registry by submitting the Division's DWC-065 form to the Division. A submitted form is reviewed by Division staff for completeness and sufficiency of documentation. Applicants for the Registry must provide business contact information as specified by §136.2(b)(1) - (3) of this title, and must document that the applicant possesses the necessary experience in providing vocational rehabilitation services and credentials required by §136.2(b)(4) and (5) of this title. Applicants must also provide documentation that describes the evaluation,

assessment, assistance, placement or support services specific to vocational rehabilitation services that they have available as a private provider. The Division may deny a person from inclusion on the Registry if they fail to meet any of the requirements outlined above. The Division reviews credentials on an annual basis and notifies registrants by mail of the need to re-register. The Division removes individuals from the Registry if a registrant fails to re-register.

The Registry may be utilized by an insurance carrier in order to locate individuals qualified to provide vocational rehabilitation services for injured employees. Insurance carriers are required to ensure any individual contracted to provide vocational services is qualified to do so under applicable provisions of the Labor Code, Title 5 and Division rules. Insurance carriers determine the use of a private provider of vocational rehabilitation services on a claim based on the individual circumstances associated with a claim.

Currently, there are 95 providers in the Registry. The names, addresses and telephone numbers of the providers in the Registry are available to the public on the Division's web site at <http://www.tdi.state.tx.us/wc/indexwc.html>.

3. HOW THE SECTIONS WILL FUNCTION.

Adopted §136.1 conforms the rule to Labor Code requirements and current nomenclature, replacing "commission" with "division", "employee" with "injured employee", "Texas Rehabilitation Commission" with "Department of Assistive and Rehabilitative Services" and "office" with "central office."

Adopted §136.2 conforms the rule to Labor Code requirements and current nomenclature.

Adopted amendments to subsection (a) replace "commission" with "division."

Adopted amendments to subsection (b) replace “commission” with “division” and “Austin office” with “the division’s central office.”

Adopted amendments to subsection (b)(5) are substantive and add “Licensed Master Social Worker (LMSW)” and “Licensed Clinical Social Worker (LCSW)” to the list of acceptable credentials that an applicant must possess to be on the Registry. The acronyms are added for clarification purposes.

Adopted amendments to subsection (c) replace “commission” with “division.” The term “approved private provider” was substituted for the term “private provider who complies with the requirements of subsection (b) of this section.” This is a nonsubstantive change in response to comments to clarify that the Division takes action on an application to ensure the application demonstrates compliance with §136.2(b), that application approval is not automatic.

Adopted amendments to subsection (d) replace “commission” with “division” and clarify that the Registry shall be posted on the Division’s web site.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General

COMMENT: Several commenters expressed support for the proposed rule.

RESPONSE: The Division appreciates the support.

§136.2(b)(5)

COMMENT: Several commenters opposed the addition of Licensed Master Social Workers and Licensed Clinical Social Workers to the list of credentials to be on the Registry. The commenters stated that the current list of credentials is sufficient. The commenters stated that a Licensed Master Social Workers and Licensed Clinical Social Workers credentials do not necessarily qualify an individual to perform vocational rehabilitation services. The

commenters stated that a vocational rehabilitation service provider should have courses and experience specific to vocational rehabilitation services, and the social worker degrees and licenses do not necessarily require it. The commenters stated that a provider of vocational rehabilitation services should have training in: vocational rehabilitation methods; theories and practices; practical and clinical experience in vocational rehabilitation settings and with vocational rehabilitation clients, work experience or formal training in disability issues, such as vocational aspects of disability; managed care and disability management concepts; business knowledge related to disability management; return-to-work intervention; vocational counseling; vocational assessment, job placement and job development; training in return-to-work coordination; researching specific industry and job domains; resume development; matching injured worker job capability with job descriptions; contacting different employers with different job tasks; coursework on medical, psychological and functional implications of disability; and vocational counseling and employment services. An existing credential, certified rehabilitation counselor (CRC), is available to individuals who have masters degrees in a field such as social work, work experience in the disability and employment arena, an 18 hour post-graduate advanced certificate in rehabilitation counseling, 36 months of work experience, at least 24 months of which must be under the supervision of a CRC, and passage of the CRC exam.

RESPONSE: The Division disagrees, but makes a clarification based on the comments. Every applicant for the Registry must meet all of the requirements of §136.2(b) of this title. These include §136.2(b)(4) of this title, which requires an applicant to provide a statement showing the applicant's education, training or experience in vocational rehabilitation and §136.2(b)(2) of this title, which requires the applicant to provide an informational brochure that describes the evaluation, assessment, assistance, placement or support services available

from the applicant. An application will not automatically be approved. An applicant will not be approved solely on the basis of education, without specific training or experience in vocational rehabilitation. Each application will be processed in the same manner, in accordance with all of the provisions of §136.2 of this title. Only applications demonstrating compliance with §136.2(b) will be approved. Section 136.2(b)(6) has been clarified to state that only information on approved private providers will be included in the Registry. Each application will be evaluated on a case by case basis.

Licensed Master Social Workers and Licensed Clinical Social Workers are licensed by the State of Texas. Licensed Clinical Social Workers must have a masters or doctoral degree in Social Work and 3,000 hours of fulltime clinical employment experience. Licensed Master Social Workers must have a masters or doctoral degree in social work and have passed a national board exam. In order to practice independently, Licensed Master Social Workers must complete 3,000 hours of board-approved supervised full time social work experience over a two year period, including 100 hours of face-to-face supervision with a board approved supervisor. This compares to the amount of supervised counseling experience that is required of a Licensed Professional Counselor, which is currently on the list of credentials for the Registry.

The Registry is primarily a resource to insurance carriers, who will have access to all of the background information provided by the applicant. The insurance carrier will then be able to select a provider whose background best suits their needs.

COMMENT: A commenter suggested adding Licensed Marriage and Family Therapist as an acceptable credential to be on the Registry. Their scope of practice includes career development and adjustment and rehabilitation therapy.

RESPONSE: The Division declines to make the change. While Marriage and Family Therapists may assist a person in treatment of an injury and psychological recovery from an injury, they do not necessarily provide the vocational counseling, vocational assessment, job placement and job development function that vocational rehabilitation services involve. The Division clarifies that the appropriate credentials for performing vocational rehabilitation services within the Texas workers' compensation system, as opposed to rehabilitation treatment, are reflected in or required by the rule and a summary of those credentials will be included in the registry.

§136.2(b)(6)

COMMENT: A commenter expressed concerns about §136.2(b)(6), the "related services" exception. The provision allows non-credentialed persons to perform services such as initial claimant intake, providing job search skills, verifying job search efforts, and serving as a liaison with potential employers. The commenter expressed concerns that the "related services" exception will result in an unacceptable erosion of the protection that only appropriately credentialed providers will perform vocational rehabilitation services.

RESPONSE: The Division declines to make a change. Each applicant for the Registry must state that only the registrant will perform vocational rehabilitation services under their registration. Furthermore, §136.2(b)(6) provides that if related services are performed by a non-credentialed person, the services must be performed under the direction of the registrant. The examples provided in the rule are primarily duties that are administrative in nature.

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

For, without changes: An individual, Property Casualty Insurers Association of America, National Association of Social Workers, Texas Chapter.

For, with changes: Office of Injured Employee Counsel, Texas Association for Marriage and Family Therapy.

Against: American Insurance Association, Texas Association for Rehabilitation Professionals and Providers of Services.

6. STATUTORY AUTHORITY. These amendments are adopted under the Labor Code §§409.012, 402.00116, 402.00111, 402.061, and 402.00128. Section 409.012 provides that the Commissioner may require by rule that a private provider of vocational rehabilitation services maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation insurance claim and that a private provider of vocational rehabilitation services may register with the Division. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Title 5, Labor Code, and other laws applicable to the Division or Commissioner. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under Title 5, Labor Code. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to prescribe the form, manner and procedure for the transmission of information to the Division.

7. TEXT.

§136.1. *Review of Employer Report of Injury.*

(a) The division shall analyze each employer report of injury, within 30 days of its receipt, for any information indicating that the injured employee had or is likely to have:

(1) an amputation of:

(A) an arm or leg;

(B) three fingers or more; or

(C) the large toe or one-third of the foot or more;

(2) the loss of use of an arm or leg;

(3) a permanent spinal cord injury;

(4) a head injury;

(5) a heart attack or heart disease;

(6) an occupational disease;

(7) blindness or significant vision loss;

(8) severe or extensive burns;

(9) any other condition that indicates an impairment is likely; or

(10) any injury resulting in more than 30 days lost time. Such injury shall be reviewed and a determination made as to the degree of impairment and the appropriateness of vocational rehabilitation services.

(b) Whenever the division finds facts that suggest one or more of the conditions listed in subsection (a) of this section, the division shall notify the injured employee, the Department of Assistive and Rehabilitative Services, and the insurance carrier that the division has identified an injured employee who may be assisted by vocational rehabilitation. The notice shall:

(1) be made no later than 60 days after the date the division received the employer report of injury; and

(2) contain the following information:

(A) the workers' compensation claim number assigned by the division;

(B) the address of the local office of the division assigned to manage the

claim;

- (C) the insurance carrier's name and division assigned identification number (if any);
- (D) the name, address, and phone number of the injured employee; and
- (E) the condition listed in subsection (a) of this section, that indicates that the injured employee may be assisted by vocational rehabilitation.

(c) In addition to the information required by subsection (b) of this section, the division's notice to the injured employee shall contain the following:

- (1) the address and telephone number of the central office of the Department of Assistive and Rehabilitative Services;
- (2) a brief description of the availability of private providers registered with the division according to §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services); and
- (3) a statement that the division notified the Department of Assistive and Rehabilitative Services and the insurance carrier that the injured employee may be assisted by vocational rehabilitation.

§136.2. Registry of Private Providers of Vocational Rehabilitation Services.

(a) The division shall maintain a registry of private providers of vocational rehabilitation services (registry). A private provider may apply to the division to be included in the registry.

(b) A private provider who wishes to be included in the registry shall complete a division approved registration form. The registration form shall be submitted in the form, format, and manner prescribed by the division to the division at the division's central office, signed by the provider, and include the following information:

- (1) the private provider's name, business name (if applicable), business address, and telephone number;

- (2) an informational brochure that describes the evaluation, assessment, assistance, placement, or support services available from the private provider;
 - (3) the locations where the private provider renders services;
 - (4) a statement showing the private provider's education, training, or experience in vocational rehabilitation;
 - (5) a statement showing the private provider is credentialed as a Licensed Professional Counselor (LPC), Licensed Master Social Worker (LMSW), Licensed Clinical Social Worker (LCSW), Certified Case manager (CCM), Certified Rehabilitation Counselor (CRC), Certified Vocational Evaluator (CVE), or Certified Disability Management Specialist (CDMS); and
 - (6) a statement that only the credentialed private provider of vocational rehabilitation services will perform vocational rehabilitation services, although related services (such as initial claimant intake, providing job search skills, verifying job search efforts, liaison with potential employers) may be performed by non-credentialed individuals under their direction.
- (c) The division shall include in its registry, for a period of one year from the date the division enters the private provider's name in the registry, a summary of the information provided on the registration form of each approved private provider.
- (d) The division shall provide a copy of the registry on the division's web site.

8. CERTIFICATION. The agency hereby certifies that the adopted amendments and sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on January 14, 2011.

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

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that §136.1 and §136.2 of this title concerning Review of Employer Report of Injury and Registry of Private Providers of Vocational Rehabilitation Services are adopted.

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO _____

*Section 136.1 was not republished by the Texas Register due to it being adopted without changes from proposal; however as a convenience to system participants, the Division has provided the text of §136.1 in this adoption document.