

Division of Workers' Compensation Rulemaking January 2018

Rule Project	Title 28 TAC	Summary	Status  *Rules may have later effective dates if required by statute or specified in the rule.
Compound Drugs	Amend §§ 134.500, 134.530, and 134.540	Amendments change the definition of closed formulary to exclude any prescription drug created through compounding, and require preauthorization for all prescription drugs created through compounding for claims subject to and not subject to certified networks. The proposed rule changes are not intended to prohibit the use of medically necessary compound medications in the workers' compensation system. Rather, they are intended to ensure that injured employees have access to all health care reasonably required by the nature of the injury as and when needed.	Formal Proposal posted: 01/19/18  Public Hearing: 2/15/18  Comment Deadline: 2/20/18
Designated Doctor	Amend §§ 127.1, 127.5, 127.10, 127.100, 127.130, 127.140, and 127.220	Amendments include updating requirements for requesting a DD exam, communicating the DD selection process, creating a maintenance log for tracking rescheduled DD appointments, limiting the amount of multiple certifications, and updating qualification, testing and submission requirements. The amendments aim to simplify some DD processes, retain and recruit doctors to continue to ensure the most optimally qualified doctor is selected for an examination, provide transparency, and allow for better monitoring of designated doctors.	Anticipated date of formal proposal:  March 2018
Telemedicine	New § 133.30	The new section will expand the accessibility of telemedicine services in the workers' compensation system by creating an exception to the Medicare billing requirement that these services be furnished at an originating site. Under the new rule, billing for telemedicine services in the workers' compensation system would not be limited to services provided at an originating site, as defined by Medicare, or to circumstances where the injured employee is in a rural health professional shortage area.	Anticipated date of formal proposal:  February 2018
Enforcement	Amend or adopt rule in ch.180	Rulemaking will require the division, in the assessment of an administrative penalty against a person, to communicate to the person information about the penalty, including the relevant statute or rule violated, the conduct that gave rise to the violation, and the factors considered in determining the penalty. This rulemaking is required by S.B. 1895.	Anticipated date of formal proposal:  April 2018

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Death Benefit Eligibility for First Responder Spouses	Amend § 132.7	Amendments will implement H.B. 2119, which makes it so that eligible spouses of first responders remain eligible for death benefits for life, regardless of remarriage, and regardless of the date on which the death of the first responder occurred. The change in law applies to spouses who remarry on or after September 1, 2017.	Anticipated date of formal proposal: August 2018
Obsolete Reporting Requirements & Electronic Transmission	Amend ch. 112, 130, and 136	Rulemaking will implement H.B. 2112 by removing references to reporting requirements that were repealed in the legislation, and indicating that certain forms may be submitted to the division electronically.	Anticipated date of formal proposal: January 2018
Physician Assistants and Work Status Reports	Amend §§ 129.5, 126.17, and 129.6	Amendments will implement H.B. 2546 and will reflect that physician assistants may sign work status reports when delegated the authority to do so by a treating doctor.	Anticipated date of proposal: May 2018
Payment of Penalty or Bond Pending Enforcement Appeal	Amend § 148.17	Amendment will implement H.B. 1456, which removed the requirement for a person charged with an administrative penalty to forward the amount of the penalty to the division or post a bond for the amount of the penalty pending appeal.	Anticipated date of proposal: August 2018
"Hearing Officer" to "Administrative Law Judge"	Throughout 28 TAC Part 2	Rulemaking will implement H.B. 2111 and will amend all references to a division "hearing officer" in 28 TAC Part 2 to "administrative law judge."	Anticipated date of proposal: May 2018
Withdrawing Certified Self-Insurers	Amend chapter 114	Rulemaking will implement H.B. 1989 and will reflect that an adequate program for a withdrawing certified self-insured includes a program in which the certified self-insured has insured or reinsured all workers' compensation obligations incurred by the certified self-insured with an insurance company under an agreement approved in writing by the commissioner of workers' compensation.	Anticipated date of informal draft posting: May 2018
Credentialing Organizations, Work-Hardening and Work-Conditioning, and Preauthorization and Concurrent Review	Amend §§ 134.600, 134.204, 134.210, 134.230.	The division is considering rulemaking to implement S.B. 1494 and remove the preauthorization/concurrent review exemption for work-hardening and work-conditioning services provided by a CARF-accredited facility. The division is also considering rulemaking to remove the increased reimbursement rate for these services that have been provided by CARF-accredited facilities. The division will consider the results of the Workers' Compensation Research and Evaluation Group study on the impact of accredited and non-accredited work-hardening/work-conditioning programs.	Informal draft posting: 1/19/18 Comment Deadline: 2/02/18