

**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) proposes to amend 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 proposes to repeal 28 TAC §180.78, concerning the effective date of the subchapter, because it is no longer necessary. The proposed repeal is also published in this issue of the *Texas Register*.

**EXPLANATION.** 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 within the MQRP, and 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 proposed 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 proposed amendment deletes an obsolete reference to recertification 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 proposed amendment to subsection (a) deletes an obsolete reference to recertification to reflect recent amendments to 28 TAC Chapter 127 that updated the certification and renewal process.

**Section 180.72** concerns conflicts of interest. The proposed 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 proposed 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

proposed 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.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner of Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that enforcing and administering the proposed amendments will have the public benefits of conforming the language with current agency structure and practice and with other DWC rules; clarifying requirements for notice and documents to respondents in an ISC; clarifying that DWC may conduct ISCs remotely or in person; and ensuring that DWC's rules align with the language and intent of Labor Code §§413.05115, 413.0512, 413.05121, and 413.05122. The amendments will

also have the public benefit of ensuring that DWC's rules are current, accurate, and easy to read and understand, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §§413.05115, 413.0512, 413.05121, or 413.05122 because they do not impose requirements beyond those in the statutes or create obligations beyond those in the current rule. Instead, the amendments clarify respondents' rights, enhance efficiency, and reduce administrative burdens for DWC and system participants.

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

As a result, any cost associated with the proposed amendments does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments reduce confusion and administrative burdens; provide for more stable, consistent, and transparent regulation; update references; and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs. As a result, and in

accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. In contrast, DWC expects that the reduced administrative burden from the amendments will reduce costs to regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments enhance efficiency and clarity; conform the language to current agency structure, practice, and related rules; and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on July 17, 2023. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

### **SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL**

#### **28 TAC §§180.64, 180.66, 180.68, 180.72, AND 180.76**

**STATUTORY AUTHORITY.** DWC proposes §§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.

**CROSS-REFERENCE TO STATUTE.** Sections 180.64, 180.66, 180.68, 180.72, and 180.76 implement Labor Code §413.05122, enacted by HB 2605, 82nd Legislature, Regular Session (2011).

**TEXT.**

**§180.64. MQRP Application Process.**

(a) - (f) (No change.)

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

(h) - (k) (No change.)

**§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, performance-based [~~and recertification, 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 recertification~~] of designated doctors;

(2) performance-based [~~performance based~~] oversight;

(3) administrative violations that do not require an expert medical opinion;

or

(4) complaints about [~~regarding~~] professionalism that do not require an expert medical opinion.



(b) - (c) (No change.)

**§180.72. Conflict of Interest.**

(a) - (c) (No change.)

(d) If the medical advisor has a conflict of interest in a case, the medical advisor must recuse himself from the case. ~~[and appoint the associate medical advisor to perform the role of the medical advisor in the case, including enforcement decisions and recommendations. If the associate medical advisor also has a conflict of interest in the case, the commissioner shall]~~ 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 Arbitrator.

(e) (No change.)

**§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 ~~[process]~~ (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) ~~[(5)]~~ 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 ~~[requestor]~~ of the scheduled date of the ISC.

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

(G) If a requester ~~[requestor]~~ fails to attend an ISC as scheduled, the requester loses the ~~[requestor forfeits his]~~ right to an ISC. ~~[, but it does not preclude]~~ But failure to attend the ISC does not affect the requester's rights to:

(i) communicate ~~[requestor from discussing the requester's case]~~ with the office of the medical advisor as ~~[set forth in]~~ paragraph (3) of this subsection provides;]

(ii) enter [~~from entering~~] into a consent order [~~Consent Order~~]  
with the division;~~;~~ or

(iii) defend [~~from defending~~] an enforcement case at the State  
Office of Administrative Hearings.

(b) (No change.)

### **SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL**

#### **REPEAL OF 28 TAC §180.78**

**STATUTORY AUTHORITY.** DWC proposes repealing §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.

**CROSS-REFERENCE TO STATUTE.** Repealing §180.78 implements Labor Code §413.05122, enacted by HB 2605, 82nd Legislature, Regular Session (2011).

**TEXT.**

**§180.78. Effective Date.**

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 2, 2023.



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