

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 136: BENEFITS—VOCATIONAL REHABILITATION Title 28 TAC §136.1 and §136.2

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes the repeal of 28 Texas Administrative Code (TAC) §136.2, *Registry of Private Providers of Vocational Rehabilitation Services*, and amendments to 28 TAC §136.1, *Review of Employer Report of Injury*.

In House Bill (HB) 2112, the 85th legislature primarily amended or repealed certain reporting and notification requirements throughout the Labor Code. HB 2112 repealed Labor Code §409.012(d), which permitted a private provider of vocational rehabilitation services to register with the division. As a result of the repeal of Labor Code §409.012(d), the division is no longer maintaining a Registry of Private Providers of Vocational Rehabilitation Services, and removed the registry from the division website. The Legislature removed Labor Code §409.012(d) and the division is repealing §136.2 to conform to the legislative repeal. The proposed amendments to §136.1 and the repeal of §136.2 are necessary to implement the legislative changes in HB 2112, which became effective June 9th, 2017.

Additionally, HB 2112 amended Labor Code §408.150 and §409.012 to substitute the "Department of Assistive and Rehabilitation Services" with "Texas Workforce Commission."

Section 136.1 addresses **Review of Employer Report of Injury**. The division amended §136.1(b), (c)(1), and (c)(3) to replace "Texas Department of Assistive and

Rehabilitative Services” with “Texas Workforce Commission.” This amendment is necessary to reflect a change in the state agency tasked with providing vocational rehabilitation services to injured employees.

The division also deleted the existing text in §136.1(c)(2), which stated “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 renumbered §136.1(c)(3) to §136.1(c)(2). This deletion is necessary because the division is repealing §136.2.

§136.2 addresses **Registry of Private Providers of Vocational Rehabilitation Services**. Section 136.2 requires the division to maintain a registry of private providers of vocational rehabilitation services. The division proposes the repeal of §136.2 to implement the legislative repeal of Labor Code §409.012(d) in HB 2112. This amendment is necessary to reflect that, as a result of HB 2112 and the repeal of Labor Code §409.012(d), the division will no longer maintain a registry of private providers.

FISCAL NOTE. Dan Paschal, Deputy Commissioner of Internal Affairs & Strategic Planning, has determined that for each year of the first five years the amended sections and repeal are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed amendments and repeal. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed below.

PUBLIC BENEFIT AND COSTS. Mr. Paschal has also determined that, for each of the first five years amended §136.1 and the repeal of §136.2 is in effect, the public benefits anticipated as a result of the proposed amendments include aligning §136.1 with the current statute, decreasing system participant requirements by removing the registry of private providers of vocational rehabilitation services, and providing guidance on which agency the division will direct an injured employee to for vocational rehabilitation.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mr. Paschal anticipates that, for each of the first five years the repeal of §136.2 and amended §136.1 are in effect, there will be no costs to persons required to comply with the proposal. Instead, the amendments result in a cost savings to system participants by removing existing application requirements.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by: (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total cost imposed by an amount that is equal to or greater than the cost of the proposed rule. As described above, the division has determined that the proposed amendments and repeal will not impose a cost on system participants. The amendments instead provide a cost savings by removing existing requirements for a private provider of vocational rehabilitation services to send the DWC Form-065, *Application for Inclusion on Registry of Private Providers of Vocational Rehabilitation Services*, to the division. The division estimates an individual cost savings to private providers for the amount to print and mail the DWC Form-065 to the division.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

Government Code §2006.002(c) provides that if a proposed rule may have an adverse economic effect on small businesses, micro-businesses, or rural communities, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. Government Code §2005.001(1-a) defines a “rural community” as a municipality with a population of less than 25,000.

In accordance with Government Code §2006.002(c), the division has determined that the proposed repeal and amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed amendments and repeal will not create or eliminate a

government program and will not require the creation or elimination of existing employee positions. The proposed amendments and repeal will not require an increase or decrease in future legislative appropriations to the division and will not result in an increase or decrease in fees paid to the division.

The proposal does not create a new regulation, expand an existing regulation, or limit an existing regulation. However, the proposal will repeal existing regulations that require private providers of vocational rehabilitation services to register with the division. The number of individuals subject to the rules' applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

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

REQUEST FOR PUBLIC COMMENT. If you would like to comment on this proposal, please submit your written comments by 5:00 p.m. CST on February 26, 2018. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of the General Counsel, MS-4D, 7551 Metro Center Drive, Suite

100, Austin, Texas 78744-1645. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. Amended §136.1 is proposed under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking*; Labor Code §402.061, *Adoption of Rules*; Labor Code §408.150, *Vocational Rehabilitation*; and, Labor Code 409.012, *Vocational Rehabilitation Information*.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code § 408.150 states that the division should refer an employee to the appropriate administrative agency with a recommendation for appropriate services if the division determines that an employee could be materially assisted by vocational rehab or training.

Labor Code 409.012 states that the division shall analyze each report of injury to determine whether the injured employee could be assisted by vocational rehabilitation.

TEXT.

§136.1 Review of Employer Report of Injury

(a) (No Change.)

- (1) (No Change.):
 - (A) (No Change.)
 - (B) (No Change.)
 - (C) (No Change.)

- (2) (No Change.)
- (3) (No Change.)
- (4) (No Change.)
- (5) (No Change.)
- (6) (No Change.)
- (7) (No Change.)
- (8) (No Change.)
- (9) (No Change.)
- (10) (No Change.)

(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 and the Texas Workforce Commission [~~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) (No Change.)
- (2) (No Change.)
 - (A) (No Change.)
 - (B) (No Change.)
 - (C) (No Change.)

(D) (No Change.)

(E) (No Change.)

(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 Texas Workforce Commission [~~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~~

(2) [~~(3)~~] a statement that the division notified the Texas Workforce Commission [~~Department of Assistive and Rehabilitative Services and the insurance carrier~~] that the injured employee may be assisted by vocational rehabilitation.

STATUTORY AUTHORITY. Existing §136.2 is repealed under authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking*; Labor Code §402.061, *Adoption of Rules*; and, Labor Code 409.012, *Vocational Rehabilitation Information*.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code 409.012 states that the division shall analyze each report of injury to determine whether the injured employee could be assisted by vocational rehabilitation.

TEXT.

~~**§136.2 Registry of Private Providers of Vocational Rehabilitation Services**~~

CERTIFICATION.

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

Issued at Austin, Texas, on January 10, 2018.

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Nicholas Canaday III
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Texas Department of Insurance,
Division of Workers' Compensation