

**SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS.  
28 TAC §127.1 AND §127.25.**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §127.1, concerning designated doctor (DD) examination requests and §127.25, concerning failure to attend a DD examination.

The amendments to §127.1 and §127.25 are adopted without changes to the proposed text published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3909). Sections 127.1 and 127.25 will not be republished.

**REASONED JUSTIFICATION.** The amendments to 28 TAC §127.1 and §127.25 are necessary to implement House Bill (HB) 2468, 88th Legislature, Regular Session (2023). HB 2468 amended Texas Labor Code §408.0041 to include individuals receiving lifetime income benefits under new Labor Code §408.1615. Section 408.1615 allows insurance carriers to suspend benefits if the first responder does not submit to a DD examination as required by Labor Code §§408.0041(a), 408.0041(f), or 408.1615(h). DWC amends 28 TAC §127.1 and §127.5 to reflect these statutory changes.

**Section 127.1** concerns requesting DD examinations. The injured employee or an insurance carrier may ask DWC to order, or DWC on its own motion may order, an examination by a DD to resolve questions about the employee's injury. Section 127.1(d)(2) states that DWC will deny a request for a DD examination under §127.1 if the request would require a DD examination that violates certain statutes. The amendment to §127.1(d)(2) adds a reference to Labor Code §408.1615 as one of these statutes because

HB 2468 amended §408.0041 to include individuals receiving lifetime income benefits under §408.1615.

**Section 127.25** concerns the suspension, reinitiation, and reinstatement of benefits when an injured employee fails to attend a DD examination. Amending §127.25 is necessary to implement HB 2468. HB 2468 amended Labor Code §408.0041 to include individuals receiving lifetime income benefits under new Labor Code §408.1615. The adopted amendments to §127.25 allow for the suspension of lifetime benefits received under §408.1615 and for the reinstatement of those benefits after completing a missed DD examination.

#### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received one written comment, and no oral comments. Commenters in support of the proposal with changes were: Texas Mutual Insurance Company (TMIC). There were no commenters were against the proposal.

**Comment on §127.1.** TMIC recommended providing guidance in the rule to DDs and other system participants regarding the specific information that system participants should provide when requesting a DD examination to address initial lifetime income benefits versus ongoing eligibility for lifetime income benefits under proposed §127.1(b)(8).

**Agency Response to Comment on §127.1.** DWC declines to make changes to the rule to require certain information from system participants or provide guidance to DDs regarding the assessment of initial lifetime income benefits versus ongoing eligibility for lifetime income benefits because DWC's robust training and outreach programs for DDs

make additional educational rule amendments unnecessary. DWC will continue to provide active outreach and guidance on this issue.

## **SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS.**

### **28 TAC §127.1 AND §127.25.**

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to §127.1 and §127.25 under Labor Code §§408.0041, 408.1615, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides that the commissioner may order a DD examination to resolve questions about an individual's injuries. It also provides that an insurance carrier may suspend benefits for a period in which the individual does not attend the required DD examination, and provides for when the insurance carrier must reinstate benefits.

Labor Code §408.1615 provides lifetime income benefits for certain first responders who sustain a serious bodily injury, other than an injury described by §408.161, in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

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.**

**§127.1. Requesting Designated Doctor Examinations.**

(a) Initiating an examination. At the request of the insurance carrier, an injured employee, the injured employee's representative, or on its own motion, the division may order a medical examination by a designated doctor to resolve questions about:

- (1) the impairment caused by the injured employee's compensable injury;
- (2) the attainment of maximum medical improvement (MMI);
- (3) the extent of the injured employee's compensable injury;
- (4) whether the injured employee's disability is a direct result of the work-related injury;
- (5) the ability of the injured employee to return to work; or
- (6) issues similar to those described by paragraphs (1) - (5) of this subsection.

(b) Requirements for a request. To request a designated doctor examination, a requester must:

- (1) provide a specific reason for the examination;
- (2) report the injured employee's current diagnosis or diagnoses and body part or body parts affected by the injury;
- (3) provide general information about the identity of the requester, injured employee, treating doctor, and insurance carrier;
- (4) identify the workers' compensation health care network certified under Insurance Code Chapter 1305 through which the injured employee is receiving treatment,

if applicable;

(5) identify whether the claim involves medical benefits provided through a political subdivision under Labor Code §504.053(b)(2) and the name of the health plan, if applicable;

(6) submit the request on the form prescribed by the division under this section. A copy of the prescribed form is:

(A) on the division's website at [www.tdi.texas.gov/wc](http://www.tdi.texas.gov/wc); or

(B) at the division's headquarters in Austin, Texas, or any division field office location;

(7) submit the request to the division and a copy of the request to each party listed in subsection (a) of this section who did not request the designated doctor examination;

(8) provide all information listed in subparagraphs (A) - (G) of this paragraph that applies to the type of examination the requester seeks:

(A) if the requester seeks an examination on the attainment of MMI, include the statutory date of MMI, if any;

(B) if the requester seeks an examination on the impairment rating of the injured employee, include the date of MMI that has been determined to be valid by a final decision of the division or a court or by agreement of the parties, if any;

(C) if the requester seeks an examination on the extent of the compensable injury, include a description of the accident or incident that caused the claimed injury and a list of all injuries in question;

(D) if the requester seeks an examination on whether the injured employee's disability is a direct result of the work-related injury, include the beginning and ending dates for the claimed periods of disability and state if the injured employee is

either not working or is earning less than pre-injury wages as defined by Labor Code §401.011(16);

(E) if the requester seeks an examination on the injured employee's ability to return to work in any capacity and the activities the injured employee can perform, include the beginning and ending dates for the periods to be addressed. If no dates are included, the designated doctor must examine the injured employee's work status as of the date of the examination;

(F) if the requester seeks an examination to determine whether an injured employee entitled to supplemental income benefits may return to work in any capacity for the identified period, include the beginning and ending dates for the qualifying periods to be addressed and whether this period involves the ninth quarter or a subsequent quarter of supplemental income benefits;

(G) if the requester seeks an examination on topics under subsection (a)(6) of this section, specify the issue in sufficient detail for the designated doctor to identify and answer the questions; and

(9) provide a signature to attest that every reasonable effort has been made to ensure the accuracy and completeness of the information in the request.

(c) Scheduling an examination within 60 days. The division will not schedule a designated doctor examination within 60 days of the most recent designated doctor examination absent a showing of good cause.

(1) Good cause requires the requester to show that the requested examination is reasonably necessary to resolve the submitted questions and that it will affect entitlement to benefits.

(2) If the requester already asked for an examination on the claim, they must also show that the submitted questions could not reasonably have been included in the

previous examination.

(d) Denial of a request. The division will determine whether good cause exists on a case-by-case basis. The division will deny a request for a designated doctor examination and provide a written explanation for the denial to the requester if:

(1) the request does not comply with any of the requirements of subsection (b) or (c) of this section;

(2) the request would require the division to schedule an examination that violates Labor Code §§408.0041, 408.123, 408.151, or 408.1615;

(3) there is an unresolved dispute about compensability reported under §124.2 of this title (relating to Insurance Carrier Notification Requirements); or

(4) the request lacks any legal or factual basis that would reasonably merit approval.

(e) Examination ordered during a dispute. During a dispute on the compensability of a claim as a whole, if a division administrative law judge or benefit review officer determines that an expert medical opinion would be necessary to resolve a dispute about whether the claimed injury resulted from the claimed incident, the administrative law judge or benefit review officer may order the injured employee to attend a designated doctor examination to address that issue.

(f) Disputes about designated doctor requests. The dispute resolution processes in Chapters 140 - 144 and 147 of this title (relating to dispute resolution processes, proceedings, and procedures) govern disputes about designated doctor requests.

(1) The insurance carrier, an injured employee, or the injured employee's representative may dispute the division's approval or denial of a designated doctor examination request.

(2) Until the division has either approved or denied the request, a party may

not dispute the designated doctor examination request itself or the accuracy of any information on the request.

(3) To dispute an approved or denied request for a designated doctor examination, a party may seek an expedited contested case hearing under §140.3 of this title (relating to Expedited Proceedings). The party must file the request within three working days of receiving the order under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments).

(4) If the division receives and approves a timely request for expedited proceedings to dispute a designated doctor examination, the division will stay the disputed examination pending the outcome of the expedited contested case hearing.

**§127.25. Failure to Attend a Designated Doctor Examination.**

(a) Suspension of benefits. An insurance carrier may suspend temporary income benefits (TIBs), or lifetime income benefits under §408.1615, if an injured employee fails, without good cause, to attend a designated doctor examination or a referral examination under §127.10(c) of this title.

(b) No good cause. If there is no division finding that good cause exists, an insurance carrier may presume that the injured employee did not have good cause to fail to attend the examination if, by the day the examination was originally scheduled to occur, the injured employee has both:

(1) failed to submit to the examination; and

(2) failed to contact the designated doctor's office to reschedule the examination.

(c) Rescheduling timeframe. If the injured employee contacts the designated doctor within 21 days of the scheduled date of the missed examination to reschedule the

examination, the designated doctor must schedule the examination to occur as soon as possible, but no later than 21 days after the injured employee contacted the doctor.

(d) New examination request required. If the injured employee fails to contact the designated doctor within 21 days of the missed examination date but wishes to reschedule the examination, the injured employee must request a new examination under §127.1 of this title (relating to Requesting Designated Doctor Examinations).

(e) Reinitiation of TIBs. The insurance carrier must reinitiate TIBs effective on the date the injured employee submitted to the rescheduled examination under subsection (c) of this section or the date the examination was scheduled at the injured employee's request under subsection (d) of this section, unless the designated doctor's report indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. The reinitiation of TIBs must occur no later than the seventh day following:

(1) the date the insurance carrier was notified that the injured employee submitted to the examination; or

(2) the date the insurance carrier was notified that the division found the injured employee had good cause for not attending the examination.

(f) Reinstatement of lifetime income benefits. The insurance carrier must reinstate lifetime income benefits under §408.1615 effective on the date the injured employee submitted to the rescheduled examination under subsection (c) of this section, or the date the examination was scheduled at the injured employee's request under subsection (d) of this section, unless the designated doctor's report indicates that the injured employee is no longer eligible for lifetime income benefits. The reinstatement of lifetime income benefits must occur no later than the seventh day following:

(1) the date the insurance carrier was notified that the injured employee

submitted to the examination; or

(2) the date the insurance carrier was notified that the division found the injured employee had good cause for not attending the examination.

(g) Benefits during suspension. An injured employee is not entitled to TIBs or lifetime income benefits under §408.1615 during the period when the insurance carrier suspended benefits under this section unless the injured employee later submits to the examination, and:

(1) the division finds that the injured employee had good cause for not attending the examination; or

(2) the insurance carrier determines that the injured employee had good cause for not attending the examination.

**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 November 1, 2024.



---

Kara Mace  
General Counsel  
TDI, Division of Workers' Compensation

The commissioner adopts amended 28 TAC §127.1 and §127.25.

  
\_\_\_\_\_  
Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Commissioner's Order No. 2024-8929