



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Office of the Medical Advisor (MS-41)

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To: Designated Doctors and Doctors Certified to Perform Maximum Medical Improvement (MMI) and Impairment Rating (IR) Examinations

From: Graves Owen, M.D., DWC Medical Advisor

Date: October 7, 2019

RE: Update on Recent Legislative Changes

The Texas Legislature passed several bills during the 2019 legislative session relevant for designated doctors and doctors certified to perform MMI and IR examinations. This memo summarizes four bills related to work status reports, eligibility of a first responder for workers' compensation benefits for post-traumatic stress disorder (PTSD), statutory presumptions for peace officers relating to certain occupational diseases, and statutory presumptions for firefighters and emergency medical technicians diagnosed with certain cancers. **Please refer to the actual bills for the complete content of the legislation.** Bills listed will link directly to the bill text. You may also access the bills, as well as other legislative information, at the Texas Legislature Online website at <https://capitol.texas.gov/>.

While DWC encourages use of this memo to aid in your compliance efforts, individuals and entities regulated by DWC are responsible for ensuring compliance with *all* enacted legislation affecting the business they conduct.

[House Bill 387](#) allows a treating doctor to delegate to an advanced practice registered nurse the authority to complete and sign a DWC Form-073, *Work Status Report* regarding an injured employee's ability to return to work.

This law went into effect on September 1, 2019. DWC has revised DWC Form-073 to reflect the statutory change, and DWC rules will be amended to conform to the statute.

[House Bill 2143](#) clarifies that PTSD is a compensable injury for first responders if the disorder was caused by one or more events in the course and scope of employment, rather than a single event. Sets the date of injury for PTSD as the date the first responder knew or should have known that the disorder may be related to their employment.

Doctors are reminded that medical records for the event or events related to the PTSD may be from multiple sources and can include non-workers' compensation primary care physicians treating prior to a formal diagnosis.

The *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, DSM-5* remains the diagnostic criteria to be used for first responder PTSD claims.

The bill went into effect on September 1, 2019, and the changes apply to compensable injuries that occur on or after that date.

[Senate Bill 1582](#) extends the statutory presumption that certain occupational diseases are work related for peace officers as described in Texas Code of Criminal Procedures Article 2.12. Those presumptions include smallpox or other diseases that can be immunized, tuberculosis or other respiratory diseases, and heart

attacks and strokes. The bill also entitles peace officers to preventative immunization for any disease that they may be exposed at work. The cancer presumption is not extended to peace officers.

The bill went into effect on September 1, 2019, and the changes apply to compensable injuries that occur on or after that date.

[Senate Bill 2551](#) replaces the presumption standard for cancer claims from a cancer known to be associated with firefighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer, with a list of 11 cancers. Those cancers are cancers that originate in the stomach, colon, rectum, skin, prostate, testis, or brain; non-Hodgkin's lymphoma; multiple myeloma; malignant melanoma; and renal cell carcinoma.

In addition, SB 2551:

- Exempts insurance carriers from the 15-day pay or dispute requirement in Texas Labor Code §409.021(a) if certain conditions are met.
- Provides that the presumption for any of the occupational diseases described in Government Code Chapter 607 may be rebutted through a showing by a preponderance of the evidence that a risk factor or cause not associated with the firefighter or emergency medical technician's work was a substantial factor in bringing about the disease, without which the disease would not have occurred.
- Adds factors that DWC must consider when determining whether to assess administrative penalties under Labor Code 409.021(a-3).
- Clarifies and confirms that political subdivisions do not have sovereign immunity from compliance, enforcement actions, and administrative penalties under Chapter 415 and adds liability for claimant's attorney fees under Labor Code §408.221.
- Allows a political subdivision to create an account for the payment of lifetime income benefits or death benefits.
- Requires the commissioner to adopt rules as required by or necessary to implement this legislation not later than January 1, 2020.

Effective for new claims filed on or after June 10, 2019.

If you have any questions regarding this information, please contact Lori Wasserburger, Designated Doctor Education Advisor at lori.wasserburger@tdi.texas.gov or 512-804-4765.