

1 The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes
2 amending 28 Texas Administrative Code (TAC) §129.5, concerning Work Status Reports.
3 These amendments will conform §129.5 to the changes to Texas Labor Code §408.025(a-1)
4 made by House Bill (HB) 387, 86th Legislature, Regular Session (2019). These changes
5 authorize a treating doctor to delegate authority to complete, sign, and file a work status
6 report to a licensed advanced practice registered nurse.

7 BACKGROUND AND PURPOSE

8 The amendments to §129.5 provide that a licensed advanced practice registered nurse may
9 be delegated authority to complete, sign, and file DWC Form-073, Work Status Report, by a
10 treating doctor. DWC has revised DWC Form-073 in conjunction with this rule amendment.
11 In addition, the amendments include non-substantive editorial and formatting changes to
12 conform the rule to the agency's current style and to improve the rule's clarity.

13 EXPLANATION OF THE PROPOSED AMENDMENTS

14 Subsection §129.5(b) is amended to provide that, as authorized under their licensing act, a
15 treating doctor may delegate authority to complete, sign, and file a work status report to a
16 licensed advanced practice registered nurse. Under Labor Code §408.025, the delegating
17 treating doctor is responsible for the acts of the advanced practice registered nurse.

18 Subsection (c) is amended to add delegated advanced practice registered nurses to the list
19 of persons who shall file a work status report in the form and manner prescribed by DWC.

1 Subsection (d) is amended to add delegated advanced practice registered nurses to the list
2 of persons who shall be considered to have filed a complete work status report if the report
3 contains the necessary information prescribed by DWC.

4 Subsection (e) is amended to add delegated advanced practice registered nurses to the list
5 of persons who shall file a work status report and describes the situations when a work
6 status report must be filed on an injured employee's claim.

7 Subsection (g) is amended to add delegated advanced practice registered nurses to the list
8 of persons who shall file a work status report with the insurance carrier, employer, and
9 injured employee within seven days of the day of receipt of certain information.

10 Subsection (i) is amended to add delegated advanced practice registered nurses to the list
11 of persons who shall file a work status report with the insurance carrier, employer, and the
12 injured employee.

13 Subsection (j) is amended to add delegated advanced practice registered nurses to the list
14 of persons who may bill for the work status report.

15 Subsection (j)(1) is amended to add delegated advanced practice registered nurses to the
16 list of persons who shall use CPT code "99080" with modifier "73" when billing for the work
17 status report.

18 Subsection (j)(2) is amended to add delegated advanced practice registered nurses to the
19 list of persons who shall use CPT code "99080" with modifiers "73" and "RR" when billing for
20 a work status report requested by an insurance carrier.

1 Subsection (j)(3) is amended to add delegated advanced practice registered nurses to the
2 list of persons who shall use CPT code "99080" with modifier "73" and "EC" when billing for
3 an extra copy of a previously filed work status report requested by or through the insurance
4 carrier.

5 FISCAL NOTE

6 Matthew Zurek, Deputy Commissioner for Health and Safety has determined that for each
7 year of the first five years the proposed sections are in effect, there will be no fiscal impact
8 to state or local governments as a result of enforcing or administering the proposal. There
9 will be no measurable effect on local employment or the local economy as a result of the
10 proposed amendments.

11 Mr. Zurek has also determined that, for each of the first five years §129.5 is in effect, the
12 public benefits anticipated as a result of the amendments include aligning §129.5 with the
13 current statute.

14 PUBLIC BENEFITS AND COSTS

15 Mr. Zurek expects that the proposed amendments will not increase the cost of compliance
16 with Labor Code §408.025(a-1) because it does not impose requirements beyond those in
17 the statute.

18 ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

19 DWC has determined that the proposed amendments will not have an adverse economic
20 effect or a disproportionate economic impact on small or micro businesses, or on rural

1 communities. Proposed amendments to §129.5 conform the rule addressing delegation of
2 authority to complete, sign, and file work status reports with the statutory requirements set
3 out in Labor Code §408.025. As a result, and in accordance with Government Code
4 §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

5 EXAMINATION OF COSTS TO REGULATED PERSONS UNDER GOVERNMENT CODE
6 §2001.0045.

7 DWC has determined that this proposal does not impose a cost on regulated persons
8 because it aligns the language in §129.5 with the statutory requirements for work status
9 reports set forth in Labor Code §408.025. Therefore, an examination of cost under
10 Government Code §2001.0045(b) is not required.

11 GOVERNMENT GROWTH IMPACT STATEMENT

12 The proposed amendments to §129.5 will not create or eliminate a government program and
13 will not require the creation or elimination of existing employee positions. The proposed
14 amendments will not require an increase or decrease in future legislative appropriations to
15 DWC and will not result in an increase or decrease in fees paid to DWC. The proposal does
16 not create a new regulation, expand an existing regulation, or limit an existing regulation.

17 The number of individuals subject to the rule's applicability has increased by the proposal
18 because advanced practice registered nurses are authorized to complete, sign, and file work
19 status reports under Labor Code §408.025(a-1) and will now be included in the rule. The
20 legislative amendment of HB 387 created the increase in applicability and the increase

1 enlarges the number of people authorized to complete, sign, and file a work status report,
2 improving regulatory flexibility. The proposal has no impact on the state's economy.

3

4 TAKINGS IMPACT ASSESSMENT

5 DWC has determined that no private real property interests are affected by this proposal
6 and that this proposal does not restrict or limit an owner's right to property that would
7 otherwise exist in the absence of government action. As a result, this proposal does not
8 constitute a taking or require a takings impact assessment under Government Code
9 §2007.043.

10 REQUEST FOR COMMENTS

11 Written comments or public hearing requests may be submitted by e-mail to
12 RuleComments@tdi.texas.gov, or by mailing or delivering your comments to Cynthia
13 Guillen, Office of the General Counsel, MS-4D, Texas Department of Insurance, Division of
14 Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.
15 To be considered, comments must be received by 5 p.m., Central time, on November 11,
16 2019. A request for a public hearing must be sent separately from your written comments
17 and must be received before the end of the comment period. If a public hearing is held,
18 DWC will consider written comments and public testimony presented at the hearing.

19 STATUTORY AUTHORITY

1 DWC proposes amendments to §129.5 under Labor Code §§402.00111, 402.00116,
2 402.061, and 408.025.

3 Labor Code §402.00111 provides that the commissioner may adopt any rules necessary
4 and appropriate to implement the powers and duties of DWC under the Labor Code and
5 other laws of this state.

6 Labor Code §402.00116 states that the commissioner is DWC's chief executive and has the
7 powers and duties vested in DWC by the Labor Code and other workers' compensation laws
8 of Texas.

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

11 Labor Code §408.025 provides that a treating doctor may delegate to a licensed advanced
12 practice registered nurse authority to complete, sign, and file a work status report.

13 The proposed amendments support the implementation of the Workers' Compensation Act,
14 Labor Code Title 5, Subtitle A.

15 §129.5 Work Status Reports

16 (a) (No change.)

17 (b) If authorized under their licensing act, a treating doctor may delegate authority to
18 complete, sign, and file a work status report to a licensed physician assistant or a
19 licensed advanced practice registered nurse as authorized under Texas Labor Code
20 §408.025(a-1) [§408.025]. The delegating treating doctor is responsible for the acts of

1 the physician assistant and the advanced practice registered nurse under this
2 subsection.

3 (c)The doctor, [øf] delegated physician assistant, or delegated advanced practice
4 registered nurse shall file a Work Status Report in the form and manner prescribed by
5 the division.

6 (d)The doctor, [øf] delegated physician assistant, or delegated advanced practice
7 registered nurse shall be considered to have filed a complete Work Status Report if the
8 report is filed in the form and manner prescribed by the division, signed, and contains at
9 minimum:

10 (1) - (5) (No change.)

11 (e)The doctor, [øf] delegated physician assistant, or delegated advanced practice
12 registered nurse shall file the Work Status Report:

13 (1) after the initial examination of the injured employee, regardless of the injured
14 employee's work status;

15 (2) when the injured employee experiences a change in work status or a substantial
16 change in activity restrictions; and

17 (3) on the schedule requested by the insurance carrier, its agent, or the employer
18 requesting the report through its insurance carrier, which shall not exceed one report
19 every two weeks and which shall be based upon the doctor's, [øf] delegated physician
20 assistant's, or delegated advanced practice registered nurse's scheduled appointments
21 with the injured employee.

22 (f) (No change.)

1 (g) In addition to the requirements under subsection (e) of this section, the treating
2 doctor, ~~or~~ delegated physician assistant, or delegated advanced practice registered
3 nurse shall file the Work Status Report with the insurance carrier, employer, and injured
4 employee within seven days of the day of receipt of:

5 (1) - (2) (No change.)

6 (h) (No change.)

7 (i) The doctor, ~~or~~ delegated physician assistant, or delegated advanced practice
8 registered nurse shall file the Work Status Report as follows:

9 (1) A report filed with the insurance carrier or its agent shall be filed by electronic
10 transmission;

11 (2) A report filed with the employer shall be filed by electronic transmission if the doctor,
12 ~~or~~ delegated physician assistant, or delegated advanced practice registered nurse has
13 been provided the employer's facsimile number or email address; otherwise, the report
14 shall be filed by personal delivery or mail; and

15 (3) A report filed with the injured employee shall be hand delivered to the injured
16 employee or delivered by electronic transmission if the injured employee agrees to
17 receive the report by electronic transmission, unless the report is being filed pursuant to
18 subsection (g) of this section and the doctor, ~~or~~ delegated physician assistant, or
19 delegated advanced practice registered nurse is not scheduled to see the injured
20 employee by the due date to send the report. In this case, the doctor, ~~or~~ delegated
21 physician assistant, or delegated advanced practice registered nurse shall file the report
22 with the injured employee by electronic transmission if the doctor, ~~or~~ delegated

1 physician assistant, or delegated advanced practice registered nurse has been provided
2 the injured employee's facsimile number or email address; otherwise, the report shall be
3 filed by mail.

4 (j) Notwithstanding any other provision of this title, a doctor, ~~or~~ delegated physician
5 assistant, or delegated advanced practice registered nurse may bill for, and an
6 insurance carrier shall reimburse, filing a complete Work Status Report required under
7 this section or for providing a subsequent copy of a Work Status Report which was
8 previously filed because the insurance carrier, its agent, or the employer through its
9 insurance carrier asks for an extra copy. The amount of reimbursement shall be \$15. A
10 doctor, ~~or~~ delegated physician assistant, or delegated advanced practice registered
11 nurse shall not bill in excess of \$15 and shall not bill or be entitled to reimbursement for
12 a Work Status Report which is not reimbursable under this section. Doctors, ~~or~~
13 delegated physician assistants, or delegated advanced practice registered nurses are
14 not required to submit a copy of the report being billed for with the bill if the report was
15 previously provided. Doctors, ~~or~~ delegated physician assistants, or delegated
16 advanced practice registered nurses billing for Work Status Reports as permitted by this
17 section shall do so as follows:

18 (1) CPT code "99080" with modifier "73" shall be used when the doctor, ~~or~~ delegated
19 physician assistant, or delegated advanced practice registered nurse is billing for a
20 report required under subsections (e)(1), (e)(2), and (g) of this section;

21 (2) CPT code "99080" with modifiers "73" and "RR" (for "requested report") shall be
22 used when the doctor, ~~or~~ delegated physician assistant, or delegated advanced

- 1 practice registered nurse is billing for an additional report requested by or through the
- 2 insurance carrier under subsection (e)(3) of this section; and
- 3 (3) CPT code "99080" with modifiers "73" and "EC" (for "extra copy") shall be used
- 4 when the doctor, ~~[or]~~ delegated physician assistant, or delegated advanced practice
- 5 registered nurse is billing for an extra copy of a previously filed report requested by or
- 6 through the insurance carrier.
- 7 (k) (No change.)