

28 TAC §129.5

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to §129.5 (concerning Work Status Reports). The proposed amendments were published on October 11, 2019, at 44 TexReg 5878. The amendments are adopted without changes.

REASONED JUSTIFICATION

These rules are adopted to conform Rule 129.5 to Texas Labor Code §408.025(a-1) as amended by House Bill (HB) 387, 86th Legislature (2019). House Bill 387 authorizes a treating doctor to delegate authority to complete and sign a work status report to a licensed advanced practice registered nurse. Delegation requires both that the treating doctor has the authority under their licensing act to make the delegation and that the physician assistant or advanced practice registered nurse has the authority under their licensing act to accept the delegation. The Workers' Compensation Act must be read in context with the licensing acts regarding delegation authority of the treating doctor and receipt of delegation by the physician assistant and advanced practice registered nurse.

Labor Code §408.025(a-1) provides specific authority for a treating doctor to delegate the responsibility to complete and sign a work status report. Under the Workers' Compensation Act, a "[t]reating doctor" means the doctor who is primarily responsible for the employee's health care for an injury." Labor Code §401.011(42). And, a "doctor"

includes a licensed doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic. Labor Code §401.011(17).

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

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

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

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

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

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

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

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

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

Subsection (j)(3) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" and "EC" when

billing for an extra copy of a previously filed work status report requested by or through the insurance carrier.

DWC previously approved revisions to the DWC Form-073, *Work Status Report*, as the changes made by HB 387 went into effect on September 1, 2019. Advanced practice registered nurses have been authorized to sign work status reports since that date. These amendments merely conform DWC's rules to the revised statute.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Office of Injured Employee Counsel submitted a comment in support of the proposed amendments.

The Texas Medical Association commented on the proposed amendments.

COMMENT: One commenter offered general support for the amendments.

RESPONSE: DWC appreciates the supportive comments.

COMMENT: One commenter requested that DWC clarify that the phrase "[i]f authorized under their licensing act" in subsection (b) is intended to apply to the treating doctor or the physician assistant or advanced practice registered nurse.

RESPONSE: DWC appreciates the comment. The phrase “[i]f authorized under their licensing act” in subsection (b) applies to a treating doctor. Labor Code §408.025(a-1) provides that “[a] treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee’s ability to return to work.” Health care practitioners may provide or delegate services within their scope of practice as authorized by their licensing act and their respective licensing boards. Specifically, Chapters 204 and 301, Occupations Code define the authority of physician assistants and advanced practice registered nurses who act as the agent of the supervising physician for medical services that are delegated by that physician. The Workers’ Compensation Act must be read in context with the authority of doctors to delegate and the authority of a physician assistant or advanced practice registered nurse to receive delegations from doctors. No change was made in response to this comment.

COMMENT: One commenter noted that there are limitations inherent in the delegated health care practitioners’ licensing acts that would effectively limit treating doctor delegation of the responsibility of signing a work status report. Additionally, the commenter stated that, based on a response to comments on the 2018 amendments to this rule, DWC understands that limitations in the Physician’s Assistant Licensing Act continue to apply and should similarly apply to advanced practice registered nurses.

RESPONSE: DWC appreciates the comment and agrees that the licensing acts for the various health care professions in the Occupations Code include limitations that establish whether a responsibility may be delegated, when a responsibility may be delegated, and the scope of any delegation. As noted above, health care practitioners may provide or delegate services within their scope of practice as authorized by their licensing act and their respective licensing boards. No change was made in response to this comment.

COMMENT: One commenter stated that “only treating doctors who are physicians licensed to practice medicine in the state of Texas may delegate the completion and signing of a work status report to a Texas-licensed physician assistant.”

RESPONSE: DWC appreciates the comment. Labor Code §408.025(a-1) provides that “[a] treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee’s ability to return to work.” The plain language of the statute provides that a physician assistant or advanced practice registered nurse must be licensed in Texas in order to be eligible to receive the described delegation. There is no stated limitation as to the jurisdiction that has licensed the treating doctor. Injured employees can receive health

care from doctors in many jurisdictions. No change was made in response to this comment.

STATUTORY AUTHORITY

DWC adopts amendments to §129.5 under Labor Code §§402.00111, 402.00116, 402.061, and 408.025.

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

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

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

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

§129.5. Work Status Reports

(a) As used in this section:

(1) the term "doctor" means either the treating doctor or a referral doctor, as defined by §180.22(c) and (e) of this title (relating to Health Care Provider Roles and Responsibilities);

(2) "substantial change in activity restrictions" means a change in activity restrictions caused by a change in the injured employee's medical condition which either prevents the injured employee from working under the previous restrictions or which allows the injured employee to work in an expanded and more strenuous capacity than the prior restrictions permitted (approaching the injured employee's normal job);

(3) "change in work status" means a change in the injured employee's work status from one of the three choices listed in subsection (a)(4) of this section to another of the choices in that subsection; and

(4) the term "work status" refers to whether the injured employee's medical condition:

(A) allows the injured employee to return to work without restrictions (which is not equivalent to maximum medical improvement);

(B) allows the injured employee to return to work with restrictions; or

(C) prevents the injured employee from returning to work.

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

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

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

- (1) identification of the injured employee's work status;
- (2) effective dates and estimated expiration dates of current work status and restrictions (an expected expiration date is not binding and may be adjusted in future Work Status Reports, as appropriate, based on the condition and progress of the injured employee);
- (3) identification of any applicable activity restrictions;
- (4) an explanation of how the injured employee's workers' compensation injury prevents the injured employee from returning to work (if the doctor believes that the injured employee is prevented from returning to work); and
- (5) general information that identifies key information about the claim (as prescribed on the report).

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

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

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

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

(f) The Work Status Report filed as required by subsection (e) of this section shall be provided to the injured employee at the time of the examination by hand delivery or electronic transmission if the injured employee agrees to receive the report by electronic transmission, and shall be sent, not later than the end of the second working day after the date of examination, to the insurance carrier and the employer.

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

- (1) functional job descriptions from the employer listing available modified duty positions that the employer is able to offer the injured employee as provided by §129.6(a) of this title (relating to Bona Fide Offers of Employment); or
 - (2) a required medical examination doctor's Work Status Report that indicates that the injured employee can return to work with or without restrictions.
- (h) Filing the Work Status Report as required by subsection (g) of this section does not require a new examination of the injured employee.
- (i) The doctor, delegated physician assistant, or delegated advanced practice registered nurse shall file the Work Status Report as follows:
- (1) A report filed with the insurance carrier or its agent shall be filed by electronic transmission;
 - (2) A report filed with the employer shall be filed by electronic transmission if the doctor, delegated physician assistant, or delegated advanced practice registered nurse has been provided the employer's facsimile number or email address; otherwise, the report shall be filed by personal delivery or mail; and
 - (3) A report filed with the injured employee shall be hand delivered to the injured employee or delivered by electronic transmission if the injured employee agrees to receive the report by electronic transmission, unless the report is being filed pursuant to subsection (g) of this section and the doctor, delegated physician assistant, or delegated advanced practice registered nurse is not scheduled to see the injured employee by the due date to send the report. In this case, the doctor, delegated physician assistant, or delegated advanced practice registered nurse

shall file the report with the injured employee by electronic transmission if the doctor, delegated physician assistant, or delegated advanced practice registered nurse has been provided the injured employee's facsimile number or email address; otherwise, the report shall be filed by mail.

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

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

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

practice registered nurse is billing for an additional report requested by or through the insurance carrier under subsection (e)(3) of this section; and

(3) CPT code "99080" with modifiers "73" and "EC" (for "extra copy") shall be used when the doctor, delegated physician assistant, or delegated advanced practice registered nurse is billing for an extra copy of a previously filed report requested by or through the insurance carrier.

(k) As provided in §126.6(g) of this title (relating to Order for Required Medical Examinations), a doctor who conducts a required medical examination in which the doctor determines that the injured employee can return to work immediately with or without restrictions shall file the Work Status Report required by this section, but shall do so in accordance with the requirements of §126.6(g).

CERTIFICATION

DWC certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 7, 2020.

Cassie Brown
Commissioner
Texas Department of Insurance, Division of Workers' Compensation