

**SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL**  
**28 TAC §180.62**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §180.62, concerning the Medical Quality Review Panel. Section 180.62 implements Texas Labor Code §§413.0512 and 413.05122.

**EXPLANATION.** The amendments change the 10-year lifetime maximum service limit with multiple two-year terms for membership on the Medical Quality Review Panel (MQRP) to a 10-year maximum term to more closely align with the language and intent of the statute. They provide for periodic review of members during their terms, and require members whose terms are expiring to submit new applications for membership on the MQRP. The amendments also update statutory references and make editorial changes for plain language and agency style.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires. Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP. Subparagraph (a)(3) specifies that the rules must establish the maximum length of time a health care provider may serve on the MQRP. It does not state that that period must be a lifetime maximum, barring any future service; and it does not specify the length of the period.

The MQRP assists DWC's medical advisor in conducting medical case reviews as part of the medical quality review process to ensure that injured employees in the workers' compensation system get timely, cost-effective, appropriate, medically necessary health care to help them recover and return to work. The MQRP now has 60 members. Sixteen

of those members (27%) will reach the 10-year lifetime maximum in the current rule in 2023. An additional three of those members (5%) will reach that maximum in 2024. Recruiting qualified members is challenging—in the last year, the MQRP lost six experienced physicians and has only been able to add two new members (one physician and one chiropractor). New members must be trained, and it takes time for them to gain the practical experience required to perform their functions effectively and efficiently.

Amending §180.62 is necessary to keep enough qualified members on the MQRP so DWC can continue to fulfill its statutory functions in regulating the workers' compensation system. An arbitrary lifetime maximum of 10 years on the MQRP impairs DWC's ability to keep qualified and experienced members on the MQRP, does not align with the language and intent of the statute, and does not serve the interest of the public or the state. In addition, the current two-year terms make the reapplication process nearly perpetual, which burdens members and staff needlessly. In contrast, the proposed amendments that set a maximum term of 10 years, that allow DWC to review members' eligibility periodically during the term; and that require members whose terms are expiring to submit new applications for membership to verify their qualifications and eligibility, are necessary, efficient, and practical.

Without the proposed amendments, the MQRP will lose about one third of its qualified, experienced members in the next two years. Even if the MQRP manages to recruit enough new members to replace them, the loss of experience and knowledge to help the new members adjust to their duties would make the training process even longer and more burdensome for the new members, the remaining members, and DWC. The proposed amendments will enable DWC to fulfill its statutory obligations; maintain an effective, experienced MQRP; and reduce administrative and training burdens for members, prospective members, and the agency.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner of Health and Safety Matthew Zurek has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Zurek does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mr. Zurek expects that enforcing and administering the proposed amendments will have the public benefits of enabling DWC to retain and oversee enough qualified and experienced members on the MQRP, which will promote fair and consistent regulation; and ensuring that DWC's rules align with the language and intent of Labor Code §§413.0512 and 413.05122. The amendments will also have the public benefit of ensuring that DWC's rules are current, accurate, and easy to read and understand, which promotes transparent and efficient regulation.

Mr. Zurek expects that the proposed amendments will not increase the cost to comply with Labor Code §§413.0512 or 413.05122 because they do not impose requirements beyond those in the statutes or create obligations beyond those in the current rule. Instead, the amendments reduce the administrative burdens for current and prospective MQRP members, as well as DWC, by increasing the time between MQRP applications.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires. Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the medical quality review panel. Subparagraph (a)(3) specifies that the rules must establish the maximum length of time a health care provider may serve on the MQRP. As a result, any cost associated with changing the lifetime maximum service period to a 10-year maximum term, after which former MQRP members may submit new applications for membership on the panel, does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments reduce administrative burdens; provide for more stable, consistent, and transparent regulation; update references; and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. In contrast, DWC expects that the reduced administrative burden from the amendments will reduce costs to regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments change the 10-year lifetime maximum service to a 10-year maximum term, update statutory references, and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs.

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

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on August 15, 2022. Send

your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m., Central time, on August 15, 2022. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

## **SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL**

### **28 TAC §180.62**

**STATUTORY AUTHORITY.** DWC proposes §180.62 under Labor Code §§413.0511, 413.05115, 413.0512, 413.05121, 413.05122, 402.00111, 402.00116, and 402.061.

Labor Code §413.0511 requires DWC to have a medical advisor and describes the medical advisor's duties, including making recommendations about rules and policies to regulate medical matters in the workers' compensation system.

Labor Code §413.05115 requires the commissioner to adopt criteria for the medical case review process, in consultation with the medical advisor.

Labor Code §413.0512 requires the medical advisor to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties §413.0511 requires.

Labor Code §413.05121 requires the medical advisor to establish the quality assurance panel within the MQRP.

Labor Code §413.05122 requires the commissioner, after consulting with the medical advisor, to adopt rules concerning the operation of the MQRP. Subparagraph (a)(3) specifies that the rules must establish the maximum length of time a health care provider may serve on the MQRP.

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.

**CROSS-REFERENCE TO STATUTE.** Section 180.62 implements Labor Code §413.05122, enacted by HB 2605, 82nd Legislature, Regular Session (2011).

**TEXT.**

**§180.62. Medical Quality Review Panel.**

(a) Purpose. The purpose of the Medical Quality Review Panel (MQRP) is to assist the medical advisor in the performance of the medical advisor's duties under Labor Code §413.0511 in accordance with the provisions of Labor Code §§413.0512, 413.05121, and 413.05122 [~~§413.0512 and §413.05121~~].

(b) Experts. Members of the MQRP who prepare reports for medical case review will [~~shall~~] be known as MQRP Experts.

(c) Composition. Applicants may be selected and appointed to the MQRP at the discretion of the medical advisor and the commissioner of workers' compensation (commissioner) in accordance with this section. The MQRP must ~~[shall]~~ be composed of health care practitioners appointed by the medical advisor and the commissioner in accordance with this section.

(1) The MQRP must have at least 25 members.

(2) The MQRP must, at a minimum, have members in the following health care specialty fields:

(A) Orthopedic Surgery--A medical doctor (MD) or a doctor of osteopathy (DO) with board certification in orthopedic surgery.

(B) Neurosurgery--An MD or DO with board certification in neurological surgery.

(C) Chiropractic--A licensed doctor of chiropractic.

(D) Occupational Medicine--An MD or DO with board certification in occupational medicine.

(E) Pain Medicine--An MD or DO with a board certification in a subspecialty of anesthesiology, neurology, or physical medicine.

(3) The MQRP may have members that include other types of health care practitioners determined to be necessary by the medical advisor and the commissioner.

(d) Eligibility. To be eligible to serve on the MQRP, a health care practitioner must meet the following criteria, as applicable:

(1) Possess an unrestricted license to practice in Texas with the appropriate credentials, as defined by §180.1 of this title (relating to Definitions);

(2) Be ~~[Beard]~~ board-certified in a specialty or subspecialty. An MD or DO is board-certified ~~[board-certified]~~ in a specialty or subspecialty if the MD or DO holds:



(A) a general certificate in the specialty or a subspecialty certificate from one of the member boards of the American Board of Medical Specialties (ABMS); or

(B) a primary certificate in the specialty and:

(i) a certificate of special qualifications from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

(ii) a certificate of added qualifications in the subspecialty from the AOABOS.

(3) Be in ~~[An]~~ active practice in Texas. "Active practice" means, within either of the last two calendar years, at the time of appointment to the MQRP, the applicant has:

(A) actively diagnosed or treated persons at least 20 hours per week for 40 weeks duration during a given calendar year; or

(B) performed administrative, leadership, or advisory roles in the practice of medicine.

(4) The medical advisor and the commissioner may waive the requirements of paragraphs (2) and (3) of this subsection ~~[section]~~ if needed to adequately perform medical case review.

(e) Term; Resignation; Removal.

(1) MQRP members will ~~[shall]~~ be appointed for a maximum term of 10 ~~[two]~~ years. They will ~~[shall]~~ serve until the expiration of their term, until their resignation, or until their removal from the MQRP. The division will review MQRP members periodically during their term to ensure their continued eligibility.

(2) An MQRP member may submit a new application for membership in the MQRP after the term expires. ~~[An MQRP member may not serve on the panel for more than 10 years. Years served prior to September 1, 2013 do not count toward the 10-year limit.]~~

(3) An MQRP member may resign from the MQRP at any time.

(4) An MQRP member may be removed from the MQRP for cause at any time. The notice of removal will state the date of removal, which may be immediately after the member receives the notice or on a specified future date. Causes for removal include, but are not limited to ~~[immediately upon notice to the MQRP member, or at such later date as the division may establish in such notice upon the occurrence of any of the following]:~~

(A) Failure to maintain ~~[the]~~ eligibility ~~[requirements of]~~ under this subchapter.~~;~~

(B) Failure to timely inform the division of conflicts of interest.~~;~~

(C) Repeated failure to timely review medical case review assignments or timely submit reports to the division.~~;~~

(D) Repeated failure to prepare the reports in the prescribed format.~~;~~  
~~or]~~

(E) Other issues deemed sufficient by the medical advisor or commissioner.

(f) Prohibition. An MQRP member must ~~[shall]~~ not use his or her position to influence an insurance carrier, agent, or other person or entity in connection with a personal or other insurance-related ~~[insurance-related]~~ matter beyond referring to their position to demonstrate qualifications ~~[except as otherwise provided by this subchapter].~~

(g) Quality Assurance Panel.

(1) The medical advisor will ~~[shall]~~ establish the Quality Assurance Panel (QAP) within the MQRP. All members of the QAP are members of the MQRP. They perform all the duties of an MQRP member under Labor Code §413.0512, as well as the duties of a QAP member under Labor Code §413.05121.

(2) A member of the QAP will [shall] also be known as an Arbiter.

(3) QAP members may provide any services to the medical advisor provided by Labor Code §§413.0512, 413.05121, and 413.05122 [~~§413.0512 and §413.05121~~], including, but not limited to:

(A) Serving [~~serve~~] as the chair to the quality assurance committee.[:]

(B) Serving [~~serve~~] as expert witnesses in enforcement actions as appropriate.[:]


(C) Providing [~~provide~~] an additional level of medical expertise and quality assurance to assist the medical advisor in the medical advisor's duties under Labor Code §413.0511.[:~~and~~]

(D) Performing [~~perform~~] medical case review if no other MQRP member is available in a specific area of expertise. In this case, the Arbiter would be ineligible from participating in [~~sitting on~~] the informal settlement process [~~ISC~~] for the subject the Arbiter reviewed.

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

Issued in Austin, Texas, on June 28, 2022.

DocuSigned by:



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Kara Mace

Deputy Commissioner for Legal Services  
TDI, Division of Workers' Compensation