

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
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) proposes to amend 28 TAC Chapter 127, concerning designated doctor (DD) procedures and requirements. DWC proposes amending §127.1, concerning DD examination requests and §127.25, concerning failure to attend a DD examination. Sections 127.1 and 127.25 implement House Bill 2468, 88th Legislature, Regular Session (2023), which amended Labor Code §408.0041 and added Labor Code §408.1615.

EXPLANATION. The amendments to 28 TAC §§127.1 and 127.25 are 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. 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 proposes to amend 28 TAC §§127.1 and 127.5 to reflect these statutory changes.

In addition, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rule's clarity.

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. Paragraph 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 proposed amendment includes a reference to new 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 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.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments 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.

Deputy Commissioner Landrum 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, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefit of ensuring that DWC's rules conform to Labor Code §§408.0041 and 408.1615.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.0041 and 408.1615 because they do not impose requirements beyond those in the statutes. Labor Code §408.0041 requires an injured employee, under certain circumstances, to attend a DD examination to resolve questions about the injury. Labor Code §408.1615 requires the commissioner to adopt rules establishing procedures for the suspension and reinstatement of lifetime income benefits under §408.1615. As a result, the cost associated with including in the rule those individuals receiving lifetime income benefits under §408.1615 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. The amendments implement HB 2468 by including individuals receiving lifetime income benefits under Labor Code §408.1615 into existing rules. 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. Also, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. The proposed rule implements Labor Code §§408.0041 and 408.1615.

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 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 expand the existing regulation in Chapter 127 to apply to individuals receiving lifetime income benefits and increase the number of individuals subject to the rule. These amendments are required to implement the changes to Labor Code §§408.0041 and 408.1615 by HB 2468.

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 5:00 p.m., Central time, on July 1, 2024. 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, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10:00 a.m., Central time, on June 25, 2024. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

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28 TAC §§127.1 AND 127.25

STATUTORY AUTHORITY. DWC proposes 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.

CROSS-REFERENCE TO STATUTE. Sections 127.1 and 127.25 implement Labor Code §§408.0041 and 408.1615. Labor Code §408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001) and amended by HB 7, 79th Legislature, Regular Session (2005); SB 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2468, 88th Legislature, Regular Session (2023). Labor Code §408.1615 was enacted by HB 2468, 88th Legislature, Regular Session (2023).

TEXT.

§127.1. Requesting Designated Doctor Examinations.

(a) - (c) (No change.)

(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 [~~Reporting and~~] Notification Requirements); or

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

(e) (No change.)

(f) (No change.)

§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 change.)

(c) (No change.)

(d) (No change.)

(e) Reinitiation of TIBs [~~benefits~~]. The insurance carrier must reinitiate [~~reinstate~~] 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) [(f)] 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 proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on May 17, 2024.



Kara Mace
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TDI, Division of Workers' Compensation