

SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL
28 TAC §180.62

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §180.62, concerning the Medical Quality Review Panel (MQRP). Section 180.62 implements Texas Labor Code §§413.0512 and 413.05122. The amendments are adopted without changes to the proposed text published in the July 15, 2022, issue of the *Texas Register* (47 TexReg 4069).

REASONED JUSTIFICATION. The amendments are necessary to keep enough qualified members on the MQRP, so DWC can continue to fulfill its statutory functions in regulating the workers' compensation system.

The amendments change the 10-year lifetime maximum service limit with multiple two-year terms for membership on the MQRP to a 10-year maximum term to align more closely with the language and intent of the statute. They provide for periodic review of members during their terms and allow 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 61 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 amendments that set a maximum term of 10 years, that allow DWC to review members' eligibility periodically during the term, and that allow members whose terms are expiring to submit new applications for membership to verify their qualifications and eligibility, are necessary, efficient, and practical.

Without the amendments, the MQRP would lose about one third of its qualified, experienced members in the next two years. Even if the MQRP managed 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 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.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received four written comments. Commenters in support of the proposal were: Benjamin de Leon, Office of Injured Employee Counsel; R. David Bauer, M.D., Orthopedic Independent Medical Examinations; Ward Beecher, D.C., FACO, Beecher Chiropractic; and Thomas Coopwood, M.D.

Comment on §180.62. A commenter supported the rule because the changes would benefit the injured employees of Texas by keeping qualified medical advisors on the MQRP and ensuring the advisors meet eligibility requirements. In addition, the commenter supported the amendments to clarify, modernize, update, and correct rule language throughout the Texas Administrative Code.

Agency Response to Comment on §180.62. DWC appreciates the comment and agrees.

Comment on §180.62. A commenter supported the rule because the MQRP is composed of experienced, impartial doctors who provide invaluable service to DWC and the medical advisor. The loss of experience would not serve DWC's interest in any way.

Agency Response to Comment on §180.62. DWC appreciates the comment and agrees.

Comment on §180.62. A commenter stated that the new rule changes look good.

Agency Response to Comment on §180.62. DWC appreciates the comment and agrees.

Comment on §180.62. A commenter stated that there should be no limit as long as a member is recredentialed and is active on the committee.

Agency Response to Comment on §180.62. DWC appreciates the comment and notes that the amended rule will allow a member to apply to serve an additional term after the member's term ends.

SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL

28 TAC §180.62.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §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.

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.

(b) Experts. Members of the MQRP who prepare reports for medical case review will 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 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 board-certified in a specialty or subspecialty. An MD or DO is 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 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 if needed to adequately perform medical case review.

(e) Term; Resignation; Removal.

(1) MQRP members will be appointed for a maximum term of 10 years. They will 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.

(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:

(A) Failure to maintain eligibility 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.

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

(f) Prohibition. An MQRP member must 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 matter beyond referring to their position to demonstrate qualifications.

(g) Quality Assurance Panel.

(1) The medical advisor will 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 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, including, but not limited to:

(A) Serving as the chair to the quality assurance committee.


(B) Serving as expert witnesses in enforcement actions as appropriate.

(C) Providing 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.


(D) Performing 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 the informal settlement process for the subject the Arbiter reviewed.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 16, 2022.

DocuSigned by:

23DEA0A4BF424FD...
Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation

The commissioner adopts amendments to 28 TAC §180.62, concerning the Medical Quality Review Panel.

DocuSigned by:

BD1E2B50F09548F...
Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2022-7503