

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130: IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS Title 28 TAC §§130.10, 130.101, 130.102

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes the repeal of 28 Texas Administrative Code (TAC) §130.10, *Commission Review of Employment Status during the Impairment Income Benefits Period*, and amendments to §130.101, *Definitions*, and §130.102, *Eligibility for Supplemental Income Benefits; Amount*.

In House Bill (HB) 2112, the 85th legislature primarily amended or repealed certain reporting and notification requirements throughout the Labor Code. The bill included the repeal of Labor Code §408.086, *Division Determination of Extended Unemployment or Underemployment*, which required the commissioner to determine, at least annually, whether any unemployment or underemployment was the direct result of the employee's impairment. Additionally, HB 2112 repealed Labor Code §409.012(d), which permitted a private provider of vocational rehabilitation services to register with the division. As a result of the repeal of Labor Code §409.012(d), the division is no longer maintaining a Registry of Private Providers of Vocational Rehabilitation Services, and removed the registry from the division website. The proposed amendments to §130.101 and §130.102, as well as the repeal of §130.10, are necessary to implement these legislative changes, which became effective June 9th, 2017.

Section 130.10 addresses **Commission Review of Employment Status during the Impairment Income Benefits Period**. Section 130.10 requires the division to review the employment status of injured employees with an impairment rating of 15% or greater to determine whether the employee is unemployed or underemployed, and, if so, whether that unemployment or underemployment is a direct result of the impairment. The division proposes the repeal of §130.10 to implement the legislative repeal of Labor Code §408.086 in HB 2112, which related to the required determination by the division of extended unemployment or underemployment.

Section 130.101 addresses **Definitions**. Section 130.101(8) defines a “vocational rehabilitation program” as any program, provided by the Texas Department of Assistive and Rehabilitative Services (DARS), a comparable federally-funded rehabilitation program in another state, or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. The division amended §130.101(8) to replace “Texas Department of Assistive and Rehabilitative Services (DARS)” with “Texas Workforce Commission (TWC)” and “DARS” with “TWC.” This amendment is necessary to reflect a change in the state agency tasked with providing vocational rehabilitation services to injured employees. The division also amended §130.101(8) to delete “that is included in the Registry of Private Providers of Vocational Rehabilitation Services” because the division will no longer maintain a registry.

Section 130.102 addresses **Eligibility for Supplemental Income Benefits;**

Amount. Section 130.102(i) permits an insurance carrier to provide vocational rehabilitation services as long as the provider is registered on the division's Registry of Private Providers of Vocational Rehabilitation Services. In addition, subsection (i) states that an insurance carrier is responsible for reasonable travel expenses if the employee is required to travel in excess of 20 miles one way to obtain the vocational rehabilitation services. The division amended §130.102(i) to delete "[T]he insurance carrier may provide vocational rehabilitation services through a provider of such services provided that the individual is registered as a private provider in accordance with §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services) and that the." This amendment is necessary to reflect that, as a result of HB 2112 and the repeal of Labor Code §409.012(d), the division will no longer maintain a registry of private providers. However, Labor Code §408.150 continues to authorize an insurance carrier to provide services through a private provider of vocational rehabilitation services. Thus, subsection (i) remains to inform system participants of the insurance carrier's responsibility for reasonable travel when the injured employee is required to travel in excess of 20 miles one way to obtain vocational rehabilitation services from a private provider. The division also replaced "will be" with "is" and added "[T]he" and "from a private provider" to the remaining sentence to help ensure this responsibility is stated in a clear and concise manner. The division emphasizes that amendments to Chapter 130, including §130.102, do not change the eligibility criteria or work search requirements for supplemental income benefits.

FISCAL NOTE. Dan Paschal, Deputy Commissioner of TDI-DWC Affairs & Strategic Planning, has determined that for each year of the first five years the amended sections and repeal are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed amendments and repeal. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed below.

PUBLIC BENEFITS. Mr. Paschal has also determined that for each of the first five years amended §130.101 and §130.102 are in effect, as well as the repeal of §130.10, the public benefits anticipated include aligning division rules with the Labor Code by repealing mirror provisions and making conforming amendments.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mr. Paschal anticipates that, for each of the first five years the repeal of §130.10 and amended §130.101 and §130.102 are in effect, there will be no costs to persons required to comply with the proposal.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by: (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total cost imposed by an amount that is equal to or greater than the cost of the

proposed rule. As described above, the division has determined that the proposed amendments and repeal will not impose a cost on system participants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

Government Code §2006.002(c) provides that if a proposed rule may have an adverse economic effect on small businesses, micro-businesses, or rural communities, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. Government Code §2005.001(1-a) defines a “rural community” as a municipality with a population of less than 25,000.

In accordance with Government Code §2006.002(c), the division has determined that the proposed repeal and amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Government Code §2001.0221

requires that a state agency prepare a government growth impact statement that reasonably describes the effects a proposed rule may have during the first five years it is in effect. The division has determined that the proposed repeal of §130.10 and amendments to §130.101 and §130.102 will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the division. Implementation of the proposal will not require the creation or elimination of employee positions, and will not require an increase or decrease in future legislative appropriations to the division.

The proposal does not create a new regulation, expand an existing regulation, or limit an existing regulation. However, the amendments will repeal existing regulations that require insurance carriers only provide private vocational rehabilitation services through a private provider registered with the division, and that limit vocational rehabilitation programs provided by private providers to only those providers registered with the division. The number of individuals subject to the rules' applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

TAKINGS IMPACT ASSESSMENT. The division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of

government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on February 26, 2018. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to Rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. Existing §130.10 is repealed under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation, Separation of Authority, Rulemaking*; and Labor Code §402.061, *Adoption of Rules*.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and enforcement of the Act.

TEXT.

~~**§130.10. Commission Review of Employment Status during the Impairment
Income Benefits Period.**~~

STATUTORY AUTHORITY. Amended §130.101 and §130.102 are proposed under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation, Separation of Authority, Rulemaking*; Labor Code §402.061, *Adoption of Rules*; Labor Code §408.150, *Vocational Rehabilitation*; and, Labor Code §409.012, *Vocational Rehabilitation Information*.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and enforcement of the Act.

Labor Code §408.150 permits an insurance carrier to provide vocational rehabilitation or training services through a private provider of vocational rehabilitation services.

Labor Code §409.012 requires the division to analyze reports of injury to determine whether the injured employee would be assisted by vocational rehabilitation, and, if so, to notify the injured employee and the Texas Workforce Commission.

TEXT.

§130.101. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(A) (No change.)

(B) (No change.)

(C) (No change.)

(D) (No change.)

(2) (No change.)

(3) (No change.)

(4) (No change.)

(5) (No change.)

(6) (No change.)

(7) (No change.)

(8) Vocational rehabilitation program--Any program, provided by the Texas Workforce Commission (TWC) [~~Texas Department of Assistive and Rehabilitative Services (DARS)~~], a comparable federally-funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended, or a private provider of vocational rehabilitation services [~~that is included in the Registry of Private Providers of Vocational Rehabilitation Services~~], for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan, also known as an Individual Plan for

Employment at TWC, [~~DARS~~,] includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

(9) (No change.)

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) (No change.)

(b) (No change.)

(1) (No change.)

(2) (No change.)

(c) (No change.)

(d) (No change.)

(1) (No change.)

(A) (No change.)

(B) (No change.)

(C) (No change.)

(D) (No change.)

(E) (No change.)

(2) (No change.)

(e) (No change.)

(f) (No change.)

(g) (No change.)

(1) (No change.)

(2) (No change.)

(3) (No change.)

(4) (No change.)

(5) (No change.)

(6) (No change.)

(7) (No change.)

(h) (No change.)

(i) Services Provided by a Carrier Through a Private Provider of Vocational Rehabilitation Services. ~~[The insurance carrier may provide vocational rehabilitation services through a provider of such services provided that the individual is registered as a private provider in accordance with §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services) and that the]~~ The insurance carrier is ~~[will be]~~ responsible for reasonable travel expenses incurred by the injured employee if the employee is required to travel in excess of 20 miles one way from the injured employee's residence to obtain vocational rehabilitation services from a private provider.

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 at Austin, Texas, on January 10, 2018.

X

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Division of Workers' Compensation