

§126.7

1. INTRODUCTION. The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts the repeal of §126.7, concerning suspension of temporary income benefits based on the opinion of a carrier-selected required medical examination doctor. The repeal is adopted without changes to the proposal published in the February 3, 2006 issue of the *Texas Register* (31 TexReg 670).

2. REASONED JUSTIFICATION. The repealed section is necessary to implement changes to the Labor Code §408.004 as a result of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. HB 7 changed the Labor Code §408.004 by limiting the reasons an injured employee (employee) may be required to attend a required medical examination prior to a designated doctor examination to the issue of appropriateness of the health care received by the employee. HB 7 also removed the provision for the suspension of temporary income benefits for failure to attend the required medical examination on that issue. HB 7 changed Labor Code §408.0041 to provide the designated doctor's opinion presumptive weight regarding entitlement and payment of income benefits, and to address the suspension of temporary income benefits only for failure to attend a required medical exam after a designated doctor exam. These statutory changes provide procedural

guidance to suspend benefits based on the opinion of the designated doctor or the actions (failure to attend) of the employee, rather than on a report or opinion of a required medical examination doctor.

3. HOW THE SECTION WILL FUNCTION. Section 126.7 **is repealed effective December 21, 2006, as it** is no longer applicable since there are no situations in which temporary income benefits may be suspended based on the opinion of the required medical examination doctor. The Division simultaneously adopts new §126.7, **which is effective January 1, 2007,** regarding designated doctor exams, which is published elsewhere in this issue of the *Texas Register*. New §126.7 provides procedural guidance regarding the request for, and selection of, a designated doctor. The new section also provides procedural guidance regarding the responsibilities of the designated doctor.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

Comment: A commenter objects to required medical exams (RMEs) performed by carrier-paid physicians as biased and believes the RMEs should only be performed by designated doctors.

Agency Response: The Division disagrees. Labor Code §§408.004, 408.0041 and 408.151 specifically provide for medical exams to be conducted by a doctor selected by the carrier.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For: None.

Against: An individual.

6. STATUTORY AUTHORITY. The repeal is adopted under the Labor Code §§408.0041, 402.00111, and 402.061. Section 408.0041 provides for designated doctor examinations. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

7. TEXT.

§126.7. Suspension of Temporary Income Benefits Based On the Opinion of a Carrier-Selected Required Medical Examination Doctor.

CERTIFICATION. This agency hereby certifies that the adopted section has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

DWC-06-0031

TITLE 28. INSURANCE
Part 2. Texas Department of Insurance
Division of Workers' Compensation
Chapter 126. General Provisions Applicable to All Benefits

Adopted Section
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Issued at Austin, Texas, on _____, 2006.

Norma Garcia
General Counsel
Division of Workers' Compensation
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the repeal of §126.7, concerning suspension of temporary income benefits based on the opinion of a carrier-selected required medical examination doctor, is adopted.

AND IT IS SO ORDERED.

ALBERT BETTS
COMMISSIONER OF WORKERS' COMPENSATION
TEXAS DEPARTMENT OF INSURANCE

ATTEST:

Norma Garcia
General Counsel

COMMISSIONER'S ORDER NO. _____