

ADVISORY NO. 281
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TOPIC: WORK STATUS REPORTS: RULE 129.5 AND TWCC-73

Rule 129.5 was adopted in December of 1999. It precludes the use of nonspecific “light duty” releases, and is intended to promote communication between employers and treating doctors regarding modified duty opportunities. Rule 129.5 further created a new form TWCC-73 to enable the employer to offer a modified duty position consistent with the employee’s ability to work. After a short period of implementation, however, the Commission received numerous questions and complaints regarding the rule and the TWCC-73 form. Therefore it suspended the use of the form until a new form was adopted and significantly amended the rule.

On June 20, 2000, the Commission adopted numerous amendments to the rule and promulgated a new Form TWCC-73 (copy attached). **The amendments are effective July 16, 2000.** Although it will ultimately be a mandatory form, the TWCC-73 may be substituted by a provider’s own form until February 1, 2001, provided that the form comports with all of the elements of the rule.

The report is to be completed by the treating doctor, a referral doctor, or a required medical examination (RME) doctor that believes the claimant can return to some type of employment. It is expected that the TWCC-73 form will often serve as the carrier’s first written notice of injury.

If the doctor indicates that the claimant is unable to return to work, or only able to return to restricted work, the doctor must provide an estimated date that the restrictions are to expire. The intention is to promote return to work by making the evaluation of the length of time that restrictions are expected to last part of the process of making the restriction. The preamble to the original rule indicated that the doctor was prohibited from simply putting “unknown,” as is often seen. The amendments to the rule clearly indicate that failure to list specific dates renders the form incomplete. Carriers are not required to reimburse doctors for incomplete forms.

Furthermore, failure to provide a complete form when required constitutes an administrative violation and subjects the doctor to a potential penalty of up to \$500 pursuant to Section 415.0035 of the Texas Labor Code. Continued noncompliance by the doctor can lead to penalties of up to \$10,000 and removal from the approved doctor’s list. Additionally, the preamble to the amendments indicate that doctors who estimate excessive periods for minor injuries “may find themselves more likely to have their treatment reviewed” by the Commission for other potential violations.

To complete the report, a functional capacity examination (FCE) is not required. The preamble to the amendments indicates that doing FCE’s on a regular basis is not appropriate, and

notes that the Medical Fee Guidelines allow a maximum of three FCE's per employee. If the doctor believes that the claimant is not able to work in any capacity, the doctor must provide an explanation of how the claimant's medical condition precludes the return to work. The preamble to the amendments notes that otherwise the report could be biased. That is, if it were easier for the doctor to simply check a box marked "unable to work" with no further explanation than to provide further explanation, "the simplicity of the choice might influence the way the report is filled out." If the employer has a question about the explanation, the preamble to the amendments encourages the employer to contact the doctor to discuss it.

The report must be completed by the doctor after the initial examination, when there is a change in work status or a substantial change in restrictions, and up to once every two weeks if requested by the carrier or its agent. The original rule required that the report be issued with every examination regardless of a change in condition. The report must also be completed upon receipt of a modified duty description from the employer or a TWCC-73 from an RME.

If the report is issued in response to an employer's presentation of functional job requirements or a TWCC-73 from an RME doctor, a separate examination of the claimant is not required. The Commission has established a \$15 charge for completing the report, as well as for each additional copy requested by the carrier. Different fee modifiers are used to distinguish whether the charge is for a required report, a requested report, or an extra copy. This is to allow the Commission to track the cost to the system and to determine how much of the cost is controlled by the carrier. As noted, the carrier may request an increased frequency of reporting, and the doctor is required to comply. However, since the doctor may charge \$15 for each subsequent report, the Commission believes that carriers should evaluate their claims and determine whether the additional reports are worth the extra cost. Filings beyond the required level will only be reimbursed, however, if they are made at the request of the carrier or employer.

The doctor must file the TWCC-73 by fax or electronic submission with both the carrier and the employer within two working days; however, the treating doctor is expected to provide a copy to the employee at the time of the examination. The previous requirement was one day. The preamble to the amendments encourages doctors to document difficulties they have in obtaining correct facsimile number information from carriers. Employers and carriers should be very proactive in providing transmission information to the doctor to ensure that the report is received as early as possible.

The preamble to the amendments indicate that the simple fact that an expected expiration date on a TWCC-73 has been reached is generally not grounds, in and of itself, to terminate benefits. Rather, the carrier should contact the doctor to verify that the restrictions have expired. If the carrier disagrees with the doctor's opinion regarding the claimant's work status, the

preamble specifically notes that “the carrier can file a notice of dispute of disability in accordance with §124.2 (relating to Carrier Reporting and Notification Requirements).”