

CHAPTER 142. DISPUTE RESOLUTION--BENEFIT CONTESTED CASE HEARING
28 TAC §§142.13 AND 142.19

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) proposes to amend 28 TAC §142.13, concerning Discovery, and §142.19, concerning Form Interrogatories, to update the interrogatories to increase the time to respond to the interrogatories and to describe the questions that a party may ask using the interrogatories.

EXPLANATION. Texas Labor Code §410.159 requires that the commissioner of workers' compensation prescribe standard form interrogatories for parties to use in a contested case proceeding before DWC. Under Rule 142.13(b)-(d), interrogatories may be presented after the required exchange of documentary evidence, which is to take place no later than 15 days after a benefit review conference, and no later than 20 days before a contested case hearing, unless otherwise agreed. In these amendments, DWC proposes to increase the time for responding to an interrogatory from five days to ten. In order to accommodate the additional five days to respond within the allotted time for a contested case, interrogatories would now be required to be presented no later than 25 days before a hearing, unless the parties agree otherwise. The current form interrogatories, which have not been updated since 1991, are available on DWC's website.

Rule 142.13. DWC proposes to amend Rule 142.13(d) to set out the rule text in paragraphs and to make other editorial changes to conform the section to DWC's current style and to improve the rule's clarity. Paragraph (1) would be amended to clarify that the interrogatories may be used by all parties, including subclaimants. Rule 140.1(3) defines a "party to a proceeding" as "a person entitled to take part in a proceeding because of a

direct legal interest in the outcome." Rule 140.6(b) states that "a subclaimant as described in [Labor Code] §409.009 [relating to Subclaims] is a party to a claim concerning workers' compensation benefits." Paragraph (2) would be amended to require that interrogatories must be presented no later than 25 days before a hearing, rather than 20 days. Paragraph (3) would be amended to increase the time to respond to interrogatories from five days to 10.

Rule 142.19. DWC proposes to amend Rule 142.19 to describe in new subsection (a) the information that may be sought through interrogatories. That information includes the name and contact information of the person answering the interrogatories, the issues in dispute, any certification of maximum medical improvement and impairment rating, any statement obtained from any person on the issues in dispute, the name and contact information for each health care provider the claimant has seen since the date of injury, the conditions the health care provider treated, and any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury. In addition, for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim, a party may request the health care provider's name and contact information, the dates the health care provider treated the claimant, and the conditions the health care provider treated. For each expert witness expected to testify, a party may be asked to provide the expert witness' name and contact information, the subject matter the expert witness may or will testify on, the general substance of the expert witness' opinions, and a brief summary of the basis for those opinions. Also, the interrogatories provide space for five additional questions that a party may use to get specific information relevant to an individual dispute.

Rule 142.19 would also be amended to add new subsection (b) to note that DWC will develop and make available standard form interrogatories in a form and manner consistent with this rule as required under Labor Code §410.159.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Kerry Sullivan, deputy commissioner of Hearings, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments. The amendments to Rule 142.13 clarify existing requirements and modify existing timelines to allow more time to respond to interrogatories. Mr. Sullivan does not anticipate that these changes will increase the costs for responding to interrogatories. The amendments to Rule 142.19 describe the exchange of interrogatories, but the requirements for the use of interrogatories are not new. Most of the questions have been in use since 1991, and the overall sets of questions are consistent with the use of interrogatories in civil litigation. Mr. Sullivan does not anticipate that the updated questions will increase the costs of using the interrogatories. The proposed amendments will not add to or decrease state revenues or expenditures. In addition, as self-insurers, local governments will benefit from the updated form interrogatories and the additional time to respond to interrogatories from other parties.

Mr. Sullivan does not anticipate any measurable effect on local employment or a 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, Mr. Sullivan expects that administering the proposed amendments will have the public benefit of providing a more efficient discovery process

during the dispute of injured employees' claims. The amended rules and updated interrogatories will also have the benefit of educating and informing system participants of their rights and responsibilities and how to interact appropriately within the Texas workers' compensation system.

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 proposed amendments merely update and clarify existing procedures for system participants engaged in a dispute. 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 the proposed amendments do not impose a possible cost on regulated persons.

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 not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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 proposed amendments or revised interrogatories that DWC receives no later than 5 p.m., Central time, on Tuesday, January 19, 2021. The revised interrogatories are available on the Texas Department of Insurance website at www.tdi.texas.gov/wc/rules/2020rules.html. Send your comments to RuleComments@tdi.texas.gov; or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m., Central time, on Tuesday, January 19, 2021. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes these amendments to Rules 142.13 and 142.19 under Labor Code §§402.00128, 402.021, 402.061, 410.157, 410.158, 410.159, and 410.161.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings, take testimony directly or by deposition or interrogatory, and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021(b)(8) describes the Legislature's intent that DWC "effectively educate and clearly inform each person who participates in the system ... of the person's rights and responsibilities under the system and how to appropriately interact within the system."

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement the Labor Code, Title 5, Subtitle A.

Section 410.157 provides that the commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Section 410.158 provides for the scope of discovery in contested case hearings.

Section 410.159 requires the commissioner, by rule, to prescribe standard form sets of interrogatories to obtain information from claimants and insurance carriers.

CROSS-REFERENCE TO STATUTE. Rule 142.13 implements the Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

§142.13. Discovery.

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

(d) Interrogatories.

(1) Interrogatories, as prescribed by §142.19 of this title (~~concerning~~ relating to Interrogatories), may be used by all parties, including subclaimants, to obtain ~~[elicit]~~ information from any other party. ~~[claimants and insurance carriers.]~~

(2) Except as provided in subsection (g) of this section, interrogatories must ~~[shall]~~ be presented no later than ~~[20]~~ 25 days before the hearing, unless otherwise agreed.

(3) Answers to interrogatories must ~~[shall]~~ be exchanged no later than 10 ~~[five]~~ days after receipt of the interrogatories.

(4) Answers to interrogatories must ~~[shall]~~ be made under oath.

(e)-(g) (No change.)

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CROSS-REFERENCE TO STATUTE. Rule 142.19 implements the Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

§142.19. Form Interrogatories.

(a) The division has developed standard interrogatories for parties to exchange
~~[commission adopts]~~ the following information: ~~[form interrogatories by reference:]~~

(1) the name and contact information of the person answering the
interrogatories;

(2) the issues in dispute;

(3) any certification of maximum medical improvement and impairment
rating;

(4) any statement obtained from any person on the issues in dispute;

(5) the name and contact information for each health care provider the claimant has seen since the date of injury, and the conditions the health care provider treated;

(6) any recordings, photographs, videotapes, or similar material showing the claimant since the date of injury;

(7) for each health care provider the claimant has seen during the five years before the date of injury for treatment of a body part the claimant believes to be part of the claim:

(A) the health care provider's name and contact information;

(B) the dates the health care provider treated the claimant; and

(C) the conditions the health care provider treated; and

(8) for each expert witness expected to testify:

(A) the expert witness' name and contact information;

(B) the subject matter the expert witness may or will testify on; and

(C) the general substance of the expert witness' opinions and a brief summary of the basis for them.

(b) In addition to these standard interrogatories, a party may add up to five additional questions. The parties should write the questions in plain language and present them in a readable and understandable format.

(c) Parties to a dispute must use the standard form interrogatories developed and published by the division in a form and manner consistent with this rule:

(1) Claimant's Interrogatories to Carrier; and

(2) Carrier's Interrogatories to Claimant.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 7, 2020.



Kara Mace
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Texas Department of Insurance,
Division of Workers' Compensation