



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Office of General Counsel (MS-15)

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memo

To: Workers' Compensation System Participants

From: Emily McCoy, Associate General Counsel, Division of Workers' Compensation

Date: April 9, 2018

RE: Informal Posting: Amended 28 Texas Administrative Code (TAC) §§102.7, 116.11, 133.308, 140.1, 140.8, 141.2, 142.2, 142.3, 142.7, 142.8, 142.10, 142.11, 142.12, 142.13, 142.14, 142.16, 142.18, 142.20, 143.1, 143.2, 143.3, 143.4, 143.5, 152.3, 152.6 and new §140.9

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) is accepting comments on an informal working draft of amended 28 Texas Administrative Code (TAC) §§ 102.7, 116.11, 133.308, 140.1, 140.8, 141.2, 142.2, 142.3, 142.7, 142.8, 142.10, 142.11, 142.12, 142.13, 142.14, 142.16, 142.18, 142.20, 143.1, 143.2, 143.3, 143.4, 143.5, 152.3, 152.6 and new §140.9, available at www.tdi.texas.gov/wc/rules/drafts.html. The informal working draft was posted on the TDI-DWC website on April 9, 2018 and the comment period closes on April 20, 2018 at 5 p.m., Central time.

The informal working draft is not a formal rule proposal and comments received will not be treated as formal public comments for the purposes of the Administrative Procedure Act. There will be an opportunity to formally comment once the rule is proposed and published in the *Texas Register*. Informal comments may be submitted by email to InformalRuleComments@tdi.texas.gov or by mail or delivery to:

Texas Department of Insurance, Division of Workers' Compensation
Maria Jimenez
Office of General Counsel MS – 15
7551 Metro Center Drive, Suite 100
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The amendments are to §102.7, Abbreviations; §116.11, Request for Reimbursement from the Subsequent Injury Fund; §133.308, MDR of Medical Necessity Disputes; §140.1, Definitions; §140.8, Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091; §141.2, Canceling or Rescheduling a Benefit Review Conference; §142.2, Authority of the Hearing Officer; §142.3, Ex Parte Communications; §142.7, Statement of Disputes; §142.8, Summary Procedures; §142.10, Continuance; §142.11, Failure to Attend a Benefit Contested Case Hearing; §142.12, Subpoena; §142.13, Discovery; §142.14, Permission to Use Court Reporter; §142.16, Decision; §142.18, Special Provisions for Cases on Remand from the Appeals Panel; §142.20, Interlocutory Orders; §143.1, Definitions; §143.2, Description of the Appeal Proceeding; §143.3, Requesting the

Appeals Panel to Review the Decision of the Hearing Officer; §143.4, Responding to a Request for Review by the Appeals Panel; §143.5, Decision of the Appeals Panel; §152.3, Approval or Denial of Fee by the Division; §152.6, Attorney Withdrawal and new §140.9, Motions. The amendments are intended to:

- implement HB 2111 by replacing “hearing officer” with “administrative law judge” throughout the division’s rules;
- in the open chapters, delete obsolete rule text, replace “commission” with “division,” correct typographical errors, and designate several new abbreviations;
- require that parties represented by an attorney or assisted by OIEC must include with any motions a signed statement that the requesting party made reasonable efforts to confer with other parties about the request. Unrepresented and unassisted claimants may request to continue a proceeding by contacting the division in any manner;
- repeal 28 TAC §142.11 and require administrative law judges (ALJs) to send notice to parties that fail to attend a scheduled contested case hearing that the party must show good cause for failing to attend within 10 days of receipt of the notice. If the ALJ does not find good cause, or the non-attending party does not respond to the notice, the ALJ shall issue a decision based on the evidence presented at the hearing;
- specify deadlines for responding to motions; and
- clarify that the automatic right to reset a benefit review conference within ten days of receiving notice is limited to the first scheduled session.