



## 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: Nicholas Canaday III, General Counsel

Date: November 1, 2018

RE: Proposal: Amend 28 TAC §§102.7, 116.11, 133.308, 140.1, 140.8, 141.2, 142.2 - 142.5, 142.7, 142.8, 142.10 - 142.16, 142.18, 142.20, 143.1 - 143.5, 152.3, 152.6, and propose new §140.9

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is accepting public comments on proposed amendments to the above-identified rules and proposed new 28 Texas Administrative Code (TAC) §140.9.

The purpose of the proposal is to:

- Harmonize DWC rules with legislative changes made in House Bill 2111 (85th Legislature, Regular Session) by replacing "hearing officer" and "hearings officer" with "administrative law judge."
- Delete obsolete rule text, replace "commission" with "division," correct typographical errors, designate several new abbreviations, and clarify that a request for a hearing subpoena must be delivered to the parties, including any potential legal beneficiaries.
- Create new 28 TAC §140.9, which requires carriers, carrier representatives, claimants represented by an attorney, and claimants assisted by the Office of Injured Employee Counsel (OIEC) to include with any requests to a presiding officer a signed statement that the requesting party made reasonable efforts to confer with other parties about the request. Section 140.9 also establishes timeframes for responding to requests but provides presiding officers with latitude to consider requests or responses that are not timely filed. Claimants neither represented by an attorney nor assisted by OIEC may request to continue a proceeding by contacting DWC in any manner.
- Amend 28 TAC §141.2 to clarify that there is only one "first request" to reschedule a benefit review conference (BRC) that need not demonstrate good cause. The clarification is necessary to give notice that both parties do not have a "first request." The rule also provides that requests to cancel or reschedule a BRC must be sent to DWC and opposing parties no later than five days before the scheduled BRC. Parties opposing such requests must file written opposition with DWC within three days of receiving the cancellation or rescheduling request. Claimants neither represented by an attorney nor assisted by OIEC may request to cancel or reschedule a BRC by contacting DWC in any manner.
- Amend 28 TAC §142.10 to require parties to comply with new §140.9 and state that claimants neither represented by an attorney nor assisted by OIEC may request to continue a hearing by contacting DWC in any manner.

- Amend 28 TAC §142.11 to require administrative law judges (ALJs) to send notice to a party that fails to attend a scheduled contested case hearing that the non-attending party, within 10 days of receipt of the notice, must show good cause for failing to attend. Replies to the non-attending party's response are due within three days of receipt of the response. 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 and may recommend the issuance of an administrative violation.
- Amend 28 TAC §§142.5, 142.7, and 142.12 to be consistent with proposed new §140.9 on the treatment of claimants neither represented by an attorney nor assisted by OIEC.
- Amend 28 TAC §142.4 to be consistent with proposed new §140.9 as regards the delivery of copies of documents to other parties to a proceeding.

In addition, DWC is accepting public comment on revisions to DWC Form-045, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference (BRC)*, or to *Proceed Directly to Contested Case Hearing (CCH)* and DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)*. The proposed revisions to DWC Form-045 and DWC Form-045M will make the form consistent with the proposed amendments to chapters 140 and 141, updates contact information, and conforms to current agency style.

If you would like to comment on the proposal or the form revision, submit your written comments by 5 p.m. central time on December 3, 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](mailto:rulecomments@tdi.texas.gov) or by mail to:

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If a hearing is held, DWC will consider written comments and public testimony presented at the hearing.

The proposal will be published in the November 2, 2018, issue of the *Texas Register* and will be available at [www.sos.state.tx.us/texreg/index.shtml](http://www.sos.state.tx.us/texreg/index.shtml) once published. A courtesy copy will also be available on the TDI website at [www.tdi.texas.gov/wc/rules/2018rules.html](http://www.tdi.texas.gov/wc/rules/2018rules.html). The draft form is available on the TDI website at [www.tdi.texas.gov/wc/rules/drafts.html](http://www.tdi.texas.gov/wc/rules/drafts.html).