

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 141: DISPUTE RESOLUTION – BENEFIT REVIEW CONFERENCE

Title 28 Texas Administrative Code (TAC) §141.2

1. INTRODUCTION. The commissioner of workers' compensation (commissioner), Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §141.2, concerning Canceling or Rescheduling a Benefit Review Conference. The changes delete obsolete rule text. In addition, the amendments clarify that there is only one "first request" to reschedule a benefit review conference that need not demonstrate good cause. The amendments are adopted with changes to the proposed text published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7317). The changes reflect proper references to the Texas Administrative Code. The public comment period ended on December 3, 2018. No public hearing was requested. The rules will be republished.

2. BACKGROUND AND PURPOSE. The purpose of the amendment is to clarify that there is only one "first request" to reschedule a benefit review conference that need not demonstrate good cause. It must, however, comply with §140.9. The clarification is necessary to give notice that either party may request to reschedule a benefit review conference, and that subsequently scheduled benefit review conferences do not also have a "first request" that will be granted without a showing of good cause. The rule

also provides that requests to cancel or reschedule a benefit review conference must be sent to the division and opposing parties no later than five days before the scheduled benefit review conference. Parties opposing such requests must file written opposition with the division within three days of receiving the cancellation or rescheduling request. A claimant who is neither represented by an attorney nor assisted by OIEC may request to cancel or reschedule a BRC by contacting the division in any manner. In addition, DWC deletes obsolete rule text.

This clarification is appropriate in order to facilitate timely resolution of disputes by requiring a showing of good cause in order to reschedule BRCs that have already been continued once. Specifying timeframes for filing and responding to requests to reschedule provides guidance and certainty to system participants regarding these procedures.

DWC deletes rule text stating that the date the notice of setting is received is deemed to be the fifth day after the date of the notice because it's duplicative of the requirements already stated in 28 TAC §102.5.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE

General: Commenter expressed support for the proposal.

DWC Response: DWC appreciates the supportive comment.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: Office of Injured Employee Counsel

For, with changes: None

Against: None

Neither for nor against: None

5. STATUTORY AUTHORITY. The amendment is adopted under the authority of Labor Code §§402.00111, 402.00116, 402.00128, 402.061, and 410.027.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.00116 states that the commissioner of workers' compensation is the division's chief executive and administrative officer and shall administer and enforce the Texas Workers' Compensation Act, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner of workers' compensation.

Labor Code §402.00128 states that the commissioner of workers' compensation shall conduct the daily operations of the division and otherwise implement division policy and, among other functions, may delegate; assess and enforce penalties; and enter appropriate orders.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code §410.027 states that the commissioner shall adopt rules for conducting benefit review conferences.

The adopted amendments affect the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A.

6. TEXT.

§141.2. Canceling or Rescheduling a Benefit Review Conference

(a) In this subsection, "good cause" will be determined at the discretion of the benefit review officer on a case-by-case basis, including consideration of prejudice to parties, and means:

(1) objective facts beyond the control of a party, which reasonably:

(A) prevent a party from attending the benefit review conference; or

(B) would prevent the benefit review conference from accomplishing its purpose, such as the need for a reasonable amount of additional time to secure necessary evidence for the dispute; or

(2) objective facts which make the benefit review conference unnecessary.

(b) The division may cancel a benefit review conference at any time before the benefit review conference:

(1) on its own motion;

(2) at the request of the party who requested the conference; or

(3) at the mutual request of the parties.

(c) The division may reschedule a benefit review conference at any time before the benefit review conference:

(1) on its own motion, or

(2) at the request of a party.

(d) A request for cancellation or rescheduling under subsection (b) or (c) of this section shall be made by notifying the division in writing, with a copy to all parties, within 10 days of the date the notice of setting is received.

(1) The first request to reschedule a benefit review conference under subsection (d) of this section does not have to demonstrate good cause for the request but must comply with §140.9 of this title (relating to Requests by Parties).

(2) A request to reschedule or cancel a benefit review conference made outside of the 10-day period, as well as all subsequent rescheduling requests under subsection (c) of this section by any party, must:

(A) be in writing and in the form prescribed by the division;

(B) demonstrate good cause for canceling or rescheduling, as defined by subsection (a) of this section;

(C) be sent to the division and opposing party or parties no later than five days before the scheduled benefit review conference unless good cause is demonstrated for filing later; and

(D) comply with the requirements of §140.9 of this title.

(3) A claimant who is neither represented by an attorney nor assisted by OIEC may request that a benefit review conference be rescheduled or cancelled by contacting the division in any manner.

(4) A cancellation of a benefit review conference without simultaneous rescheduling constitutes a withdrawal of the dispute on the issue. A request to cancel a benefit review conference subject to §130.12 of this title (relating to Finality of the First Certification of Maximum Medical Improvement and/or First Assignment of Impairment Rating) must comply with the provisions of §130.12(b)(3) of this title.

(5) Unless otherwise directed by a presiding officer, a party opposing the rescheduling or cancellation of a benefit review conference must file any written opposition with the division within three days of receiving the cancellation or rescheduling request.

(6) The division will notify the parties of a cancellation or rescheduling of a benefit review conference in a timely manner.

(7) If the benefit review officer denies a request to cancel or reschedule a benefit review conference under this section, the benefit review officer will notify the parties in writing and state the reasons for the denial.

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

Issued at Austin, Texas, on December 17, 2018.

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

The commissioner adopts amendments to §141.2.

Cassie Brown
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation

COMMISSIONER'S ORDER NO. _____