

**CHAPTER 141. DISPUTE RESOLUTION--BENEFIT REVIEW CONFERENCE**  
**28 TAC §141.1**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §141.1, relating to Requesting and Setting a Benefit Review Conference. The amendments are adopted without changes to the proposed text published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6202).

DWC adopts amendments to 28 TAC §141.1 to amend the name from "Site" to "Method of Conducting" in subsection (j) and add videoconference as a way that DWC can conduct a benefit review conference (BRC). Amended subsection (j) adds a requesting party's showing of good cause as a condition to DWC conducting a BRC in person.

**REASONED JUSTIFICATION.** Texas Labor Code §410.005 allows DWC the option to conduct a BRC by videoconference, telephone, or in person. Under Labor Code §410.005, a BRC will be conducted in person if DWC finds that the requesting party has good cause. The amendment to §141.1(j) is necessary to add videoconference as a way that DWC can conduct a BRC. Expanding the ways DWC conducts a BRC in §141.1(j) is also necessary to provide that DWC will hold a BRC in person if a requesting party shows good cause for conducting the BRC in person.

Labor Code §410.021 defines a BRC as a nonadversarial, informal dispute resolution proceeding. Under Labor Code §410.021, a BRC is designed to explain, orally or in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights. Labor Code §410.021 also provides that the purposes

of the BRC include discussing the facts of the claim, reviewing available information to evaluate the claim, defining the issues in dispute, and mediating the issues by agreement under Labor Code Chapter 410 and DWC's policies.

Labor Code §410.026 provides that benefit review officers (BROs) must mediate disputes between the parties; thoroughly inform all parties of their rights and responsibilities under the Texas Workers' Compensation Act; ensure that all documents and information relating to the injured employee's wages, medical condition, and any other information needed for the resolution of the disputed issues are contained in the claim file at the conference, especially when the injured employee is not represented by an attorney or other representative; and prepare a written report that details each issue not resolved at the BRC.

#### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received one written comment, and no oral comments. The commenter in support of the proposal is the Office of Injured Employee Counsel. DWC received no comments to change the proposal or against the proposal.

**Comment on §141.1.** One commenter supports the amendment to add videoconference as a way to conduct a BRC because use of technology may make the system more efficient.

**Agency Response to Comment on §141.1.** DWC appreciates the comment in support of amendments to §141.1.

#### **CHAPTER 141. DISPUTE RESOLUTION--BENEFIT REVIEW CONFERENCE**

**28 TAC §141.1.**

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to 28 TAC §141.1 under Labor Code §§402.00111, 402.00116, 402.00128, 402.061, 410.005, 410.007, 410.021, 410.023, 410.025, 410.026, and 410.027.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.00128 provides that the commissioner shall implement division policy and may prescribe the form, manner, and procedure for transmitting information to the division.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §410.005 provides the ways the division conducts BRCs and contested case hearings and allows the division to conduct a BRC by telephone, videoconference, or in person on a showing of good cause as determined by the division.

Labor Code §410.007 provides that the division must determine the type of information that is most useful to parties to help resolve disputes regarding benefits and to publish a list of such information.

Labor Code §410.021 provides that a BRC is a nonadversarial, informal dispute resolution proceeding designed to explain the rights of the parties and the procedures needed to protect those rights, discuss and review the information to evaluate the claim, and mediate and resolve disputed issues by agreement.

Labor Code §410.023 provides that a party requesting a BRC must provide documentation of efforts made to resolve the dispute before requesting a BRC. It also directs the commissioner to adopt guidelines by rule regarding the type of information needed to satisfy the documentation requirement and establish a process through which the division evaluates the requesting party's documentation. It also provides that the division may direct the parties to a disputed claim to meet in a BRC to reach agreement on the disputed issues.

Labor Code §410.025 provides that the commissioner may prescribe the scheduling of BRCs and expedited hearings, and the required notices related to the scheduling.

Labor Code §410.026 provides that a BRO may schedule an additional BRC if the BRO determines that available information related to the resolution of disputed issues was not produced at the first BRC, and the division has not already conducted a second BRC.

Labor Code §410.027 provides that the commissioner shall adopt rules for conducting BRCs and that a BRC is not subject to common law or statutory rules of evidence or procedure.

**TEXT.**

§141.1. Requesting and Setting a Benefit Review Conference.

(a) Prior Notification. Before requesting a benefit review conference, a disputing party must notify the other parties of the nature of the dispute and attempt to resolve the dispute.

(b) Who May Request. A request for a benefit review conference may be made by an injured employee, a subclaimant, or an insurance carrier. An employer may request a benefit review conference to contest compensability when the insurance carrier has accepted the claim as compensable.

(c) Subclaimant. A request for a benefit review conference made by a subclaimant under Labor Code §409.009 must also comply with the requirements of §140.6 of this title (relating to Subclaimant Status: Establishment, Rights, and Procedures).

(d) Request for Benefit Review Conference. A request for a benefit review conference must be made in the form and manner required by the division. The request must:

(1) identify and describe the disputed issues;

(2) provide details and supporting documentation of efforts made by the requesting party to resolve the disputed issues, including, but not limited to, copies of the notification provided in accordance with subsection (a) of this section, correspondence, emails, faxes, records of telephone contacts, or summaries of meetings or telephone conversations. For the purposes of this subsection, copies of the notification provided under subsection (a) of this section, correspondence, emails, faxes, records of telephone contacts, or summaries of meetings or telephone conversations should not include all attachments of pertinent information exchanged with the opposing parties as required by §141.4 of this title (relating to Sending and Exchanging Pertinent Information);

(3) contain the requesting party's signature to show that the party made reasonable efforts to resolve the disputed issues before requesting a benefit review conference, and provide any pertinent information in their possession to the other parties as required by §141.4(c) of this title; and

(4) send the request to the division and opposing parties.

(e) Complete Request. A request that meets the requirements of subsection (d) of this section is a complete request for a benefit review conference. The division will schedule a benefit review conference if the request is complete and otherwise appropriate for a benefit review conference.

(f) Incomplete Request. A request for a benefit review conference that does not meet the requirements of subsection (d) of this section is an incomplete request. The division will deny an incomplete request.

(1) A denied request for a benefit review conference does not constitute a dispute proceeding, except as provided by subsection (g) of this section.

(2) If the division denies a request, it will provide notice to the parties and state the reasons for the denial.

(3) On notice from the division, the requesting party may submit a new request for a benefit review conference that meets the requirements of this section.

(g) Incomplete Request Denials. If a party disagrees with the division's determination that the request was incomplete, or if a party has good cause for failing to meet the requirements of subsection (d) of this section, the party may pursue an administrative appeal of the division's determination under Chapter 142 of this title (relating to Dispute Resolution--Benefit Contested Case Hearing). The party may also

request an expedited contested case hearing under §140.3 of this title (relating to Expedited Proceedings).

(h) Setting. If a request meets the standards of subsection (e) of this section, the division will schedule a benefit review conference:

(1) within 40 days after the division received the request; and

(2) within 20 days after the division received the request, if the division determines that an expedited setting is needed.

(i) Notice. After setting the benefit review conference, the division must provide, by first class mail, electronic transmission, or personal delivery, written notice of the date, time, and location to the parties and the employer.


(j) Method for Conducting. The benefit review conference will be conducted by telephone or videoconference, unless the division determines that good cause exists for conducting the benefit review conference in person. Unless the division determines that good cause exists for the selection of a different location, an in-person benefit review conference will be conducted at a site no more than 75 miles from the injured employee's residence at the time of injury.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on November 19, 2021.

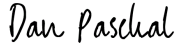
TITLE 28. INSURANCE  
Part II. Texas Department of Insurance,  
Division of Workers' Compensation  
Chapter 141. Dispute Resolution--Benefit Review Conference

Adopted Section  
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Kara Mace  
Deputy Commissioner for Legal Services  
TDI, Division of Workers' Compensation

The commissioner adopts amendments to 28 TAC §141.1.

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Dan Paschal  
Deputy Commissioner for Policy & Customer Services  
Texas Government Code §601.002  
TDI, Division of Workers' Compensation

Commissioner's Order No. 2021-7091.