



## TEXAS DEPARTMENT OF INSURANCE

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# memo

To: Texas Workers' Compensation System Participants

From: Emily McCoy, Associate General Counsel, Office of General Counsel

Date: August 1, 2017

RE: Finalized DWC Form-045: Request to Schedule, Reschedule, or Cancel a Benefit Review Conference, or to Proceed Directly to Contested Case Hearing (CCH)

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) has finalized revisions to the DWC Form-045, Request to Schedule, Reschedule, or Cancel a Benefit Review Conference (BRC). TDI-DWC did not amend the DWC Form-045A or the DWC Form-045M. The revisions allow system participants to use the form for an additional purpose – to request to proceed directly to a contested case hearing (CCH) pursuant to Labor Code §410.024 and 28 Texas Administrative Code (TAC) §142.5.

Generally, parties are required to participate in a BRC prior to requesting a CCH. However, under §142.5(b) parties may proceed directly to a CCH in certain instances, including when the division determines that mediation would not prove effective to resolve the dispute or that the overall policy of the Workers' Compensation Act would be advanced by proceeding directly to CCH. With limited exceptions, a party must request to proceed directly to a CCH in writing. Revised DWC Form-045 provides an option for these requests to be made that helps ensure TDI-DWC receives the information it needs to make a determination. TDI-DWC's goal is to focus BRC time and resources on disputes in which participation is thought to be the most productive. Both the English and Spanish versions of the form are finalized.

An informal draft of the revised DWC Form-045 was posted on the TDI-DWC website on June 8, 2017, with an informal comment period ending on June 23, 2017. Based upon comments, TDI-DWC emphasizes that, under §142.5(e), the other party or parties has an opportunity to respond if a hearing is set upon request. Additionally, §142.5(c)(1)(B) requires that a request to proceed directly to CCH identify and describe the disputed issue or issues, and 28 TAC §142.7(f) provides that a request for hearing and the other party's response are included in the statement of disputed issues for a CCH without a prior BRC. There were no changes made to the draft DWC Form-045 as a result of comment.

The finalized DWC Form-045 is available on the TDI-DWC website at <http://www.tdi.texas.gov/forms/form20numeric.html>, and is effective immediately.