

TITLE 28. INSURANCE

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

CHAPTER 41: PRACTICE AND PROCEDURE

**SUBCHAPTER A: COMMUNICATIONS
REPEAL: §41.50**

**SUBCHAPTER B: ACCESS TO BOARD RECORDS
REPEAL: SUBCHAPTER (ALL SECTIONS)**

REPEAL ADOPTION

1. INTRODUCTION.

The Texas Department of Insurance, Division of Workers' Compensation (Division) adopts the repeal of §41.50, concerning Carrier's Address; §41.101, concerning Purpose; §41.105, concerning Definitions; §41.110, concerning Availability; §41.115, concerning Inspection; §41.120, concerning Duplication and Related Services; §41.125, concerning Duplicating Charges; §41.130, concerning Certified Copies; §41.135, concerning Subpoenas for Confidential Records; §41.140, concerning Record Checks; §41.150, concerning Publications; and §41.160, concerning Annual Review of Charges.

The repeal of §41.50 and Chapter 41, Subchapter B, §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 is adopted without changes to the proposed repeal as published in the July 5, 2013, issue of the *Texas Register* (38 TexReg 4292) and the text of the repealed sections will not be published. No comments were received and there was not a request for a public hearing submitted to the Division.

In accordance with Government Code §2001.033, this preamble contains a summary of the factual basis for the repeal.

2. REASONED JUSTIFICATION.

The repeal of §41.50 is necessary because it is redundant. Section 41.50, concerning Carrier's Address, was adopted effective November 20, 1977 (2 TexReg 4315). It provides that unless otherwise approved by the board, all notices and communications to insurance carriers will be addressed to the carrier at an address designated by the carrier as its Texas mailing address. Section 41.60, concerning Communication to Insurance Carriers, was adopted November 11, 1983 (8 TexReg 4491). Section 41.60 supersedes §41.50 because it was adopted almost six years after §41.50 and is more specific. Section 41.60 provides that unless otherwise required by statute or a board rule all notices and other communications to insurance carriers will be sent either to an address designated by the insurance carrier as its principal Texas mailing address or to its designated Austin representative.

The repeal of Subchapter B is necessary because its sections are outdated and have been replaced by other statutory and regulatory provisions. The statutes and rules cited in this adoption order are not an exhaustive list of all the statutes and rules that apply and that have superseded these repealed rules. The issues addressed by Subchapter B pertain to confidentiality provisions and open records which are currently addressed by other statutes and rules including, Government Code Chapter 552, known as the Texas Public Information Act; Labor Code §§402.081, 402.083 - 402.088, 402.090, 402.091, 402.092 413.0513, and 413.0514; 1 TAC Chapter 63, concerning Public Information; 1 TAC Chapter 70, concerning Cost of Copies of Public Information; and 28 TAC §108.1, concerning Charges for Copies of Public Information.

Because §§41.50, 41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 are unnecessary they are repealed.

3. HOW THESE SECTIONS WILL FUNCTION.

The adoption of the repeal of §41.50 and Chapter 41, Subchapter B, will eliminate unnecessary sections.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSES.

The Division did not receive any comments on the proposed repeal.

5. STATUTORY AUTHORITY.

**SUBCHAPTER A: COMMUNICATIONS
REPEAL: §41.50**

The repeal is adopted pursuant to Labor Code §§402.0111, 402.00116, and 402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Labor Code Title 5, and other laws applicable to the Division or Commissioner. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code.

**SUBCHAPTER B: ACCESS TO BOARD RECORDS
REPEAL: SUBCHAPTER (ALL SECTIONS)**

The repeal of §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 is adopted pursuant to Labor Code §§402.00111, 402.061, 402.081, 402.083 - 402.088, 402.090, 402.092, 413.0513, and 413.0514; and Government Code Chapter 552. Section 402.00111 requires that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 requires that the

Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of Title 5, Labor Code. Section 402.081 provides that the Commissioner of Workers' Compensation is the custodian of the Division's records and shall perform the duties of a custodian required by law, including providing copies and the certification records; requires compliance with the records retention schedules as provided by §441.185, Government Code; pertains to formats of records maintained; allowable fees for inspection of information and copies; and requires the fee for access to information under Chapter 552, Government Code, shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter. Section 402.081(d) provides that reasonable fees can be billed for inspecting Division records and the fee for access to information under Government Code Chapter 552 shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter. Section 402.083 requires that information in or derived from a claim file regarding an employee is confidential and may not be disclosed except as provided by law. Section 402.084 regulates when the Division shall perform and release a record check on an employee and claim file information, requires confidentiality, allows the Commissioner of Workers' Compensation to establish by rule a reasonable fee for information, requires adoption of rules for reasonable security parameters for all transfers of information requested under this section in electronic data format, and requires adoption of rules to establish requirements regarding the maintenance of electronic data in the possession of insurance carriers or their authorized representatives. Section 402.085 contains regulations regarding exceptions to confidentiality. Section 402.086 requires transfer of confidentiality of claim information except in certain circumstances. Section 402.087 regulates information available to prospective employers. Section 402.088 regulates the release of reports of prior injuries. Section 402.090 allows the Division, the Texas Department of Insurance, or any other

governmental agency to prepare and release statistical information if the identity of an employee is not explicitly disclosed. Section 402.091 provides that a person commits a Class A misdemeanor that may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under Labor Code Chapter 402, Subchapter D, to a person not authorized to receive the information directly from the division. Section 402.092 requires that investigation files compiled or maintained by the Division be confidential, states that they are not open records for purposes of Government Code Chapter 522, and provides exceptions to confidentiality. Section 413.0513 describes what constitutes an investigation file and the information that is not subject to discovery or court subpoena. Section 413.0514 pertains to the sharing confidential information between the division and occupational licensing boards. Government Code Chapter 552 contains the Texas Public Information Act.

6. TEXT.

§41.50 Carrier's Address

§41.101 Purpose

§41.105 Definitions

§41.110 Availability

§41.115 Inspection

§41.120 Duplication and Related Services

§41.125 Duplicating Charges

§41.130 Certified Copies

§41.135 Subpoenas for Confidential Records

§41.140 Record Checks

§41.150 Publications

§41.160 Annual Review of Charges

8. CERTIFICATION.

This agency hereby certifies that the adopted repeal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on December 16, 2013.

X

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the repeal of §41.50, concerning Carrier's Address; §41.101, concerning Purpose; §41.105, concerning Definitions; §41.110, concerning Availability; §41.115, concerning Inspection; §41.120, concerning Duplication and Related Services; §41.125, concerning Duplicating Charges; §41.130, concerning Certified Copies; §41.135, concerning Subpoenas for Confidential Records; §41.140, concerning Record Checks; §41.150, concerning Publications; and §41.160, concerning Annual Review of Charges, is adopted.

AND IT IS SO ORDERED.

X

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

X

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO