



Texas Department of Insurance

Division of Workers' Compensation

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4001 fax • www.tdi.texas.gov

Memorandum

To: Workers' Compensation System Participants

From: Jeff Carothers, Director, Office of Workers' Compensation Counsel

Date: November 9, 2011

Subject: Adopted Amendments: 28 TAC §141.2 and §141.3 Regarding Canceling or Rescheduling a Benefit Review Conference and Failure to Attend a Benefit Review Conference and §143.2 Regarding Description of the Appeal Proceeding

On October 31, 2011, the Commissioner of Workers' Compensation Rod Bordelon, adopted amendments to 28 Texas Administrative Code (TAC) §141.2 and §141.3, regarding Canceling or Rescheduling a Benefit Review Conference and Failure to Attend a Benefit Review Conference, and §143.2, regarding Description of the Appeal Proceeding. These adoptions will publish in the November 18, 2011 issue of the *Texas Register* and may be viewed on the Secretary of State website at <http://www.sos.state.tx.us/texreg/index.shtml> once published. A courtesy copy of these adoptions may be viewed on the Texas Department of Insurance website at <http://www.tdi.texas.gov/wc/rules/adopted/index.html>. The amendments are effective November 20, 2011.

The purpose of the adopted amendments to 28 TAC §141.2 and §141.3 is to implement certain legislative changes made by House Bill 2605, 82nd Legislature, Regular Session, effective September 1, 2011 (HB 2605), that affect the rescheduling of benefit review conferences (BRCs). HB 2605 amended Texas Labor Code §410.028 to require the Commissioner of Workers' Compensation by rule to define "good cause" for rescheduling a BRC and establish deadlines for requesting that a BRC be rescheduled. The adopted amendments include provisions that define "good cause" for rescheduling a BRC both prior to the scheduled BRC and in situations where a party fails to attend the BRC. The adopted amendments also establish procedures for requesting to reschedule a BRC when a party has failed to attend the BRC. These new provisions and other amendments to these rules will apply to a request for a BRC that is filed on or after December 1, 2011. The provisions in previous 28 TAC §141.2 and §141.3 will continue to apply to a request for a BRC that is filed before December 1, 2011.

The DWC Form-045, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference (BRC)*, has been revised to conform with the adopted amendments to 28 TAC §141.2 and §141.3 and is to be used for requests for a BRC filed with the TDI-DWC on or after December 1, 2011. The previous version of the DWC Form-045 will not be accepted after November 30, 2011. The revised form may be accessed and downloaded from the Texas Department of Insurance website at <http://www.tdi.texas.gov/forms/form20.html>.

The purpose of the adopted amendments to 28 TAC §143.2 is to implement certain legislative changes made by HB 2605 to Texas Labor Code §410.203 and §410.204. These legislative changes authorize the Texas Department of Insurance, Division of Workers' Compensation's (TDI-DWC) Appeals Panel to affirm the decision of the hearings officer in a case described by Texas Labor Code §410.204(a-1). Texas Labor Code §410.204(a-1) authorizes an Appeals Panel to issue a written decision affirming the decision of a hearings officer if the case is a case of first impression, involves a recent change in law, or involves errors at the contested case hearing that require correction, but do not affect the outcome of the hearing. These adopted amendments incorporate these new provisions into existing TDI-DWC rules affecting the Appeals Panel.

If there are any questions regarding the information in this memo, contact James Dodds at 512-804-4725, or james.dodds@tdi.state.tx.us.