

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

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 Texas Administrative Code §141.1, concerning Requesting and Setting a Benefit Review Conference. Section 141.1 implements the changes the Legislature made to Texas Labor Code §410.005, Venue for Administrative Proceedings under House Bill 1752, 87th Legislature, Regular Session (2021). The amendments to Labor Code §410.005 became effective June 4, 2021.

**EXPLANATION.** Labor Code §410.005 allows DWC the option to conduct a benefit review conference (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.

Amending §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 the division'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.

Proposed amendments to 28 TAC §141.1 include amending the name from "Site" to "Method of Conducting" in subsection (j) and adding videoconference as a way that DWC can conduct a BRC. Proposed subsection (j) also adds a requesting party's showing of good cause as a condition to DWC's conducting a BRC in person.

In addition, the proposed amendments include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and improve the rule's clarity.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Allen Craddock, deputy commissioner of Hearings, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Dr. Craddock does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Dr. Craddock expects that administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §410.005 and will allow flexibility in the method and site where DWC conducts the BRC.

Dr. Craddock expects that the proposed amendments will not increase the cost to comply with Labor Code §410.005 because it does not impose requirements beyond those in the statute. Labor Code §410.005 allows DWC to conduct a BRC by telephone, videoconference, and in person if there is a good-cause reason. As a result, any costs associated with DWC conducting videoconference BRCs instead of in-person BRCs does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Parties attending a BRC by videoconference might avoid fewer travel-related expenses that can occur when DWC conducts a BRC in person. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045 because the proposed 28 TAC §141.1 is necessary to implement legislation. The proposed rule

implements Labor Code §410.005, as added by HB 1752, 87th Legislature, Regular Session (2021).

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability;

or

- positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 22, 2021. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance,

Division of Workers' Compensation, Legal Services, MC-LS, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m., Central time, on October 11, 2021. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

## **CHAPTER 141.**

### **28 TAC §141.1.**

**STATUTORY AUTHORITY.** DWC proposes §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.

**CROSS-REFERENCE TO STATUTE.** Section 141.1 implements Labor Code §410.005, enacted by HB 1752, 87th Legislature, Regular Session (2021). The following statutes are affected by this proposal: Labor Code §§410.007, 410.021, 410.023, 410.024, 410.025, 410.026, 410.027, 410.028, 410.151, 410.154, 413.013, 413.031, 413.0312, 415.001, 415.002, 415.003, 415.0035, and 415.0036.

**TEXT.**

§141.1. Requesting and Setting a Benefit Review Conference.

(a) Prior Notification. Before ~~Prior to~~ requesting a benefit review conference, a disputing party must notify the other ~~party or~~ 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 ~~shall~~ be made in the form and manner required by the division. The request must ~~shall~~:

- (1) identify and describe the disputed ~~issue or~~ 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, [~~e-mails, facsimiles,~~] records of telephone contacts, or summaries of meetings or telephone conversations. For the purposes of this subsection, copies of the notification provided under [~~in accordance with~~] subsection (a) of this section, correspondence, emails, faxes, [~~e-mails, facsimiles,~~] records of telephone contacts, or summaries of meetings or telephone conversations should not include all attachments of pertinent information exchanged with the opposing [~~party or~~] parties as required by §141.4 of this title (relating to Sending and Exchanging Pertinent Information);

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

(4) send the request [~~be sent~~] to the division and opposing [~~party or~~] 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. [~~and will be denied.~~]

(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 [~~The division will notify the parties if a request is denied~~] and state the reasons for the denial.

(3) On [~~Upon~~] 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<sup>[7]</sup> 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 [~~in accordance with~~] Chapter 142 of this title (relating to Dispute Resolution--Benefit Contested Case Hearing). The party may also request an expedited contested case hearing under [~~in accordance with~~] §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 [~~the request was~~] received the request; [~~by the division~~] and

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

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

(j) Method for Conducting. [~~Site.~~] The benefit review conference will be conducted by telephone or videoconference, [~~at a site no more than 75 miles from the injured employee's residence at the time of injury,~~] unless the division determines that good cause exists for conducting the benefit review conference in person. [~~selecting another site.~~] 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.

~~[(k) Effective Date. [date.] The effective date of this section is October 1, 2010.]~~

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

Issued in Austin, Texas, on September 3, 2021.

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Kara Mace  
Deputy Commissioner for Legal Services  
Texas Department of Insurance,  
Division of Workers' Compensation