

## **Requesting Interlocutory Orders 28 TAC §141.6**

**1. INTRODUCTION.** The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of 28 Tex. Admin. Code §141.6, concerning requesting interlocutory orders. This repeal is adopted without changes to the proposal as published in the February 1, 2008, issue of the *Texas Register* (33 *TexReg* 866).

**2. REASONED JUSTIFICATION.** The repeal of §141.6 is necessary due to House Bill 473 (HB 473) and Senate Bill 1169 (SB 1169), enacted by the 80th Legislature (2007), which amended Labor Code §410.032 and rendered §141.6 unworkable and outdated. These bills altered the process for requesting and issuing interlocutory orders. House Bill 473 restored authority to benefit review officers to issue interlocutory orders, gave the opposing party an opportunity to respond, and clarified that the authority to issue interlocutory orders includes the authority to order the payment or the suspension of benefits, or both. Senate Bill 1169 required the benefit review officer to issue an order no later than the third day after the receipt of a request for the order. These amendments to §410.032 facilitate requests for interlocutory orders to be acted on in an expedited manner; thereby providing for the prompt initiation or suspension of benefits during a period of dispute resolution. With the amendments to Labor Code §410.032, §141.6 is outdated since it was promulgated

when the interlocutory orders were requested from and issued by central Division staff other than the benefit review officer that presided at the benefit review conference and where deadlines for requesting an interlocutory order existed that are no longer supported by the statute. Labor Code §410.032, as amended, provides detailed guidance on who may issue an interlocutory order, the time for issuing an order, the form for requesting an order (written or oral), an opportunity to respond to a request, and the issues that can be addressed in an order. Any revision of §141.6 would essentially be a restatement of the statutory requirements. Section 141.6 conflicts with the amendments to Labor Code §410.032. The Division has determined that the statutory requirements provide sufficient guidance to participants regarding their responsibilities and that further guidance by rule is unnecessary. For this reason, the Division adopts the repeal of §141.6.

**3. HOW THE SECTION(S) WILL FUNCTION.** The repeal of §141.6 removes the former process for requesting and issuing interlocutory orders. This repealed rule will not be replaced with another rule regarding interlocutory orders. The interlocutory orders process will now proceed as set forth in Labor Code §410.032.

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

**Comment:** Commentor stated it supports the repeal of §141.6 as the repeal of the rule is necessary due to the passage of HB 473 and SB 1169 by the 80th Legislature

in 2007 which amended §410.032 of the Texas Labor Code and rendered §141.6 unworkable and outdated as these bills alter the process for requesting and issuing interlocutory orders. Commenter also states the Commissioner will need to adopt a new interlocutory order rule in the near future.

**Agency Response:** The Division agrees that §141.6 is no longer necessary. However, this repealed rule will not be replaced with another rule regarding interlocutory orders. The interlocutory orders process will now proceed as set forth in Labor Code §410.032. If a rule regarding interlocutory orders is required in the future, the Division will follow its process of obtaining stakeholder input.

## **5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.**

**For:** Insurance Council of Texas

**6. STATUTORY AUTHORITY.** The repeal is adopted pursuant to Labor Code §402.00111 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 and other laws of this state. Section 402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

## **7. TEXT.**

TITLE 28. INSURANCE  
Part 2. Texas Department of Insurance  
Division of Workers' Compensation  
Chapter 141. Dispute Resolution—Benefit Review Conference

Adopted Section  
Page 4 of 5 Pages

§141.6. Requesting Interlocutory Orders.

**8. CERTIFICATION.** This agency certifies that the adopted section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on \_\_\_\_\_, 2008.

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Norma Garcia  
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 §141.6 concerning requesting interlocutory orders after the conclusion of a benefits review conference, is adopted.

**AND IT IS SO ORDERED.**

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ALBERT BETTS  
COMMISSIONER OF WORKERS' COMPENSATION  
TEXAS DEPARTMENT OF INSURANCE

ATTEST:

\_\_\_\_\_  
Norma Garcia  
General Counsel

COMMISSIONER'S ORDER NO.