



Texas Department of Insurance

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August 30, 2005

COMMISSIONER'S BULLETIN NO. B-0040-05

TO: WORKERS' COMPENSATION SYSTEM PARTICIPANTS

RE: AMENDMENTS TO DISPUTE RESOLUTION REQUIREMENTS

House Bill 7 (HB 7), passed by the 79th Legislature, made several changes to dispute resolution processes, which are effective September 1, 2005.

Workers' compensation rules remain in effect unless these rules conflict with statutory provisions. Pending the adoption, amendment, or repeal of rules by the Commissioner of Workers' Compensation, the following guidance is provided concerning procedural changes that will be implemented by the Texas Department of Insurance, Division of Workers' Compensation (Division) on September 1, 2005:

Useful Information:

- HB 7 added a new §410.007, which directs the Division to develop and publish a list of information most useful to parties to help resolve disputes regarding income benefits. When a Benefit Review Conference (BRC) or Contested Case Hearing (CCH) is scheduled, the Division will make a copy of the list of information required under §410.007 available to each party to the dispute. A preliminary list of information will be available on TDI's website (www.tdi.state.tx.us) after September 1, 2005.

Benefit Review Conferences (BRCs):

- HB 7 amended §410.023 to require that a party requesting a BRC must provide documentation to the Division of prior efforts made to resolve the disputed issues. A BRC will not be scheduled unless the requesting party describes the issues in dispute and documents the prior resolution attempts. Dispute parties may use Box 7 on the Division's FORM-45, Request for a Benefit Review Conference for this purpose. The Division will be developing rules required by amendments to §410.023 relating to the type of information necessary to document prior attempts to resolve disputed issues. Until these

rules are adopted by the Commissioner of Workers' Compensation, parties are encouraged to document prior attempts to resolve disputes.

- HB 7 amended §410.005 to allow the Division to conduct BRCs telephonically with the injured employee's agreement. If the injured employee is agreeable to a telephone BRC, the party requesting telephonic attendance should contact the presiding Benefit Review Officer (BRO) for permission to appear telephonically. In accordance with §410.005, the Division has the discretion to determine when a telephone BRC will be held.
- In accordance with §410.026, a BRO may schedule an additional BRC if: the BRO determines that any available information pertinent to the resolution of a disputed issue(s) was not produced at the initial BRC; and if a second BRC has not already been conducted on the disputed issue(s). If any disputed issue(s) remains unresolved after the first BRC is conducted and a second BRC has not been scheduled to address this issue(s), the parties may proceed to a Contested Case Hearing (CCH). The provisions of §410.026 as amended will apply to BRCs that are scheduled on or after September 1, 2005.
- Additionally, HB 7 amended §410.026 (a) (4) and §410.031 to require that BROs write a report that lists the unresolved issue(s), including any new issue(s) raised during an additional BRC and each party's position on the unresolved issue(s), at the conclusion of any BRC at which unresolved issue(s) remain. The BRO will no longer issue a recommendation on the disputed issue(s).

Appeals Panel:

HB 7 also made several changes to the structure and administration of the Division's Appeals Panel, including:

- Amendments to §410.201, Labor Code, which clarifies that the Division's Appeals Panel will consist of a single panel composed of three administrative law judges.
- A new §410.203 (e), which requires the Division's Appeals Panel to issue and maintain a precedent manual composed of precedent-establishing decisions, and other information as identified by the Appeals Panel. Persons interested in obtaining a copy of the precedent manual are encouraged to check TDI's website (www.tdi.state.tx.us).
- Amendments to §410.203 (b) and (c), which state that the Appeals Panel will no longer issue a written decision in cases where the Appeals Panel affirms the decision of the CCH Hearing Officer. The Appeals Panel will continue to

issue written decisions for cases where the CCH Hearing Officer decision is being reversed and rendered or reversed and remanded.

- Amendments to §410.204 to clarify that for an appeal filed on or after September 1, 2005, the Appeals Panel shall issue a written decision not later than 45 days after the date on which the written response to the request for appeal is filed with the Division.

Questions regarding this bulletin should be directed to:

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Sincerely,

Mike Geeslin
Commissioner of Insurance