

**CHAPTER 149. MEMORANDUM OF UNDERSTANDING WITH THE STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

§ 149.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act -- The Texas Workers' Compensation Act, Texas Labor Code, §§401.001 et. seq.
- (2) ALJ -- The Administrative Law Judge assigned by the State Office of Administrative Hearings.
- (3) APA -- The Administrative Procedure Act, as specified in the Government Code, Chapter 2001.
- (4) Commission -- The Texas Workers' Compensation Commission.
- (5) Contested Case -- A proceeding in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing as defined in the Government Code, §2001.003, subject, however, to the provisions of the Act as codified in the Texas Labor Code, Title 5, Subtitle A, including §§401.021(1), 411.049, 413.031, 413.055, 415.034, 402.073, 407.046, and 408.0231; and the rules adopted by the commission, in particular Chapter 148 of this title (relating to Hearings Conducted by the State Office of Administrative Hearings).
- (6) IRO -- An Independent Review Organization, established in accordance with Insurance Code article 21.58C, performing reviews of health care under the Act.
- (7) MOU -- The Memorandum of Understanding executed by the commission in accordance with this chapter.
- (8) SOAH -- The State Office of Administrative Hearings.
- (9) TWCC Chief Clerk -- The Chief Clerk of Proceedings within the Hearings Division of the commission.

The provisions of this §149.1 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.2. General Statement.

- (a) The Act, §402.073, mandates the commission and the chief administrative law judge of SOAH to adopt by rule an MOU governing contested case hearings held by SOAH under the Act.
- (b) The MOU is necessary to accomplish the efficient and expeditious hearing of matters to be heard by SOAH under the Act, §402.073 by establishing the procedures to be used by each agency and clearly delineating each agency's responsibilities. Additionally, the MOU is necessary to inform the public of each agency's responsibilities and the procedures for the institution, conduct and determination of proceedings before SOAH on behalf of the commission.
- (c) Chapter 149 rules constitute the MOU between the Commission and SOAH. The MOU provides procedures for referring a case to SOAH, the notice of hearing, proposals for decision, final orders, and custody of the hearing record, and related matters.

The provisions of this §149.2 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.3. Referral of Contested Case to SOAH.

- (a) Referral of a contested case to SOAH may be made only by the commission. The referral is initiated by filing with SOAH a Request to Docket Case form. The TWCC Chief Clerk will ensure that the appropriate areas are marked on the SOAH form to provide additional notification of the confidentiality provisions as specified in §149.6 of this title (relating to Confidentiality of Records). In addition to filing the appropriate form, a referral also consists of the following items:
- (1) all pleadings in the case, including but not limited to, the agency's findings and decision, requests for hearing, complaints, petitions, applications, motions, or such other documents produced by the commission describing agency action relating to the contested case;
 - (2) a current service list; and
 - (3) notification of any statutory deadlines imposed by statute or rule involving the contested case.
- (b) Not later than ten days after receiving the Request to Docket Case form, SOAH shall assign the case a docket number and provide the docket number and a confirmation of the date, time, and place of hearing to the commission within the limitations specified in §148.5 of this title (relating to Notice of Hearing). The SOAH docket clerk will coordinate the assignment of hearing dates with the TWCC Chief Clerk so that hearings are scheduled both for the efficient use of ALJs and commission representatives in such cases. Following receipt of a request for an assignment of judge, SOAH shall assign an ALJ and shall notify all parties and the commission in writing of the ALJ assigned to the case.
- (c) SOAH shall utilize its best efforts to set hearings involving issues of preauthorization under the Act, §§413.014 and 413.055, for a date no more than 30 days after SOAH has received the Request to Docket Case form. SOAH shall utilize its best efforts to set a hearing to consider a proposed penalty under the Act, Chapter 415, Subchapter B, no earlier than 60 days after SOAH has received the Request to Docket Case form. In all other cases under the Act, SOAH shall set such cases for a date within a 90-day period after receiving the Request to Docket Case form.

The provisions of this §149.3 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.4. Notice of Hearing.

- (a) Except as provided in subsection (b) of this section and upon receipt of the docket number, location and setting date from SOAH and no later than ten days before the hearing date, the TWCC Chief Clerk shall notify the parties in writing, by a verifiable means, of the date, time, place, and nature of the hearing; the docket number; the legal authority and jurisdiction under which the hearing will be held; a reference to the particular sections of the statutes and any rules involved; a notice regarding failure to appear and default judgment, and a short, plain statement of the matters asserted. The reference to the statutes and any rules involved, nature of the hearing, and the short, plain statement may be provided by the commission's representative, and, if so, would not be provided by the TWCC Chief Clerk. After the initial notice is sent by the commission, the ALJ may issue additional notices of the time, date, and place of the hearing as needed.
- (b) No later than 30 days before the scheduled hearing date for a hearing conducted under the Act, §407.046(b), SOAH will issue a notice of hearing to the certified self-insurer and to the TWCC Chief Clerk according to the procedures specified in §148.5(b) of this title (relating to Notice of Hearing).

The provisions of this §149.4 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.5. Hearings.

- (a) Hearings, including prehearing proceedings, on contested cases shall be conducted in accordance with the

APA, subject to the provisions of the Act, the commission's rules, SOAH's rules of procedure and any other applicable law and accompanying regulations.

- (b) SOAH shall notify the TWCC Chief Clerk of the date, time, and location of the hearing utilizing its best efforts to make such notification within ten days after receiving from the TWCC Chief Clerk a Request to Docket Case form.

The provisions of this §149.5 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.6 Confidentiality of Records.

- (a) SOAH shall ensure that the confidentiality provisions of the Act, §§402.082 through 402.091, 402.092, 411.034, 413.0513, and 413.0514 and the Code of Federal Regulations, Title 20, §§603.6 and 603.7 (for information obtained from the Texas Workforce Commission or its successor agencies), will be followed, including requests for release of documents or information made confidential under the Act or other applicable law.
- (b) Unless authorized by law, SOAH will not identify the name of a claimant for workers' compensation coverage under the Act or other information contained in or derived from the commission's claim file for such a claimant in listings of docketed cases or in other documents distributed to persons other than to the commission and the parties to a contested case involving that claimant.
- (c) If a party or a member of the public files a written request with the TWCC Chief Clerk and with SOAH that a hearing be conducted as a hearing open to the public, the ALJ shall consider that request and issue a ruling prior to the opening of the hearing to the public.
- (d) Any request for a hearing open to the public shall be filed with the TWCC Chief Clerk and with SOAH at least seven days prior to the first day of the hearing unless the ALJ allows a shorter filing period upon a showing of good cause.
- (e) When considering a request that a hearing be open to the public, the ALJ's considerations shall include, but are not limited to, whether the hearing would contain information made confidential under the Act or other applicable laws. If confidential information would be included, then the ALJ may consider whether any procedure could be devised and utilized which would allow a hearing to be open to the public without violating the confidentiality provisions of the Act, other applicable laws, other applicable regulations, and agreements required by those laws or regulations or without causing an undue burden on the commission or the parties to the hearing.
- (f) While SOAH will have temporary custody of the hearing records, the Executive Director of the commission retains statutory authority as custodian of records and is ultimately responsible, as the originating agency, for the release or non-release of the information. Therefore, should any information, which may be confidential under the Act, commission rules, or other law, be requested from SOAH by any person or entity, SOAH shall follow all legal requirements necessary to ensure that the confidential information or document is not released, unless specifically required by law, and shall provide such request to the commission's executive communication division immediately upon receipt.
- (g) Pursuant to §413.031(c) of the Act, the commission shall be responsible for publishing any SOAH decisions required to be published by that section on its Internet website. SOAH shall as soon as practicable deliver to the commission a version of the decision in an electronic format.
- (h) SOAH and the commission have responsibilities for compliance with the Texas Public Information Act, Chapter 552, Government Code. Each agency maintains information that may be considered confidential or exempt from disclosure under laws administered by that agency. To the extent required by law, each agency is responsible for replying to all public information requests for information maintained by that agency. Each agency will promptly notify the other agency of the receipt of a Texas Public Information

Act request relating to confidential or exempt records obtained from the other agency and will coordinate responses as necessary.

The provisions of this §149.6 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.7. Action Upon Withdrawal of Decision.

If a findings and decision of the commission's medical review division in a review of a medical service or medical fee under the Act, §413.031, or an IRO decision under the Act, §413.031, is withdrawn by the commission within fifteen working days after the commission receives the request for hearing before SOAH the commission shall file a request to withdraw the case from the SOAH docket. SOAH shall then issue an order dismissing the case without prejudice from the SOAH docket. This provision does not apply to a prospective medical necessity dispute regarding spinal surgery, in which case the withdrawal of request shall be filed in accordance with §133.308 of this title (relating to Medical Dispute Resolution by Independent Review Organization).

The provisions of this §149.7 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.8. Final Orders in Accordance with the Act, §§411.049, 413.031, 413.055 and 415.034.

- (a) The ALJ shall prepare and issue the decision and order for contested cases under the Act, §§411.049, 413.031, 413.055, and 415.034. The decision shall include findings of fact, conclusions of law, and the order(s) of the ALJ. The Government Code, §2001.058(d) does not permit the commission to attempt to influence the ALJ's findings of fact, conclusions of law, or the ALJ's application of the law to the facts in any proceedings except by proper evidence and legal argument. Unless otherwise provided by statute or rule, the ALJ shall issue a decision and order no later than the 60th day after the date the record is finally closed. In cases involving issues of preauthorization under the Act, §413.014, the ALJ shall make a good faith effort to expedite the issuance of the final order and to issue the final order no later than 30 days after the record in the case is closed.
- (b) SOAH shall serve true and correct copies of the transmittal letter and the decision and order by verifiable means upon the parties and shall provide a copy of such documents to the TWCC Chief Clerk.
- (c) SOAH shall place a confidentiality stamp on each page of the final order.

The provisions of this §149.8 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.9. Proposals for Decision in Accordance with the Act, §§402.072, 407.046, and 408.0231.

- (a) After holding a hearing pursuant to the Act, §§402.072, 407.046, and 408.0231, and in other cases not subject to §149.8 of this title (relating to Final Orders in Accordance with the Act, §§411.049, 413.031, 413.055 and 415.034), the ALJ shall prepare a proposal for decision not later than 60 days after the date of the hearing.
- (b) The proposal for decision shall contain:
 - (1) a statement of the reasons upon which the decision is based;
 - (2) findings of fact based on the evidence presented and matters officially noticed;
 - (3) conclusions of law based upon the findings of fact and other legal requirements of the law; and
 - (4) the sanction or order recommended by the ALJ; and

- (5) a conclusion of whether the commission is authorized by the Act or commission rules to take disciplinary or sanction action against the Petitioner.
- (c) The proposal for decision may also contain:
 - (1) a summary of the evidence presented by each party; and
 - (2) a list of all mitigating circumstances and a list of all aggravating circumstances, separately stated, which are necessary for the commissioners to have a complete understanding of the case.
- (d) SOAH shall serve a copy of the transmittal letter and the proposal for decision by verifiable means on each party or attorney of record and the TWCC Chief Clerk.
- (e) Although filed with SOAH, exceptions and replies are the primary methods by which a party may communicate with the agency's decision maker. Notwithstanding, upon review of any exceptions and replies filed pursuant to §148.16(d) and (e) of this title (relating to Proposal for Decision by the Administrative Law Judge) the ALJ may amend the proposal for decision if the ALJ deems it is appropriate to do so. If the ALJ believes comments other than an amendment are necessary, the administrative law judge may issue a letter to the commission with service of copies to all parties by verifiable means. Any amendments or comments by the ALJ under this subsection shall be due to the TWCC Chief Clerk not later than fifteen working days after receipt of any briefs and exceptions and replies thereto. If such amendments or comments are not received within the twenty working days, the Commission will proceed under the assumption that the ALJ does not intend to make any changes to the existing proposal for decision.
- (f) SOAH shall forward the completed record in a case, including the proposal for decision, any amended proposal for decision, and any proposed order to the TWCC Chief Clerk utilizing its best efforts to ensure that such record is forwarded no later than ten days after the later of the deadline for the filing of any exceptions or replies has passed or the issuance of an amended proposal for decision.
- (g) SOAH shall place a confidentiality stamp on each page of the proposal for decision.

The provisions of this §149.9 adopted to be effective June 9, 2005 30 TexReg 3250

§ 149.10. Custody of the Hearing Record.

- (a) SOAH shall maintain the official record in a contested case from the time the commission refers the case to SOAH until the conclusion of the administrative hearing process. The commission may also maintain a copy of the record. The conclusion of the administrative hearing process occurs when:
 - (1) there is the entry of a final order by an ALJ;
 - (2) the ALJ enters an order to withdraw or dismiss a case from the SOAH docket either by the granting of a party's motion or on the ALJ's own motion; or
 - (3) the ALJ sends the proposal for decision to the commission.
- (b) Prior to the conclusion of the administrative hearing process, any request for a copy of the record may be directed either to SOAH or the commission. Requests for official copies shall be directed to SOAH as the official custodian authorized to certify as to the completeness of the record before the conclusion of the administrative hearing process. SOAH shall consider the confidentiality provisions of the Act, §§402.081 - 402.091 and other applicable laws before denying release or releasing the requested information within the procedures specified in §149.6 of this title (relating to Confidentiality of Records).

- (c) After the conclusion of the administrative hearing process, the official custodian of the record shall be the commission. SOAH shall deliver the official record, including the hearing audiotape, to the TWCC Chief Clerk along with a certified statement that the documents delivered constitute the complete record in the case. Any request for a copy or transcript of the record shall then be directed to the commission. The commission shall have the authority to certify as to the completeness of the record.

The provisions of this §149.10 adopted to be effective June 9, 2005 30 TexReg 3250