CHAPTER 102. PRACTICE AND PROCEDURES-GENERAL PROVISIONS

§102.2. Gifts, Grants, and Donations.

(a) The commission may accept gifts, grants, and donations made to the Texas Workers' Compensation Commission as follows:

(1) If the value of a gift or donation is $500 or more, the commissioners must, by a majority vote at a public meeting, acknowledge the gift or donation, no later than the 90th day after the date it is accepted.

(2) The Executive Director may accept a gift or donation on behalf of the commission. The Executive Director shall report all accepted gifts and donations to the commissioners.

(3) The Commission may accept a grant from the Texas Workers' Compensation Insurance Fund for the purpose of implementing steps to control and lower medical costs in the workers' compensation system and to ensure the delivery of quality medical care. The commission must additionally:

(A) publish the name of the grantor and the purpose and conditions of the grant in the Texas Register;

(B) provide a 20-day public comment period prior to acceptance of the grant; and

(C) acknowledge acceptance at a public meeting

(4) The Executive Director may accept all other grants on behalf of the Commission and shall report all accepted grants to the Commissioners.

(b) The acceptance or acknowledgment of a gift, grant, or donation made in accordance with subsection (a)(1)or (a)(3)of this section must be reflected in the minutes of the public meeting at which the gift, grant, or donation was accepted or acknowledged. The minutes must include the name of the donor/grantor; a description of the gift, grant, or donation; and a general statement of the purpose for which the gift, grant, or donation will be used.

(c) The Executive Director shall forward all money or financial instruments received as a gift, grant, or donation to the Comptroller of Public Accounts, for deposit in the appropriate commission fund.

(d) The Executive Director shall, where appropriate, convert non-monetary gifts, grants, and donations to cash.

(e) A donor may direct the use of the gift, grant, or donation in writing. This direction will be followed by the commission, as nearly as practicable, and in accordance with state and federal law.

(f) The Commission may not accept a gift or donation of $500 or more from a person who is a party to a contested case before the agency until the 30th day after the decision in the case becomes final under §2001.144 of the Texas Government Code. For purposes of this rule, "contested case" has the meaning assigned by §2001.003 of the Texas Government Code.

The provisions of this §102.2 adopted to be effective January 1, 1991, 15 TexReg 6746; amended to be effective December 2, 1997, 22 TexReg 11691; amended to be effective March 13, 2000, 25 TexReg 2078.

§102.3. Computation of Time.

(a) Due dates and time periods under this Act shall be computed as follows:

(1) computing a period of days. In counting a period of time measured by days, the first day is excluded and the last day is included.

(2) computing a period of months. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

(3) unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day.

(b) A working day is any day, Monday-Friday, other than a national holiday as defined by Texas Government Code, §662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th. Use in this title of the term "day," rather than "working day" shall mean a calendar day.

(c) Normal business hours in the Texas workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's El Paso field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time.

(d) Any written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day.

(e) Unless otherwise specified by rule, any written or telephonic communications required to be filed by a specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing.

(f) If there is a conflict between this rule and a specific provision of another rule that is applicable to a specific type of benefit, the other rule prevails.

The provisions of this §102.3 adopted to be effective January 1, 1991, 15 TexReg 6747; amended to be effective August 29, 1999, 24 TexReg 6488; amended to be effective May 1, 2005, 30 TexReg 2397.

§102.4. General Rules for Non-Commission Communications.

(a) All written communications to a claimant (who is either an employee, an employee's legal beneficiary, or a subclaimant) shall be sent to the most recent address or facsimile number supplied by the claimant. If an address has not been supplied by the claimant, the most recent address provided by the employer shall be used.

(b) After an insurance carrier, employer, or health care provider is notified in writing that a claimant is represented by an attorney or other representative, copies of all written communications related to the claim to the claimant shall thereafter be mailed or delivered to the representative as well as the claimant, unless the claimant requests delivery to the representative only.

(c) Insurance carriers shall provide a toll free telephone number for receipt of communication from claimants and/or their representatives with a sufficient quantity of lines to service their volume of business.

(d) Insurance carriers and health care providers shall provide telephone and facsimile numbers in sufficient quantity of lines to service the volume of business for receiving required verbal and written communications regarding workers' compensation claims.
address provided by the employer shall be used.

(e) Insurance carriers must ensure effective and timely communication with claimants and other parties in the system. If a claimant is unable to communicate with a carrier due to a language barrier and the claimant is unable to provide a person who he or she trusts to serve as a translator, the carrier shall provide a means to translate except as needed for a Commission proceeding. The claimant shall not be required to contract with or otherwise employ a translator.

(f) When a claimant contacts a carrier and requests a response regarding their claim, the response shall be verbally provided or sent in writing by the carrier within five working days of receiving the request, unless the request is redundant or the response is duplicative of information previously provided.

(g) Insurance carriers shall employ or provide sufficient numbers of person, including adjusters appropriately licensed by the Texas Department of Insurance to meet their obligations under the Act and this title.

(h) Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on:

(1) the date received, if sent by fax, personal delivery or electronic transmission or,

(2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.

(i) A carrier shall maintain adjuster's notes on activities and verbal communications involved with the administration of a claim, with the exception of privileged attorney-client communications. The adjuster's notes shall, at a minimum, include the date of the activity or communication, the identity of the carrier staff involved in the contact, the person contacted by or contacting the carrier and a summary of the activity or communication.

(j) An insurance carrier, employer or health care provider that receives a written communication related to a workers' compensation claim shall date stamp or otherwise annotate the document indicating the date the written communication was received.

(k) Written communications include all records, reports, notices, filings, submissions, and other information contained either on paper or in an electronic format.

(l) For purposes of this title, if a written communication is required to be filed with both the Commission and another person by the Act or Commission rules, the other person shall be presumed to have received the written communication on the date the Commission received its copy, unless the other person annotated the date of receipt as provided in subsection (j) of this section or the means of delivery of the communication was different. In this situation, the other person has the burden of proving that it did not receive or timely receive the written communication.

(m) Electronic communication refers to the electronic transmission of claim or medical information. Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method and does not include telephonic communication. Electronic communication for reporting purposes is described in §102.5(e) of this chapter (relating to General Rules for Written Communications to and from the Commission), §124.2 of this title (relating to Carrier Reporting and Notification Requirements), and §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Commission).

(n) If the Commission receives an allegation that a carrier or health care provider has failed to provide a sufficient number of toll-free telephone, toll telephone, or facsimile lines or that a carrier has not provided a sufficient number of adjusters as required by this section, unless the violation appears to be willful or intentional, the Commission will not issue a monetary penalty or other sanctions prior to:

(1) notifying the alleged violator of the allegation;

(2) affording the alleged violator the opportunity to either disprove the allegation or provide mitigating

information; and

(3) if the violator is unable to disprove the allegation, issuing a written warning to the violator allowing a reasonable grace period of not less than 30 days to correct the noncompliance. The grace period may be less than 30 days if the noncompliance prevents the violator from fulfilling other obligations under this title.

(o) A violation as described in subsection (n) will be considered willful or intentional if the violator has been advised of complaints such that the violator knew or should have known that the number of toll-free telephone, toll telephone, facsimile lines, or adjusters was insufficient and the violator cannot establish that it made good faith efforts to correct the deficiency or if the violator otherwise exhibited willful or intentional conduct.

(p) For purposes of determining the date of receipt for non-commission written communications, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed via United States Postal Service regular mail; or the date faxed or electronically transmitted.

The provisions of this §102.4 adopted to be effective January 11, 1991, 16 TexReg 114; amended to be effective August 29, 1999, 24 TexReg 6488; amended to be effective May 1, 2005, 30 TexReg 2397.

§102.5. General Rules for Written Communications to and from the Commission.

(a) After the Commission is notified in writing that a claimant is represented by an attorney or other representative, all copies of written communications to the claimant shall thereafter be sent to the representative as well as the claimant, unless the claimant requests delivery to the representative only. However, copies of settlements, notices setting benefit review conferences and hearings, and orders of the Commission shall always be sent to the claimant regardless of representation status. All written communications to the claimant or claimant's representative will be sent to the most recent address or facsimile number supplied on either the employer's first report of injury, any verbal or written communication from the claimant, or any claim form filed by the carrier via written notice or electronic transmission.

(b) All written communications to persons other than carriers and claimants will be sent to the most recent address or fax number reported to the Commission by the intended recipient or, in the absence of an address or fax number supplied by the intended recipient, to an address or fax number identified by the Commission.

(c) Unless otherwise specified by rule, written communications required to be filed with the Commission should be sent to the local Commission field office managing the claim, however, written communications shall also be accepted at any Commission office.

(d) For purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be the earliest of: five days after the date mailed via United States Postal Service regular mail; the first working day after the date the written communication was placed in a carrier's Austin representative box; or the date faxed or electronically transmitted.

(e) Electronic communications shall be filed or submitted in the format, form, and manner prescribed by the Commission. Electronic communication is considered filed if on the date received, the record meets the required edit checks to insure data quality. Electronic communication is defined in subsection (h) of this section, §102.4(m) of this chapter (relating to General Rules for Non-Commission Communications), and §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Commission). Claim Electronic Data Interchange records filed pursuant to §124.2 of this title (relating to Carrier Reporting and Notification Requirements):

(1) which do not pass the required edit checks in accordance with the International Association of Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation Guides shall be rejected back to the trading partner. Rejected records are not considered received by the Commission and must be corrected and re-submitted. Rejected records must be re-submitted by the original due date to be considered timely filed;

(2) which are accepted but in which the Commission identifies errors shall be corrected and resubmitted, in accordance with the Texas EDI Implementation Guide, within 90 days of receipt of the notification of the acceptance with errors through the corresponding transaction acknowledgment.

(f) Unless the great weight of evidence indicates otherwise, written communications received by the Commission by means other than electronic filing described in subsection (e) of this section and §124.2 of this title, and §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Commission) shall be deemed to have been sent on:

(1) the date received if sent by fax, personal delivery or electronic transmission or,

(2) the date postmarked if sent by United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.

(g) Written communications include all records, reports, notices, filings, submissions, and other information contained either on paper or in an electronic format.

(h) Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange or any other similar method and does not include telephonic communication.

The provisions of this §102.5 adopted to be effective July 29, 1991, 16 TexReg 3939; amended to be effective March 15, 1995, 20 TexReg 1418; amended to be effective August 29, 1999, 24 TexReg 6488; amended to be effective May 1, 2005, 30 TxReg 2397.

§102.7. Abbreviations.

When used in this title, the following terms may be abbreviated as follows:

(1) Additional Lost Time - ALT;

(2) Average Weekly Wage - AWW;

(3) Benefit Review Conference - BRC;

(4) Benefit Review Office - BRO

(5) Contested Case Hearing (also Benefit Contested Case Hearing) - CCH.

(6) Contested Case Hearing Officer (also Benefit Contested Case Hearing Officer) - CCHO

(7) Death Benefits - DBs;

(8) Electronic Claims Submission - ECS

(9) Electronic Data Interchange - EDI

(10) Health Care Provider - provider or HCP;

(11) Impairment Income Benefits - IIBs;

(12) Impairment Rating - IR;

(13) Injured Employee - employee;

(14) Insurance Carrier - carrier;

(15) Lifetime Income Benefits - LIBs;

(16) Maximum Medical Improvement - MMI;

(17) Post Injury Earnings (also Weekly Earnings After the Injury) - PIE;

(18) Required Medical Exam - RME;

(19) Return to Work - RTW;

(20) Supplemental Income Benefits - SIBs;

(21) Temporary Income Benefits - TIBs;

(22) Texas Workers' Compensation Act - the Act or the Statute; and

(23) Texas Workers' Compensation Commission - TWCC or the Commission.

The provisions of this §102.7 adopted to be effective August 29, 1999, 24 TexReg 6488.

§102.8. Information Requested on Written Communications to the Commission.

(a) Unless the Commission prescribed form, format, or manner of a written communication specifies otherwise, all written communications to the Commission regarding an injured worker or claim for benefits shall include the following information, if known:

(1) the injured worker's full name, date of injury, address, and social security number. If no social security number has been assigned, insert the numerical digits "999" followed by the claimant's birth date or if unknown, the claimant's date of injury, listed by the month, day, and year (MMDDYY); use of "999" shall not be used in place of a valid social security number in order to meet timeliness of reporting requirements.

(2) the name and address of the claimant, if other than the injured worker;

(3) the workers' compensation number assigned to the claim by the Commission;

(4) the employer's name and address;

(5) the employer's Federal Employer's Identification Number (FEIN);

(6) the insurance carrier's name;

(7) the insurance carrier's policy number; and

(8) the insurance carrier's claim number.

(b) Written communications involving medical issues shall also provide the information required by §133.1 of this title (relating to Information Required in Communications).

(c) Written communications filed by Electronic Data Interchange pursuant to §124.2 of this title (relating to Carrier Reporting and Notification Requirements)must include all mandatory data elements and all applicable conditional data elements required by the International Association of Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation Guides.

The provisions of this §102.8 adopted to be effective October 1, 1992, 17 TexReg 6361; amended to be effective March 15, 1995, 20 TexReg 1418; amended to be effective August 29, 1999, 24 TexReg 6488.

§102.9. Submission of Information Requested by the Commission.

(a) In addition to information required by the Act or Commission rules, the Commission shall require those subject to the Act to provide information at such times and in such manner and format as necessary to effectively and efficiently administer the Act or Commission rules. This request for information shall:

(1) be communicated by telephone, electronically, or in writing;

(2) inform the participant of:

(A) where the information is to be sent;

(B) when the information must be submitted; and

(C) the specific information to be submitted.

(b) If the request for information is communicated by telephone, the request must be followed up in writing before any order is issued pursuant to subsection (e) of this section.

(c) Upon receipt of the request for information from the Commission, those subject to the Act will have a reasonable period of time to provide the requested information to the Commission considering factors that include:

(1) accessibility of the information;

(2) amount of information requested;

(3) any other circumstances affecting the person's ability to supply the requested information, such as the format in which the information is required to be provided.

(d) In the absence of an emergency, the reasonable period for responding to the request for information shall not be less than one day if the requested information is needed to administer a benefit issue on a claim. For other requested information, the reasonable period for response shall not be less than three working days.

(e) Failure to provide the information may result in a written order requested and issued by staff designated by the Executive Director to issue an order to produce the information. The written order shall be mailed through certified mail, return receipt requested, sent by personal delivery with receipt acknowledged, or for a carrier, placed in an Austin Representative Box with receipt acknowledged. A person receiving a written communication from the Commission which requests receipt acknowledgment shall accept and acknowledge receipt including the date of receipt in the manner prescribed by the Commission.

(f) Nothing in this section limits the authority of the Executive Director to enter orders pursuant to the Act.

The provisions of this §102.9 adopted to be effective April 1, 1993, 18 TexReg 1357; amended to be effective March 15, 1995, 20 TexReg 1418; amended to be effective August 29, 1999, 24 TexReg 6488.

§102.10. Interest, General.

Unless otherwise specified by law, the term "interest" when applied to workers' compensation benefits shall mean simple interest (interest computed on the same amount of principal for each interest period).

The provisions of this §102.10 adopted to be effective March 14, 2001, 26 TexReg 2031.

§102.11. Electronic Formats for Electronic Claim Data Request and Report.

(a) The Division prescribes standard electronic formats by utilizing implementation guides for data requests and data reports for the purpose of exchanging data between the Division and insurance carriers, as defined in Labor Code §402.084.

(b) The following words and terms, when used in this section, shall have the following meanings:

(1) Claim Data Request and Report Implementation Guide (Guide)--The Division specification document for the Claim Data Request and the Claim Data Report that defines specific data requirements, data set transactions, data mapping, data edits and fees per record available at *www.tdi.state.tx.us/wc*.

(2) Claim Data Report--The electronic report generated by the Division in the format specified by the Guide. The report contains data for claims meeting confidence match criteria defined in the Guide.

(3) Claim Data Request--The electronic request submitted by a requester in the format specified by the Division in the Guide.

(4) Record--An electronic representation of one insured person containing a set of unique identifiers including the full name, date of birth, gender, and social security number, if available. Each set of individual identifiers included in a Claim Data Request represents a separate record.

(5) Requester--An insurance carrier that has adopted an antifraud plan under Labor Code §402.084(b)(8) and qualifies as an insurance carrier under Labor Code §402.084(c-1) or its authorized representative.

(c) A Claim Data Request must contain the following elements:

(1) all fields required in the applicable Guide as defined in subsection (b) of this section;

(2) complete, current and correct values as described in the applicable Guide; and

(3) records of persons who are or were valid members of the requesters' benefit programs and whose claims may be related to a workers' compensation claim.

(d) A Claim Data Report must contain:

(1) all fields required in the applicable Guide; and

(2) complete, current and correct values as described in the applicable Guide.

(e) A Claim Data Request may be submitted by a requester.

(f) The Division will match the records submitted by a requester against the Division's claim data using a matching methodology published in the Guide. The search will include all claims on record with the Division

relating to injuries sustained on or after September 1, 2002. For each record submitted, the Division will report:

(1) the existence of a positive match with one or more workers' compensation claims; or

(2) the failure to match the record to any recorded workers' compensation claim.

(g) File transfers between requesters and the Division shall be sent using secured file transfer protocol (SFTP) with access controlled by a unique username and password.

(h) The data shall not be shared or disclosed to any other person or entity, except as necessary to document and pursue reimbursement with the appropriate workers' compensation carrier or claims administrator or through Division dispute resolution procedures. Requesters shall destroy all electronic or paper records related to Claim Data Requests that are not needed to pursue subclaimant status or recovery of reimbursement by an insurance carrier as defined by Labor Code §402.084(c-1).

(i) A requester may submit a Claim Data Request once every 30 days for each covered individual.

(j) Unless waived by the Division, the requester shall pay to the Division a fee for each record included in a request. The fee will be established in the Guide, but shall be no more than $.05 for each record included in the Claim Data Request. Claim Data Requests that include previously submitted requests for records would also be charged a fee of up to $.05 for each record.

(k) Prior to submitting a Claim Data Request, the requester shall execute a trading partner agreement with the Division in the form and manner prescribed by the Division. The trading partner agreement shall contain:

(1) a statement that the requester agrees to abide by all applicable federal and state laws and regulations;

(2) an agreement to submit only names and identifying information related to bona fide beneficiaries of the requester's benefit plans;

(3) an agreement to comply with Division standards for secure transfer and storage of workers' compensation claim information;

(4) an agreement to comply with Division standards regarding the confidentiality of workers' compensation claim information and the approved uses of that information; and

(5) an agreement to pay applicable fees.

(l) After a match of a record has been determined, the information may be used by the requester as the basis for identification and filing of a subclaim under Labor Code §409.009. When a match has been determined and a subclaim filed, the requester shall contact the injured employee who received the health care and is the subject of the subclaim. The requester shall provide the injured employee written notice, which includes the following:

(1) the name of the subclaimant;

(2) the dates of service;

(3) the name of the injured employee;

(4) a statement declaring, "As the injured employee in this matter, you will receive notice of all proceedings related to this matter and may participate in those proceedings. To determine whether to take any action in this matter, you may wish to consult with an attorney. You can also contact the Office of Injured Employee Counsel (OIEC) for ombudsman assistance."; and

(5) the phone number and website address of OIEC.

The provisions of this §102.11 adopted to be effective December 31, 2006, 31 TexReg 10313.