CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT

§124.1. Notice of Injury.

(a) Except as provided in subsections (b) and (c) of this section, written notice of injury, as used in the Texas Workers' Compensation Act, §409.021, consists of the insurance carrier's earliest receipt of:

(1) the Employer's First Report of Injury as described in §120.2 of this title (relating to Employer's First Report of Injury);

(2) the notification provided by the Commission under subsection (e) of this section; or

(3) if no Employer's First Report of Injury has been filed, any other communication regardless of source, which fairly informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related.

(b) Written notice of injury for a certified self-insurer is received on the date the qualified claims servicing contractor designated by the self-insurer under Texas Labor Code §407.061(c) receives the notice.

(c) Written notice of injury for a political subdivision that self-insures under Texas Labor Code §504.011, either individually or through an interlocal agreement with other political subdivisions, is received on the date the intergovernmental risk pool or other entity responsible for administering the claim receives the notice.

(d) The carrier shall immediately create a written record on paper or in an electronic format of the earliest notice of injury as defined in subsection (a) of this section that is not received in writing. The date of receipt of a written notice of injury shall be deemed to be the earliest date the carrier receives the information identified in subsections (a)(1), (2), or (3) of this section. Upon request of the Commission, a carrier shall provide an affidavit indicating the receipt or non-receipt of a notice of injury received and the receipt date.

(e) The Commission shall furnish written notification to the carrier when a source other than the carrier reports:

(1) an injury that may cause the employee eight days or more of disability or has resulted in an impairment;

(2) a death; or

(3) an occupational disease.

(f) If a carrier is notified of an injury for which it has not received an Employer's First Report of Injury, from the employer, the carrier shall contact the employer regarding the injury within seven days of notification.

(g) Subsections (b) and (c) of this section apply only to compensable injuries with a date of injury on or after September 1, 2003.

The provisions of this §124.1 adopted to be effective August 29, 1999, 24 TexReg 6503; amended to be effective March 14, 2004, 29 TexReg 2321.

§124.2. Carrier Reporting and Notification Requirements.

(a) An insurance carrier shall notify the Commission and the claimant of actions taken on, or events occurring in a claim as required by this title.

(b) The Commission shall prescribe the form, format, and manner of required electronic submissions through publications such as advisory(ies), instructions, specifications, the Texas Electronic Data Interchange

Implementation Guide, and trading partner agreements. Trading partners will be responsible for obtaining a copy of the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange Implementation Guide.

(c) The carrier shall electronically file, as that term is used in §102.5(e) of this title (relating to General Rules for Written Communication To and From the Commission), with the Commission:

(1) the information from the original Employer's First Report of Injury; the insurance carrier's Federal Employer Identification Number (FEIN); and the policy number, policy effective date, and policy expiration date reported under §110.1 of this title (relating to Requirements for Notifying the Commission of Insurance Coverage) for the employer associated with the claim, not later than the seventh day after the later of:

(A) receipt of a required report where there is lost time from work or an occupational disease; or

(B) notification of lost time if the employer made the Employer's First Report of Injury prior to the employee experiencing absence from work as a result of the injury;

(2) any correction of Commission-identified errors in a previously accepted electronic record as provided in §102.5(e) of this title (Correction);

(3) information regarding a compensable death with no beneficiary (Compensable Death No Beneficiaries/Payees) not later than the tenth day after determining that an employee whose injury resulted in death had no legal beneficiary; and

(4) a change in an electronic record initiated by carrier (Change), the coverage information required by paragraph (1) of this subsection if not available when the First Report of Injury was submitted to the commission and any change in a claimant or employer mailing address within 7 days of receipt of the new address.

(d) The carrier shall notify the Commission and the claimant of a denial of a claim (Denial) based on non-compensability or lack of coverage in accordance with this section and as otherwise provided by this title.

(e) The carrier shall notify the Commission and the claimant of the following:

(1) first payment of indemnity benefits on a claim (Initial Payment) within 10 days of making the first payment;

(2) change in the net benefit payment amount caused by a change in the employee's post-injury earnings (Reduced earnings) within ten days of making the first payment reflecting the change;

(3) change in the net benefit payment amount that was not caused by a change in employee's post-injury earnings, this includes but is not limited to subrogation, attorney fees, advances, and contribution (Change in Benefit Amount) within 10 days of making the first payment reflecting the change;

(4) change from one income benefit type to another or to death benefits (Change in Benefit Type) within 10 days of making the first payment reflecting the change;

(5) resumption of payment of income or death benefits (Reinstatement of Benefits) within 10 days of making the first payment;

(6) termination or suspension of income or death benefits (Suspension) within 10 days of making the last payment for the benefits.

(7) employer continuation of salary equal to or exceeding the employee's Average Weekly Wage as defined by this title (Full Salary) within:

(A) seven days of receipt of the Employer's First Report of Injury or a Supplemental Report of Injury (if the report included information that salary would be continued) if the carrier has not initiated temporary income benefits; or

(B) ten days of making the last payment of temporary income benefits due to the employer's continuation of full salary.

(f) Notification to the claimant as required by subsections (d) and (e) of this section requires the carrier to use plain language notices with language and content prescribed by the Commission. These notices shall provide a full and complete statement describing the carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim. A generic statement that simply states the carrier's position with phrases such as "employee returned to work," "adjusted for light duty," "liability is in question," "compensability in dispute," "under investigation," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(g) Notification to the Commission as required by subsections (c), (d) and (e) of this section requires the carrier to use electronic filing, as that term is used in §102.5(e) of this title. In addition to the electronic filing requirements of this subsection, when a carrier notifies the Commission of a denial as required by subsection (d) of this section, it must provide the Commission a written copy of the notice provided to the claimant under subsection (f) of this section. The notification requirements of this section are not considered completed until the copy of the notice provided to the claimant is received by the Commission.

(h) Notification to the Commission and the claimant of a dispute of disability, extent of injury, or eligibility of a claimant to receive death benefits shall be made as otherwise prescribed by this title and requires the carrier to use plain language notices with language and content prescribed by the Commission. These notices shall provide a full and complete statement describing the carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim. A generic statement that simply states the carrier's position with phrases such as "no medical evidence to support disability," "not part of compensable injury," "liability is in question," "under investigation," "eligibility questioned" or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(i) The Commission shall send an acknowledgment to the transmitting trading partner detailing whether an electronically submitted record was accepted, accepted with errors, or rejected. The acknowledgment shall be provided directly to the trading partner submitting the transmission, not through the Austin representative box identified in §102.5 of this title. If the record was accepted with errors in conditional elements, the carrier must correct the errors in accordance with §102.5 of this title.

(j) Except as otherwise provided by this title, carriers shall not provide notices to the Commission that explain that:

(1) benefits will be paid as they accrue;

(2) a wage statement has been requested;

(3) temporary income benefits are not due because there is no lost time;

(4) the carrier is disputing some or all medical treatment as not reasonable or necessary;

(5) compensability is not denied but the carrier disputes the existence of disability (if there are no indications of lost time or disability and the employee is not claiming disability); or

(6) future medical benefits are disputed (notices of which shall not be provided to anyone in the system).

(k) Written requests for a waiver of the electronic filing requirement for the Employer's First Report of Injury may be submitted to the Commission's executive director or his/her designee for consideration. Waivers must be requested at least annually and the requests must include, a justification for the waiver, the volume of the carrier's claims and total premium amounts, current automation capabilities, Electronic Data Interchange (EDI) programming status, and a specific target date to implement EDI. Waivers require written approval from the executive director and shall be granted at the discretion of and for the time frame noted by the Executive Director or his/her designee.

(l) If specifically directed by the Commission, such as through Commission advisory or the Texas Electronic Data Interchange Guide, the carrier may provide the information required in subsection (c), (d), or (e) of this section to the Commission in hardcopy/paper format.

(m) Notifications to the claimant and the claimant's representative shall be filed by facsimile or electronic transmission unless the recipient does not have the means to receive such a transmission in which case the notifications shall be personally delivered or sent by mail.

(n) On or after November 1, 2003, each insurance carrier shall provide to the commission, through its Austin representative in the form and manner prescribed by the commission, the contact information for all workers' compensation claim service administration functions performed by the insurance carrier either directly or through third parties.

(1) The contact information for each function shall include mailing address, telephone number, facsimile number, and e-mail address as appropriate. This contact information may be provided either in the form of a single World Wide Web (Web) Uniform Resource Locator (URL) for a Web page created and maintained by the carrier that contains the required information or through an online submission to the commission.

(A) Coverage verification (policy issuance and effective dates of policy);

(B) Claim adjustment;

(C) Medical billing;

(D) Pharmacy billing (if different from medical billing); and

(E) Preauthorization.

(2) If the Web page option is used the page shall contain the date on which it was last updated and an e-mail address or other contact information to which a user may report problems or inaccuracies.

(3) The insurance carrier shall update the contact information and/or Web URL within ten working days after any such change is made.

The provisions of this §124.2 adopted to be effective August 29, 1999, 24 TexReg 6503; amended to be effective June 5, 2003, 28 TexReg 4285.

§124.3. Investigation of an Injury and Notice of Denial/Dispute.

(a) Except as provided in subsection (b) of this section, upon receipt of written notice of injury as provided in §124.1 of this title (relating to Notice of Injury) the carrier shall conduct an investigation relating to the compensability of the injury, the carrier’s liability for the injury, and the accrual of benefits. If the carrier believes that it is not liable for the injury or that the injury was not compensable, the carrier shall file the notice of denial of a claim (notice of denial) in the form and manner required by §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(1) If the carrier does not file a notice of denial by the 15th day after receipt of the written notice of injury, the carrier is liable for any benefits that accrue and shall initiate benefits in accordance with this section.

(2) If the carrier files a notice of denial after the 15th day but on or before the 60th day after receipt of written notice of the injury:

(A) The insurance carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the carrier filed the notice of denial and only then is it permitted to suspend payment of benefits; and

(B) The insurance carrier is liable for and shall pay for all medical services, in accordance with the Act and rules, provided prior to the filing of the notice of denial.

(3) The carrier shall not file notice with the commission that benefits will be paid as and when they accrue. A carrier's failure to file a notice of denial of a claim by the 15th day after it receives written notice of an injury constitutes the carrier's acceptance of the claim as a compensable injury, subject to the carrier's ability to contest compensability on or before the 60th day after receipt of written notice of the injury.

(4) The carrier commits a violation if, not later than the 15th day after it receives written notice of the injury, it does not begin to pay benefits as required or file a notice of denial of the compensability of a claim in the form and manner required by §124.2.

(A) An administrative penalty under this subsection shall be assessed at:

(i) $500 if the carrier initiates compensation or files a notice of refusal within five working days of the date required by subsection (a);

(ii) $1,500 if the carrier initiates compensation or files a notice of refusal more than five and less than 16 working days of the date required by subsection (a);

(iii) $2,500 if the carrier initiates compensation or files a notice of refusal more than 15 and less than 31 working days of the date required by subsection (a); or

(iv) $5,000 if the carrier initiates compensation or files a notice of refusal more than 30 working days after the date required by subsection (a).

(B) The administrative penalties provided for in this subsection are not cumulative and a violation occurs only with respect to the initial late payment of benefits.

(C) The commission will send periodic notifications to all carriers regarding the amount of penalties owed and the proper way to submit and document the payments.

(b) Except as provided by subsection (c), the carrier waives the right to contest compensability of or liability for the injury, if it does not contest compensability on or before the 60th day after the date on which the insurance carrier receives written notice of the injury.

(c) If the carrier wants to deny compensability of or liability for the injury after the 60th day after it received written notice of the injury:

(1) the carrier must establish that it is basing its denial on evidence that could not have reasonably been discovered earlier; and

(2) the carrier is liable for and shall pay all benefits that were payable prior to and after filing the notice of denial until the Commission has made a finding that the evidence could not have been reasonably discovered earlier.

(d) If the claim involves the death of an injured employee, investigations, denials of compensability or liability, and disputes of the eligibility of a potential beneficiary to receive death benefits are governed by §132.17 of this title (relating to Denial, Dispute, and Payment of Death Benefits).

(e) Texas Labor Code, §409.021 and subsection (a) of this section do not apply to disputes of extent of injury. If a carrier receives a medical bill that involves treatment(s) or service(s) that the carrier believes is not related to the compensable injury, the carrier shall file a notice of dispute of extent of injury (notice of dispute). The notice of dispute shall be filed in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements) and be filed not later than the earlier of:

(1) the date the carrier denied the medical bill; or

(2) the due date for the carrier to pay or deny the medical bill as provided in Chapter 133 of this title (relating to General Medical Provisions).

(f) The 15-day time frame provided for in subsection (a) and the administrative penalty provisions of subsection (a)(4) apply to a claim for benefits based on a compensable injury occurring on or after September 1, 2003. For claims based on a compensable injury occurring prior to September 1, 2003, the applicable time frame is seven days and the administrative penalty provisions of subsection (a)(4) are inapplicable.

The provisions of this §124.3 adopted to be effective March 13, 2000, 25 TexReg 2096; amended to be effective March 14, 2004, 29 TexReg 2322.

§124.5. Mode of Payment Made by Carriers.

(a) The insurance carrier shall make all payments other than income or death benefits by:

(1) check or other readily negotiable instrument; or

(2) electronic transfer by mutual agreement to an account designated in writing by the payee.

(b) Except as provided by §126.2 of this title (relating to Payment of Benefits to Minors), carriers shall make all payments of income or death benefits by:

(1) check or other readily negotiable instrument to the order of the claimant; or

(2) electronic transfer if required to under subsection (g) of this section or by mutual agreement between the carrier and the claimant.

(c) A carrier that routinely pays benefits by check or other negotiable instrument to the claimant drawn on an out-of-state financial institution shall accompany each instrument with written information about the carrier's office location and telephone number where the claimant may call, at the carrier's expense, to obtain help with cashing the instrument, if necessary.

(d) A claimant may request that the carrier make benefit payments by electronic transfer to a personal bank account by providing the carrier in writing: the name and routing transit number of the financial institution and the account number and type of account that the claimant wants the benefits electronically transferred to. The carrier shall provide the claimant with a form to fill out the information required by this subsection within seven days of receiving a request for such a form from the claimant.

(e) If agreed to by the claimant and the carrier, payments by electronic transfer can be made to an account set up by the carrier and accessible by the claimant through an access card provided by the carrier or other mutually acceptable means. A carrier that intends to make payments under this subsection shall:

(1) only set up and utilize this payment system if the claimant signs an agreement in which the carrier has disclosed all of the requirements, risks, and limitations of receiving benefits in this manner;

(2) ensure that the claimant is not charged an account maintenance fee for the account;

(3) continue to make payments by check until the carrier has verified that the claimant has received the information and/or card needed to access the account; and

(4) not remove money from the account.

(f) Subsections (g) through (j) of this section apply to income or death benefit payments due on or after September 1, 2000.

(g) Unless relieved by subsection (h) of this section, the carrier shall make benefit payments by electronic transfer if the claimant:

(1) requests in writing that payment be made by electronic transfer;

(2) provides the information required by subsection (d) of this section; and

(3) is reasonably expected to be entitled to receive income or death benefits for a period of sufficient duration of eight weeks or more from the point that subsections (g)(1) and (g)(2) of this section are satisfied.

(h) A carrier is relieved of the responsibility to make payment of temporary income benefits, impairment income benefits, and supplemental income benefits by electronic transfer if the mode of payment has been switched at the request of the claimant three times after initially changing to electronic payments.

(i) The carrier shall initiate payment by electronic transfer starting with the first benefit payment due on or after the 21st day after the requirements of subsection (g) of this section are met but shall continue to timely make payments by check until the carrier initiates benefit delivery by electronic transfer.

(j) If a claimant has previously been receiving benefit payments by electronic transfer and wants to receive benefits by check, the carrier shall initiate benefit delivery by check starting with the first benefit payment due to the claimant on or after the 7th day after receiving a written request.

The provisions of this §124.5 adopted to be effective January 11, 1991, 16 TexReg 116; amended to be effective November 28, 1999, 24 TexReg 10333.

§124.7. Initial Payment of Temporary Income Benefits.

(a) As used in this section, the following terms have the following meanings, unless the context clearly indicates otherwise: "Accrual date" means the day an injured worker's income benefits begin to accrue. "Day of disability" means a day when the worker is unable to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Intermittent days of disability shall be cumulated to calculate the accrual date.

(b) An injured worker's accrual date is the worker's eighth day of disability.

(c) A carrier who has received written notice of an injury and has not disputed the claim shall initiate income benefits no later than the seventh day after the accrual date.

(d) Nothing in this section is intended to limit a carrier's discretion to initiate payment of temporary income benefits before the time limit established in subsection (c) of this section.

The provisions of this §124.7 adopted to be effective September 30, 1991, 16 TexReg 5071; amended to be effective March 1, 1993, (18 TexReg 472); amended to be effective June 5, 2003, 28 TexReg 4290.