

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

§132.1. Calculation of Death Benefits.

Death benefits shall be computed by multiplying the employee's average weekly wage by .75. The amount paid shall not exceed 100% of the state average weekly wage as determined by the Texas Workers' Compensation Commission and in effect on the date of injury. A claim for death benefits shall be filed as required by §122.100 of this title (relating to Claim for Death Benefits).

The provisions of this §132.1 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.2. Determination of Facts of Dependent Status.

- (a) This section applies to a person who claims death benefits as a dependent of the deceased employee.
- (b) A benefit which flowed from a deceased employee, at the time of death, on an established basis in at least monthly intervals to the person claiming to be dependent, is presumed to be a regular or recurring economic benefit. This presumption may be overcome by credible evidence. The burden is on the claimant to prove that benefits, which flowed less frequently than once a month, were regular or recurring at the time of the employee's death.
- (c) It shall be presumed that an economic benefit, whose value was equal to or greater than 20% of the person's net resources in the period (see subsection (d) of this section) for which the benefit was paid, is an economic benefit which contributed substantially to the person's welfare and livelihood. This presumption may be overcome by credible evidence. The burden is on the claimant to prove that benefits whose value was less than 20% of the person's net resources contributed significantly to the person's welfare and livelihood.
- (d) Net resources for the purpose of subsection (b) of this section are 100% of all wage and salary income and all other income including nonpecuniary income and all income of the individual's spouse, less 100% of social security taxes and federal income tax withholding.
- (e) The person claiming to be a dependent shall furnish sufficient information to enable the commission to accurately identify the net resources and to establish the existence of the economic benefit claimed. This information may include, but is not limited to, tax returns, a financial statement of the individual, and check stubs.
- (f) If an economic benefit was provided in the form of goods and services, the value shall be the market value of the same or similar goods and services in the same vicinity.

The provisions of this §132.2 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.3. Eligibility of Spouse To Receive Death Benefits.

- (a) The surviving spouse is entitled to receive death benefits, unless subsection (b) of this section applies. The surviving spouse shall submit a certified copy of the marriage license, or satisfactory evidence of common-law marriage to the deceased employee, to the insurance carrier.
- (b) A surviving spouse who abandoned the employee, without good cause for more than one year immediately preceding the death, shall be ineligible to receive death benefits. The surviving spouse shall be deemed to have abandoned the employee if the surviving spouse and the employee had not been living in the same household for more than one year preceding the employee's death unless the spouse is:
 - (1) hospitalized;

- (2) in a nursing home; or
 - (3) living apart due to career choices, military duty, or other reasons where it is established their separation is not due to the pending breakup of the marriage. The burden is on a person who opposes the claim of a surviving spouse to prove the spouse abandoned the deceased employee.
- (c) If more than one person claims to be the surviving spouse of the deceased employee, the commission shall presume the most recent spouse is the surviving spouse. This presumption may be rebutted by an individual who presents proof of a prior valid marriage to the deceased employee.

The provisions of this §132.3 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.4. Eligibility of a Child To Receive Death Benefits.

- (a) A child eligible for death benefits is the son or daughter of a deceased employee, including an adoptive child, and including a dependent stepchild, who meets any of the conditions set out in the Texas Workers' Compensation Act (the Act), §4.42(g)(2).
- (b) A person claiming benefits as the biological or adoptive son or daughter of a deceased employee shall submit proof of relationship to the deceased employee to the carrier or along with the claim for death benefits. The claimant shall submit a certified copy of the claimant's birth certificate or decree of adoption. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee.
- (c) If there are two parents listed on the claimant's birth certificate, but deceased employee is not listed, the claimant is presumed to be the child of the parents actually named and is presumed not eligible to receive death benefits. The presumption may be rebutted by credible evidence.
- (d) A person claiming benefits as the dependent stepchild of the deceased employee shall prove that the employee was married to a parent of the claimant, and must also establish dependent status as set out in §132.2 of this title (relating to Determination of Facts of Dependent Status).
- (e) A child under 18 years of age, who is married or has been emancipated from the disabilities of minority at the time of the employee's death, shall not be eligible to receive benefits as a minor under the Act, §4.42(g)(2)(A).
- (f) A child who is a full-time student at the time of the employee's death and is less than 25 years old shall submit evidence of enrollment at an accredited educational institution. A child shall only be considered a full-time student if the child meets the educational institution's requirements for a full-time student in the child's course of study.
- (g) An adult child claiming eligibility to receive benefits under the Act, §4.42(g)(2), shall be required to establish dependent status as set out in §132.2 of this title (relating to Determination of Facts of Dependent Status). A physically or mentally handicapped child also shall submit medical evidence of the handicap.

The provisions of this §132.4 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.5. Eligibility of a Grandchild To Receive Death Benefits.

- (a) A grandchild who was dependent on the deceased employee on the day of death shall be entitled to receive death benefits, unless the grandchild's own parent is eligible for benefits.
- (b) A person claiming to be an eligible grandchild shall submit proof of the relationship to the deceased employee to the carrier or along with the claim for death benefits. The claimant shall submit a certified

copy of the claimant's birth certificate or decree of adoption, and a certified copy of the birth certificate or decree of adoption of the parent who was a child of the deceased employee. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee. In addition, the claimant must present evidence of dependent status on the deceased employee as defined by §132.2 of this title (relating to Determination of Facts of Dependent Status).

The provisions of this §132.5 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.6. Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits.

- (a) A parent, stepparent, sibling, or grandparent of a deceased employee who was dependent on the employee on the day of death is entitled to receive death benefits, only if there is no eligible spouse, child, or grandchild.
- (b) A surviving eligible parent is entitled to receive death benefits only if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. The term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated.
- (c) A person claiming to be a beneficiary under subsection (a) or (b) of this section is required to present proof of the relationship to the deceased employee to the carrier or along with the claim for death benefits. The evidence presented as proof of a relationship shall include certified copies of applicable birth certificates, or decrees of adoption, or proof of marriage. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee. A person claiming to be a beneficiary under subsection (a) of this section shall submit evidence of dependence on the deceased employee as defined in §132.2 of this title (relating to Determination of Facts of Dependent Status). A person claiming to be a beneficiary under subsection (b) of this section shall designate all eligible parents on the claim for death benefits. An insurance carrier is not liable for payment to any eligible parent not designated on the claim for death benefits. A person claiming to be a beneficiary under subsection (b) of this section shall also submit proof of receipt of burial benefits unless the claim for burial benefits is filed with the insurance carrier pursuant to §132.13 of this title at the same time the claim for death benefits is filed with the Division or the claim for burial benefits has been filed with the insurance carrier but is still pending at the time the claim for death benefits is filed with the Division.
- (d) The term "sibling" means a brother or sister who shares at least one parent, through birth or adoption, with the deceased employee.

The provisions of this §132.6 adopted to be effective January 1, 1991, 15 TexReg 7023; amended to be effective October 12, 2008, 33 TexReg 8395; .

§132.7. Duration of Death Benefits for Eligible Spouse.

- (a) A spouse who is determined eligible for death benefits is entitled to receive benefits until the date of the spouse's death or until remarriage. The carrier shall notify the eligible spouse of the requirements of this rule within 60 days of initiating benefits to that spouse.
- (b) An eligible spouse who enters into a ceremonial or common law marriage is entitled to receive a lump-sum payment of 104 weeks of death benefits.

- (c) An eligible spouse shall notify the commission and the carrier in writing within 30 days of the date of remarriage. The notice shall include the name and social security number of the deceased employee, the date of death, the workers' compensation claim file number, and the date of remarriage.
- (d) The amount of the lump-sum payment shall be calculated by multiplying the amount paid to the spouse the week prior to the remarriage by 104. If the carrier paid any weekly benefits to the eligible spouse after the remarriage, the total amount of such payments shall be deducted from the amount of the commuted payment.
- (e) An eligible spouse who knowingly accepts death benefits after remarriage in excess of the amount allowed by this rule, and who does not notify the commission or the carrier of remarriage, may be subject to administrative penalties under the Texas Workers' Compensation Act, §10.04.

The provisions of this §132.7 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.8. Duration of Death Benefits for an Eligible Child.

- (a) A child, who is eligible to receive death benefits because the child is a minor on the date of the employee's death, is entitled to receive benefits until the date on which the child turns 18. However, if the child is enrolled as a full-time student in an accredited educational institution on that date, benefits continue as described in subsection (b) of this section.
- (b) A child, who is eligible to receive death benefits as a full-time student in an accredited educational institution on the date of the employee's death or on the child's 18th birthday, is entitled to receive benefits until the earliest of:
 - (1) the date on which the child ceases, for the second consecutive semester (excluding summer semesters), to be enrolled as a full-time student;
 - (2) the date on which the child turns 25; or
 - (3) the date on which the child dies.
- (c) The insurance carrier may request proof that a child eligible for benefits is enrolled as a full-time student in an accredited educational institution; the child shall furnish such proof within 20 days of receiving such request.
- (d) A child, who is eligible to receive death benefits because the child had a mental or physical handicap and was dependent on the employee because of the handicap on the date of the employee's death, is entitled to receive benefits until the earlier of:
 - (1) the date on which the child is no longer handicapped; or
 - (2) the date on which the child dies.
- (e) Once each year, the insurance carrier may request proof that a child eligible under subsection (d) of this section is still mentally or physically handicapped. The carrier shall pay all reasonable medical and travel related expenses incurred in obtaining the requested proof.
- (f) A child, who is otherwise eligible to receive benefits because the child was dependent on the employee on the date of the employee's death, is entitled to receive benefits until the earlier of:
 - (1) the date on which the child dies; or
 - (2) the expiration of 364 weeks of death benefit payments.

- (g) A person who knowingly or intentionally continues to receive benefits as an eligible child or on behalf of an eligible child when the person is no longer entitled to receive them, or who knowingly fails to disclose the facts of ineligibility to the carrier or the commission, may be assessed administrative penalties under the Texas Workers' Compensation Act, §10.04.

The provisions of this §132.8 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.9. Duration of Death Benefits for an Eligible Grandchild, Eligible Dependent, and Eligible Parent.

- (a) A grandchild, who is eligible to receive death benefits and is a minor at the time of the employee's death, is entitled to receive benefits until the earlier of:
 - (1) the date on which the grandchild turns 18; or
 - (2) the date of death of the grandchild.
- (b) A grandchild, who is eligible to receive death benefits and is not a minor at the time of the employee's death, is entitled to receive benefits until the earlier of:
 - (1) the date of death of the grandchild; or
 - (2) the expiration of 364 weeks of death benefit payments.
- (c) Any other dependent, including a parent, stepparent, sibling, or grandparent of the deceased employee, who is entitled to death benefits shall receive benefits until the earlier of:
 - (1) the date of death of the beneficiary; or
 - (2) the expiration of 364 weeks of death benefit payments.
- (d) An eligible parent who is entitled to receive death benefits shall receive benefits until the earlier of:
 - (1) the date the eligible parent dies; or
 - (2) the date of the expiration of 104 weeks of death benefit payments.

The provisions of this §132.9 adopted to be effective January 1, 1991, 15 TexReg 7023; amended to be effective October 12, 2008; TexReg 8395.

§132.10. Payment of Death Benefits to the Subsequent Injury Fund.

- (a) If a compensable death occurs and the carrier's investigation, as described in §132.17 of this title (relating to Denial, Dispute, and Payment of Death Benefits), has confirmed that the deceased employee has no legal beneficiaries, or if a claim for death benefits is not made in a timely manner, the insurance carrier shall, without order from the Commission, pay to the administrator of the Subsequent Injury Fund (SIF) an amount equal to 364 weeks of death benefits for deposit in the SIF. This payment shall be accompanied by the Employer's First Report of Injury and the Wage Statement.
- (b) If, after a carrier has paid death benefits to all legal beneficiaries, all legal beneficiaries cease to be eligible to receive death benefits prior to the carrier paying a full 364 weeks of benefits, the carrier shall, without order from the Commission, pay the remainder of the 364 weeks of death benefits to the administrator of the SIF. The remainder to be paid to the SIF shall be computed by subtracting the total amount paid, including any applicable remarriage payment, from the 364 weeks of death benefits that the carrier is required to pay. This payment shall be accompanied by the Employer's First Report of Injury, the Wage

Statement, a detailed payment record showing the dates of payments, the amounts of the payments, the payees, the periods of benefits paid, and any other documentation reasonably required by the SIF administrator.

- (c) The payments required by subsections (a) and (b) shall be made no later than the seventh day after the latest of:
- (1) the day that there has been final adjudication that a death is compensable and/or that the carrier is liable for death benefits (if a denial of compensability or liability had been filed in accordance with §132.17 and §124.2 of this title (relating to Carrier Reporting and Notification Requirements and Denials));
 - (2) the sixtieth day after the carrier received written notice of the injury;
 - (3) one year after the date of the employee's death, if no claims of beneficiary entitlement have been made;
 - (4) the day that beneficiary entitlement disputes are finally adjudicated with the beneficiary being found to not be entitled to death benefits; or
 - (5) the day that all previously eligible beneficiaries are no longer eligible to receive death benefits.
- (d) If a carrier has denied compensability of or liability for a death pursuant to §124.2 of this title and §132.17, and no claim of entitlement has been filed by a potential beneficiary by the 60th day after the date the carrier received written notice of the injury/death, the carrier shall provide to the SIF administrator within 14 days: copies of all reports, notices, witness statements, and investigation notes relating to the compensability of the death or the carrier's liability for payment of death benefits.
- (e) If a carrier has disputed compensability of or liability for a death and no claim of entitlement has been filed by a potential beneficiary by the 60th day after the date the carrier received written notice of the injury, the SIF may pursue the issue of compensability or liability through dispute resolution.
- (f) The carrier may elect to commute the amount to be paid under subsections (a) and (b) in a lump sum payment. If the carrier does not elect to commute benefits, the Commission may order that the death benefits payable to the SIF be commuted to a lump sum payment. The amount of a commuted payment shall be discounted at the rate established under §401.023 of the Act compounded annually.
- (g) If, after the carrier has paid the death benefits to the SIF, a beneficiary makes a claim for death benefits which the carrier accepts or a final award of the Commission or the final judgment of a court of competent jurisdiction determines that the beneficiary is entitled to the death benefits, the carrier shall pay benefits in accordance with the award or order and request a refund for the amount overpaid to the SIF as provided in §116.11 (relating to Request for Reimbursement or Refund from the Subsequent Injury Fund).
- (h) If no claim for death benefits is filed with the Commission on or before the first anniversary of the death of the employee and the carrier's investigation has confirmed that the deceased has no legal beneficiaries, it shall be presumed, for the purpose of this section and §403.007 of the Act only, that no legal beneficiary survived the deceased employee.
- (i) The presumption created under subsection (h) of this section does not apply against a minor beneficiary, or an incompetent beneficiary for whom no guardian has been appointed.
- (j) The SIF as a potential beneficiary in the case of any fatality may bring or enter into any dispute as a party.

The provisions of this §132.10 adopted to be effective January 1, 1991, 15 TexReg 7023; amended to be effective March 13, 2000, 25 TexReg 2106.

§132.11. Distribution of Death Benefits.

- (a) All of the death benefits shall be paid to the eligible spouse if the deceased employee had no eligible children or eligible grandchildren.
- (b) Death benefits shall be paid in equal shares to each eligible child per capita and to each eligible grandchild per stirpes if there is no eligible spouse.
- (c) If there is an eligible spouse and an eligible child or eligible grandchild, half of the death benefits shall be paid to the eligible spouse. The remaining half shall be paid:
 - (1) if there are no eligible grandchildren, in equal shares to the eligible children;
 - (2) if there are no eligible children, per stirpes to the eligible grandchildren; or
 - (3) if there are eligible children and eligible grandchildren, the eligible children shall be paid equal shares per capita and the eligible grandchildren shall be paid per stirpes.
- (d) If there is no eligible spouse, child, or grandchild, the death benefits shall be paid in equal shares to any surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. The amount to be paid to each surviving dependent shall be calculated by dividing the weekly death benefit by the number of surviving dependents.
- (e) If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents. The amount paid may not exceed one payment per household and may not exceed 104 weeks.
- (f) If the deceased employee has no legal beneficiaries as defined by the rules and the Texas Workers' Compensation Act, the death benefits shall be paid to the subsequent injury fund, as set out in §132.10 of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund).
- (g) The term "per stirpes" means that the grandchildren shall be entitled to share in only the amount of benefits that the parent of those grandchildren would have received had the parent been alive or otherwise eligible to receive death benefits.

The provisions of this §132.11 adopted to be effective January 1, 1991, 15 TexReg 7023; amended to be effective October 12, 2008, 33 TexReg 8395.

§132.12. Redistribution of Death Benefits.

- (a) Death benefits shall be redistributed if a legal beneficiary dies or becomes ineligible to receive benefits. The benefits shall be redistributed to the remaining legal beneficiaries eligible to receive death benefits at the time of death of the employee.
- (b) If an eligible spouse becomes disqualified from continued payment of death benefits because of remarriage, the amount of benefits paid to each remaining legal beneficiary shall remain the same for 104 weeks. At the expiration of 104 weeks, the amount of benefits paid to each remaining legal beneficiary shall be recalculated as provided in §132.11 of this title (relating to Distribution of Death Benefits).
- (c) If 364 weeks of death benefit payments have not been paid and the only remaining legal beneficiary is the subsequent injury fund, the insurance carrier shall pay any remaining amounts to the subsequent injury

fund in accordance with §132.10 of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund).

- (d) In no case shall the insurance carrier pay an amount less than the weekly death benefit multiplied by 364, taking into consideration the discount rate set out in the Texas Workers' Compensation Act, §1.04, for a commuted payment to the subsequent injury fund in subsection (c) of this section.

The provisions of this §132.12 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.13. Burial Benefits.

- (a) When an employee has died as the result of a compensable injury, a person claiming burial benefits shall file a request for payment of burial benefits and the bills showing the amount of burial and transportation costs incurred. The request and the documentation shall be filed with the insurance carrier within 12 months of the date of death of the employee.
- (b) The person who incurred liability for the costs of burial is entitled to receive the lesser of:
 - (1) the actual costs incurred for reasonable burial expenses; or
 - (2) \$2,500--if burial benefits are paid based on a compensable injury that occurs before September 1, 1999; or
 - (3) \$6,000--if burial benefits are paid based on a compensable injury that occurs on or after September 1, 1999.
- (c) The person who incurred liability for the costs of transporting the body of the employee is entitled to be reimbursed for the reasonable cost of transportation if the employee died away from the usual place of employment. The insurance carrier's liability for transportation costs under this subsection shall not exceed the cost equivalent to transporting the body from the place the employee died to the employee's usual place of employment.
- (d) The insurance carrier shall review each claim for burial benefits. The insurance carrier must either pay or deny the claim within seven days of the date the claim was received by the carrier. If the claim is denied, the insurance carrier must notify the person claiming burial benefits and the Commission in writing of its denial and the facts supporting the denial.

The provisions of this §132.13 adopted to be effective January 1, 1991, 15 TexReg 7023; amended to be effective December 26, 1999, 24 TexReg 11452.

§132.14. Autopsy.

- (a) In a claim for death benefits based on an occupational disease, an autopsy may be requested by:
 - (1) an insurance carrier or the commission; or
 - (2) any legal beneficiary if the claim for benefits is denied.
- (b) The request shall be submitted in writing to the commission with a copy delivered to every other party. Any party that disputes the need for an autopsy shall request, within 10 days after an autopsy is requested, a contested case hearing in accordance with the Texas Workers' Compensation Act, §6.31. A benefit review conference is not required before the hearing is held.

- (c) After opportunity for a hearing, the commission may order the legal beneficiaries of the deceased employee to permit an autopsy if an autopsy is deemed necessary to determine the cause of the employee's death.
- (d) If an autopsy is ordered, a legal beneficiary is entitled to have a representative present at the autopsy.
- (e) The insurance carrier shall pay the costs of an autopsy ordered under this rule.

The provisions of this §132.14 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.15. Definitions.

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

- (1) Accredited educational institution--An institution which provides a recognized course or courses of instruction and leads to the conference of a diploma, degree, or other recognized certification of completion at the conclusion of the course of study. The definition may include, but is not limited to, high schools, colleges and universities, and trade schools.
- (2) Full-time student--A person enrolled in at least the minimum course load required to qualify as full-time at the particular educational institution and in the particular course of study.
- (3) Semester--The periods by which the educational institution divides its academic year.

The provisions of this §132.15 adopted to be effective January 1, 1991, 15 TexReg 7023.

§132.16. Change in Payment Periods; Purchase of Annuity for Death Benefits.

- (a) Upon the request of the eligible beneficiaries, the insurance carrier and eligible beneficiaries entitled to death benefits may agree to change the frequency of death benefits payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing. To relieve the insurance carrier of the responsibility to pay death benefits weekly:
 - (1) An application to change the frequency of payments must be submitted to the Commission with the written agreement for approval in the form, format and manner required by the Commission
 - (2) A separate application must be submitted to the Commission for each eligible beneficiary, and the application must state that a payment adjustment shall be made when there is a change in the individual beneficiary's eligibility status in accordance with the provisions of the Act.
 - (3) If less than the maximum weekly death benefit in effect at the time of death is being paid, a completed Employer's Wage Statement (Form TWCC-3) must be filed with the application to change the payment period.
 - (4) The written agreement for monthly payment of death benefits must include:
 - (A) the agreement for the monthly payment of death benefits will be effective the first calendar day of the month following the month in which the written agreement was approved by the Commission;
 - (B) payment of monthly death benefits shall be issued on or before the seventh day of the month for which benefits are due.
 - (C) continuation of weekly death benefits payments through the end of the month in which the agreement was approved;

- (D) payment of the last week of death benefits to transition from weekly payment of death benefits to monthly payments shall be prorated to the end of the month to ensure the eligible beneficiaries receives death benefits through the last day of the month; and
- (E) calculation of the monthly compensation rate by multiplying the weekly compensation rate by 4.34821.

(5) The Commission must approve the application to change the frequency of death benefit payments.

- (b) With the exception of payments made by annuity under subsection (d)(7) of this section, at any time after signing the agreement for the monthly payment of death benefits, the eligible beneficiary or insurance carrier may notify the other party in writing that it no longer agrees to the monthly payment of death benefits. The last monthly payment shall be prorated to ensure the insurance carrier pays the appropriate amount of DBs. In this case, the insurance carrier shall pay all accrued but unpaid death benefits at the end of the current monthly cycle and shall continue to pay death benefits weekly as and when they accrue and are due.
- (c) The insurance carrier and an eligible beneficiary may enter into a written agreement that the carrier shall purchase an annuity for that beneficiary for weekly or monthly payment of death benefits. An application for payment of death benefits by annuity must be submitted to the Commission for approval in the form, format and manner required by the Commission. If less than the maximum weekly death benefit in effect at the time of death is being paid, a completed Employer's Wage Statement (Form TWCC-3) must be filed with the application for payment by annuity.
- (d) An annuity for the payment of death benefits shall meet the following terms and conditions.
 - (1) Monthly death benefit payments shall be initiated no later than the 45th day after the date on in which the written agreement was approved by the Commission.
 - (2) The company providing an annuity for the payment of death benefits must be licensed to do business in Texas and must have a current A. M. Best rating of B+ or better or have a Standard & Poor's rating of claims paying ability of A or better.
 - (3) The workers' compensation insurance carrier must guarantee the payments provided by the annuity company in the event of default.
 - (4) When benefits are paid to an eligible spouse of the deceased employee and the spouse subsequently remarries, the annuity contract must address the payment of a lump sum payment equal to 104 weeks of benefits to the eligible spouse and the redistribution of benefits at the end of 104 weeks to the remaining eligible beneficiaries, if any.
 - (5) If all beneficiaries become ineligible to receive death benefits and an amount equal to 364 weeks of death benefits has not been paid, the remaining benefits shall be paid by the annuity company without an order from the Commission to the Subsequent Injury Fund not later than 30 days after all beneficiaries' eligibility ends.
 - (6) A beneficiary, or the beneficiary's guardian if applicable, shall not be allowed to assign the right to receive death benefits from an annuity. All death benefits must be paid to the order of the eligible beneficiary or the legal guardian, if applicable.
 - (7) The annuity company shall pay death benefits either weekly or monthly as elected by the beneficiary in the application for payment of death benefits by annuity.

(8) If monthly payments are elected by the beneficiary, the transition from weekly to monthly benefits paid by annuity shall be the same as that for death benefits paid by the responsible insurance carrier set out in subsection (a) of this section.

(e) This section applies only to agreements entered into on or after January 1, 2000, for payment of death benefits under the provisions of the Act.

The provisions of this §132.16 adopted to be effective December 26, 1999, 24 TexReg 11452.

§132.17. Denial, Dispute, and Payment of Death Benefits.

(a) Upon being notified of a death resulting from an injury, the insurance carrier (carrier) shall: investigate whether the death was a result of the injury and, if the carrier has not already done so in compliance with §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) due to the injury being reported separately, conduct an investigation relating to the compensability of the death, the carrier's liability for the death, and the accrual of benefits. The carrier shall have 60 days from notification of the death or from written notice of the injury that resulted in the death (whichever is greater) to conduct its investigation.

(b) If the carrier believes that it is not liable for the death or that the death 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). If the notice of denial is not filed by the 60th day as required, the carrier may not raise an issue of compensability or liability and is liable for any benefits that accrued and shall initiate benefits in accordance with this section.

(c) A carrier that is made aware of a death under subsection (a) of this section shall attempt to identify all potential beneficiaries, other than the subsequent injury fund (SIF), and the carrier shall maintain documentation relating to its attempt to identify potential beneficiaries.

(d) A carrier that identifies or becomes aware of a potential beneficiary shall notify the potential beneficiary of potential entitlement to benefits, using a plain language notice containing language and content prescribed by the Commission. This notice shall be sent within seven days of the date the carrier identified or was otherwise made aware of the identity and means of contacting the potential beneficiary.

(e) If the carrier receives a claim for death benefits in accordance with §122.100 of this title (relating to Claim for Death Benefits), the carrier shall review the evidence provided by the beneficiary to determine whether the person is entitled to death benefits as provided in §132.2 through §132.6 of this title (relating to Determination of Facts of Dependent Status; Eligibility of Spouse to Receive Death Benefits; Eligibility of a Child to Receive Death Benefits; Eligibility of a Grandchild to Receive Death Benefits; Eligibility of Other Surviving Dependents to Receive Death Benefits).

(f) If the carrier believes the claimant is eligible to receive death benefits, the carrier shall begin payment of death benefits. If the carrier believes that the claimant is not eligible to receive death benefits, the carrier shall file the notice of dispute of eligibility (notice of dispute) in the form and manner required by §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(1) The carrier shall either begin the payment of death benefits or file the notice of dispute not later than the 15th day after the latest of:

(A) receiving the claim for death benefits;

(B) final adjudication of the carrier's denial of compensability or liability under §124.2 and subsection (b) of this section; or

(C) the expiration of the carrier's right to deny compensability/liability under subsection (a) of this section.

- (2) If the notice of dispute is not filed within 15 days as required, the carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the carrier files the notice of dispute and only then is the carrier permitted to suspend payment of benefits.
- (g) If the carrier has filed a notice of denial prior to receipt of a claim for death benefits, the carrier shall provide a copy of the previously filed notice of denial to the claimant within seven days of receipt of the claim for death benefits.
- (h) The 15-day timeframe provided for in subsection (f) of this section applies only to claims for benefits based on compensable injuries that occurred on or after September 1, 2003. For claims based on compensable injuries that occurred prior to September 1, 2003, the applicable timeframe in subsection (f) of this section is seven days.

The provisions of this §132.17 adopted to be effective March 13, 2000, 25 TexReg 2106; amended to be effective March 14, 2004, 29 TexReg 2345.