

**SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED  
EMPLOYEES  
28 TAC §122.100**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §122.100, Claim for Death Benefits. The amendments are adopted with a change to the proposed text published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5620). DWC held a public hearing on the proposal on October 24, 2023. The text will be republished.

**REASONED JUSTIFICATION.** Amending §122.100 is necessary to clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers, and outline what happens after filing. House Bill (HB) 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and it imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

**Section 122.100** provides requirements for legal beneficiaries to file claims for death benefits. The amendments clarify that they may file a claim with DWC or an insurance carrier. The amendments also cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title, adopted to implement HB 2314), clarify that beneficiaries may provide additional evidence electronically, and include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity and readability.

The amendments are necessary to ease administrative barriers for legal beneficiaries to claim the benefits to which they are entitled, and to ensure that, regardless of the way the claim was initially filed, DWC receives the documentation necessary to process the claim effectively and efficiently.

In response to a comment, DWC has adjusted §122.100(d) from the proposed text to make the processes for collecting additional evidence from potential beneficiaries the same, regardless of filing method, and to streamline the text for clarity. Under §102.5(h) of this title, electronic transmission includes fax, email, electronic data interchange (EDI), or any other similar method. Before HB 2314, all claims had to be filed with DWC, which enabled DWC to guide potential beneficiaries' paper claim submissions to ensure that they were complete. However, now that electronic filing is more advanced, and potential beneficiaries may file their claims with either DWC or the insurance carrier, a simpler, more efficient process for collecting additional evidence that applies regardless of filing method reduces confusion, cost, and regulatory burdens for everyone involved, including potential beneficiaries and insurance carriers.

#### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received three written comments from two commenters on the proposal, and no oral comments. Commenters in support of the proposal were: Texas Mutual Insurance Company. Commenters in support of the proposal with changes were: the Office of Injured Employee Counsel. DWC did not receive comments that were against the proposal.

**Comment on §122.100.** A commenter stated that they supported the proposed changes in this rule to implement HB 2314.

**Agency Response to Comment on §122.100.** DWC appreciates the comment and support.

**Comment on §122.100(a).** A commenter recommended adding a good cause exception to §122.100(a) to allow the filing of claims after the one-year anniversary of the death of the employee for good cause to conform to the requirements of Labor Code §§409.007(b)(2) and 408.108(d-2).

**Agency Response to Comment on §122.100(a).** DWC appreciates the comment but declines to make the change. An exception to the one-year filing deadline for good cause already exists in §122.100(f)(2), so adding an additional good cause exception to §122.100(a) would be unnecessary and redundant.

**Comment on §122.100(d).** A commenter recommended changing §122.100(d) to state that a potential beneficiary that files a claim in paper format may file additional evidence at a later time and in paper or electronic format, instead of being required to file additional evidence on paper at the time they file the paper claim.

**Agency Response to Comment on §122.100(d).** DWC appreciates the comment and has adjusted the rule text to make the processes for collecting additional evidence from potential beneficiaries the same, regardless of filing method, and to streamline the text for clarity.

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**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to 28 TAC §122.100 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

**TEXT.**

**§122.100. Claim for Death Benefits.**

(a) Filing. For a legal beneficiary, other than the subsequent injury fund, to receive the benefits available because of the death of an employee that results from a compensable injury, a person must file a written claim for death benefits within one year after the date of the employee's death.

(b) An insurance carrier that receives a claim for death benefits under this section must comply with §124.8 of this title (relating to Receipt, Records, and Notice of Death or Claim for Death Benefits).

(c) Form and information requirements. The claim should be submitted to the division or insurance carrier either on paper or via electronic transmission, in the form, format, and manner prescribed by the division, and should include the following:

(1) the potential beneficiary's name, address, telephone number (if any), Social Security number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, Social Security number (if known), and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

- (B) the name and location of the employer at the time of the injury;
- (C) the date of the compensable injury, and date of death; and
- (D) other known legal beneficiaries.

(d) Required documents. A potential beneficiary must file with the division or insurance carrier a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the potential beneficiary is a legal beneficiary of the deceased employee. The required documents or additional evidence may be filed separately either on paper or by electronic transmission, as defined in §102.5(h) of this title.

(e) One claim per person. Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(f) Deadline. Failure to file a claim for death benefits within one year after the date of the employee's death bars the claim of a legal beneficiary, other than the subsequent injury fund, unless:

- (1) that legal beneficiary is a minor or otherwise legally incompetent;
- (2) except as provided by paragraph (3) of this subsection, good cause exists for failure to file the claim on time; or
- (3) for a legal beneficiary who is an eligible parent as defined by §132.6(e) of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits), the parent submits proof satisfactory to the commissioner of a compelling reason for the delay in filing the claim for death benefits.

**CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.


Issued at Austin, Texas, on November 21, 2023.



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Kara Mace  
General Counsel  
TDI, Division of Workers' Compensation

The commissioner adopts amendments to 28 TAC §122.100.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Commissioner's Order No. 2023-8352