

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS
28 TAC §132.17

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 Texas Administrative Code §132.17, concerning Denial, Dispute, and Payment of Death Benefits. Section 132.17 implements Texas Labor Code §§408.181 and 409.021.

EXPLANATION. Amending §132.17 is necessary to clarify an insurance carrier's deadlines to file disputes on eligibility of death benefits under Labor Code §408.181, and on compensability of a death claim under Labor Code §409.021. The amendments to §132.17(i) clarify that the timeframes to pay or dispute are based on the date of injury, and make editorial changes to avoid confusion.

The amendments also correct grammar errors in the current rule text and update rule language to conform the section to the agency's current style. Examples of these amendments include changing "shall" to "must," updating "Commission" to "division," and adding "insurance" before "carrier."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Hearings Allen Craddock has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statutes. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Dr. Craddock does not anticipate any measurable effect on local employment or local economies as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Dr. Craddock expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.181 and 409.021 and are current and accurate, which promote transparent and efficient regulation.

Dr. Craddock expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.181 and 409.021 because they do not impose requirements beyond those in the statutes. Labor Code §408.181 requires an insurance carrier to pay death benefits to legal beneficiaries if the employee's compensable injury results in death. Labor Code §409.021 requires an insurance carrier to provide written notice to DWC when the insurance carrier initiates death benefits. As a result, the cost associated with the insurance carrier's denial, dispute, and payment of death benefits does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments make editorial changes and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. DWC has also determined that removing obsolete requirements reduces costs to regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments make editorial changes and updates for plain language and agency style only. They do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action.

As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on June 24, 2022. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050. The request for public hearing must be separate from any comments and received by DWC no later than 5:00 p.m., Central time, on June 15, 2022. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. DWC proposes §132.17 under Labor Code §§401.011, 402.00111, 402.00116, 402.061, 408.181, and 409.021.

Labor Code §401.011 provides general definitions used in the Texas Workers' Compensation Act, including "death benefits," and "insurance carrier."

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 DWC 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.

Labor Code §408.181 provides that an insurance carrier must pay death benefits to the legal beneficiaries if a compensable injury results in an injured employee's death.

Labor Code §409.021 provides that an insurance carrier has the right to contest the compensability of an injury in a workers' compensation case.

CROSS-REFERENCE TO STATUTE. Section 132.17 implements Labor Code §408.181, enacted by HB 7, 79th Legislature, Regular Session (2005). Section 132.17 implements Labor Code §409.121 enacted by SB 2551, 86th Legislature, Regular Session (2019). Section 132.17 references 28 TAC §124.2, which implements Labor Code §409.021. Section 132.17 references 28 TAC §122.100, which implements Labor Code §409.007. Section 132.17 references 28 TAC §§132.2-132.6, which implement Labor Code §408.182.

TEXT.

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

(a) On [~~Upon~~] being notified of a death resulting from an injury, the insurance carrier must [~~(carrier) shall~~]:

(1) investigate whether the death was a result of a compensable [~~the~~] injury;
or [~~and,~~]

(2) if the injury and death were reported to the insurance carrier separately,
investigate the compensability of the death, [~~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 insurance carrier's liability for the death, and the accrual of benefits, in accordance with §124.3 of this title (relating to Investigation of an Injury and Notice of Denial or Dispute).

(b) To conduct its investigation, the insurance [The] carrier has [~~shall have~~] 60 days from the date it was notified [~~notification~~] of the death or [~~from notice of the~~] injury that resulted in the death, whichever date is later [~~(whichever is greater) to conduct its investigation.~~].

(c) [~~(b)~~] If the insurance carrier believes that it is not liable for the death and [~~or that~~] the death is [~~was~~] not compensable, the insurance carrier must [~~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 Insurance Carrier Reporting and Notification Requirements). If the insurance carrier does not file the required notice of denial [~~is not filed~~] by the 60th day from the date of notice of death or notice of injury that resulted in death, [~~as required,~~] the insurance carrier may not raise an issue of compensability or liability, [~~and~~] is liable for any benefits that accrued, and must [~~shall~~] initiate benefits in accordance with this section.

(d) [~~(c)~~] An insurance [A] carrier that has notice [~~is made aware~~] of a death under subsection (a) of this section must [~~shall~~]:

(1) attempt to identify all potential beneficiaries, other than the subsequent injury fund; [~~(SIF),~~] and

(2) [~~the carrier shall~~] maintain documentation relating to its attempt to identify potential beneficiaries.

(e) [~~(d)~~] An insurance [A] carrier that identifies [~~or becomes aware of~~] a potential beneficiary must use a plain language notice in the form and manner prescribed by the division to [~~shall~~] notify them [~~the potential beneficiary~~] of potential entitlement to

benefits. ~~[using a plain language notice containing language and content prescribed by the Commission.]~~ This notice must ~~[shall]~~ be sent within seven days after ~~[of]~~ the date the insurance carrier identified the potential beneficiaries ~~[or was otherwise made aware of the identity]~~ and received their contact information ~~[means of contacting the potential beneficiary.]~~.

(f) ~~[(e)]~~ If the insurance carrier receives a claim for death benefits in accordance with §122.100 of this title (relating to Claim for Death Benefits), the insurance carrier must ~~[shall]~~ review the evidence provided by the claimant beneficiary to determine whether the person is entitled to death benefits as provided in §§132.2 ~~[\$132.2]~~ through 132.6 ~~[\$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 and Eligible Parents to Receive Death Benefits).

(g) ~~[(f)]~~ If the insurance carrier believes the claimant beneficiary is eligible to receive death benefits, it must ~~[the carrier shall]~~ begin paying ~~[payment of]~~ death benefits. If the insurance carrier believes that the claimant beneficiary is not eligible to receive death benefits, it must ~~[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 insurance carrier must ~~[shall]~~ either begin paying ~~[the payment of]~~ death benefits or file the notice of dispute not later than the 15th day after the latest of:

(A) receipt of ~~[receiving]~~ the claim for death benefits;

(B) final adjudication of the insurance carrier's denial of compensability or liability under §124.2 of this title and subsection (c) ~~[(b)]~~ of this section;

or

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

(2) If the insurance carrier does not file its notice of dispute [~~is not filed~~] within 15 days as required, the insurance carrier is liable for and must [~~shall~~] pay all benefits that [~~had~~] accrued and were payable before [~~prior to~~] the date it filed its [~~the carrier files the~~] notice of dispute. The insurance carrier must not suspend death benefits before filing its notice of dispute [~~and only then is the carrier permitted to suspend payment of benefits~~].

(h) [~~g~~] If the insurance carrier has filed a notice of denial before receiving [~~prior to receipt of~~] a claim for death benefits, the insurance carrier must [~~shall~~] provide a copy of the previously filed notice of denial to the claimant beneficiary within seven days of receiving [~~receipt of~~] the claim for death benefits.

(i) [~~h~~] The 15-day timeframe [~~provided for~~] in subsection (g) [~~f~~] of this section applies only to claims for benefits based on dates of injuries [~~compensable injuries that occurred~~] on or after September 1, 2003. For claims based on dates of [~~compensable~~] injuries before [~~that occurred prior to~~] September 1, 2003, the [~~applicable~~] timeframe in subsection (g) [~~f~~] of this section is seven days.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 3, 2022.

DocuSigned by:



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Kara Mace

Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation