



Texas Department of Insurance

Division of Workers' Compensation

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Memorandum

To: Workers' Compensation System Participants

From: Jeff Carothers, Director, Office of Workers' Compensation Counsel

Date: December 19, 2011

Subject: Adoption: New 28 TAC §126.15 and §126.16 and Amended 28 TAC §128.1,
Regarding Procedures for the Resolution of Underpayments and Overpayments of
Income Benefits

On December 12, 2011, the Commissioner of Workers' Compensation Rod Bordelon, adopted new 28 Texas Administrative Code (TAC) §126.15 and §126.16, regarding Procedures for the Resolution of Underpayments and Overpayments of Income Benefits and amendments to 28 TAC §128.1, regarding Benefits - Calculation of Average Weekly Wage. These adopted new rules and amendments relate to procedures insurance carriers and injured employees must follow when resolving an overpayment or underpayment of income benefits. These adoptions will publish in the December 23, 2011, issue of the *Texas Register* and may be viewed on the Secretary of State website at <http://www.sos.state.tx.us/texreg/index.shtml> once published. A courtesy copy of the adoptions is currently available on the Texas Department of Insurance website at <http://www.tdi.texas.gov/wc/rules/adopted/index.html>.

The purpose of the adopted new rules and amendments is to implement House Bill (HB) 2089, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. HB 2089 enacted Texas Labor Code §408.0815 which requires the Commissioner of Workers' Compensation to adopt rules to establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments, and shall pay an underpayment of income benefits, including interest on accrued by unpaid benefits. The adopted rules apply to income benefits only and do not affect the Texas Department of Insurance, Department of Workers' Compensation's (TDI-DWC) authority to identify and take action on underpayments and overpayments on its own motion.

The TDI-DWC has created a sample notice, *Notice of Underpayment of Income Benefits*, injured employees may use under adopted new 28 TAC §126.15 when providing the insurance carrier with written notice of an underpayment. Injured employees may begin using this form on or after January 1, 2012. The form is available for download in English and Spanish at <http://www.tdi.texas.gov/forms/form20.html>.

If there are any questions regarding the information in this memo, contact James Dodds at (512) 804-4725 or James.Dodds@tdi.state.tx.us.