

CHAPTER 166. ACCIDENT PREVENTION SERVICES
28 TAC §§166.1, 166.2, 166.3, AND 166.5

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §§166.1, 166.2, 166.3, and 166.5, concerning certain submission requirements for insurance companies (companies) about their accident prevention services (APS). The amendments to §§166.1, 166.2, and 166.5 are adopted without changes to the proposed text published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 960) and will not be republished. Section 166.3 is adopted with one change to the proposed text published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 960) and will be republished. The change corrects a typo in subsection (b) from "subsection" to "section."

REASONED JUSTIFICATION. The amendments eliminate overly burdensome administrative regulations that companies must adhere to in order to demonstrate the sufficiency of their APS to DWC. The amendments bring these administrative rule requirements more in line with statutory requirements and are necessary to allow companies to streamline their services and focus on their APS by not having to track and submit as much additional information to DWC. Also, these amendments will allow DWC to direct our attention and resources on services that have proven to be more effective in providing occupational safety assistance to Texas employees and employers.

DWC's evaluation process included an informal draft proposal to gather information and comments on possible changes to the rule text before writing and posting the formal proposal. DWC considered the comments and information received through the informal process, as well as the comments received in response to the formal proposal, when drafting the amendments.

Section 166.1. The amendments to §166.1 apply nonsubstantive editorial and formatting changes to conform the section to the agency's current style and improve the rule's clarity.

Section 166.2. The amendments to §166.2 remove the requirement that companies must maintain written procedures and remove the requirement that a company must evaluate a policyholder's needs according to those written procedures. Because these requirements will be removed, the requirement that companies must, after evaluating and determining the policyholder's need for services, render all offers of services and the provision of services to the policyholder within a reasonable period of time, will also be removed. The Labor Code does not mandate these requirements. Also, DWC amended §166.2(b)(1) to update DWC's new mailing address.

Section 166.3. The amendments to §166.3 align the rule with statutory requirements. They remove the requirement that companies must file an initial annual report on their APS, but still require companies to file an annual report with DWC. The information required in the annual report is revised to reflect what is required under Labor Code §411.065. DWC forms were updated to incorporate the amendments regarding annual reports. The revised annual report form will be used beginning with 2024 reporting data and due by April 1, 2025.

Section 166.5. The amendments to §166.5 remove the requirement that DWC must conduct an initial inspection of each company and remove the requirement that a company must provide a copy of all APS procedures 60 days before an inspection. The amendments also remove the requirements that, for each policy selected by DWC for

inspection, the company must provide the primary North American Industry Classification System (NAICS) code, the A.M. Best Hazard index number, and certain service and loss information. The amendments remove the requirements that DWC must issue a certificate to each company if the inspection is deemed adequate and withhold the certificate if a company's APS are inadequate.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment, and no oral comments. The commenter, that supported the proposal with changes, was the American Property Casualty Insurance Association (APCIA). DWC did not receive any comments against the proposal.

Comment on §166.2(b)(2) (Contact and surveys following fatalities). APCIA recommended that DWC eliminate the requirement that insurance companies must offer the policyholder a survey within seven working days of knowledge of a work-related fatality.

Agency Response to Comment on §166.2(b)(2) (Contact and surveys following fatalities). DWC appreciates the suggestion but declines to make the change because it is in the interest of the state for companies to reach out to a policyholder if a work-related death occurs. Companies are not required to complete the survey within seven days. They are required to contact the policyholder within seven days and offer a survey.

Comment on §166.2(b)(3) (Services requested by a policyholder). APCIA recommended that the current 15-day period following a policyholder request for insurers to provide APS other than surveys be extended to 30 days.

Agency Response to Comment on §166.2(b)(3) (Services requested by a policyholder). DWC appreciates the suggestion but declines to make the change because the rule allows the parties to extend this time period if they mutually agree to do so.

CHAPTER 166. ACCIDENT PREVENTION SERVICES.

28 TAC §§166.1, 166.2, 166.3, AND 166.5.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§166.1, 166.2, 166.3, and 166.5 under Labor Code §§411.061, 411.064, 411.065, 411.066, 411.068, 402.00111, 402.00116, and 402.061.

Labor Code §411.061 provides that a company must maintain adequate APS as a prerequisite for writing workers' compensation insurance in Texas.

Labor Code §411.064 provides that DWC may conduct inspections of a company to determine the adequacy of that company's APS.

Labor Code §411.065 provides that every company writing workers' compensation insurance in Texas must submit, at least annually, to DWC detailed information on the type of accident prevention facilities offered to the company's policyholders.

Labor Code §411.066 requires that the front of each workers' compensation insurance policy delivered or issued for delivery in this state contain notice that accident prevention services are available to the policyholder from the insurance company to appear in at least 10-point bold type.

Labor Code §408.068 states that a company commits an administrative violation if the company does not maintain or provide APS as required under Labor Code Chapter 411, Subchapter E.

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.

§166.1. Definition of Terms.

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

(1) Accident prevention facilities--All personnel, procedures, equipment, materials, documents, buildings, programs, and information necessary to maintain or provide accident prevention services to the policyholder.

(2) Nature of the policyholders' operations--Type of business or industry with specific reference to potential for accident, injury, or disease determined by the standard hazards associated with the most hazardous industrial operations in which the policyholder is engaged.

(3) Premium--The amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations as defined by Insurance Code §2053.001(2-a).

(4) Survey--An on-site visit to a policyholder's worksite in Texas where the risk exists or the loss occurred and during which the insurance company's accident prevention personnel performs a hazard assessment of the worksite, reviews safety and health programs, and makes recommendations to assist in mitigating risks and preventing injuries and illnesses.

(b) This section is effective July 1, 2024.

§166.2. Adequacy of Accident Prevention Services.

(a) Under Labor Code §§411.061, 411.063, and 411.068(a)(1), an insurance company writing workers' compensation insurance in Texas must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations, and must include:

- (1) surveys;
- (2) recommendations;
- (3) training programs;
- (4) consultations;
- (5) analyses of accident causes;
- (6) industrial hygiene;
- (7) industrial health services;

(8) qualified accident prevention personnel. To provide qualified accident prevention personnel and services, an insurance company may:

- (A) employ qualified personnel;
- (B) retain qualified independent contractors;
- (C) contract with the policyholder to provide personnel and services;

or

(D) use a combination of the methods provided in this paragraph;
and

(9) written records, reports, and evidence of all accident prevention services provided to each policyholder.

(b) Under Labor Code §411.068(a)(2), an insurance company must use accident prevention services to prevent injuries to employees of its policyholders in a reasonable manner, which at a minimum, include:

(1) Notice of availability of accident prevention services and return-to-work coordination services. Under Labor Code §411.066, an insurance company must include a notice on the information page or on the front of the policy containing text identical to the following in at least 10-point bold type for each workers' compensation insurance policy delivered or issued for delivery in Texas: Pursuant to Texas Labor Code §411.066, (name of company) is required to notify its policyholders that accident prevention services are available from (name of company) at no additional charge. These services may include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services. (Name of company) is also required to provide return-to-work coordination services as required by Texas Labor Code §413.021 and to notify you of the availability of the return-to-work reimbursement program for employers under Texas Labor Code §413.022. If you would like more information, contact (name of company) at (telephone number) and (email address) for accident prevention services or (telephone number) and (email address) for return-to-work coordination services. For information about these requirements, call the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) at 1-800-687-7080 or for information about the return-to-work reimbursement program for employers, call the TDI-DWC at (512) 804-5000. If (name of company) fails to respond to your request for

accident prevention services or return-to-work coordination services, you may file a complaint with the TDI-DWC in writing at <http://www.tdi.texas.gov> or by mail to Texas Department of Insurance, Division of Workers' Compensation, P.O. Box 12050, HS-WS, Austin, Texas 78711-2050;

(2) Contact and surveys following fatalities. An insurance company must contact the policyholder within seven working days of knowledge of a work-related fatality and offer a survey. Survey offers accepted by the policyholder must be initiated by the insurance company within 60 days of policyholder acceptance of the survey offer. No offer of a survey is required if the fatality occurred outside of Texas or was the result of an accident on a common carrier, unless the fatality involves an employee of the common carrier during the course and scope of normal job duties; and

(3) Services requested by a policyholder. An insurance company must provide to each policyholder accident prevention services required by the nature of their policyholders' operations within 15 days from the date of a policyholder request for services, if appropriate services can be provided without conducting a survey; and within 60 days from the date of a policyholder request, if a survey is required regardless of any provision of this section. Services can be provided at a later date if circumstances require, and the policyholder agrees to the later date.

(c) The division may determine adequacy of an insurance company's accident prevention services in accordance with the requirements of this chapter and generally accepted tools and guidelines of loss control provision and through:

(1) review of reports of annual information, as required by §166.3 of this title;
and

(2) inspections, as specified in §166.5 of this title (relating to Inspections of Adequacy of Accident Prevention Facilities and Services).

(d) Accident prevention services must be provided to policyholders at no additional charge.

(e) An insurance company must not solicit or obtain from its policyholders a prospective waiver declining all accident prevention services. Under Labor Code §411.063(a)(3), if an insurance company contracts with a policyholder to provide accident prevention personnel or services, this contract does not limit in any way the insurance company's authority or responsibility to comply with any statutory or regulatory requirement contained in this chapter. Insurance companies are responsible for maintaining or providing all services, including contracted services, in accordance with this chapter.

(f) This section is effective July 1, 2024.

§166.3. Annual Information Submitted by Insurance Companies.

(a) An insurance company writing workers' compensation insurance in Texas must file with the division an annual report on its accident prevention services no later than April 1 of each calendar year.

(b) An annual report required by this section must be filed with the division in the format and manner prescribed by the division.

(c) The annual reports must not include the expenses or the costs of underwriting visits to a policyholder's premises unless accident prevention services are provided during the visit. In that case, the proportionate costs of the accident prevention services may be included in the report.

(d) Insurance companies are responsible for timely and accurate reporting under this section. A report required by this section is considered filed with the division only

when it accurately contains all of the required data elements and is received by the division.

(e) This section is effective July 1, 2024.

§166.5. Inspections of Adequacy of Accident Prevention Facilities and Services.

(a) Inspections. The division may conduct inspections to determine the adequacy of an insurance company's accident prevention services.

(1) Affiliated companies of an insurer may be inspected together if the same facilities, programs, and personnel are used by each of the companies.

(2) At least 90 days before an inspection, the division must notify the insurance company in writing of the inspection. The notice must specify the location and date of the inspection.

(3) The division may conduct unannounced on-site visits to determine compliance with the Labor Code and division rules in accordance with the procedures governing on-site visits in Chapter 180 of this title (relating to Monitoring and Enforcement) regardless of the provisions of this section.

(b) Site of inspection. The inspection of the insurance company's accident prevention services must take place as determined by the division:

(1) at the insurance company's office in Texas;

(2) at the division; or

(3) electronically.

(c) Pre-inspection exchange of information.

(1) At least 60 days before the date set for inspection, in the format and manner specified by the division, the insurance company must provide to the division a list of policyholders.

(A) For the period of time determined by the division, the list must be organized by:

- (i) policyholder name;
- (ii) policy number;
- (iii) effective date or expiration date of the policy;
- (iv) premium;
- (v) number of fatalities;
- (vi) principal Texas location;
- (vii) indication of whether the insurance company has contracted with the policyholder for accident prevention services; and
- (viii) indication of whether that policyholder has requested accident prevention services.

(B) The list must also:

- (i) be taken from the insurance company's most current records;
- (ii) be separated by affiliated companies;
- (iii) be arranged in descending order by premium; and
- (iv) include all policies.

(2) Within 10 days of receipt of the policyholder list, the division must select the specific policyholder files to be evaluated and notify the insurance company of those selected files.

(3) For each policy selected by the division, the insurance company must prepare an accident prevention services worksheet in the format and manner prescribed by the division. The worksheet must include the:

- (A) policyholder name;

- (B) policy number;
- (C) number of employees;
- (D) principal Texas office address or principal corporate office address if there is no principal Texas office address;
- (E) policyholder contact person's name, phone number, and email address;
- (F) insurance company name;
- (G) effective date of the policy; and
- (H) name of person completing the form and date completed.

(4) At least 10 days before the date of the inspection, the insurance company must file the completed worksheets with the division.

(d) Information to be made available at or before the inspection. The insurance company must make available for the time frame specified by the division:

- (1) the loss control files corresponding to the requested worksheets;
- (2) a sample policy declaratory page as evidence that each policyholder has been provided the notice required by §166.2(b)(1) of this title;
- (3) a copy of all documentation of accident prevention services provided in accordance with this title;
- (4) samples of policyholder training materials, audiovisual aids, and training programs; and
- (5) other information requested by the division necessary to complete the inspection. Information requested may include, but is not limited to:
 - (A) records of surveys;
 - (B) consultations;
 - (C) recommendations;

(D) training provided;

(E) loss analyses;

(F) industrial health and hygiene services;

(G) return-to-work coordination services information; and

(H) the name, location, status (whether employee or contractor), and qualifications of each person that provided accident prevention services in the loss control files being reviewed during the inspection.

(e) Insurance company policyholder visits and contacts. The division may conduct scheduled visits of the jobsite of an insurance company's policyholder and make other off-site contacts with a policyholder to obtain information about the insurance company's accident prevention facilities and use of services.

(f) Written report of inspection.

(1) The division must prepare a written report of the inspection and must provide a copy to the insurance company's executive management and to the Texas Department of Insurance, Loss Control Regulation Division.

(2) The inspection report must contain the division's determination of adequacy in accordance with Labor Code §411.061 and §166.2 of this title, and include specific findings and required corrective actions. The inspection report will indicate whether the division has issued a final determination of adequacy, a final determination of inadequacy, or an initial determination of inadequacy with regard to an insurance company's accident prevention services.

(3) The division will provide written notification to the insurance company of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequacy. Not later than the 60th day after the date of the initial inspection report, the insurance company must provide written documentation

evidencing its compliance with the division's recommendations contained in the initial inspection report. The written documentation must detail the corrective actions taken to address each specific finding. If the insurance company believes that it will take more than 60 days to implement the recommendations listed in the initial inspection report, it must request an extension from the division. After the end of the correction period, a final determination of adequacy or inadequacy will be assigned. The division must provide the insurance company with notification of this final determination.

(g) Reinspection.

(1) After an inspection and a final determination of inadequacy of an insurance company's accident prevention services, the division will reinspect the accident prevention services of the insurance company not earlier than the 180th day or later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(2) Information required under this section to be provided at the time of initial inspection is required to again be provided at the time of reinspection in accordance with the time frames established within this section.

(h) This section is effective July 1, 2024.


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 April 8, 2024.



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The commissioner adopts amended 28 TAC §§166.1, 166.2, 166.3, and 166.5.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2024-8602