

**SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF
PAYMENT
28 TAC §124.8**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts new 28 TAC §124.8, Receipt, Records, and Notice of Death or Claim for Death Benefits. The new section is adopted with a change to subsection (c)(1) of the proposed text published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5622) to eliminate a potential conflict in the timing of the notice. DWC held a public hearing on the proposal on October 24, 2023. The text will be republished.

REASONED JUSTIFICATION. New §124.8 is necessary to implement House Bill (HB) 2314, 88th Legislature, Regular Session (2023). 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 124.8 cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title, with amendments to implement HB 2314) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. It requires an insurance carrier that sends a plain-language notice of potential entitlement to workers' compensation death benefits to a potential beneficiary under existing rules to also send a copy of that notice to DWC.

New §124.8 is necessary to ensure that, if an insurance carrier receives a notice of death or a claim for death benefits, the insurance carrier knows what the requirements for recordkeeping and notice to DWC are. It is also necessary to ensure that procedures for receiving information from claimants, maintaining records, and transmitting information to DWC are as consistent as possible with procedures for other similar situations and with other rules to enhance compliance and reduce confusion. Finally, new §124.8 is necessary to ensure that DWC has the information needed to identify potential claims for death benefits and potential beneficiaries. Having that information is necessary for DWC to ensure that the potential beneficiaries have access to DWC's outreach services, and that insurance carriers have the information they need to process the claims efficiently.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

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

Comments on §124.8. Two commenters requested that DWC clarify when an insurance carrier must send DWC a copy of the plain-language notice that it sends to potential beneficiaries.

Agency Response to Comment on §124.8. DWC appreciates the comments and has clarified the text by deleting the reference that tied sending the plain-language notice to receiving the claim. Section 132.17(d) requires the insurance carrier to send the plain-

language notice to the potential beneficiary within seven days of the date the insurance carrier identified or was otherwise made aware of the identity and means of contacting the potential beneficiary. The insurance carrier's obligation is to send DWC a copy of the notice when it sends the notice to the potential beneficiary, so the same seven-day time frame applies.

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STATUTORY AUTHORITY. The commissioner of workers' compensation adopts new 28 TAC §124.8 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 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.

TEXT.

§124.8. Receipt, Records, and Notice of Death or Claim for Death Benefits.

(a) Definition. In this section, "claim for death benefits" means a claim that is filed under Chapter 122, Subchapter B, §122.100 of this title.

(b) General requirements. An insurance carrier that receives a notice of death in accordance with §132.17 of this title, or a claim for death benefits must comply with all of the requirements in this chapter.

(c) Recordkeeping and notice. An insurance carrier in subsection (b) of this section must:

(1) send the division a copy of the plain-language notice that the insurance carrier must provide to the potential beneficiary under §132.17 of this title.

(2) on receiving a claim for death benefits, create and maintain a record documenting receipt of the claim for death benefits. The record must include all of the information in the claim for death benefits. The insurance carrier must maintain the record in accordance with Chapter 102, §102.4 of this title.

(3) send the division a copy of a claim for death benefits the insurance carrier receives from the potential beneficiary not later than the seventh day after receiving it and include any other documents and information the insurance carrier received.

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.



Kara Mace
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The commissioner adopts new 28 TAC §124.8.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2023-8353