

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

**§166.2. Adequacy of Accident Prevention Services**

(a) Under [~~Pursuant to~~] Labor Code §§411.061, 411.063, and 411.068(a)(1) [~~411.068(a)(1)~~], an insurance company writing workers' compensation insurance in Texas must [~~shall~~] 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;

(9) [~~written procedures. An insurance company shall maintain written~~  
procedures for:

~~(A) notifying policyholders of the availability of accident prevention services;~~

~~(B) determining the appropriate accident prevention services for a policyholder;~~

~~(C) the specific time frame and manner in which the services will be delivered to a policyholder as required by subsection (b) of this section;~~

~~(D) providing training programs to policyholders;~~

~~(E) providing written recommendations to the policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company provides accident prevention services;~~

~~(F) providing written reports to the insurance company and policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company contracts out the accident prevention services or retains qualified independent contractors; and~~

~~(G) items set forth in §166.3(a)(2)(G) of this title (relating to Annual Information Submitted by Insurance Companies);] and~~

[10] written records, reports, and evidence of all accident prevention services provided to each policyholder.

(b) Under [~~Pursuant to~~] Labor Code §411.068(a)(2), an insurance company must use [~~shall utilize~~] 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 [~~An~~] insurance company must [~~shall~~] 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, MS-27, Austin, Texas 78711-2020 [~~MS-8, at 7551 Metro Center Drive, Austin, Texas 78744-1645~~];

(2) Contact and surveys following fatalities. An insurance company must [~~shall~~] 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 [~~shall~~] 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) [Insurance company evaluation of need for service. An insurance company shall evaluate a policyholder's need for services in accordance with the procedures required by subsection (a)(9) of this section taking into consideration the following criteria:~~

~~(A) generally accepted industry standards and practices governing occupational safety and health, such as: A.M. Best, North American Industry Classification System (NAICS), Bureau of Labor Statistics data, workers' compensation classification codes, occupational safety and health standards, and underwriting requests;~~

~~(B) nature of losses;~~

~~(C) frequency of claims;~~

~~(D) loss ratio;~~

~~(E) severity of claims;~~

~~(F) risk exposure;~~

~~(G) experience modifier;~~

~~(H) premium; and~~

~~(I) any other information relevant under the circumstances;~~

~~(4) Services offered and provided by an insurance company. After evaluating and determining the policyholder's need for services, all offers of services and the provision of services shall be rendered to a policyholder within a reasonable period of time and in accordance with the insurance company's written procedures under this section and their annual information submitted under §166.3(a)(2)(G) of this title; and]~~

~~[(5)]~~ Services requested by a policyholder. ~~An~~ ~~[Notwithstanding any other provision of this section, an]~~ insurance company must ~~[shall]~~ 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 ~~[is agreed upon by the policyholder]~~.

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

(1) review of ~~[the initial and subsequent]~~ reports of annual information, as required by Labor Code §411.065 ~~§166.3 of this title~~; and

(2) inspections, as specified in Labor Code §411.064 ~~§166.5 of this title (relating to Inspections of Adequacy of Accident Prevention Facilities and Services)~~.

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

(e) An insurance company must ~~[shall]~~ not solicit or ~~[nor]~~ obtain from its policyholders a prospective waiver declining all accident prevention services. Under Labor Code §411.063(a)(3), if ~~[if]~~ an insurance company~~[, pursuant to Labor Code §411.063(a)(3),]~~ 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 **fill in new date** [October 1, 2013].

### **166.3. Annual Information Submitted by Insurance Companies**

(a) [~~Initial annual report by insurance company.~~

~~(1) Not later than April 1, 2014, each insurance company writing workers' compensation insurance in Texas as of the effective date of this section shall file with the division an initial annual report on its accident prevention services. An insurance company that writes its first workers' compensation insurance policy after the effective date of this section shall file with the division an initial annual report on its accident prevention services not later than the effective date of its first workers' compensation insurance policy.~~

~~(2) An initial annual report required by this subsection shall be filed in the format and manner prescribed by the division and shall include:~~

~~(A) insurance company's name;~~

~~(B) group name;~~

~~(C) name, email, phone number, and mailing address of the primary loss control contact for Texas;~~

~~(D) National Association of Insurance Commissioners (NAIC) number;~~

~~(E) company's A.M. Best rating;~~

~~(F) changes in ownership, organizational structure, or management of the insurance company since the last annual report that affect the provision of accident prevention services;~~

~~(G) for each of the accident prevention services listed in §166.2(a)(1) –(7) of this title (relating to Adequacy of Accident Prevention Services):~~

~~(i) criteria, including the specific time frame and manner, that the insurance company will use to evaluate and determine a policyholder's need for accident prevention services required by the nature of its policyholder's operations based on frequency and severity of claims and risk exposures, including how the insurance company will ascertain the date of the final determination;~~

~~(ii) the specific time frame and manner in which an insurance company will make an offer of accident prevention services to policyholders once a determination has been made;~~

~~(iii) the specific time frame and manner in which services will be provided to policyholders;~~

~~(iv) specify each entity that will provide the services, such as the insurance company, contracted provider, or contracted policyholder; and~~

~~(v) how the provision of services to policyholders will be documented;~~

~~(H) the manner in which an insurance company determines a loss ratio;~~

~~(I) insurance company qualification requirements for employing or contracting with accident prevention personnel;~~

~~(J) method for assuring that the accident prevention personnel provide the requisite level of service to the insurance company's policyholders;~~

~~(K) total number of workers' compensation policies in effect as of December 31 of the report year;~~

~~(L) number of policies in the following premium groups that received any type of workers' compensation accident prevention services:~~

- ~~(i) less than \$25,000;~~
- ~~(ii) \$25,000 – \$100,000; and~~
- ~~(iii) more than \$100,000;~~

~~(M) total dollar amount spent for accident prevention services for Texas workers' compensation policyholders;~~

~~(N) number of policyholder requests for service;~~

~~(O) number of policyholder requests for service fulfilled;~~

~~(P) number of surveys performed;~~

~~(Q) number of work-related fatalities incurred by policyholders;~~

~~(R) evidence of the effectiveness of and accomplishments in accident prevention; and~~

~~(S) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.~~

~~(b) Subsequent annual reports by insurance company.]~~

~~[(1)] An [Subsequent to an insurance company's initial annual report under subsection (a) of this section, an] insurance company writing workers' compensation insurance in Texas must [shall] file with the division an annual report on its accident prevention services no [not] later than April 1 of each calendar year.~~

~~(b) [(2)] An annual report required by this subsection must [shall] be filed with the division in the format and manner prescribed by the division [and shall include the:~~

- ~~(A) insurance company's name;~~
- ~~(B) group name;~~



~~(C) name, email, phone number, and mailing address of the primary loss control contact for Texas;~~

~~(D) NAIC number;~~

~~(E) information in subsection (a)(2)(E) — (R) of this section that has changed since the last annual report; and~~

~~(F) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete].~~

(c) The ~~[initial and subsequent]~~ annual reports must ~~[shall]~~ 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) [When resuming writing workers' compensation insurance in Texas, any insurance company that has not written workers' compensation insurance with exposures in Texas for 12 months or more shall submit, not later than the effective date of its first workers' compensation policy, the initial annual report required under this section.]~~

~~[(e)]~~ 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) [(f)]~~ This section is effective insert date here ~~[October 1, 2013].~~

### **§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) [The division will conduct an initial inspection of each insurance company's accident prevention facilities and the company's use of accident prevention services after the effective date of this section. After the initial inspection, the division may conduct an inspection of an insurance company's accident prevention facilities and the company's use of accident prevention services as often as the division considers necessary to determine compliance with this chapter.]~~

~~[(2)]~~ Affiliated companies of an insurer may be inspected together if the same facilities, programs, and personnel are used by each of the companies.

~~(2)~~ ~~[(3)]~~ At least 90 days before ~~[prior to]~~ an inspection, the division must ~~[shall]~~ notify the insurance company in writing of the inspection. The notice must ~~[shall]~~ specify the location of the inspection and the date when ~~[on which]~~ the inspection will occur.

~~(3)~~ ~~[(4) Notwithstanding the provisions of this section, the]~~ The division may conduct unannounced on-site visits to determine compliance with the Labor Code ~~[Act]~~ 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 ~~[shall]~~ take place as determined by the division ~~[at]~~:

(1) at the insurance company's ~~[company]~~ office in Texas; ~~[or]~~

(2) at the division; or ~~[division's Austin headquarters]~~

(3) electronically.

(c) Pre-inspection exchange of information.

(1) At least 60 days before [~~prior to~~] the date set for inspection, in the format and manner specified by the division, the insurance company must [~~shall~~] provide to the division:

(A) a list of policyholders, for the period of time determined by the division, by policyholder name, policy number, effective date or expiration date of the policy, premium, number of fatalities, principal Texas location, indication of whether the insurance company has contracted with the policyholder for accident prevention services, and indication of whether that policyholder has requested accident prevention services. The list must [~~shall~~] be taken from the insurance company's most current records, separated by affiliated companies, arranged in descending order by premium, and include all policies.

~~[(B) a copy of all accident prevention services procedures, including any changes since the insurance company's last annual report.]~~

(2) Within 10 days of receipt of the policyholder list, the division must [~~shall~~] 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 [~~shall~~] prepare an accident prevention services worksheet in the format and manner prescribed by the division. The worksheet must [~~shall~~] 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) primary NAICS code;~~

~~(F) A. M. Best Hazard index number;~~

(E) ~~[(G)]~~ policyholder contact person's name, phone number, and email address;

(F) ~~[(H)]~~ insurance company name;

(G) ~~[(I)]~~ effective date of the policy; and

(H) ~~[(J)]~~ name of person completing the form and date completed[;]

~~[(K) service and loss information for policy years as requested by the division, including:~~

~~(i) total premium;~~

~~(ii) number of claims;~~

~~(iii) number of and dates of fatalities;~~

~~(iv) loss ratio;~~

~~(v) experience modifier;~~

~~(vi) surveys (list all dates);~~

~~(vii) recommendation letters (list all dates);~~

~~(viii) training programs (list all dates);~~

~~(ix) consultations (list all dates);~~

~~(x) analyses of accident causes (list all dates);~~

~~(xi) industrial hygiene services (list all dates);~~

~~(xii) industrial health services (list all dates);~~

~~(xiii) policyholder requests (list all dates requested and dates provided);~~

~~(xiv) underwriting requests (list all dates requested and dates provided);~~

~~(xv) insurance company determinations in accordance with §166.2(b)(4) of this title (relating to Adequacy of Accident Prevention Services) (list all dates need for services were determined and dates offered);~~

~~(xvi) description of policyholder operations; and~~

~~(xvii) comments].~~

(4) At least 10 days before ~~[prior to]~~ the date of the inspection, the insurance company must ~~[shall]~~ file the completed worksheets with the division.

(d) Information to be made available at or before the inspection. The insurance company must ~~[shall]~~ 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 loss runs for each selected policyholder that includes:~~

~~(A) number of injuries;~~

~~(B) accident or illness types;~~

~~(C) body parts involved;~~

~~(D) injury causes; and~~

~~(E) fatalities;]~~

~~[(4)] a copy of all documentation of accident prevention services provided in accordance with ~~[\$166.2(b)(2) - (5) of]~~ this title;~~

~~(4) [(5)] samples of policyholder training materials, audiovisual aids, and training programs; and~~

~~(5) [(6)] other information requested by the division [which is] 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 [~~shall~~] prepare a written report of the inspection and must [~~shall~~] 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 [~~shall~~] 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 ~~[shall]~~ provide written documentation evidencing its compliance with the division's recommendations contained in the initial inspection report. The written documentation must ~~[shall]~~ detail the corrective actions ~~[being]~~ 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 ~~[shall]~~ 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 ~~[shall]~~ provide the insurance company with notification of this final determination.

~~[(4) The division shall issue a certificate of inspection to each insurance company after completion of an inspection in which the accident prevention services are deemed adequate.]~~

~~(5) In addition to any sanction authorized by law, a final determination of inadequacy may be cause for withholding a certificate of inspection or reinspection.]~~

(g) Reinspection.

(1) After an inspection and a final determination of inadequacy of an insurance company's accident prevention services, the division must ~~[shall]~~ 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 insert new effective date ~~[October 1, 2013]~~.