



# Accident Prevention Services Rule Implementation

# Content Overview

- Part 1: Rule Revision History and Summary of Changes and Requirements
- Part 2: DWC Form-109, *Accident Prevention Services Annual Report* and Helpful Tips for Completing the Report
- Part 3: Accident Prevention Services Inspection Process
- Part 4: DWC Form-105, *Accident Prevention Services Worksheet*

## Part 1: Rule Revision History and Summary of Changes and Requirements

Texas Labor Code Chapter 411, Subchapter E  
Statutory Requirements

28 Texas Administrative Code Chapter 166

Chapter 166 Rule Revision History

Summary of Rule Changes

Other Repealed Requirements

# Texas Labor Code (TLC) Chapter 411, Subchapter E Statutory Requirements

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- As a prerequisite for writing workers' compensation insurance in this state an insurance company must maintain or provide accident prevention facilities that are adequate to provide accident prevention services (APS) required by the nature of its policyholders' operations [TLC §411.061(a)].

# Texas Labor Code (TLC) Chapter 411, Subchapter E Statutory Requirements (cont.)

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- To implement a program of APS, a facility must include:
    - Surveys;
    - Recommendations;
    - Training Programs;
    - Consultations;
    - Analysis of accident causes;
    - Industrial hygiene; and
    - Industrial health services.
- [TLC §411.061(b)]

# Texas Labor Code (TLC) Chapter 411, Subchapter E Statutory Requirements (cont.)

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## Insurance companies must:

- ❑ use the services in a reasonable manner to prevent injury to employees of its policyholders [TLC §411.068(a)(2)];
- ❑ provide qualified accident prevention personnel and services [TLC §411.063(a)];
- ❑ submit to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) detailed information on the type of accident prevention facilities offered to their policyholders at least once a year [TLC §411.065(a)]; and
- ❑ provide notice that APS are available on the front of each policy (TLC §411.066).

# 28 Texas Administrative Code (TAC)

## Chapter 166

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Chapter 166 contains the TDI-DWC's rules that implement the statutory requirements relating to APS provided by an insurance company.

- Specifies what facilities and services an insurance company must at a minimum provide to its policyholders (28 TAC §166.4).
- Sets out annual report due date and content requirements (28 TAC §166.3).
- Details the procedures that apply to a TDI-DWC inspection of an insurance company's APS (28 TAC §§166.5,166.6, & 166.7).

# Chapter 166 Rule Revision History

- ❑ Current rules in place since September 1, 1995.
- ❑ Revision process began informally in 2010.
- ❑ Over past two years, the TDI-DWC held multiple informal and formal meetings with industry to discuss revisions.
- ❑ The TDI-DWC posted three informal versions and one formal version of the rule, and held numerous stakeholder meetings to discuss the drafts.
- ❑ New rules, amended rules and repeals adopted on March 11, 2013.
- ❑ New rules, amended rules and repeals effective on October 1, 2013.



# Summary of Rule Changes

- ❑ 28 TAC §166.1: Definitions of Terms
- ❑ 28 TAC § 166.2: Adequacy of Accident Prevention Services
- ❑ 28 TAC § 166.3: Annual Information Submitted by Insurance Companies
- ❑ 28 TAC § 166.5: Inspections of Adequacy of Accident Prevention Facilities and Services
- ❑ Other Repealed Requirements

# 28 TAC § 166.1: Definitions of Terms

- Amended or New Definitions
  - **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).
  - **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.

# 28 TAC § 166.1: Definitions of Terms (cont.)

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- Repealed Definitions
  - Division
  - Field Safety Representative
  - Loss Ratio
  - On-site Visit
  - Other appropriate services

# 28 TAC §166.2:

## Adequacy of Accident Prevention Services

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- Defines what constitutes adequate APS.
- Service requirements previously found in 28 TAC §166.4 have been amended and recodified in this section.
- Requires insurance companies writing workers' compensation insurance in Texas to maintain or provide accident prevention facilities that are adequate to provide APS required by the nature of its policyholders' operations, and delineates adequacy requirements.

## 28 TAC §166.2:

# Adequacy of Accident Prevention Services (cont.)

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Adequate facilities include:

- The seven services required by statute;
- Qualified personnel;
- Written procedures; and
- Written records, reports and evidence of all APS provided to each policyholder.

# 28 TAC §166.2:

## Adequacy of Accident Prevention Services (cont.)

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- Requires insurance companies to use accident prevention services in a reasonable manner to prevent injuries to employees of its policyholders and sets out minimum use requirements [28 TAC §166.2(b)].
- Requires insurance companies to provide accident prevention services to policyholders at no additional charge [28 TAC §166.2(d)].
- Prohibits insurance companies from soliciting or obtaining from its policyholders a prospective waiver declining all accident prevention services [28 TAC §166.2(e)].

# 28 TAC §166.2:

## Adequacy of Accident Prevention Services (cont.)

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- Amended notice of APS statement:
  - Specifies the statutorily required services that may be available to the policyholder; and
  - Provides contact information for the TDI-DWC for policyholders to request additional information or file complaints [28 TAC §166.2(b)(1)].
- Modified post-fatality service requirements [28 TAC §166.2(b)(2)].
- Insurance companies determine appropriate time frames and thresholds for policyholder evaluations, offers of service, and provisions of service [28 TAC §166.2(b)(3)&(4)].
- Policyholder requested service time frames adjusted [28 TAC §166.2(b)(5)].

# 28 TAC §166.2:

## Adequacy of Accident Prevention Services (cont.)

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- Repealed requirements for:
  - ▣ Solicitation of Comments notifications every 12 months;
  - ▣ Mandatory provisions of on-site visits or other appropriate services based on premium and loss ratios set by the TDI-DWC;
  - ▣ Written notification of actual claims experience every 12 months; and
  - ▣ Written documentation of loss analysis every 12 months based on premium and loss ratios set by the TDI-DWC.



# 28 TAC §166.3: Annual Information Submitted by Insurance Companies

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- Annual reports now due to the TDI-DWC by April 1 of each year. Changed to more closely align with other TDI-DWC reporting requirements [28 TAC §166.3(a)(1)&(b)(1)].
- Initial annual report [28 TAC §166.3(a)]
  - ▣ How has it changed and how is it the same?
- Subsequent annual report [28 TAC §166.3(b)]
  - ▣ How is it different from the initial report?

# 28 TAC §166.3: Annual Information Submitted by Insurance Companies (cont.)

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- Most data elements listed in the rule are already provided to the TDI-DWC through various sources.
- Provides the TDI-DWC a gauge to assess adequacy and compliance.
- The annual report does not replace an insurance company's written accident prevention services procedures.

# 28 TAC §166.5: Inspections of Adequacy of Accident Prevention Facilities and Services

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- ❑ Prescribes the TDI-DWC procedures for inspections and re-inspections of insurance company APS and facilities.
- ❑ Expands the minimum timeframe for the TDI-DWC to notify an insurance company prior to an inspection from 60 to 90 days  
[28 TAC §166.5(a)(3)].
- ❑ Repeals the requirement that the TDI-DWC inspect each insurance company at least every two years.

# 28 TAC §166.5: Inspections of Adequacy of Accident Prevention Facilities and Services (cont.)

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- Provides for three potential inspection outcomes.
  - ▣ Final determination of adequacy.
  - ▣ Initial determination of inadequacy.
    - This new option will allow an insurance company a meaningful opportunity to correct defects in its services within a time period of up to 60 days. Successful correction can lead to a final determination of adequacy.
  - ▣ Final determination of inadequacy [28 TAC §166.5(f)(2)&(3)].

# Other Repealed Requirements

- Filing of an Accident Prevention Plan prior to writing in Texas [28 TAC §166.3(a)(1)] (some elements included in new annual report requirements) .
  
- 28 TAC §166.8 - Qualification of Field Safety Representatives
  - Due to repeal of Texas Labor Code §411.062 by House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.
  
- 28 TAC §166.9 - Approval of Occupational Health and Safety Education Programs
  - Due to repeal of Texas Labor Code §411.062 by HB 7, enacted by the 79<sup>th</sup> Legislature, Regular Session, effective September 1, 2005.

QUESTIONS AND BREAK



## Part 2: DWC Form-109

### *Accident Prevention Services Annual Report*

Due Dates

Submission

Filling out the Report

Initial vs. Subsequent Reports

Annual Report Review

# Annual Report Due Dates

- Insurance companies writing workers' compensation insurance in Texas before October 1, 2013 must file an initial report with the division no later than April 1, 2014. [28 TAC §166.3(a)(1)]
- Insurance companies writing workers' compensation insurance in Texas after October 1, 2013 must file an initial report no later than the effective date of their first policy. [28 TAC §166.3(a)(1)]
- 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 must file an initial report no later than the effective date of their first policy. [28 TAC §166.3(d)]
- Subsequent reports shall be filed with the division no later than April 1 of each calendar year. [28 TAC §166.3(b)(1)]



# Initial Annual Report Submission

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- ❑ Initial annual reports must be filed in the form and manner prescribed by the division (DWC Form-109). [28 TAC §166.3(a)(2)]
- ❑ The form may be found online at <http://www.tdi.texas.gov/forms/dwc/dwc109apsar.pdf>.
- ❑ A report is considered filed with the division only when it accurately contains all of the required data elements and is received by the division. [28 TAC §166.3(e)]
- ❑ A report must be filed for **each company** writing workers' compensation insurance in Texas.
- ❑ Annual reports should be submitted to the division via email at [APS@tdi.texas.gov](mailto:APS@tdi.texas.gov).

# Filling Out the Initial Annual Report

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- I. Insurance Company Information
  - ▣ Complete all fields. (#3 only if applicable)
- II. Accident Prevention Service Information
  - ▣ Complete all fields.
  - ▣ #10 – Number of policies by premium group: Premium group amounts are different from previous DWC Form-109.
  - ▣ #11 – Dollar amount spent on APS: Do not include the expenses or costs of underwriting visits to a policyholder's premises unless accident prevention services are provided during the visit.  
[28 TAC §166.3(c)]

# Filling Out the Initial Annual Report (cont.)

## II. Accident Prevention Services Information (cont.)

- ▣ #12 – Policyholder service requests: New field. Policyholder requests for service and requests fulfilled must be tracked and reported.
- ▣ #14 – Evidence of APS effectiveness and accomplishments: This is a free form field. The insurance company can provide information as they determine to be relevant. (Previous form required claim payment and reserve information as well as number of fatalities.)

# Filling Out the Initial Annual Report (cont.)

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## II. Accident Prevention Services Information (cont.)

- ▣ #16 – Changes in ownership, organizational structure or management: Note only changes that affect the provision of APS.
  
- ▣ #17 – Manner in which a loss ratio is determined: The division no longer defines loss ratio by rule. Insurance companies now provide to the division the calculation method used when determining loss ratio for their APS activities.

# Filling Out the Initial Annual Report (cont.)

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## II. Accident Prevention Services Information (cont.)

- ▣ #18 to 24: Report the insurance company's procedures for providing each of the seven services required by TLC §411.061(b), including:
  - a. Criteria the insurance company uses to evaluate and determine a policyholder's need for service.
  - b. Time frame and manner the insurance company follows to evaluate and determine a need for service.
  - c. Time frame and manner in which the insurance company offers to provide the service.
  - d. Time frame and manner in which the insurance company provides the service.
  - e. Specify each entity that will provide the service.
  - f. Specify the method the insurance company uses to document provision of the service.

# Filling Out the Initial Annual Report (cont.)

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- Helpful Tips for Completing Items #18-24:
  - a. Criteria the insurance company uses to evaluate and determine a policyholder's need for service.
    - Criteria are the actual triggers that are used to determine that a need for service exists, such as premium level, loss ratio, experience modifier, frequency, etc.
    - List the actual trigger threshold (i.e., premium amount of \$100,000 or above and loss ratio of 100%, not just that premium and loss ratio will be used.)
    - Must consider criteria in accordance with TAC §166.2(b)(3)(A-I).

# Filling Out the Initial Annual Report (cont.)

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- Helpful Tips for Completing Items #18-24 (cont.):
  - b. Time frame and manner the insurance company follows to evaluate and determine a need for service
    - List the actual time frame or frequency of when policyholder evaluations for need will be conducted.
    - List the actual manner in which this evaluation will be conducted (i.e., manually, automated computer program) and documented.

# Filling Out the Initial Annual Report (cont.)

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- Helpful Tips for Completing Items #18-24 (cont.):
  - c. Time frame and manner the insurance company offers to provide the service.
    - List the actual time frame for when the service will be offered after a determination of need has been made.
    - List the manner(s) or means by which the service will be offered (i.e., mail, email, phone) and documented.



# Filling Out the Initial Annual Report (cont.)

- Helpful Tips for Completing Items #18-24 (cont.):
  - d. Time frame and manner in which the insurance company provides the service.
    - List the actual time frame of when the service will be provided after an offer is accepted by the policyholder, considering the nature of the service. Some services such as surveys or industrial hygiene may require longer time frames to provide than other services such as analysis or training.
    - List the actual manner(s) in which the service will be provided. This may vary depending on the particular service.

# Filling Out the Initial Annual Report (cont.)

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- Helpful Tips for Completing Items #18-24 (cont.):
  - e. Specify each entity that will provide the service.
    - Check boxes as appropriate (insurance company employee, contracted provider, contracted policyholder). Check all that apply.
    - Do not list specific employees or contracted companies that provide the service. It is only necessary to check the box(es) as appropriate.

# Filling Out the Initial Annual Report (cont.)

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- Helpful Tips for Completing Items #18-24 (cont.):
  - f. Specify the method the insurance company uses to document provision of the service.
    - List the method that will be used. This may vary by service type.

# Filling Out the Initial Annual Report (cont.)

## II. Accident Prevention Services Information (cont.)

- #25 – List the insurance company’s qualification requirements for employing or contracting with accident prevention personnel.
- List the qualification requirements for each type of service provider (insurance company employee, contracted third party provider, or contracted policyholder).

# Filling Out the Initial Annual Report (cont.)

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## II. Accident Prevention Services Information (cont.)

- ▣ #26 – Describe the method for assuring that the accident prevention personnel provide the requisite level of service to the insurance company’s policyholders.
  - For each type of provider, explain how the insurance company will verify that the services were actually provided in accordance with the company’s service procedures (i.e., internal audit, quality control process, communication processes, etc.).

## III. Insurance Company Certification

- ▣ Complete all fields.

A report is considered filed with the division only when it accurately contains all of the required data elements and is received by the division. [28 TAC §166.3(f)]

# Initial vs. Subsequent Reports

- Subsequent reports use the same DWC Form-109.
  - Should be submitted each year no later than April 1.
  - Fields 1 to 15: Must be completed (as applicable).
  - Fields 16 through 26: Fill in detailed procedure information only if changes have occurred since the last annual report. Otherwise, checking the “No change” box is all that is required.
  - Fields 27 through 32: Must be completed.

# Annual Report Review

- In addition to inspections and the generally accepted tools and guidelines of loss control provision, the annual report will be used to determine the adequacy of an insurance company's APS. [28 TAC §166.2(c)]
- The TDI-DWC will discuss items on the report that are missing, unclear, or potentially inadequate with the insurance company. The TDI-DWC may request resubmission of such information by the insurance company.
- Subsequent annual reports will be used as one of several ways to determine if an accident prevention services inspection is necessary.
- The TDI-DWC cannot provide legal advice regarding completion of the annual report.

# Annual Report Review

- ❑ Insurance companies are encouraged to submit their proposed service provision procedures to the TDI-DWC for review prior to October 1, 2013, when the rules become effective.
- ❑ Although the annual report is not required to be submitted until April 1, 2014, as a courtesy the TDI-DWC will review procedures that are submitted prior to that time.
- ❑ Insurance companies wishing to have their procedures reviewed should submit them as they would on the DWC Form-109. Other formats will not be considered.



QUESTIONS AND BREAK



## Part 3: Accident Prevention Services Inspection Process

Inspection Frequency

Pre-Inspection Notice and Exchange of  
Information

Policyholder File Selection

Inspection Process

Inspection Outcomes

# Inspection Frequency

- Per 28 TAC §166.5(a)(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 the rules.
  - ▣ 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.

# Inspection Frequency (cont.)

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- Per 28 TAC §166.5(a)(1)(cont.) :
  - ▣ Insurance companies are no longer required to be inspected at least once every two years.
  - ▣ Companies that fail to meet standards during an inspection are still required to be re-inspected 180 to 270 days after the date the services were determined to be inadequate. [TLC §411.064(b)]

# Inspection Frequency (cont.)

45

- The TDI-DWC will determine the need for subsequent inspections under the new rules through several means, which may include:
  - DWC Form-109 submitted by the insurance company;
  - Previous inspection performance;
  - Policyholder complaints; or
  - Statutorily required re-inspections.

# Pre-Inspection Notice and Exchange of Information

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- The division must notify an insurance company at least 90 days prior to an inspection. [28 TAC §166.5(a)(3)]
  - ▣ Time increased from 60 days under previous rules.
  
- At least 60 days prior to the date of the inspection the insurance company must provide to the division:
  - ▣ A list of policyholders for the time period determined by the division. [28 TAC §166.5(c)(1)(A)]
  - ▣ A copy of all APS procedures, including any changes since the insurance company's last annual report. [28 TAC §166.5(c)(1)(B)]

# Pre-Inspection Notice and Exchange of Information (cont.)

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- As required by 28 TAC §166.5(c)(1)(a), the policyholder list shall include :
  - Policyholder name;
  - Policy number;
  - Effective date or expiration date of the policy;
  - Premium;
  - Number of fatalities (new);
  - Principal Texas location (new);
  - Indication of whether the insurance company has contracted with the policyholder for APS (new); and
  - Indication of whether the policyholder has requested APS (new).

# Pre-Inspection Notice and Exchange of Information (cont.)

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- ❑ Within 10 days of receipt of the policyholder list, the division shall select the specific policyholder files to be evaluated and notify the insurance company of those selected files. [28 TAC §166.5(c)(2)]
- ❑ The insurance company will prepare a DWC Form-105 *Accident Prevention Services Worksheet* for each file selected by the division. [28 TAC §166.5(c)(3)]
- ❑ Completed worksheets must be filed with the division at least 10 days prior to the inspection date. [28 TAC §166.5(c)(4)]



# Policyholder File Selection

- Policyholder files to be reviewed during an inspection will be selected from the policyholder list that is provided during the pre-inspection exchange of information. [28 TAC §166.5(c)(2)]
- The number of files selected will typically be based on a statistically valid sample size. Factors affecting the sample size may include:
  - Total number of policies in effect during the time period covered by the inspection;
  - Group inspections that include companies with different service provision guidelines; and
  - Prior inspection performance.
- Attribute error for subsequent inspections may be determined by the actual error rate from the previous inspection.

# Inspection Process

- During the inspection, the division will use the following information to determine an insurance company's compliance with the rules and its reported procedures based on the nature of their policyholders' operations:
  - DWC Form-109(s) **and** written procedures applicable during the scope of the inspection;
  - DWC Form-105 and loss control file for each policyholder being reviewed as well as documentation of services provided in accordance with 28 TAC §166.2(b)(2)-(5);
  - Samples of training materials, audiovisual aids and training programs;
  - Sample declaratory page;
  - Loss runs for each selected policyholder;
  - Contact and visits with policyholders; and
  - Additional documentation that the insurance company shall make available during the inspection per 28 TAC §166.5(d).

# Inspection Process (cont.)

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- The TDI-DWC may request additional documentation, as allowed by 28 TAC §166.5(d), which may include, but is not limited to:
  - ▣ Records of surveys, consultations, recommendations, training, loss analysis, and industrial health and hygiene services;
  - ▣ Return-to-work coordination services information;
  - ▣ The name, location, status (employee or contractor) and qualifications of each person that provided APS in the loss control files being reviewed.

# Inspection Outcomes

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- ❑ **Final Determination of Adequacy**
  - ❑ Inspection findings at or above minimum compliance rate (to be determined).
  - ❑ The division will issue a certificate of inspection.

# Inspection Outcomes (cont.)

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## □ Initial Determination of Inadequacy

- May be issued for inspections resulting in a score below the minimum compliance rate.
- Allows an insurance company a meaningful opportunity to correct defects in its services within a time period of up to 60 days.
- Insurance company may request an extension.
- Successful correction may lead to a final determination of adequacy.

# Inspection Outcomes (cont.)

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## □ Final Determination of Inadequacy

- Will be issued for inspections resulting in scores below minimum compliance rate, either initially or after an abatement period granted through an initial determination of inadequacy when deficiencies are not corrected adequately in accordance with TDI-DWC rule requirements.
- Results in statutorily required re-inspection 180 to 270 days after the date the accident prevention services were determined to be inadequate.  
[TLC §411.064(b)]

# Inspection Outcomes (cont.)

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- The division shall prepare a written report of the inspection to the insurance company's executive management and to the TDI Loss Control Regulation Division. [28 TAC §166.5(f)(1)]
- 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. [28 TAC §166.5(f)(4)]

QUESTIONS AND BREAK





Part 4: DWC Form-105 *Accident Prevention Services Worksheet*

Filling Out the Report

Due Dates & Submission

# Filling Out the DWC Form-105

- Section I: Policyholder Information
  - ▣ Information must be complete and accurate.
  - ▣ #4 Effective Date of Policy: For policyholders no longer covered by the insurance company, use the effective date of the most recent policy year.
  
- Section II: Insurance Company Information
  - ▣ Information must be complete and accurate.

# Filling Out the DWC Form-105 (cont.)

- **Section III: Service and Loss Information**
  - ▣ **Fields a – f:** Information must be complete and accurate.
  - ▣ **Fields g – m:** List the dates that any of these services were provided to the policyholder during the policy period. Dates in these fields should have a corresponding date listed in field n, o, or p that initiated the service provision.
  - ▣ **Field n:** List the date(s) that the policyholder requested and received services during the policy period; please indicate what type of service was requested/provided.

# Filling Out the DWC Form-105 (cont.)

- Section III: Service and Loss Information
  - ▣ **Field o:** List the date(s) that underwriting requested and policyholder received services during the policy period; please indicate what type of service was requested/provided.
  - ▣ **Field p:** List the date(s) the insurance company determined a need for service and the date(s) service was offered during the policy period; please indicate what type of service was needed/offered.

# DWC Form-105 Due Dates and Submission

- ❑ Insurance companies shall file completed worksheets with the division at least 10 days prior to the date of the inspection.  
(28 TAC §166.5(c)(4))
- ❑ Insurance companies are responsible for timely and accurately filing of the DWC Form-105.
- ❑ A DWC Form-105 is considered filed with the TDI-DWC only when it accurately contains all of the required data elements.
- ❑ Forms may be filed by mail, fax or email.

# Questions and Contact

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**For additional information or questions regarding the information in this presentation, please contact:**

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