



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Office of General Counsel (MS-15)

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To: System Participants

From: Nicholas Canaday, III, General Counsel

Date: December 30, 2019

RE: Adopted Rules to Implement SB 2551

The Texas Department of Insurance, Division of Workers' Compensation (DWC) has adopted amendments to 28 Texas Administrative Code §§124.2, 124.3, 180.8, and 180.26 to implement Senate Bill 2551, 86th Legislature. These amendments involve process changes for claims by first responders that may qualify for a presumption under Texas Government Code Chapter 607, Subchapter B. Several changes were made in response to the comments received. Editorial corrections are made throughout these amendments to provide clarity and to align the rule with current agency style.

Rule 124.2 Insurance Carrier Reporting and Notification Requirements

- Adds Subsection (f) that describes the three alternative actions that an insurance carrier must take no later than the 15th day from the notice of injury: pay the claim, deny it, or issue a Notice of Continuing Investigation.
- Adds Subsection (g) which provides that a "claim for benefits" means the first written notice of injury.
- Adds Subsection (h) that describes the elements of a Notice of Continuing Investigation, as authorized under Texas Labor Code §409.021(a-3).
- Adds Subsection (j) that lists requirements for a notice of denial for a disease or illness covered by Texas Government Code, Chapter 607, Subchapter B.
- Adds Subsection (s) to require insurance carriers to provide all required plain language notices to claimants using plain language and a minimum font size of 12-point.

Rule 124.3 Investigation of an Injury and Notice of Denial or Dispute

- Amends Subsection (a)(1-5) to provide for a Notice of Continuing Investigation.
- Amends Subsection (a)(4) to provide that an insurance carrier's failure to file a timely Notice of Continuing Investigation obligates the insurance carrier to pay all accrued and accruing income and medical benefits, subject to contesting compensability on or before the 60th day from written notice of injury.
- Deletes Subsection (a)(5)(A-C) to remove outdated penalty provisions.
- Amends Subsection (d) to provide for a Notice of Continuing Investigation relating to a claim for death benefits.
- Adds Subsection (e) to provide for a Notice of Continuing Investigation relating to a claim for burial benefits.
- Deletes the obsolete text of Subsection (f).
- Adds Subsection (g) regarding an insurance carrier's investigation of a claim and any applicable statutory presumption. Provides that a claimant is not required to expressly

claim a presumption and that an insurance carrier is required to investigate the applicability of the statutory presumption.

Rule 180.8 Notices of Violation; Notices of Hearing; Default Judgments

- Amends Subsection (b)(4) to include the factors from Labor Code §415.021(c-2).

Rule 180.26 Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies

- Adds Subsection (f) to provide that when an insurance carrier has provided a Notice of Continuing Investigation, DWC must consider the factors under Labor Code §415.021(c-2).
- Amends Subsection (i), previously (h), to note that DWC must consider the factors from Labor Code §415.021(c-2) as part of the appropriateness of a sanction.
- Amends Subsection (j)(2), previously (i), to note that a consent order will include an acknowledgement that DWC considered the factors from Labor Code §415.021(c-2).

The adopted rules will be published in the January 10, 2020, issue of the *Texas Register* and will be available at www.sos.state.tx.us/texreg/index.shtml once published. A courtesy copy is on the [TDI website](#).

DWC has also adopted a new [PLN-14, Notice of Continuing Investigation](#), as a template for an insurance carrier to use when communicating with a first responder who's claim may be subject to a presumption under Government Code Chapter 607, Subchapter B.