

1 **CHAPTER 116. GENERAL PROVISIONS--SUBSEQUENT INJURY FUND**
2 **28 TAC §116.11**
3

4 **§116.11. Request for Reimbursement from the Subsequent Injury Fund.**

5 (a) An insurance carrier may request:

6 (1) reimbursement from the Subsequent Injury Fund (SIF) under ~~[pursuant~~
7 ~~to]~~ Labor Code §403.006(b)(2) ~~[,]~~ for an overpayment of income, death, or medical benefits
8 when the insurance carrier has made an unrecoupable overpayment pursuant to the
9 decision of an administrative law judge, ~~[or]~~ the Appeals Panel, ~~[appeals panel]~~ or an
10 interlocutory order, and that decision or order is reversed or modified by final arbitration,
11 order, or decision of the commissioner, State Office of Administrative Hearings, or a court
12 of last resort;

13 (2) reimbursement from the SIF under ~~[pursuant to]~~ Labor Code
14 §403.007(d) ~~[,]~~ for death benefits paid to the SIF before a legal beneficiary was determined
15 to be entitled to receive death benefits;

16 (3) for a compensable injury that occurs on or after July 1, 2002,
17 reimbursement from the SIF for the amount of income benefits paid to an injured
18 employee based on ~~[attributable to]~~ multiple employment and paid under ~~[pursuant to]~~
19 Labor Code §408.042;

20 (4) for a compensable injury that occurs on or after September 1, 2007,
21 reimbursement from the SIF for the amount of income, death benefits, or a combination
22 paid to an injured employee or a legal beneficiary based on ~~[attributable to]~~ multiple
23 employment and paid under ~~[pursuant to]~~ Labor Code §408.042;

24 (5) reimbursement from the SIF, under ~~[pursuant to]~~ Labor Code
25 §408.0041(f) and (f-1), for an overpayment of benefits made by the insurance carrier based
26 on the opinion of the designated doctor if that opinion is reversed or modified by a final
27 arbitration award or a final order or decision of the commissioner or a court; or

1 (6) reimbursement from the SIF made in accordance with rules adopted by
2 the commissioner under [~~pursuant to~~] Labor Code §413.0141. For purposes of this
3 subsection only, an injury is determined not to be compensable following:

4 (A) The final decision of the commissioner or the judgment of the
5 court of last resort; or

6 (B) A claimant's failure to respond within one year of a timely dispute
7 of compensability filed by an insurance carrier. In this instance only, the effective date of
8 the determination of non[-]compensability is one year from the date the insurance carrier
9 filed the dispute [~~is filed~~] with the division [~~by the insurance carrier~~].

10 (i) A determination under this paragraph does not constitute
11 final adjudication. It does not preclude a party from pursuing their claim through the
12 division's dispute resolution process, and it does not permit a health care provider to
13 pursue a private claim against the claimant.

14 (ii) If the claim is later determined to be compensable, the
15 insurance carrier must [~~shall~~] reimburse the SIF for any initial pharmaceutical payment,
16 which the SIF previously reimbursed to the insurance carrier. The insurance carrier's
17 reimbursement of the SIF must [~~shall~~] be paid within the timeframe the insurance carrier
18 has to comply with the agreement, decision and order, or other judgment, which found
19 the claim to be compensable.

20 (b) The amount of reimbursement [~~that~~] the insurance carrier may be entitled to is
21 equal to the amount of unrecoupable overpayments paid and does not include any
22 amounts the insurance carrier overpaid voluntarily or as a result of its own errors. An
23 unrecoupable overpayment of income or death benefits for the purpose of
24 reimbursement from the SIF only includes those benefits that were overpaid by the
25 insurance carrier pursuant to an interlocutory order, a designated doctor's [~~doctor~~]
26 opinion, or a decision, which were finally determined to be not owed and which, in the

1 case of an overpayment of income or death benefits to the injured employee or legal
2 beneficiary, were not recoverable or convertible from other income or death benefits.

3 (c) To request [~~Requests for~~] reimbursement under [~~attributable to~~] subsection
4 (a)(1) of this section[;] for insurance carrier claims of benefit overpayments made under
5 an interlocutory order or decision of the commissioner that is later reversed or modified
6 by final arbitration, order, decision of the commissioner, the State Office of Administrative
7 Hearings, or court of last resort, an insurance carrier must:

8 (1) submit the request electronically on the form and manner prescribed by
9 the division; [~~shall be filed with the SIF administrator in writing and include:~~]

10 (2)[~~(1)~~] provide a claim-specific summary of the reason the insurance carrier
11 is seeking reimbursement and the total amount of reimbursement requested, including
12 how it was calculated;

13 (3)[~~(2)~~] provide a detailed payment record showing the dates and [~~of~~
14 ~~payments, the~~] amounts of the payments, [~~purpose of payments~~], the payees, type of
15 benefits and [~~the~~] periods of benefits paid, all plain language notices (PLNs) about
16 [~~regarding~~] the payment of benefits, all certifications of maximum medical
17 improvement[;] and [~~all~~] assignments of impairment rating, and documentation that
18 shows [~~demonstrates that~~] the overpayment was unrecoupable as described in
19 subsection (b) of this section, if applicable;

20 (4)[~~(3)~~] provide the name, address, and federal employer identification
21 number of the payee (insurance carrier) for any reimbursement that may be due;

22 (5)[~~(4)~~] provide copies of all relevant orders and decisions (benefit review
23 conference reports, [~~Benefit Review Conferences,~~] interlocutory orders, [~~Interlocutory~~
24 ~~Orders,~~] contested case hearing decisions and orders, [~~Contested Case Hearing Decisions~~
25 ~~& Orders,~~] Appeals Panel decisions, [~~Decisions,~~] and court [~~Court~~] orders) relating to the
26 requested reimbursement [~~regarding the payment for which reimbursement is being~~

1 ~~requested]~~ and show ~~[along with an indication of]~~ which document is the final decision
2 on the matter;

3 ~~(6)[(5)]~~ provide copies of all relevant reports and DWC forms ~~[filed by]~~ the
4 employer filed with the insurance carrier; and

5 ~~(7)~~ provide ~~[(6) if the request is based on an overpayment of medical~~
6 ~~benefits,]~~ copies of all medical bills, ~~[and]~~ preauthorization request documents, relevant
7 independent review organization (IRO) decisions, medical fee dispute decisions,
8 contested case hearing decisions and orders, Appeals Panel decisions, and court orders
9 on medical disputes associated with the overpayment, if the request is based on an
10 overpayment of medical benefits. ~~[as well as all relevant Independent Review Organization~~
11 ~~(IRO) decisions, fee dispute decisions and Contested Case Hearing Decisions and Orders,~~
12 ~~Appeals Panel Decisions, and court orders regarding medical disputes.]~~

13 (d) To request ~~[Requests for]~~ reimbursement under ~~[pursuant to]~~ subsection (a)(2)
14 of this section~~;~~ for ~~[related to a]~~ reimbursement of death benefits paid to the SIF before
15 ~~[prior to]~~ a legal beneficiary is ~~[being]~~ determined to be entitled to receive death benefits,
16 an insurance carrier must: ~~[shall be filed with the SIF administrator in writing and include:]~~

17 ~~(1)~~ submit the request electronically on the form and manner prescribed by
18 the division;

19 ~~(2)[(4)]~~ provide a claim-specific summary of the reason the insurance carrier
20 is seeking reimbursement and the total amount of reimbursement requested, including
21 how it was calculated;

22 ~~(3)[(2)]~~ provide a detailed payment record showing the dates and amounts
23 of payments, ~~[the amounts of the payments, purpose of payments, the]~~ payees, and ~~[the]~~
24 periods of benefits paid;

25 ~~(4)[(3)]~~ provide the name, address, and federal employer identification
26 number of the payee (insurance carrier) for any reimbursement that may be due;

1 (5)[(4)] provide the documentation the legal beneficiary submitted
2 ~~[provided]~~ with the claim for death benefits under ~~[in accordance with]~~ §122.100 of this
3 title (relating to Claim for Death Benefits); and

4 (6)[(5)] provide ~~[if applicable,]~~ the final award of the commissioner[,], or the
5 final judgment of a court of competent jurisdiction determining that the legal beneficiary
6 is entitled to the death benefits.

7 (e) To request ~~[Requests for]~~ reimbursement under ~~[pursuant to]~~ subsections
8 ~~[subsection]~~ (a)(3) or (4) of this section[,], regarding multiple employment, the requester
9 must ~~[shall be]~~ submit ~~[submitted]~~ the request on an annual basis for the payments made
10 during the same or previous fiscal year. The fiscal year begins each September 1 ~~[1st]~~ and
11 ends on August 31 ~~[31st]~~ of the next calendar year. For example, insurance carrier
12 payments made during the fiscal year from September 1, 2009, through August 31, 2010,
13 must be submitted by August 31, 2011. Any claims for insurance carrier payments related
14 to multiple employment that are not submitted within the required timeframe will not be
15 reviewed for reimbursement. ~~[These requests shall be filed with the SIF administrator in~~
16 ~~writing and include:]~~ To request reimbursement under subsections (a)(3) or (4), an
17 insurance carrier must:

18 (1) submit the request electronically on the form and manner prescribed by
19 the division;

20 (2)[(4)] provide a claim-specific summary of the reason the insurance carrier
21 is seeking reimbursement and the total amount of reimbursement requested, including
22 how it was calculated;

23 (3)[(2)] provide a detailed payment record showing the dates and amounts
24 of payments, ~~[the amounts of the payments, purpose of payments, the]~~ payees, type of
25 benefits and ~~[the]~~ periods of benefits paid, all PLNs about ~~[regarding]~~ the payment of
26 benefits, and ~~[as well as]~~ documentation that shows ~~[that]~~ the overpayment was

1 unrecoupable as described in subsection (b) of this section, if applicable;

2 ~~(4)~~⁽³⁾ provide the name, address, and federal employer identification
3 number of the payee (insurance carrier) for any reimbursement that may be due;

4 ~~(5)~~⁽⁴⁾ provide information documenting the injured employee's average
5 weekly wage amounts paid from all non[-]claim employment held at the time of the work-
6 related [~~work-related~~] injury under [~~pursuant to~~] §122.5 of this title (relating to Employee's
7 Multiple Employment Wage Statement); and

8 ~~(6)~~⁽⁵⁾ provide information documenting the injured employee's average
9 weekly wage amounts paid based on employment with the claim employer.

10 (f) To request [~~Requests for~~] reimbursement under [~~attributable to~~] subsection
11 (a)(5) of this section, for insurance carrier claims of benefit overpayments made pursuant
12 to a designated doctor's [~~doctor~~] opinion that is later reversed or modified by a final
13 arbitration award or a final order or decision of the commissioner or a court, an insurance
14 carrier must: [~~shall be filed with the SIF administrator in writing and include:~~]

15 ~~(1)~~ (1) submit the request electronically on the form and manner prescribed by
16 the division;

17 ~~(2)~~⁽¹⁾ provide a claim-specific summary of the reason the insurance carrier
18 is seeking reimbursement and the total amount of reimbursement requested, including
19 how it was calculated;

20 ~~(3)~~⁽²⁾ provide a detailed payment record showing the dates and [~~of~~
21 ~~payments, the~~] amounts of [~~the~~] payments, [~~purpose of payments, the~~] payees, type of
22 benefits and [~~the~~] periods of benefits paid,[;] PLNs about [~~regarding~~] the payment of
23 benefits, and all certifications of maximum medical improvement and [~~all~~] assignments of
24 impairment rating;

25 ~~(4)~~⁽³⁾ provide the name, address, and federal employer identification
26 number of the payee (insurance carrier) for any reimbursement that may be due;

1 (5)[(4)] provide copies of all relevant designated doctors' ~~[doctor]~~ opinions
2 (including responses to letters of clarification) and orders and decisions (IRO decisions,
3 interlocutory orders, contested case hearing decisions and orders, ~~[Interlocutory Orders,~~
4 ~~Contested Case Hearing Decisions and Orders,]~~ arbitration awards, Appeals Panel
5 decisions, ~~[Decisions,]~~ and court ~~[Court]~~ orders) relating to ~~[regarding]~~ the designated
6 doctor's ~~[doctor]~~ opinion and the payment~~;~~ made pursuant to the designated doctor's
7 ~~[doctor]~~ opinion for which reimbursement is being requested, and indicate ~~[along with an~~
8 ~~indication of]~~ which document is the final decision on the matter;

9 (6)[(5)] provide copies of all relevant reports and DWC forms ~~[filed by]~~ the
10 employer filed with the insurance carrier; and

11 (7)[(6)] provide ~~[for an overpayment of medical benefits,]~~ copies of all
12 medical bills and preauthorization request documents associated with an ~~[the]~~
13 overpayment of medical benefits.

14 (g) To request ~~[Requests for]~~ reimbursement under subsection (a)(6) of this section
15 regarding ~~[attributable to]~~ initial pharmaceutical coverage, a requester must submit the
16 request ~~[shall be submitted]~~ in the same or ~~[in the]~~ following fiscal year after a
17 determination that the injury is not compensable, ~~[in accordance with subsection (a)(6) of~~
18 ~~this section.]~~ The fiscal year begins each September 1 ~~[1st]~~ and ends on August 31 ~~[31st]~~
19 of the next calendar year. For example, if an injury is determined to be not compensable
20 during the fiscal year from September 1, 2009, through August 31, 2010, the request for
21 reimbursement under ~~[pursuant to]~~ Labor Code §413.0141 must be submitted by August
22 31, 2011. Any claims for insurance carrier payments related to initial pharmaceutical
23 coverage that are not submitted within the required timeframe will not be reviewed for
24 reimbursement. An insurance carrier must: ~~[The requests shall be filed with the SIF~~
25 ~~administrator in writing and include:]~~

26 (1) submit the request electronically on the form and manner prescribed by

1 the division;

2 (2)[(4)] provide a claim-specific summary of the reason the insurance carrier
3 is seeking reimbursement and the total amount of reimbursement requested;

4 (3)[(2)] provide a detailed payment record showing the dates of payments,
5 [~~specifically~~] including documentation on [~~of~~] dates of payment of initial pharmaceutical
6 coverage (i.e., during the first seven days following the date of injury), [~~the~~] payment
7 amounts, [~~of the payments, the purpose of payments, the~~] and payees; [~~and the periods~~
8 ~~of benefits paid;~~]

9 (4)[(3)] provide the name, address, and federal employer identification
10 number of the payee (insurance carrier) for any reimbursement that may be due;

11 (5)[(4)] provide documentation that the pharmaceutical services were
12 provided during the first seven days following the date of injury, not counting the actual
13 date the injury occurred, and identify [~~which is to include a description of~~] the prescribed
14 pharmaceutical services; [~~service(s);~~] and

15 (6)[(5)] provide documentation of:

16 (A) the final resolution of any dispute either from the commissioner
17 or court of last resort that [~~which~~] determines the injury is not compensable; [~~either from~~
18 ~~the commissioner or court of last resort;~~] or [~~documentation of~~]

19 (B) a claimant's failure to respond in accordance with subsection
20 (a)(6)(B) of this section.

21 (h) A copy of the prescribed forms under this section are on the division's website
22 at www.tdi.texas.gov/wc/index.html. An insurance carrier seeking reimbursement from the
23 SIF must [~~shall~~] timely provide to the SIF administrator by electronic transmission, as that
24 term is used in §102.5(h) of this title, all forms and documentation reasonably required by
25 the SIF administrator to determine entitlement to reimbursement or payment from the
26 SIF and the amount of reimbursement to which the insurance carrier is entitled. The

- 1 insurance carrier must also provide notice to the SIF of any relevant pending dispute,
- 2 litigation, or other information that may affect the request for reimbursement.