

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 131: BENEFITS--LIFETIME INCOME BENEFITS

28 TAC §131.1 - INITIATION OF LIFETIME INCOME BENEFITS; NOTICE OF DENIAL

1. INTRODUCTION.

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes new §131.1, concerning Initiation of Lifetime Income Benefits; Notice of Denial. New §131.1 is necessary to achieve the goals of Labor Code §402.021(b)(3) and (b)(8), entitled Goals; Legislative Intent; General Workers' Compensation Mission of Department. Labor Code §402.021(b)(3) requires that injured employees are provided income and medical benefits in a timely and cost-effective manner. Labor Code §402.021(b)(8) outlines the Texas workers' compensation system's goal to effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system.

New §131.1 ensures these goals are met by requiring insurance carriers initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits by establishing a 60-day deadline for the initial payment of or denial of lifetime

income benefits; by establishing a 15-day deadline for the initial payment of lifetime income benefits after the carrier reasonably believes the injured employee is eligible; and by requiring that the insurance carrier send a plain language notice of denial of eligibility to the injured employee and the Division explaining the reasons for the denial and the right of all parties to initiate dispute resolution.

The statutory criteria for lifetime income benefits is outlined in Labor Code §408.161, concerning Lifetime Income Benefits. Labor Code §408.161 states that lifetime income benefits are paid until the death of the employee for:

- (1) total and permanent loss of sight in both eyes;
- (2) loss of both feet at or above the ankle;
- (3) loss of both hands at or above the wrist;
- (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;
- (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or
- (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

New §131.1 will require that all reviews regarding an injured employees' eligibility to lifetime income benefit claims are evaluated with all of the statutory criteria in mind, instead of reviews where each criterion under Labor Code §408.161 is examined separately. This ensures the goals of Labor Code §402.021(b)(3), as well as to satisfy the requirements of Labor Code §408.081, concerning Income Benefits, which provide that an employee is entitled to timely and accurate income benefits. The Division further notes that an insurance carrier is required to process claims promptly in a reasonable

and prudent manner under Labor Code §415.002(a)(11), concerning Administrative Violation by Insurance Carrier.

Workers' compensation stakeholder feedback was considered and incorporated throughout the informal draft and proposal process. As part of the development process for these proposed rules, the Division posted informal working drafts of these sections on its website on June 20, 2014 and August 19, 2014 and received written comments from system participants. These proposed rules incorporate several recommendations from system participants.

Section 131.1 addresses Initiation of Lifetime Income Benefits; Notice of Denial.

New §131.1(a) requires insurance carriers to initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 as a result of the compensable injury. New §131.1(a) reaffirms an insurance carrier's existing duties to adjust claims and initiate benefit payments promptly as and when they are due. Prompt initiation of claims payments is an existing requirement of Labor Code §409.021, concerning Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation. Additionally, under Labor Code §415.002(a), concerning Administrative Violation by Insurance Carrier, an insurance carrier or its representative commits an administrative violation if it fails to process claims promptly in a reasonable and prudent manner or if it fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. New §131.1(a) also reaffirms the current requirements under Labor Code §408.081(a),

concerning Income Benefits, and §402.021(b)(3), that insurance carriers pay and the injured employees receive all income benefits they are entitled to timely and accurately.

New §131.1(b) provides that an insurance carrier must either initiate or deny lifetime income benefits within 60 days from the receipt of the injured employee's written request and after considering all the factors of Labor Code §408.161. An insurance carrier's piecemeal review of an injured worker's request for lifetime income benefits under Labor Code §408.161, and fragmented response on a paragraph by paragraph basis, can delay the review process and hinder the injured employee from receiving timely lifetime income benefits.

New §131.1(b) provides that an insurance carrier's failure to respond to an injured workers' request for lifetime income benefits within the 60-day timeframe does not constitute a waiver of the insurance carrier's right to dispute eligibility to lifetime income benefits. The Division determined that 60 days is an adequate amount of time for an insurance carrier to review an injured employee's eligibility under Labor Code §408.161. The Division weighed the factors of the injured employee's need for prompt payment of lifetime income benefits against the insurance carrier's need to have more time to investigate an injured employee's request for lifetime income benefits that may not contain all of the necessary information needed to process the request. The Division determined that the 60-day deadline was an adequate amount of time based on stakeholder feedback throughout the rule drafting process. The 60-day timeline also reflects existing Division timelines for investigating a potential beneficiary's eligibility for death benefit payments and will ensure consistent requirements for ease of compliance.

The Division notes that the waiver language in new §131.1(b) speaks to an injured worker's eligibility for lifetime income benefits, not to the compensability of the claim. An insurance carrier still waives its right to contest compensability under Labor Code §409.021 if the insurance carrier does not contest compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury.

New §131.1(b) is proposed under the Division's general rulemaking authority under Labor Code §402.00111, regarding Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking, which provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. New §131.1(b) is also proposed under the Division's general rulemaking authority under Labor Code §402.061, regarding Adoption of Rules, which provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

New §131.1(b) is also necessary to ensure that insurance carriers pay and the injured employees receive all benefits as required by Labor Code §§408.081(a), 415.002(a)(11), 415.002(a)(12), 402.021(b)(3), and 409.021.

New §131.1(c) requires the insurance carrier to make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes the injured employee is eligible for lifetime income benefits. The Division notes that the initiation of lifetime income benefits without a final decision,

order, or other action of the commissioner does not waive the insurance carrier's right, in accordance with Labor Code §409.021, to contest the compensability of the injury. This requirement reflects the existing requirement for initiation of all benefits under Labor Code §409.021(a), which requires an insurance carrier to begin the payment of benefits not later than the 15th day after the date on which an insurance carrier receives written notice of an injury. However, Labor Code §409.021(a) concerns the initiation of the first type of workers' compensation benefits paid under the claim, while the requirement in §131.1(c) triggers the initiation of lifetime income benefits regardless of whether the insurance carrier has been making another type of income benefit payment. New §131.1(c) provides that the 15-day initial payment of lifetime income benefits is the same for both when lifetime income benefits are the first benefit type on the claim and when lifetime income benefits are not the first benefit type on the claim to ensure consistent requirements for ease of compliance. The requirements that lifetime income benefits must be initiated within 15 days regardless of whether the insurance carrier has been making another type of benefit payment is proposed under the Division's general rulemaking authority under Labor Code §402.00111 and §402.061.

New §131.1(c) is necessary to fulfill the goals of Labor Code §402.021(b)(3), which states that the Texas workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. New §131.1(c) is also necessary to implement Labor Code §408.081, which provides that an employee is entitled to timely and accurate income benefits.

Although an insurance carrier must initiate or deny an injured employee's request for lifetime income benefits within 60 days under new §131.1(b), insurance carriers are still required to make the first payment on or before the 15th day after the insurance carrier reasonably believes the injured employee is eligible for lifetime income benefits. New §131.1(b) does not authorize an insurance carrier to delay initiation of lifetime income payments to an injured employee beyond 15 days after the insurance carrier reasonably believes the injured employee is eligible for lifetime income benefits. The Division also notes that nothing in this rule is intended to change the requirement that weekly income benefits begin to accrue on the eighth day after the date of injury under Labor Code §408.082, concerning the Accrual of Right to Income Benefits.

New §131.1(d) outlines the form and manner in which an insurance carrier must issue a denial of lifetime income benefits to an injured employee. If the insurance carrier receives a request for lifetime income benefits from an injured employee, and the insurance carrier believes the insured employee is not eligible, the insurance carrier shall deny eligibility by sending a plain language notice of denial of eligibility to the injured employee and to the Division. The denial of eligibility must be in the form and manner prescribed by the Division and must be sent within 60 days of receipt of the injured employee's written request for lifetime income benefits. The notice of denial of eligibility must include the following: (1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that

simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial do not satisfy these requirements; (2) contact information including the adjuster's name, toll-free telephone and fax numbers, and email address; and (3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

This section will help streamline the denial process because insurance carriers are already familiar with its requirements as they closely track existing requirements in §124.2(h) of Title 28 of the Texas Administrative Code relating to Carrier Reporting and Notification Requirements. Additionally, §124.2(e)(1) and §124.2(e)(4) of the Texas Administrative Code impose existing requirements on insurance carriers to notify the Division and the injured employee within 10 days of making the initial income benefit payment on a claim and the initial payment after making a change from one income benefit type to another. This section ensures that communication between insurance carriers and injured employees is consistent and thorough and that injured employees understand the reason for the denial and their right to dispute the insurance carrier's decision by requesting a benefit review conference. Since the reason for denial of payment of lifetime income benefits to the injured employee must be written in plain language, it should not include the unnecessary use of technical terms, acronyms, and abbreviations. Additionally, the insurance carrier's notice of denial under new §131.1(d) does not constitute a request for a benefit review conference.

New §131.1(e) provides that an injured employee may contest an insurance carrier's denial of eligibility for lifetime income benefits by requesting a benefit review conference as provided by Chapter 141 of Title 28 of the Texas Administrative Code (relating to Dispute Resolution--Benefit Review Conference). New §131.1(e) is necessary to fulfill the goals of the workers' compensation system outlined in Labor Code §402.021(b)(5) and §402.021(b)(8) to minimize the likelihood of disputes and resolve them promptly and fairly when identified and effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system.

New §131.1(f) clarifies new §131.1 does not limit an insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c). For example, if an insurance carrier receives a written request for lifetime income benefits and then five days later has a reasonable belief the injured employee is entitled to lifetime income benefits, the insurance carrier must initiate payment within 15 days, and the deadline is not extended to day 60 after receipt of request. This is necessary to fulfill the goals of Labor Code §402.021(b)(5), which requires that the Texas workers' compensation system minimize the likelihood of disputes and resolve them promptly and fairly when identified. New §131.1(f) is necessary to fulfill the goals of Labor Code §402.021(b)(3), which states that the Texas workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. New §131.1(f) is also necessary to

implement Labor Code §408.081, which provides that an employee is entitled to timely and accurate income benefits.

New §131.1(g) provides the effective date for the rule. This is necessary in order to provide additional time for insurance carriers to fulfill the requirements of this section including possible procedural and tracking changes in the systems that insurance carriers employ for adjusting claims.

2. FISCAL NOTE

Brent Hatch, Director of Return-to-Work and Special Initiatives, has determined that for each year of the first five years the new section is in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the section, except to the extent set forth below. There will be no measurable effect on local employment or the local economy as a result of the proposal. Labor Code §2001.024(4), concerning content of notice, requires an explanation of any additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed more fully below.

3. PUBLIC BENEFIT/COST NOTE.

Mr. Hatch has also determined that, for each year of the first five years that new §131.1 is in effect, there are several public benefits anticipated because of the

enforcement and administration of the proposal, as well as potential costs for persons to comply with the proposal.

ANTICIPATED PUBLIC BENEFITS

The public benefits anticipated as a result of the proposal include (i) ensuring insurance carriers consider all eligibility criteria for lifetime income benefits listed under Labor Code §408.161; (ii) promoting consistency in lifetime income benefit procedures by creating deadlines for determination of eligibility and initiation of payment; and (iii) protecting injured employees' rights by requiring that the denial of lifetime income benefits be consistent, documented, and that all parties will be informed of their right to initiate dispute resolution.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

Mr. Hatch anticipates that there are probable costs to persons required to comply with several of the proposed new provisions during each year of the first five years that the rule will be in effect. The Division notes that lifetime income benefit claims make up a small percentage of the overall claims in the Texas workers' compensation system. According to the Division's System Data Report, there were 58 lifetime income benefit claims in 2012 compared to 48,031 temporary income benefit claims and 18,493 impairment income benefit claims. The small number of claims that receive lifetime income benefits will likely minimize any potential costs of complying with the proposal.

The Division anticipates costs for compliance with new §131.1(b), which establishes a 60-day deadline for insurance carriers to either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits upon receipt of the injured employee's written request. This new deadline may require procedural and tracking changes in the systems that insurance carriers employ for adjusting claims. To analyze the current systems and develop the necessary features to comply with new §131.1, the insurance carrier may need to engage the services of systems software engineers for computer applications and software development, as well as computer programmers.

The United States Department of Labor, Bureau of Labor Statistics' May 2012, Occupational Employment Statistics indicates that the average hourly wage for these professions in Texas are: \$47.80 for software engineers; (<http://www.bls.gov/oes/current/oes151133.htm#st>); and \$37.78 for computer programmers, (<http://www.bls.gov/oes/current/oes151133.htm#st>). The Division anticipates that insurance carriers have the information necessary to determine their individual costs to comply based on their current procedures addressing lifetime income benefits.

The Division has determined that the deadline in §131.1(c) requiring the insurance carrier to make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier makes a determination of eligibility will add no additional costs to the insurance carrier because of the existing requirements in Labor Code §409.021(a). Labor Code §409.021(a) requires an insurance carrier to

begin the payment of benefits as required by law not later than the 15th day after the date on which an insurance carrier receives written notice of an injury.

The Division anticipates costs for compliance with new §131.1(d). Insurance carriers may incur costs issuing the plain language notice of denial of eligibility to injured employees through regular mail, although the Division notes that some insurance carriers may already be incurring similar costs for sending their own written notices of denial of eligibility to injured employees who request lifetime income benefits prior to the adoption of these proposed rules. According to the U.S. Postal Service business price calculator, available at: <http://dbcalc.usps.gov/>, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is 27 cents. The Division determined that the cost of a standard business envelope is two cents. Accordingly, the Division estimates each mailing would be no more than 29 cents.

The insurance carrier may incur costs for an administrative assistant to mail and process the written agreements if the insurance carrier is not already sending written notices of denial of eligibility to injured employees who request lifetime income benefits. An administrative assistant working in an insurance-related industry in Texas earns a median hourly wage of \$22.98, according to the Texas Workforce Commission OES Report available at:

<http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5242&occcode=43-6011&compare=2>. The number of hours that will be required to comply with a particular proposed requirement will vary, and as a result, any

total cost would best be determined by the insurance carrier. The Division anticipates that the insurance carriers have the information necessary to determine their individual costs, including the number of mailings, the number of pages to be mailed, and the number of hours that an administrative assistant will incur to mail and process the written agreements.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES.

Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(1) defines a “micro business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

In accordance with Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on small and micro-businesses because they will be required to comply with the 60-day timeframe to initiate or deny lifetime income benefits, send a plain language notice describing the reasons for any denial to the Division and the injured employee on a form prescribed by the Division, and must initiate lifetime income benefits within 15 days after the date the insurance

carrier should reasonably believe that the injured employee is eligible for lifetime income benefits as a result of the compensable injury.

According to the Texas Department of Insurance records, there are currently 269 insurance carriers authorized to write workers' compensation coverage in Texas. The Division does not know the total number of persons affected by the proposal or the number that will be small or micro-businesses under Government Code §2006.002(c), because the Division does not have data on the number of employees insured by each insurance carrier. This number does not include the number of certified self-insured employers or governmental entities. The Division does not have data on the number of employees insured by each certified self-insured employer or governmental entity. The Division estimates that the majority of insurance carriers required to comply with new §131.1 do not qualify as small or micro-businesses for the purposes of Government Code §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Since the Division has determined that the proposed amendments may have an adverse economic effect on small or micro-businesses, this proposal contains the required economic impact statement and a regulatory flexibility analysis, as detailed under Government Code §2006.002.

The specific costs to small and micro-businesses are in the Public Benefit/Cost Note part of this proposal. The Division, in accord with Government Code §2006.002(c)(1), has considered three alternative methods of achieving the purpose of

the proposed rule that would not adversely affect small or micro-businesses. The three alternative methods are (i) exempting small and micro-businesses from submitting the required plain language notice to the Division and the injured employee; (ii) exempting small and micro-businesses from the 15-day requirement to initiate lifetime income benefits under §131.1(c); and exempting small and micro-businesses from the 60-day timeframe to initiate or deny lifetime income benefits. The Division has determined that adopting any of these alternatives for small or micro-businesses is neither legal nor reasonable.

The Division rejected these options because implementing different requirements or standards would not be in the best interest of injured employees. These exempted employees may no longer benefit from the requirements that the denial of lifetime income benefits be consistent, documented, and that all parties will be informed of their right to initiate dispute resolution. Additionally, the 15-day initiation requirement in §131.1(c) reflects existing statutory requirements and promotes consistency in the Texas workers' compensation system. Insurance carriers must initiate lifetime income benefits within 15 days of receiving a notice of injury under existing requirements in Labor Code §409.021(a) if the injured employee meets the eligibility requirements for lifetime income benefits under Labor Code §408.161. Insurance carriers must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective under existing requirements in Labor Code §402.021(b)(3). Additionally, Labor Code §415.002(a)(12) provides, in part, that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if

a legitimate dispute does not exist as to the liability of the insurance carrier. The 60-day timeframe to initiate or deny lifetime income benefits is necessary to ensure that insurance carriers pay and the injured employees receive all benefits as required by Labor Code §§408.081(a), 415.002(a)(11), 415.002(a)(12), 402.021(b)(3), and 409.021. The clarifications in new §131.1 regarding initiation of lifetime income benefit payments will also prevent disparate handling of similar claims in the workers' compensation system. Exempting small or micro-businesses from the requirement to timely pay lifetime income benefits would be contrary to the intent of the statute that that insurance carriers pay and the injured employees receive all benefits as required by Labor Code §§408.081(a), 415.002(a)(11), 415.002(a)(12), 402.021(b)(3), and 409.021.

Creating an exemption for small or micro-businesses from sending a plain language notice to the injured employee is also not reasonable because the exemption would be contrary to the goals of Labor Code §402.021(b)(8) to effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system. Because insurance carriers are currently required to notify injured employees and the Division pursuant to 28 TAC §124.2(e)(1) and §124.2(e)(4), the new notification requirements under §131.1 will not be a significant additional burden to small and micro-businesses. Insurance carriers must send plain language notices to injured employees under existing requirements in 28 TAC §124.2(e)(1) and §124.2(e)(4) within 10 days of making the initial payment on a claim and within 10 days of making the initial payment after making a change from one income benefit type to another.

Section 2006.002(c-1) of the Government Code requires that the regulatory analysis “consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses.” Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The purpose of the clarifications in new §131.1 is to consistently and uniformly protect the economic welfare of all injured employees who incurred catastrophic injuries and who are eligible for lifetime income benefits, or are in a position to dispute a denial of lifetime income benefits, regardless of the size of the insurance carrier's business. The purpose is not just to protect the economic interests of those injured employees covered by insurance carriers that do not meet the definitions of small or micro-businesses in the Government Code §2006.001(1) and (2). To waive or modify the requirements of the proposed clarification for small and micro-businesses would result in a disparate effect on injured employees affected by the proposed rule and would not be equally protective of the economic welfare of injured employees covered by insurance carriers that qualify as small or micro-businesses. Therefore, the Division has further determined that there are no regulatory alternatives, including the waiving or modifying of the requirements of proposed new §131.1, that will sufficiently protect the economic interests of consumers and the economic welfare of the state.

5. TAKINGS IMPACT ASSESSMENT.

The Division has determined that no private real property interests are affected by this proposal and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on November 10, 2014. Comments may be submitted via the internet through the Texas Department of Insurance website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY.

The amendments are proposed under the Labor Code §§408.161, 415.002(a)(11), 415.002(a)(12), 415.002(a)(13), 402.021(b)(5), 402.021(b)(3), 402.021(b)(8), 402.022, 408.081, 409.021, 402.00111, and 402.061. Labor Code §408.161 states the requirements for lifetime income benefits eligibility, the amount the injured employee is owed, and how the insurance carrier may pay the injured employee.

Labor Code §415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner.

Labor Code §415.002(a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier.

Labor Code §415.002(a)(11) provides that an insurance carrier or its representative commits an administrative violation if that person misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits.

Labor Code §402.021(b)(5) requires that the Texas workers' compensation system minimize the likelihood of disputes and resolve them promptly and fairly when identified.

Labor Code §402.021(b)(3) states that the Texas Workers' Compensation System must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

Labor Code §402.021(b)(8) outlines the workers' compensation system's goal to effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system.

Labor Code §402.022 provides, in part, the commissioner by rule shall ensure that each division form, standard letter, and brochure under this subtitle is written in plain language; is in a readable and understandable format; and complies with all applicable requirements relating to minimum readability requirements.

Labor Code §408.081 provides that an employee is entitled to timely and accurate income benefits.

Labor Code §409.021 requires that an insurance carrier initiate compensation promptly and begins the payment of benefits not later than the 15th day after the date on which an insurance carrier receives written notice of an injury.

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 §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

8. CROSS REFERENCE TO STATUTE.

The following statutes are affected by this proposal: Labor Code §§408.16, 408.162, and 415.002.

9. TEXT.

§131.1 Initiation of Lifetime Income Benefits; Notice of Denial

(a) The insurance carrier shall initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 as a result of the compensable injury.

(b) An injured employee may submit a written request for lifetime income benefits to the insurance carrier. The insurance carrier shall either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits considering all of the eligibility criteria listed under Labor Code §408.161 within 60 days from the receipt of the injured employee's written request. An insurance carrier's failure to respond to the request for lifetime income benefits within the timeframes described in this subsection does not constitute a waiver of the insurance carrier's right to dispute the injured worker's eligibility for lifetime income benefits.

(c) The insurance carrier shall make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes that the injured employee is eligible for lifetime income benefits as a result of the compensable injury. The initiation of lifetime income benefits without a final decision, order, or other action of the commissioner does not waive the insurance carrier's right to contest the compensability of the injury in accordance with Labor Code §409.021(c).

(d) If the injured employee submits a written request for lifetime income benefits and the insurance carrier denies that the injured employee is eligible for lifetime income

benefits, the insurance carrier shall deny eligibility by sending a plain language notice of denial of eligibility to the division, the injured employee, and the injured employee's representative, if any, in the form and manner prescribed by the division up to the 60th day after receipt of the written request. The notice of denial of eligibility shall include:

(1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial does not satisfy the requirements of paragraph (1) of this subsection;

(2) contact information including the adjuster's name, toll-free telephone and fax numbers, and email address; and

(3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

(e) An injured employee may contest the insurance carrier's denial of eligibility for lifetime income benefits or failure to respond to the written request for lifetime income benefits by requesting a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).

(f) Nothing in this section is intended to limit any insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c) of this section.

(g) Effective date. This section is effective on June 1, 2015.

10. CERTIFICATION.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on September 29, 20014.

X

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation