

**Electronic Formats for Electronic Claim Data Request and Report
28 TAC §102.11**

1. INTRODUCTION. The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts new §102.11 concerning electronic formats for electronic claim data request and report. The new section is adopted with changes to the proposed text as published in the September 22, 2006 issue of the *Texas Register* (31 TexReg 8077).

2. REASONED JUSTIFICATION. The 77th Texas Legislature, Regular Session, 2001, enacted House Bill (HB) 1562, amending Labor Code §402.084 to authorize the Texas Workers' Compensation Commission, now the Division, to establish by rule a reasonable fee for information requested in an electronic data form by subclaimants or their representatives to control insurance fraud. The 79th Texas Legislature, Regular Session, 2005, enacted HB 251, amending Labor Code §402.084 to require the Division to release to an insurance carrier certain data, on request, that will allow the carrier to identify potential subclaims and pursue recovery allowed under Labor Code §409.009. HB 251 authorizes the Division to establish by rule a reasonable fee not to exceed five cents for each claimant listed in an information request.

The section is necessary to implement a system that uses a computer program developed by the Division, which compares information submitted from potential subclaimants, or their representatives, to information contained in workers' compensation claim data. The system will provide information in a

secure manner to insurance carriers that will assist them in determining if they provided health insurance coverage for claims that have related workers' compensation claims.

The Division met with stakeholders and invited input on HB 251. Following publication of the proposed new section in the *Texas Register* on September 22, 2006, the Division received three comments. In response to written comments received from interested parties, the Division has changed some of the language in the text of the rule as adopted. The changes do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. The Division revised subsection (e) to eliminate redundancy and subsection (h) to clarify that an insurance carrier is not required to demonstrate that a subclaim exists to request claims information from the Division.

3. HOW THE SECTION WILL FUNCTION. Section 102.11 provides the purpose, defines words and terms associated with the electronic claim data request and report, details the elements that a data request must contain, describes the required information that a report must contain, and describes who can be a requesting party. The section also describes the process the Division will use to match request data to workers' compensation claim data and addresses security and confidentiality. The section establishes the frequency for requests and the fees associated with the requests. The section also requires the requester to execute an agreement with the Division regarding the requested

data, and sets out the requirements of such an agreement. Further, the section contains provisions for injured employee notification and the elements a notification must include.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

General comments.

Comment: A commenter states that the Division should create a process for insurance carriers to be reimbursed without entering into the Division subclaim process. The commenter states that the Division misinterprets Labor Code §409.009 and limits access to the Division's dispute resolution process to those disputes between subclaimants that contest compensability of an injury or illness. According to the commenter, a health care insurer who meets the two elements of §409.009 has no administrative remedy. The commenter's position is that the Division has explicit authority through Labor Code §410.024 to create an administrative remedy for insurance carriers who meet the elements of §409.009 but are not otherwise involved in a workers' compensation case. The commenter proposes language be added to the rule to create an arbitration process which would require a workers' compensation carrier to make direct reimbursement to a health care insurer for compensable medical benefits that were wrongly paid by the health care insurer.

Agency Response: HB 251 relates to the release of certain information regarding workers' compensation claims and does not include or create an

arbitration process for reimbursement of health care insurers. Section 102.11 implements a system for exchanging data regarding workers' compensation claims for certain requesters. The Division lacks statutory authority to create an arbitration process for health care insurers to obtain reimbursement from workers' compensation carriers. Furthermore, the Division disagrees that Labor Code §409.009 is misinterpreted because if a health care insurer meets the elements of §409.009 they may file a written claim with the Division.

Comment: A commenter recommends the Division publish a draft implementation guide and seek stakeholder input prior to adoption of the rule. The commenter further states that any revisions to the guide should be made with at least 90 days notice to allow stakeholders sufficient time to make programming changes.

Agency Response: HB 251 provides clear instruction to adopt rules to implement a process for the exchange of electronic data. HB 251 does not require an implementation guide prior to adoption of the rule. The Division notes that a pilot program for electronic data exchange is already being utilized by trading partners. The Division wants to assure the commenter that it will publish the implementation guide and obtain stakeholder feedback prior to finalizing the implementation guide and sufficient notice will be provided to stakeholders to allow for necessary system or process changes.

Subsection (e). Claim data request

Comment: A commenter recommends deleting subsection (e) because it is redundant since subsection (b)(5) already defines requester using the definition from Labor Code §402.084(b)(8). The commenter states that the statute does not allow a request to be submitted by an agent acting on behalf of an authorized entity.

Agency Response: The Division acknowledges that the subsection may be redundant and has changed subsection (e) to clarify the process for requesting information. The Division disagrees that the statute does not allow a request to be submitted by an agent acting on behalf of an authorized entity because Labor Code §402.084(b)(8) and (c-3) states that an insurance carrier or the authorized representative of the insurance carrier may submit a written request for claims information.

Subsection (h). Claims information

Comment: A commenter states that the proposed rule is required to implement HB 251 and to allow the release of workers' compensation claim information to an insurance carrier that has adopted an anti-fraud plan. The commenter further states that subsection (h) prevents an insurance carrier from obtaining claims information from the Division without pursuing status as a formal subclaimant, and that subsection (h) as drafted violates the Labor Code §408.084(c)(2) and the legislative intent of HB 251. Another commenter recommends deleting language in subsection (h) which requires requesters to destroy claim data records which are not necessary to pursue subclaimant status or reimbursement

by the insurance carrier. The commenter contends that requesters may need this information to reconcile charges from the Division or to later recreate transmissions that are, later determined, not to have been received. The commenter is also concerned about the cost of destroying electronic records.

Agency Response: The Division disagrees that subsection (h) prevents an appropriate insurance carrier from obtaining claims information because subsection (e) allows requests from entities, including appropriate insurance carriers that are authorized by §408.024. However, the Division has clarified subsection (h) by deleting the first sentence to eliminate any confusion about appropriate requesters. The Division disagrees with the comment to delete the language which requires requesters to destroy certain information. Labor Code §402.084(d) requires the Division to adopt rules under §401.024(d) to establish reasonable security parameters for the transfer of information and to establish requirements for the maintenance of requested electronic data. Carriers and their agents, or authorized representatives, must execute and enter into a written agreement, regarding the security parameters, with the Division prior to carriers request for information. Labor Code §402.084 authorizes a process for electronic exchange of data so that an insurance carrier can determine if a workers' compensation claim exists for individuals insured by the insurance carrier. Accordingly, the section implements a process for carriers to identify potential subclaims and pursue appropriate reimbursement, by submitting a list of persons that are certified as insureds of the carrier to the Division to obtain

workers' compensation claim information for those persons. Information obtained which is not necessary for this process exceeds the statutory authority of Labor Code §402.084 and subsection (h) is within the purview of the Labor Code and HB 251.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For with changes: MedRecovery Management, Texas Mutual Insurance Company and the 4600 Texas Group.

Against: None.

6. STATUTORY AUTHORITY. The section is adopted under Labor Code §§402.084, 401.024, 409.009, 402.00111, and 402.061. Section 402.084 provides for the exchange of information between requesters and the Division to determine if a workers' compensation claim exists. It also authorizes the Commissioner of Workers' Compensation to establish by rule a reasonable fee, not to exceed five cents for each claimant listed in a request. Further, it requires the Commissioner of Workers' Compensation to adopt rules under §401.024(d) to establish reasonable security parameters and requirements regarding the maintenance of electronic data in the possession of an insurance carrier. Section 401.024 allows the Commissioner of Workers' Compensation to prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission. Section 409.009 sets out the situations when a

person may file a written claim with the Division as a subclaimant. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner of Workers' Compensation the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

7. TEXT.

§102.11. Electronic Formats for Electronic Claim Data Request and Report.

(a) The Division prescribes standard electronic formats by utilizing implementation guides for data requests and data reports for the purpose of exchanging data between the Division and insurance carriers, as defined in Labor Code §402.084.

(b) The following words and terms, when used in this section, shall have the following meanings:

(1) Claim Data Request and Report Implementation Guide (Guide)-
-The Division specification document for the Claim Data Request and the Claim Data Report that defines specific data requirements, data set transactions, data mapping, data edits and fees per record available at www.tdi.state.tx.us/wc.

(2) Claim Data Report--The electronic report generated by the Division in the format specified by the Guide. The report contains data for claims meeting confidence match criteria defined in the Guide.

(3) Claim Data Request--The electronic request submitted by a requester in the format specified by the Division in the Guide.

(4) Record--An electronic representation of one insured person containing a set of unique identifiers including the full name, date of birth, gender, and social security number, if available. Each set of individual identifiers included in a Claim Data Request represents a separate record.

(5) Requester--An insurance carrier that has adopted an antifraud plan under Labor Code §402.084(b)(8) and qualifies as an insurance carrier under Labor Code §402.084(c-1) or its authorized representative.

(c) A Claim Data Request must contain the following elements:

(1) all fields required in the applicable Guide as defined in subsection (b) of this section;

(2) complete, current and correct values as described in the applicable Guide; and

(3) records of persons who are or were valid members of the requesters' benefit programs and whose claims may be related to a workers' compensation claim.

(d) A Claim Data Report must contain:

(1) all fields required in the applicable Guide; and

(2) complete, current and correct values as described in the applicable Guide.

(e) A Claim Data Request may be submitted by a requester.

(f) The Division will match the records submitted by a requester against the Division's claim data using a matching methodology published in the Guide. The search will include all claims on record with the Division relating to injuries sustained on or after September 1, 2002. For each record submitted, the Division will report:

(1) the existence of a positive match with one or more workers' compensation claims; or

(2) the failure to match the record to any recorded workers' compensation claim.

(g) File transfers between requesters and the Division shall be sent using secured file transfer protocol (SFTP) with access controlled by a unique username and password.

(h) The data shall not be shared or disclosed to any other person or entity, except as necessary to document and pursue reimbursement with the appropriate workers' compensation carrier or claims administrator or through Division dispute resolution procedures. Requesters shall destroy all electronic or paper records related to Claim Data Requests that are not needed to pursue subclaimant status or recovery of reimbursement by an insurance carrier as defined by Labor Code §402.084(c-1).

(i) A requester may submit a Claim Data Request once every 30 days for each covered individual.

(j) Unless waived by the Division, the requester shall pay to the Division a fee for each record included in a request. The fee will be established in the Guide, but shall be no more than \$.05 for each record included in the Claim Data Request. Claim Data Requests that include previously submitted requests for records would also be charged a fee of up to \$.05 for each record.

(k) Prior to submitting a Claim Data Request, the requester shall execute a trading partner agreement with the Division in the form and manner prescribed by the Division. The trading partner agreement shall contain:

(1) a statement that the requester agrees to abide by all applicable federal and state laws and regulations;

(2) an agreement to submit only names and identifying information related to bona fide beneficiaries of the requester's benefit plans;

(3) an agreement to comply with Division standards for secure transfer and storage of workers' compensation claim information;

(4) an agreement to comply with Division standards regarding the confidentiality of workers' compensation claim information and the approved uses of that information; and

(5) an agreement to pay applicable fees.

(l) After a match of a record has been determined, the information may be used by the requester as the basis for identification and filing of a subclaim under Labor Code §409.009. When a match has been determined and a subclaim filed, the requester shall contact the injured employee who received the health

care and is the subject of the subclaim. The requester shall provide the injured employee written notice, which includes the following:

(1) the name of the subclaimant;

(2) the dates of service;

(3) the name of the injured employee;

(4) a statement declaring, "As the injured employee in this matter, you will receive notice of all proceedings related to this matter and may participate in those proceedings. To determine whether to take any action in this matter, you may wish to consult with an attorney. You can also contact the Office of Injured Employee Counsel (OIEC) for ombudsman assistance."; and

(5) the phone number and website address of OIEC.

CERTIFICATION. This agency certifies that the adopted section has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2006.

Norma Garcia
General Counsel
Division of Workers' Compensation
Texas Department of Insurance

DWC-06-0051

TITLE 28. INSURANCE

Part 2. Texas Department of Insurance,

Division of Workers' Compensation

Chapter 102. Practices and Procedures—General Provisions

Adopted Section
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IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that new §102.11 specified herein concerning electronic formats for electronic claim data request and report are adopted.

AND IT IS SO ORDERED.

ALBERT BETTS
COMMISSIONER OF WORKERS' COMPENSATION
TEXAS DEPARTMENT OF INSURANCE

ATTEST:

Norma Garcia
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. DWC-06-0051