



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: August 1, 2019

RE: Informal Working Draft of Rules to Implement SB 2551

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is [accepting comments on an informal working draft of rule amendments](#) for 28 Texas Administrative Code §§124.2, 124.3, 180.8, and 180.26 to implement Senate Bill (SB) 2551, 86th Legislature (2019).

Rule 124.2 outlines the amended process for claim notification pursuant to SB 2551.

The amendments to Rule 124.3 describe an insurance carrier's obligation to investigate when it receives notice of an injury for which a presumption may apply on a claim and the process they must follow when investigating a presumption claim under Chapter 607 of the Texas Government Code.

Rule 180.8 relates to the assessment of administrative penalties in claims where the insurance carrier provided notice under Section 409.021(a-3).

Rule 180.26 is amended to include the additional factors to be considered when determining sanctions. Additional editorial corrections are made throughout to align them with current style and usage.

Under SB 2551, DWC is required to adopt all rules necessary no later than January 1, 2020. The informal working draft of the rules would establish that under certain circumstances, an insurance carrier is not required to comply with the 15-day deadline to either initiate benefit payments in response to a claim or provide notice of refusal. To qualify for this exemption, the insurance carrier must send to both the claimant and DWC, within 15 days, a notice describing the steps it has taken to investigate the employee's injury and any evidence it believes is reasonably required for it to complete its investigation of the compensability of the injury. The changes in law made by SB 2551 apply to a claim for benefits filed on or after June 10, 2019.

Rule 124.2

- Adds new Subsection (f) and (g) to establish the notice requirements provided for under Labor Code §409.021(a-3).
- Provides additional denial notice requirements in Subsection (i) if the denial relates to a written notice of injury where a presumption under Government Code Chapter 607, Subchapter B, may be applicable.
- Adds a new Subsection (r) to establish minimum standards for plain language notices.

Rule 124.3

- Adds a new Subsection (b) to provide that if an insurance carrier receives written notice of injury where a presumption under Government Code Chapter 607, Subchapter B, may apply, the insurance carrier is required to investigate each element thoroughly in addition to investigating the compensability of the injury, the insurance carrier's liability for the injury, and the accrual of benefits.
- Adds a new Subsection (c) to provide for the filing of a notice of denial as required by Labor Code §409.022 (relating to Refusal to Pay Benefits; Notice; Administrative Violation) and Rule 124.2. Subsection (c) also conforms existing rule language governing an insurance carrier's liability for any benefits that accrue and the insurance carrier's duty to initiate benefits with changes made by SB 2551.
- Deletes obsolete penalty provisions in what is now Subsection (c)(4)(A).
- Deletes obsolete transition language in existing Subsection (f).

Rule 180.8

- Conforms the requirements for notices of violations with the changes made by SB 2551 by including a description of the underlying facts considered by DWC for each of the factors listed in Labor Code §415.021(c) and (c-2), if applicable in the statement of the basis for each proposed sanction.

Rule 180.26

- Adds a new Subsection (f) to establish when determining which sanction to impose against a system participant and the severity of that sanction in claims where the insurance carrier provided notice under Labor Code §409.021(a-3). DWC shall also consider the factors listed in Labor Code §415.021(c-2).

DWC will host a stakeholder meeting to discuss the rules on Wednesday, August 21, 2019, at 1:30 p.m. at the DWC Central Office located at 7551 Metro Center Drive, Suite 100, in Austin. Written comments on the informal working draft of the rules may be submitted at the meeting, by email to RuleComments@tdi.texas.gov, or by mailing or delivering your comments to:

Cynthia Guillen
Office of General Counsel, MS-4D
Texas Department of Insurance, Division of Workers' Compensation
7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

To be considered, comments must be received by 5 p.m., Central time, on Friday, August 23, 2019.

DWC provides reasonable accommodations for persons attending meetings, hearings, or educational events as required by the Americans with Disability Act. If you need accommodations, please contact Cynthia Guillen at 512-804-4275 or at RuleComments@tdi.texas.gov before the end of day Monday, August 19, 2019.

This informal working draft of the rules and opportunity to comment is the first step in the rulemaking required by SB 2551. DWC will review any comments received and prepare a formal proposed rule for publication in the *Texas Register*.