

1 **CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS**

2
3 **TEXT.**

4 §102.4. General Rules for Non-Division [~~Non-Commission~~] Communications.

5 (a) All written communications to a claimant (who is either an employee, an
6 employee's legal beneficiary, or a subclaimant) must [~~shall~~] be sent to the most recent
7 address or fax [~~facsimile~~] number supplied by the claimant. If an address has not been
8 supplied by the claimant, the most recent address provided by the employer must [~~shall~~]
9 be used.

10 (b) After an insurance carrier, employer, or health care provider is notified in writing
11 that a claimant is represented by an attorney or other representative, copies of all written
12 communications related to the claim or to the claimant must [~~shall thereafter~~] be mailed
13 or delivered to the representative as well as the claimant, unless the claimant requests
14 delivery to the representative only.

15 (c) Insurance carriers must [~~shall~~] provide a toll free telephone number for receipt
16 of communication from claimants or [~~and/or~~] their representatives with a sufficient
17 quantity of lines to service their volume of business.

18 (d) Insurance carriers and health care providers must [~~shall~~] provide telephone
19 numbers, [and] fax [facsimile] numbers, and email addresses [~~in~~] sufficient [~~quantity of~~
20 lines] to service the volume of business for receiving required verbal and written
21 communications on [~~regarding~~] workers' compensation claims.

22 (e) Insurance carriers must ensure effective and timely communication with
23 claimants and other parties in the system. If a claimant is unable to communicate with an
24 insurance [~~a~~] carrier due to a language barrier and the claimant is unable to provide a
25 person that [~~who~~] he or she trusts to serve as a translator, the insurance carrier must [~~shall~~]

1 provide a means to translate except as needed for a division ~~Commission~~ proceeding. The
2 claimant must ~~[shall]~~ not be required to contract with or otherwise employ a translator.

3 (f) When a claimant contacts an insurance ~~[a]~~ carrier and requests a response on
4 ~~[regarding]~~ their claim, the response must ~~[shall]~~ be verbally provided or sent in writing
5 by the insurance carrier within five working days of receiving the request, unless the
6 request is redundant or the response duplicates ~~[is duplicative of]~~ information previously
7 provided.

8 (g) Insurance carriers must ~~[shall]~~ employ or provide a sufficient number ~~[numbers]~~
9 of personnel ~~[person]~~, including adjusters appropriately licensed by the Texas Department
10 of Insurance, to meet their obligations under the Act and this title.

11 (h) Unless the great weight of evidence indicates otherwise, written
12 communications will ~~[shall]~~ be deemed to have been sent on:

13 (1) the date received~~;~~ if sent by fax, personal delivery, or electronic
14 transmission; or~~;~~

15 (2) the date postmarked if sent by mail through ~~[via]~~ United States Postal
16 Service regular mail, or, if the postmark date is unavailable, the later of the signature date
17 on the written communication or the date it was received minus five days. If the date
18 received minus five days is a Sunday or legal holiday, the date deemed sent must ~~[shall]~~
19 be the next previous day that ~~[which]~~ is not a Sunday or legal holiday.

20 (i) An insurance carrier must ~~[shall]~~ maintain adjuster's notes on activities and
21 verbal communications involved with the administration of a claim, with the exception of
22 privileged attorney-client communications. The adjuster's notes must, ~~[shall],~~ at a
23 minimum, include the date of the activity or communication, the identity of the insurance
24 carrier staff involved in the contact, the person contacted by or contacting the insurance
25 carrier, and a summary of the activity or communication.

1 (j) An insurance carrier, employer, or health care provider that receives a written
2 communication related to a workers' compensation claim must ~~[shall]~~ date stamp or
3 otherwise note ~~[annotate]~~ on the document ~~[indicating]~~ the date the written
4 communication was received.

5 (k) Written communications include all records, reports, notices, filings,
6 submissions, and other information contained either on paper or in an electronic format.

7 (l) For purposes of this title, if a written communication is required to be filed with
8 both the division ~~[Commission]~~ and another person by the Act or division ~~[Commission]~~
9 rules, the other person will ~~[shall]~~ be presumed to have received the written
10 communication on the date the division ~~[Commission]~~ received its copy, unless the other
11 person noted ~~[annotated]~~ the date of receipt as provided in subsection (j) of this section,
12 or the means of delivery of the communication was different. In this situation, the other
13 person has the burden of proving that they ~~[it]~~ did not receive or timely receive the written
14 communication.

15 (m) ~~[Electronic communication refers to the electronic transmission of claim or~~
16 ~~medical information.]~~ Electronic transmission is defined as transmission of information by
17 fax, ~~[facsimile,]~~ electronic mail, electronic data interchange (EDI), or any other similar
18 method and does not include telephonic communication. ~~[Electronic communication for~~
19 ~~reporting purposes is described in §102.5(e) of this chapter (relating to General Rules for~~
20 ~~Written Communications to and from the Commission), §124.2 of this title (relating to~~
21 ~~Carrier Reporting and Notification Requirements), and §134.802 of this title (relating to~~
22 ~~Insurance Carrier Medical Electronic Data Interchange to the Commission.)~~

23 (n) If the division ~~[Commission]~~ receives an allegation that an insurance ~~[a]~~ carrier
24 or health care provider has failed to provide a sufficient ~~[number of]~~ toll-free telephone
25 number, ~~[toll]~~ telephone numbers, fax lines, ~~[or facsimile lines,]~~ or email addresses or that

1 ~~[a]~~ an insurance carrier has not provided a sufficient number of adjusters as required by
2 this section, unless the violation appears to be willful or intentional, the ~~[Commission]~~
3 division will not issue a monetary penalty or other sanctions prior to:

4 (1) notifying the alleged violator of the allegation;

5 (2) affording the alleged violator the opportunity to either disprove the
6 allegation or provide mitigating information; and

7 (3) if the violator is unable to disprove the allegation, issuing a written
8 warning to the violator allowing a reasonable grace period of not less than 30 days
9 to correct the noncompliance. The grace period may be less than 30 days if the
10 noncompliance prevents the violator from fulfilling other obligations under this
11 title.

12 (o) A violation as described in subsection (n) will be considered willful or intentional
13 if the violator has been advised of complaints such that the violator knew or should have
14 known that the ~~[number of]~~ toll-free telephone number, ~~[toll]~~ telephone numbers,
15 ~~[facsimile] fax [lines] numbers, email addresses~~ or number of adjusters was insufficient
16 and the violator cannot establish that it made good faith efforts to correct the deficiency
17 or if the violator otherwise exhibited willful or intentional conduct.

18 (p) For purposes of determining the date of receipt for ~~[non-commission]~~ non-
19 division written communications, unless the great weight of evidence indicates otherwise,
20 the ~~[Commission]~~ division ~~[shall]~~ will deem the received date to be five days after the date
21 mailed via United States Postal Service regular mail; or the date faxed or electronically
22 transmitted.

23

24 §102.5. General Rules for Written Communications to and from the ~~[Commission]~~ Division.

1 (a) After the [~~Commission~~] division is notified in writing that a claimant is
2 represented by an attorney or other representative, all copies of written communications
3 to the claimant [~~shall~~] will thereafter be sent to the representative as well as the claimant[;].
4 [~~unless the claimant requests delivery to the representative only. However,;~~] [e]Copies of
5 settlements, notices setting benefit review conferences and hearings, and orders of the
6 [~~Commission~~] division [~~shall~~] will always be sent to the claimant regardless of
7 representation status. All written communications to the claimant or claimant's
8 representative will be sent to the most recent address or [~~facsimile~~] fax number supplied
9 on either the employer's first report of injury, any verbal or written communication from
10 the claimant, or any claim form filed by the insurance carrier [~~via~~] through written notice
11 or electronic transmission.

12 (b) All written communications to people [~~persons~~] other than insurance
13 carriers and claimants will be sent to the most recent address or fax number reported to
14 the division [~~Commission~~] by the intended recipient or, in the absence of an address or
15 fax number supplied by the intended recipient, to an address or fax number identified by
16 the division [~~Commission~~].

17 (c) Unless otherwise specified by rule, written communications required to
18 be filed with the division may [~~Commission should~~] be sent to the division headquarters
19 or any division field office. [~~the local a Commission managing the claim, however, written~~
20 ~~communications shall also be accepted at any Commission office.~~]

21 (d) For purposes of determining the date of receipt for [~~these~~] written
22 communications sent by the division, [~~Commission~~] which require the recipient to perform
23 an action by a specific date after receipt[;] unless the great weight of evidence indicates
24 otherwise, the division will [~~Commission shall~~] deem the received date to be the earliest
25 of: five days after the date mailed through the [~~via~~] United States Postal Service regular

1 mail; the first working day after the date the written communication was placed in an
2 insurance [a] carrier's Austin representative's electronic [representative] box; or the date
3 faxed or electronically transmitted as defined in subsection (h) of this subchapter.

4 (e) EDI and other required notices must [Electronic communications shall]
5 be filed or submitted in the format, form, and manner prescribed by the division
6 [Commission] under §124.2 of this title (concerning Insurance Carrier Notification
7 Requirements), and Chapter 134, Subchapter I of this title (concerning Medical Bill
8 Reporting. [Electronic communication is considered filed if on the date received, the
9 record meets the required edit checks to insure data quality. Electronic communication is
10 defined in subsection (h) of this section, §102.4(m) of this chapter (relating to General
11 Rules for Non-Commission Communications), and §134.802 of this title (relating to
12 Insurance Carrier Medical Electronic Data Interchange to the Commission. Claim
13 Electronic Data Interchange records filed pursuant to §124.2 of this title (relating to Carrier
14 Reporting and Notification Requirements):

15 (1) which do not pass the required edit checks in accordance with the
16 International Association of Industrial Accident Boards and Commissions (IAIABC) and
17 Texas EDI Implementation Guides shall be rejected back to the trading partner. Rejected
18 records are not considered received by the Commission and must be corrected and re-
19 submitted. Rejected records must be re-submitted by the original due date to be
20 considered timely filed;

21 (2) which are accepted but in which the Commission identifies errors shall
22 be corrected and resubmitted, in accordance with the Texas EDI Implementation Guide,
23 within 90 days of receipt of the notification of the acceptance with errors through the
24 corresponding transaction acknowledgment.]

1 (f) Unless the great weight of evidence indicates otherwise, written
2 communications received by the division will [~~Commission by means other than electronic~~
3 ~~filing described in subsection (e) of this section and §124.2 of this title, and §134.802 of~~
4 ~~this title (relating to Insurance Carrier Medical Electronic Data Interchange to the~~
5 ~~Commission shall]~~ be deemed to have been sent on:

6 (1) the date received if sent by fax, personal delivery, or electronic
7 transmission; or⁶]

8 (2) the date postmarked if sent by United States Postal Service regular mail,
9 or, if the postmark date is unavailable, the later of the signature date on the written
10 communication or the date it was received minus five days. If the date received minus five
11 days is a Sunday or legal holiday, the date deemed sent will [~~shall]~~ be the next previous
12 day that [~~which]~~ is not a Sunday or legal holiday.

13 (g) Written communications include all records, reports, notices, filings,
14 submissions, and other information contained either on paper or in an electronic format.

15 (h) Electronic transmission is defined as transmission of information by fax,
16 [~~facsimile,~~] electronic mail, EDI, [~~electronic data interchange]~~ or any other similar method
17 and does not include telephonic communication.

18

19 §102.8. Information Requested on Written Communications to the Division.

20 (a) Unless the division prescribed form, format, or manner of a written
21 communication specifies otherwise, all written communications to the division about
22 [~~regarding]~~ an injured employee or claim for benefits must [~~shall]~~ include the following
23 information, if known:

24 (1) the injured employee's full name, date of injury, address, and social
25 security number. If no social security number has been assigned, insert the numerical

1 digits "999" followed by the claimant's birth date or if unknown, the claimant's date of
2 injury^[7] listed by the month, day, and year (MMDDYY).~~[-use of]~~ "999" must ~~[shall]~~ not be
3 used in place of a valid social security number ~~[in order]~~ to meet timeliness of reporting
4 requirements.

5 (2) the name and address of the claimant, if other than the injured employee;

6 (3) the workers' compensation number assigned to the claim by the division;

7 (4) the employer's name and address;

8 (5) the employer's Federal Employer's Identification Number; ~~[(FEIN)];~~

9 (6) the insurance carrier's name;

10 (7) the insurance carrier's policy number; and

11 (8) the insurance carrier's claim number.

12 (b) Written communications filed by claim EDI ~~[Electronic Data Interchange (EDI)]~~
13 under ~~[pursuant to]~~ §124.2 of this title ~~(concerning~~ ~~[relating to]~~ Insurance Carrier
14 ~~[Reporting and]~~ Notification Requirements) must comply with the requirements of
15 Chapter 124, Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data
16 Interchange to the Division). ~~[include all mandatory data elements and all applicable~~
17 ~~conditional data elements required by the International Association of Industrial Accident~~
18 ~~Boards and Commissions (IAIABC) and Texas EDI Implementation Guides.]~~