



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Office of General Counsel (MS-15)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4703 | F: (512) 804-4276 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

To: System Participants

From: Nicholas Canaday, III, General Counsel

Date: October 29, 2019

RE: Proposed Rules to Implement SB 2551

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is accepting public comments on proposed amendments to 28 Texas Administrative Code (TAC) §§124.2, 124.3, 180.8, and 180.26 to implement Senate Bill 2551, 86th Legislature. These amendments involve process changes for claims that may qualify for a presumption under Texas Government Code, Chapter 607, Subchapter B. Editorial corrections are made throughout these rules to provide clarity and to align with current agency style.

Rule 124.2 Insurance Carrier Reporting and Notification Requirements

- Adds Subsection (f) that describes the three alternative actions that an insurance carrier must take no later than the 15th day from the notice of injury: pay the claim, deny it, or issue notice of a continuing investigation.
- Adds Subsection (g) which provides that a "claim for benefits" means the first written notice of injury.
- Adds Subsection (h) that describes the elements of a Notice of Continuing Investigation, as authorized under Texas Labor Code §409.021(a-3).
- Adds Subsection (j) that lists requirements for a notice of denial for a disease or illness covered by Texas Government Code, Chapter 607, Subchapter B.
- Adds Subsection (s) to require insurance carriers to provide all required plain language notices to claimants on the insurance carrier's letterhead, using plain language, and a minimum font size of 12-point.

Rule 124.3 Investigation of an Injury and Notice of Denial or Dispute

- Amends Subsection (a)(1-5) to provide for a Notice of Continuing Investigation.
- Amends Subsection (a)(4) to provide that an insurance carrier's failure to file a timely Notice of Continuing Investigation obligates the insurance carrier to pay all accrued and accruing income and medical benefits, subject to contesting compensability on or before the 60th day from written notice of injury.
- Deletes Subsection (a)(5)(A-C) to remove outdated penalty provisions.
- Amends Subsection (d) to provide for the Notice of Continuing Investigation relating to a claim for death benefits.
- Adds Subsection (e) to provide for the Notice of Continuing Investigation relating to a claim for burial benefits.
- Deletes the obsolete text of Subsection (f).
- Adds Subsection (g) regarding an insurance carrier's investigation of a claim and any applicable statutory presumption. Provides that a claimant is not required to expressly claim a presumption and that an insurance carrier is required to complete its investigation of a claim regardless of whether a presumption applies.

Rule 180.8 Notices of Violation; Notices of Hearing; Default Judgments

- Amends Subsection (b)(4) to include the factors from Labor Code §415.021(c-2).

Rule 180.26 Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies

- Adds Subsection (f) to provide that when an insurance carrier has provided a Notice of Continuing Investigation, DWC must consider the factors under Labor Code §415.021(c-2).
- Amends Subsection (i), previously (h), to note that DWC must consider the factors from Labor Code §415.021(c-2) as part of the appropriateness of a sanction.
- Amends Subsection (j)(2), previously (i), to note that a consent order will include an acknowledgement that DWC considered the factors from Labor Code §415.021(c-2).

The proposed rules were published in the October 25, 2019, issue of the *Texas Register* and are available at www.sos.state.tx.us/texreg/index.shtml. A courtesy copy is on the TDI website at www.tdi.texas.gov/wc/rules/2019rules.html.

DWC has also posted the draft of the new PLN-14, *Notice of Continuing Investigation*, for comment at www.tdi.texas.gov/wc/rules/drafts.html. Comments on the draft notice will be considered independently of comments on the proposed rule amendments.

DWC will host a public hearing on these rules on November 20, 2019, at 10 a.m. at the DWC central office located at 7551 Metro Center Drive, Suite 100, in Austin. 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 noon, Central time, on November 18, 2019.

Written comments on the proposed rules and the new PLN-14 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 on the proposed rules and the new PLN-14 must be received by 5 p.m., Central time, on November 25, 2019.