

CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT
SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF
PAYMENT
28 TAC §124.2

SUBCHAPTER B. INSURANCE CARRIER CLAIM ELECTRONIC DATA INTERCHANGE
REPORTING TO THE DIVISION
28 TAC §§124.100-124.108

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §124.2, concerning insurance carrier reporting and notification requirements and new Subchapter B, 28 TAC §§124.100-124.108, concerning insurance carrier claim electronic data interchange (EDI) reporting to DWC. The purpose of these amendments is to update the outdated workers' compensation claim EDI reporting standard from the currently required International Association of Industrial Accident Boards and Commissions (IAIABC) Release 1.0 to IAIABC Release 3.1.4.

The proposal also creates new Subchapter A, concerning Insurance Carriers: Required Notices and Modes of Payment for 28 TAC §§124.1-124.7. The claim EDI reporting standard is proposed in Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division. The amendments also update the name of the chapter to conform with the agency's current style and create a new Subchapter A, titled Insurance Carriers: Required Notices and Modes of Payment. The rule does not make any changes that affect when notices, such as plain language notices, are due to the injured employee or DWC in §124.2. DWC also does not anticipate making any changes to the language of plain language notices required in §124.2 as a result of this proposal.

DWC posted an informal draft of the rule text on its website on November 17, 2020, and held a stakeholder meeting on December 19, 2020. DWC received eight comments

on the informal draft and considered those comments when drafting this proposal. DWC posted a second informal draft of the rule text on its website on May 25, 2021. DWC received five comments on the second informal draft and considered those comments when drafting this proposal. DWC also requested more feedback from insurance carriers, trading partners, and claim administrators on the cost and time frame needed to comply with the new data collection standard. DWC received 17 comments on the cost and timeframe. DWC considered those comments when drafting this proposal.

EXPLANATION. Amending §124.2 is necessary to relocate and update current claim EDI reporting requirements to proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and to implement the new claim EDI IAIABC Release 3.1.4 reporting standard. The amendments are also necessary to clarify and update existing reporting and notification requirements. The amendments also correct typographic, grammar, and punctuation errors in the current rule text and update rule language to conform the sections to the agency's current style. Some examples of these amendments include changing "shall" to "must" and "facsimile" to "fax," adding "insurance" before "carrier," and updating "Commission" to "division."

New §§124.100-124.108 are necessary to update current claim EDI reporting requirements to the claim EDI IAIABC Release 3.1.4 reporting standard. The amendments also clarify and update existing reporting and notification requirements. In 1995, the 74th Texas Legislature amended the Texas Workers' Compensation Act requiring insurance carriers to submit employers' first reports of injury (FROI) electronically to the Texas Workers' Compensation Commission (TWCC). TWCC adopted rules for EDI processing later that year. TWCC adopted the IAIABC national standards for claim EDI Release 1.0 for claim EDI data. TWCC made changes to claim EDI reporting in 2004 to enable the data to pass to TXCOMP, DWC's web-based claims system. DWC has not made changes to the

claim EDI reporting standard since then. Using the updated national data reporting standard for claim EDI will improve the quality of data reported, allowing DWC to better perform its administrative and regulatory duties. Insurance carriers that operate in other states that already report claim EDI data using the IAIABC Release 3.1.4 reporting standard will also benefit by not having to maintain an outdated reporting standard for Texas claims.

The proposal amends the title of Chapter 124, Carriers: Required Notices and Mode of Payment, to Insurance Carriers: Notices, Payments, and Reporting. This more accurately describes the content of the chapter, since §§124.1-124.7 are proposed to be grouped under a new subchapter titled Subchapter A. Insurance Carriers: Required Notices and Modes of Payment. Proposed Chapter 124, new Subchapter B, titled Subchapter B. Insurance Carrier Claim EDI Reporting to the Division contains claim reporting requirements moved from proposed Subchapter A, §124.2. The amendment to the title of Chapter 124 also updates the rule language to conform the sections to the agency's current style by adding "insurance" before "carrier."

Section 124.2 concerns Insurance Carrier Reporting and Notification Requirements. The proposal amends the title of §102.4 to remove "Reporting" from the title. Proposed Chapter 124, new Subchapter B, titled Subchapter B. Insurance Carrier Claim EDI Reporting to the Division contains claim reporting requirements for insurance carriers.

The proposal removes §124.2(b) because requirements related to the form, format, and matter of claim EDI transmissions are included in proposed Chapter 124, new Subchapter B.

The proposal amends §124.2(c) by adding a reference to proposed Chapter 124, new Subchapter B.

The proposal amends §124.2(c)(1)(A) to clarify that insurance carriers must file electronically with DWC information about a fatality as described in §124.2(c)(1).

The proposal amends §124.2(c) by adding a new §124.2(c)(2) that requires insurance carriers to report information about an acquired claim electronically to DWC no later than the 37th day after the acquiring claim administrator has knowledge of claim-specific information from the previous claim administrator. This timeframe is designed to allow the acquiring claim administrator 30 days to get the minimal information required to report the claim electronically to DWC. The timeframe also includes an additional seven days for the insurance carrier, aligning with the filing timeframe requirement for other claims as detailed in §124.2(c)(1). The proposal amends current §124.2(c)(2) by removing "(Correction)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report corrections electronically. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(c)(3) by removing "(Compensable Death No Beneficiaries/Payees)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report electronically the compensable death of an injured employee without beneficiaries or payees. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(c)(4) by removing "(Change)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report corrections electronically. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(d) by removing "(Denial)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used

to report a claim denial electronically. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(1) by removing "(Initial Payment)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report electronically the first payment of indemnity benefits on a claim. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(2) by clarifying that reporting a change in the net benefit payment amount without a change to the benefit type is the same as reporting caused by a change in the employee's post-injury earnings. This amendment aligns rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

The proposal amends §124.2(e) by adding new §124.2(e)(2) that requires insurance carriers to report the first payment of indemnity benefits on an acquired claim within 10 days of making the first payment. This timeframe aligns with the timeframe for reporting the first payment of an indemnity benefit on a claim as detailed in §124.2(e)(1). Insurance carriers will also be required to use a new plain language notice that specifically notifies an injured employee or beneficiary about the first payment of income benefits on an acquired claim.

The proposal amends §124.2(e)(3) by removing a reference to the change in the net benefit payment amount that was not caused by a change in the employee's post-injury earnings. Proposed amended §124.2(e)(2) now includes reporting all changes in the net benefit payment amounts including, but not limited to, changes resulting from subrogation, attorney fees, advances, and contribution. The proposed change aligns rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

The proposal amends §124.2(e)(4)-(6) by removing "(Change in Benefit Type)," "(Reinstatement of Benefits)," and "(Suspension)," from the text. The terms refer to the maintenance type code description in the claim EDI reporting standard used to report electronic changes in benefit types, reinstatement of benefits, and suspensions of indemnity benefits. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(7) by adding a reference to §129.1(1) that specifies the meaning of employer continuation of salary. The proposal also amends §124.2(e)(7) by removing "(Full Salary)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report electronically when an injured employee is receiving full salary instead of indemnity benefits. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(7)(A) by removing "Employer's First Report of Injury or a Supplemental Report of Injury (if the report included" because an insurance carrier may receive information about salary continuation for an injured employee through sources other than a first or supplemental report of injury. The proposal also amends §124.2(e)(7)(A) by clarifying that salary continuation should be reported when the insurance carrier is not initiating temporary income benefits.

The proposal amends §124.2(e)(7)(B) by changing "of full salary" to "salary" to align rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

The proposal amends §124.2(e)(7) by adding new §124.2(e)(7)(C) to clarify that an insurance carrier must notify DWC electronically of employer continuation of salary equal to or exceeding the employee's average weekly wage within 10 days of resuming payment of the employer's salary continuation. The amendment aligns rule language with the

updated methodology for reporting salary continuation in the claim EDI Release 3.1.4 standard.

The proposal adds new §124.2(e)(8) to specify that the insurance carrier must notify DWC and the claimant of lump sum payments of income or death benefits within 10 days of making the payment. The new claim EDI Release 3.1.4 reporting standard now allows the insurance carrier to provide DWC with information identifying the type or reason for the lump sum payment. Insurance carriers will also be required to use a new plain language notice that specifically notifies an injured employee or beneficiaries about the lump sum payment of income or death benefits.

The proposal adds new §124.2(e)(9) to specify that the insurance carrier must notify DWC and the claimant of the insurance carrier's refusal to pay accrued income benefits due to dispute of disability. The new claim EDI Release 3.1.4 reporting standard will require the insurance carrier to notify DWC that accrued temporary income benefits are not being paid, due to a dispute of disability.

The proposal amends 124.2(k)(1) by adding "or dispute of disability" requiring the insurance carrier to provide DWC with a written copy of the notice provided to the claimant, in addition to the electronic filing requirement, when the insurance carrier disputes disability.

The proposal amends §124.2(m) by removing the subsection because requirements related to transmission of acknowledgements and the correction of errors by the insurance carrier are included in new Subchapter B.

The proposal amends §124.2 by removing §124.2(o) and (p) concerning the ability of an insurance carrier to request a waiver of the electronic filing requirement for the employer's FROI. Insurance carriers have reported claim information electronically since 1994, and DWC will not be waiving the claim EDI Release 3.1.4 filing requirements or accepting claim reporting in hard copy or paper format. Insurance carriers with a low

annual volume of claim transactions will have access to the designated data collection agent's web portal to manually enter claim EDI reporting.

The proposal amends §124.2(r)(1) by clarifying that proposed §124.2(r)(1)(A)-(F) are claim service administration functions with contact information that must be reported to DWC. The proposal also amends §124.2(r)(1) by adding workers' compensation health care network contact information as claims service information that must be reported to DWC. The contact information for an insurance carrier's claims service administration functions is provided to the public through DWC's Workers' Compensation Coverage Verification portal and DWC's claims system, TXCOMP. Adding workers' compensation health care network contact information will allow system participants and DWC staff to more easily verify whether an injured employee receives health care through a workers' compensation certified network or whether the claim involves medical benefits provided through a political subdivision that contracts directly with a health care provider or through a health benefits pool under Labor Code §504.053.

The proposal adds new subsection (p) to clarify that the section is effective July 26, 2023, to align with the effective date of the claim EDI requirements in new proposed Chapter 124, Subchapter B.

Section 124.100 concerns applicability of the insurance carrier claim EDI reporting and notification requirements. Proposed new §124.100 clarifies that the subchapter applies to all insurance carriers as defined in Labor Code §401.011(27) and requires all insurance carriers to report information prescribed by the commissioner for each workers' compensation claim. Labor Code §401.011(27) defines the term insurance carrier, and it means insurance companies, certified self-insurers, certified self-insured groups, and governmental entities that self-insure. The proposed section also provides the effective

date for the new reporting requirements and requires insurance carriers to submit claim EDI records to DWC under the current IAIABC Release 1.0 before the effective date.

DWC received 15 comments on the second informal proposal from insurance carriers, claim administrators, and EDI vendors about the time needed to prepare to report data in the claim EDI Release 3.1.4 format. Eleven commenters said they would need one year or less to modify their systems, three commenters said they would need one and half to two years, and one commentator said they would need more than two years. DWC considered these comments, as well as feedback from DWC's data collection agent, when determining the effective date of the reporting requirements.

Section 124.101 concerns the purpose of the insurance carrier claim EDI reporting and notification requirements. Proposed new §124.101 clarifies that the purpose of the subchapter is to prescribe the reporting requirements for the information and claim EDI data to be submitted to DWC. The proposed section is important for the relationship among the provisions of Labor Code §402.82, which require DWC to maintain information on every compensable injury; the provisions of Labor Code §411.012, which require DWC to maintain a repository for statistical information on workers' health and safety; the provisions of Labor Code §411.032, which allow DWC to require the submission of this type of data; and Labor Code §414.003, which requires DWC to compile, maintain, and use statistical and other information as necessary to detect practices or patterns of misconduct by system participants.

Section 124.102 concerns definitions associated with the insurance carrier claim EDI reporting and notification requirements. Proposed new §124.102 defines specific terms used in this subchapter. The term "division" means the Texas Department of Insurance, Division of Workers' Compensation or its data collection agent. This is significant because

DWC has designated a data collection agent, which means that an insurance carrier fulfills its requirement to report claim EDI data to DWC when it reports to DWC's designated data collection agent. The term "trading partner" also recognizes that an insurance carrier may send the data to DWC directly or may contract with an external entity to fulfill its data reporting requirements.

Section 124.103 concerns reporting IAIABC reporting standards adopted by reference necessary for successful claim EDI reporting and transaction processing. Proposed new §124.103(a) specifically adopts the IAIABC Claim EDI Implementation Guide for Claims, Release 3.1.4, dated January 1, 2021, published by the IAIABC. The IAIABC Claim EDI Implementation Guide for Claims allows individual jurisdictions to tailor certain data usage descriptions to their regulatory requirements.

Proposed new §124.103(b)(1) specifically adopts the Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0, published by DWC. The Texas implementation guide provides a history of claim EDI reporting in Texas, relevant statutory authority, and detailed information about the role of the claim EDI compliance coordinator, including reports available to help them monitor reporting compliance. The Texas implementation guide also contains details about the technology requirements for sending and receiving transactions from the designated data collection agent and the testing process that an insurance carrier or trading partner must complete before submitting claim EDI in production.

Proposed new §124.103(b) also specifically adopts by reference three different tables published by DWC that must be used in conjunction with the IAIABC Claim EDI Release 3.1.4 Implementation Guide to successfully transmit claim EDI records to DWC. Proposed new §124.103(b)(2) specifically adopts the Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0, published by DWC. This table contains data

elements used in Texas' FROI and subsequent report of injury (SROI) record layouts, defines required and conditional data elements and how data edits apply to the elements, and details the requirements for reporting those data elements by maintenance type code (MTC) with migration and match data considerations.

Proposed new §124.103(b)(3) specifically adopts the Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, dated June 30, 2022, published by DWC. The table contains the edits applied to Texas' FROI and SROI record data elements, including error messages, which notify the sender the nature of the error associated with the data element and whether the error is required to be fixed before submitting other transactions. The table also defines valid data element values, which define what code values are valid for the data element. The edit matrix also details match data information, which defines the data elements that must be used as primary or secondary match data elements to identify a transaction as a new claim to create or match to an existing claim for duplicate checking, updating, and processing. The table also contains population restrictions, which define the limitation values or conditions for the match data and sequencing requirements, which define the order the sender must send transactions for the claim events described with an MTC. Claim EDI records that do not meet these edits may result in the rejection of specific transactions. DWC will publish a finalized edit matrix on June 30, 2023, which is after the end of the testing period. This will allow DWC and the Insurance Services Office, Inc. (ISO) to make minor corrections to the edit process discovered during trading partner testing.

Proposed new §124.103(b)(4) specifically adopts the Texas Claim EDI Release 3.1.4 Event Table, Version 1.0, published by DWC. The table contains the reportable claim events for Texas' FROI and SROI records and timeframes for reporting the information. Specifically, the table relates EDI information and the circumstances under which a report should be initiated. The table also indicates what communication must be sent to the

injured employee as detailed in §124.2, concerning Insurance Carrier Notification Requirements.

Proposed new §124.103(c) provides the location of the adopted tables on DWC's website. Proposed new §124.103(d) provides that the provisions of the Labor Code and DWC rules prevail in the event of any conflict with the contents of the IAIABC EDI Implementation Guide.

Section 124.104 concerns reporting requirements for insurance carrier claim EDI reporting. Proposed new §124.104(a)(1)-(3) require insurance carriers to timely and accurately submit claim EDI records and list the conditions necessary for a record to be considered accurate. Proposed new §124.104(b) sets the requirement for correcting and resubmitting claim EDI records accepted with errors, including the requirement to use the same insurance carrier claim number as the previously accepted claim EDI record. The current 90-day timeframe for correcting and resubmitting previously submitted claim EDI records under 28 TAC §102.5(e)(2) is revised to 30 days, which aligns the timeframe for correcting claim EDI records with the timeframe for correcting medical EDI records submitted under §134.804(c). The insurance carrier must correct the records within 30 days of receiving the EDI acknowledgement of the acceptance with errors or receiving other notice or communication from DWC requiring the correction. Proposed new §124.104(c) specifies that receipt of a rejection does not change the date a transaction must be reported to DWC and details the requirement to use the same insurance carrier claim number as the previously rejected claim EDI record.

Section 124.105 concerns records required to be reported through claim EDI. Proposed new §124.105(a) identifies the events that require an insurance carrier to submit a claim EDI record. Proposed new §124.105(b) outlines additional conditions that must be met for

a claim EDI record to be accurately and timely received. This subsection informs insurance carriers about the accuracy requirements and addresses certain data elements that cannot be validated through technical edits and may result in an accepted record during incoming transaction processing. This section clarifies that the data required to be submitted to DWC must reflect the actual data contained on the claim, not derived or modified data. Proposed new §124.105(c) clarifies that claim EDI records submitted in the test environment are not considered received, regardless of whether the records were accepted or rejected. Proposed new §124.105(c) provides that claims with a date of injury on or after January 1, 1991, must be reported according to the requirement of Chapter 124, concerning Insurance Carriers: Notices, Payments, and Reporting.

Section 124.106 concerns records excluded from reporting through claim EDI. Proposed new §124.106 identifies the types of records that are not required to be reported under the subchapter. Proposed new §124.106(b) specifically excludes claims that do not meet the requirements of §124.2(b), and this provision mirrors the requirement in new proposed §124.105(a)(1). Proposed new §124.106(d) specifically excludes claims with dates of injury before January 1, 1991, and this provision mirrors the requirement in new proposed §124.105(d) to report claims with dates of injury on or after that date.

Section 124.107 concerns state specific requirements for claim EDI reporting. Proposed new §124.107(a)(1)-(5) specify that Texas state specific reporting requirements are allowed and contained in the implementation guides and tables adopted by reference in proposed new §124.103(a) and (b), concerning reporting standards. The IAIABC Claim EDI Implementation Guide allows individual jurisdictions to tailor certain data usage descriptions to their regulatory requirements.

Proposed new §124.107(b) clarifies the claim EDI reporting requirement when the injured employee's Social Security number is unknown. This subsection requires reporting of an unknown Social Security number in accordance with Texas EDI Claim Release 3.1.4 Element Requirement Table, Version 1.0, as required by §124.103. Specifically, the reporting requirement provides that, when a Social Security number is unknown, one of the following is required: employment visa number, green card number, passport number, individual taxpayer identification number, or the employee ID assigned by the jurisdiction.

Section 124.108 concerns insurance carrier EDI compliance coordinators and trading partners. Proposed new §124.108(a) provides that insurance carriers may contract with trading partners to submit required claim EDI records to DWC. Proposed new §124.108(b) requires each insurance carrier to designate an EDI compliance coordinator to serve as the central compliance control contact for data reporting. DWC will modify an existing form for this purpose. The insurance carrier's EDI compliance coordinator must be an employee of the insurance carrier with knowledge and experience in EDI reporting, who is responsible for EDI reporting. This requirement mirrors a similar requirement in 28 TAC §134.808 for an insurance carrier to designate an EDI compliance coordinator for medical EDI submissions. The proposed new §124.108(b) provides flexibility to allow an insurance carrier to use the same EDI compliance coordinator for both claim and medical EDI. The insurance carrier may not delegate this responsibility to an external entity, such as a trading partner. Proposed new §124.108(c) outlines the process for notifying DWC who will send data on behalf of an insurance carrier, whether it is the insurance carrier or a trading partner. This subsection outlines the requirements to be contained in the notice, including the signature of the insurance carrier's EDI compliance coordinator. The subsection also describes the potential consequence of rejection of claim EDI records for not reporting updated information timely.

Proposed new §124.108(d) outlines the process for notifying DWC about an insurance carrier's or trading partner's EDI profile. This information is used by DWC and the designated data collection agent to set up the technical infrastructure to allow an entity to submit claim EDI transmissions. Proposed new §124.108(e) outlines the requirements related to testing before an insurance carrier or trading partner will be approved for production submissions. Proposed new §124.108(e) clarifies that DWC will not approve an insurance carrier or trading partner for production submissions until the insurance carrier or trading partner has met the requirements for testing as described in the Texas Claim EDI Release 3.1.4 Implementation Guide. Proposed new §124.108(f) also clarifies that, once an insurance carrier or trading partner has met the testing requirements in the Texas Claim EDI Release 3.1.4 Implementation Guide, they are approved to report claim EDI. Only approved insurance carriers or trading partners may report claim EDI data.

Proposed new §124.108(g) specifies that DWC may suspend the ability for an insurance carrier or trading partner to report claim EDI if it does not meet the requirements for an approved trading partner as described in the Texas Claim EDI Release 3.1.4 Implementation Guide. Proposed new §124.108(h) specifies that loss of approval to report claim EDI does not relieve an insurance carrier of the duty to report claim information or notices to DWC under §124.2, concerning Insurance Carrier Reporting and Notification Requirements. These two provisions stress the importance of insurance carriers and trading partners filing timely and accurate information. Insurance carriers and trading partners must promptly address technology and system issues that affect their ability to remain in compliance with the claim EDI reporting and notices requirements.

Proposed new §124.108(i) specifies that insurance carriers are responsible for the acts or omissions of their trading partners, and an insurance carrier commits an administrative violation if its trading partner fails to timely or accurately submit claim EDI records. Proposed new §124.108(j) specifies the date that an insurance carrier must

provide the EDI compliance coordinator's contact information to DWC. The subsection also specifies that an insurance company that obtains a certificate of authority to write workers' compensation insurance in Texas or an employer or group of employers who are authorized to self-insure by DWC or the Texas Department of Insurance (TDI) after the adoption date of the rule must provide the compliance coordinator's contact information no later than the 30th day after the insurance company's certificate of authority or authorization to self-insure becomes effective.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Business Process Joseph McElrath has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute because local governments are not involved in enforcing or administering the rule. Local and state government entities, when acting in the capacity of an insurance carrier, will be impacted in the same manner as other insurance carriers that are required to comply with the proposed amendments and new rule, as described later in this preamble. There will be no measurable effect on local employment or the local economy because of the new subchapter. The amendments to Chapter 124 reflect other changes made to proposed amended Chapter 102, concerning Practices and Procedures--General Provisions, and proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and do not impose any additional requirements that could produce a fiscal impact. The new subchapter reflects other changes made to proposed amended §§102.4, 102.5, and 102.8, concerning General Rules for Non-Division Communications, General Rules for Written Communications to and from the Division, and Information Requested on Written Communications to the Division, and proposed amended §124.2, concerning Insurance

Carrier Reporting and Notification Requirements, and do not impose any additional requirements that could produce a fiscal impact.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner McElrath expects that administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033, and ensuring that DWC has the best available data to effectively monitor the workers' compensation system. Using updated national data reporting standards that meet DWC's business needs will improve the quality of data reported. DWC uses claim EDI data for multiple administrative and regulatory activities, such as system monitoring and research activities under Labor Code Chapter 405, administering DWC's performance based oversight activities under Labor Code Chapter 402, monitoring compliance with indemnity payment requirements under Chapter 414, generating agency performance measures, and producing required legislative reports.

The accuracy of claim EDI data impacts whether individual records can be included in the research and analysis of certain workers' compensation research questions. For example, DWC currently uses a proxy date for the injured employee's benefit accrual date. The updated IAIABC claim EDI Release 3.1.4 standard provides new codes and data elements related to reporting intermittent lost time from work, which will allow DWC to report more accurate information about when income benefits accrue. Also, the updated IAIABC claim EDI Release 3.1.4 standard allows DWC to understand early in a claim whether an injured employee is in a health care network. This reduces the number of additional communications and verifications DWC must engage in with insurance carriers when processing certain administrative requests, such as change of treating doctor requests and required medical exam requests.

The updated IAIABC claim EDI Release 3.1.4 standard also allows DWC to respond to stakeholder questions and requests; detect special categories of claims; collect information about employer payments; and collect the details of any adjustments, credits, and redistributions of indemnity benefit payments more quickly and efficiently.

The improvements to the quality of data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes. The IAIABC no longer updates the IAIABC Release 1.0 claim EDI standard. DWC's current use of this outdated standard decreases its ability to leverage the data collection methods in the most current claim EDI standard. In addition, the IAIABC actively encourages jurisdictions to adopt the most current standard for claim EDI reporting, which decreases the need for reporting entities to maintain their systems with multiple versions of the reporting standard and increases efficiencies for those entities.

Deputy Commissioner McElrath expects that the proposed amendments may impose an economic cost on persons required to comply with the amendments. Insurance carriers and trading partners may experience costs to modify their automated systems to report claim EDI data using the IAIABC Release 3.1.4 reporting standard. While some commercial insurance carriers, self-insured employers, and trading partners already report claim EDI data in other jurisdictions using the IAIABC Release 3.1 reporting standard, they will likely need to modify their systems to comply with Texas-specific reporting requirements allowed by the IAIABC reporting standards. The costs associated with the reporting requirements in IAIABC Release 3.1 will vary based on the number of transactions submitted and whether the insurance carriers use contracted trading partners to report the required data or report the required data in-house. This analysis considers the cost of an insurance carrier to implement the required reporting requirements in-house because the insurance carrier is ultimately responsible for reporting the data, and

the in-house reporting method is available to every insurance carrier. The proposal does not require this method, and other methods of compliance may be available to the insurance carrier. The method of compliance and ultimate cost of compliance is a business decision of the insurance carrier and not a requirement of this proposal.

DWC received 13 comments on the second informal proposal from insurance carriers, claim administrators, and EDI vendors about the estimated cost for modifying their systems to report data in the claim EDI Release 3.1 format. Eight commenters said their cost was less than \$50,000, one commenter said their cost was between \$50,000 and \$100,000, two commenters said their cost was greater than \$300,000, and two commenters said their cost was unknown.

Entities may need an automation development project to design the changes; modify their existing database; modify the extract, transform, and load processes; and test the changes before implementation. For insurance carriers and trading partners not already reporting claim EDI data in other jurisdictions using the IAIABC Release 3.1 reporting standard and not using a third party to report the information, DWC estimates that this type of automation project will require about 9,400 hours of work. According to the Texas Wages and Employment Projections at the Labor Market and Career Information Department of the Texas Workforce Commission and the Occupational Employment Statistics at the U.S. Bureau of Labor Statistics, computer programmers receive a median wage of \$47 per hour.

The cost to implement these automation changes for insurance carriers and trading partners not already reporting claim EDI data in other jurisdictions using the IAIABC Release 3.1 reporting standard and not using a third party to report the information equals \$441,800 (9,400 hours times \$47 per hour.)

As an alternative to modifying their own claims management system, insurance carriers may choose to contract with a trading partner that already uses the IAIABC

Release 3.1 reporting standard. The trading partner can transform the insurance carriers' claims data to the Release 3.1 reporting format and report the data to DWC on their behalf. Trading partners are able to offer economies of scale for Release 3.1 reporting to insurance carriers. The insurance carrier may be able to save significantly on the cost of updating their claims systems to report the claim data on their own, depending on the contracted rate with the vendor.

Insurance carriers and trading partners that have not implemented systems that comply with the current Texas Claim EDI Implementation Guide will experience more programming and development costs, but those changes are not related to the requirements contained in the new sections.

New notice requirements related to the insurance carrier EDI coordinator and other trading partner relationship notification will introduce a new business process for insurance carriers. Since insurance carriers have a similar requirement related to medical EDI reporting, DWC does not anticipate that any insurance carrier will need to hire more staff to perform similar functions related to claim EDI reporting. However, the new forms and processes will require staff time to complete the required paperwork and associated retention or validation activities. Each individual insurance carrier will be required to complete and submit the new forms shortly after adoption. DWC estimates that the completion of these forms will require about four hours of staff time, including research on existing relationships and documenting current relationships. DWC assumes that an insurance adjuster will likely be assigned to perform these types of activities due to the detailed knowledge that may be needed related to the business activities of claims management. According to the Texas Wages and Employment Projections at the Labor Market and Career Information Department of the Texas Workforce Commission and the Occupational Employment Statistics at the U.S. Bureau of Labor Statistics, claims adjusters

receive a median wage of \$32 per hour. DWC estimates that the cost of initial compliance with the notice provisions would be four (hours) times \$32 (median wage), or \$128.

Labor Code §401.024 allows the commissioner of workers' compensation to designate and contract with one or more data collection agents to fulfill the data collection requirements of the Texas Workers' Compensation Act. The statute also allows a data collection agent to collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier. A reporting insurance carrier, other than a governmental entity, must pay the fee to the data collection agent for the data collection services the data collection agent provides. Reporting claim EDI to the designated data collection agent is the same as reporting to DWC, as provided by 28 TAC §124.102, concerning Definitions. No affiliation or membership fee will be required of insurance carriers or reporting companies for Texas claim EDI data collection services during the period of the data collection agent designation.

The commissioner of workers' compensation designated ISO/Verisk as DWC's data collection agent for claim EDI data by Commissioner's Order Number 2021-6929 on July 19, 2021. Insurance carriers, other than governmental entities, must pay the data collection agent an annual fee to submit claim EDI data, unless they submit the required reporting through the data entry portal at no cost.

DWC does not anticipate any other additional costs after implementation for governmental entities. Any costs, other than fees paid to the data collection agent by insurance carriers other than governmental entities, in later fiscal years would be restricted to standard system maintenance and notification processes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed rules will not have an adverse economic effect or a

disproportionate economic impact on small micro businesses or on rural communities. These rules mostly impact insurance carriers and small businesses have a no cost option. As of 2019, DWC identified 144 insurance carriers that had less than \$6 million total direct written premium nationally for workers' compensation insurance. These insurance carriers writing workers' compensation insurance in Texas meet the definition of a small business under Government Code §2006.001(2). As a result, and in accordance with Government Code §2006.002(c), DWC is required to prepare a regulatory flexibility analysis.

Small businesses will have the option of submitting the required reporting through the data entry portal at no cost. If a small business chooses to use this portal, they will not incur the costs associated with updating their claims system to automatically report the claim information this proposal requires.

DWC also considered exempting small businesses from all or part of the rule. Exempting small businesses from some or all of the rule would not be consistent with the Labor Code's requirement under §411.032, which provides that an employer must file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. DWC also considered separate compliance or reporting requirements for small businesses.

These rules will impact political subdivisions that self-insure their workers' compensation responsibilities. This includes rural political subdivisions. DWC has determined that the proposal will not impose an adverse impact to rural communities.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal may impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed amended §124.2 and Chapter 124 new Subchapter B are necessary

to implement legislation. The proposed rule implements Labor Code §401.024, enacted by HB 2511, 76th Legislature, Regular Session (1999) and amended by SB 800, 82nd Legislature, Regular Session (2011), and Labor Code §§402.082, 411.012, 411.031, 411.032, and 411.033, enacted by HB 752, 73rd Legislature, Regular Session (1993).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability;

or

- positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. DWC 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on January 24, 2022. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. 12050, Austin, Texas 78711.

The commissioner of workers' compensation will also consider written and oral comments on the proposal in a virtual public hearing at 10 a.m., Central time, on January 18, 2022.

CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT

SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF PAYMENT

28 TAC §124.2

SUBCHAPTER B. INSURANCE CARRIER CLAIM ELECTRONIC DATA INTERCHANGE REPORTING TO THE DIVISION

28 TAC §§124.100-124.108

STATUTORY AUTHORITY. DWC proposes amended §124.2 and new §§124.100-124.108 under Labor Code §§401.024, 402.00111, 402.00116, 402.021, 402.061, 402.082, 411.012, 411.031, 411.032, 411.033, and 414.003.

Labor Code §401.024 allows the commissioner of workers' compensation to require the use of an electronic transmission; prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability; and designate and contract with one or more data collection agents to fulfill claim data collection

requirements. The section also provides that a data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier. The section also provides that the commissioner of workers' compensation may adopt rules necessary to implement the section.

Labor Code §402.00111 provides that the commissioner of workers' compensation must exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation must administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.021 provides the basic goals of the workers' compensation system and specifically directs that the system take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

Labor Code §402.061 provides that the commissioner of workers' compensation must adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §402.082 provides that DWC must maintain information on every compensable injury as to the race, ethnicity, and sex of the injured employee; the classification of the injury; identification of whether the injured employee is receiving medical care through a workers' compensation health care network certified under Insurance Code Chapter 1305; the amount of wages earned by the injured employee before the injury; and the amount of compensation received by the injured employee.

Labor Code §411.012 provides that DWC must collect and serve as a repository for statistical information on workers' health and safety. The section requires DWC to analyze

and use that information to identify and assign priorities to safety needs, and better coordinate the safety services provided by public or private organizations, including insurance carriers. The section also provides that DWC must coordinate or supervise the collection by state or federal entities information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

Labor Code §411.031 provides that DWC must maintain a job safety information system and obtain from any appropriate state agency, including the Texas Workforce Commission, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services, data and statistics, including data and statistics compiled for rate-making purposes.

Labor Code §411.032 provides that an employer must file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. The section also requires the commissioner of workers' compensation to adopt rules and prescribe the form and manner of reports filed under the section. The section also provides that an employer commits an administrative violation if it fails to report to DWC as required unless the commissioner determines good cause exists for the failure.

Labor Code §411.033 provides that the job safety information system required in §411.031 must include a comprehensive database that incorporates all pertinent information relating to each injury reported under §411.032, including the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee; the nature, source, severity, and cause of the injury and any equipment involved; the part of the body affected; the number of prior workers' compensation claims by the employee; the prior loss history of the employer; the standard industrial

classification code of the employer; the classification code of the employer; and any other information considered useful for statistical analysis.

Labor Code §414.003 provides that DWC must compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons that violate Subtitle A of the Labor Code, commissioner rules, or a commissioner order or decision; or otherwise adversely affect the workers' compensation system. DWC must use the information compiled to impose appropriate penalties and other sanctions.

CROSS-REFERENCE TO STATUTE. Sections 124.2 and 124.100-124.108 implement Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033.

TEXT.

CHAPTER 124. INSURANCE CARRIERS: [REQUIRED] NOTICES, [AND MODE OF PAYMENT] PAYMENTS, AND REPORTING

SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF PAYMENT

§124.2. Insurance Carrier ~~[Reporting and]~~ Notification Requirements.

(a) An insurance carrier must ~~[shall]~~ notify the division and the claimant of actions taken on or events occurring in a claim as required by this title.

~~[(b) The division shall prescribe the form, format, and manner of required electronic submissions through publications such as advisory(ies), instructions, specifications, the Texas Electronic Data Interchange Implementation Guide, and trading partner agreements. Trading partners will be responsible for obtaining a copy of the International~~

~~Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange Implementation Guide.]~~

(b) ~~[(c)]~~ The insurance carrier must ~~[shall]~~ electronically file, as that term is used in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Division ~~[Commission,])~~ with the division, according to the requirements in Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data Interchange Reporting to the Division):

(1) the information from the original Employer's First Report of Injury; the insurance carrier's Federal Employer Identification Number (FEIN); and the policy number, policy effective date, and policy expiration date reported under §110.1 of this title (concerning Insurance Carrier Requirements for Notifying the Division of Insurance Coverage) for the employer associated with the claim, not later than the seventh day after the later of:

(A) receipt of a required report where there is lost time from work, ~~or~~ an occupational disease, or a fatality; or

(B) notification of lost time if the employer made the Employer's First Report of Injury before ~~[prior to]~~ the employee experienced ~~[experiencing]~~ absence from work as a result of the injury;

(2) information about an acquired claim no later than the 37th day after the acquiring claim administrator has knowledge of claim-specific information from the previous claim administrator;

(3) ~~[(2)]~~ any correction of an ~~[division-identified errors in a previously accepted]~~ electronic record accepted with errors, as provided in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Division), within 30 days of the notification from the division detailed in §124.104(b) of this title (concerning Reporting Requirements) [(Correction)];

(4) [(3)] information about [regarding] a compensable death with no beneficiary no [(Compensable Death No Beneficiaries/Payees) not] later than the 10th day after determining that an employee whose injury resulted in death had no legal beneficiary; and

(5) [(4)] a change in an electronic record initiated by the insurance carrier [(Change)], the coverage information required by paragraph (1) of this subsection if not available when the First Report of Injury was submitted to the division, and any change in a claimant or employer mailing address within seven days of receiving [receipt of] the new address.

(c) [(d)] The insurance carrier must [shall] notify the division and the claimant of its [a] denial of a claim [(Denial)] based on noncompensability [non-compensability] or lack of coverage in accordance with this section and as otherwise provided by this title.

(d) [(e)] The insurance carrier must [shall] notify the division and the claimant of the following:

(1) first payment of indemnity benefits on a claim [(Initial Payment)] within 10 days of making the first payment;

(2) first payment of indemnity benefits on an acquired claim within 10 days of making the first payment;

(3) [(2)] a change in the net benefit payment amount without a change to the benefit type [caused by a change in the employee's post-injury earnings (Reduced Earnings)] within 10 [ten] days of making the first payment reflecting the change;

[(3) change in the net benefit payment amount that was not caused by a change in employee's post-injury earnings, this includes but is not limited to subrogation, attorney fees, advances, and contribution [(Change in Benefit Amount)], and the notice must be made within 10 days of making the first payment which reflects the change;]

(4) a change from one income benefit type to another or to death benefits [~~(Change in Benefit Type)~~] within 10 days of making the first payment reflecting the change;

(5) resumption of payment of income or death benefits [~~(Reinstatement of Benefits)~~] within 10 days of making the first payment;

(6) termination or suspension of income or death benefits [~~(Suspension)~~] within 10 days of making the last payment for the benefits; [~~or~~]

(7) employer continuation of salary, as defined in §129.1(1) (concerning Definitions for Temporary Income Benefits) of this title, equal to or exceeding the employee's average weekly wage [~~Average Weekly Wage~~] as defined by this title [~~(Full Salary)~~] within:

(A) seven days of receiving [~~receipt of~~] the [~~Employer's First Report of Injury or a Supplemental Report of Injury (if the report included)~~] information that salary would be continued in lieu of [~~if~~] the insurance carrier initiating [~~has not initiated~~] temporary income benefits; [~~or~~]

(B) ten [~~10~~] days of making the last payment of temporary income benefits due to the employer's salary continuation; or [~~of full salary.~~]

(C) ten days of resuming payment of the employer's salary continuation;

(8) lump sum payment of income or death benefits within 10 days of making the payment; or

(9) refusal to pay accrued income benefits due to dispute of disability.

(e) [~~(f)~~] If an insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, and [~~or~~] Emergency Medical

Technicians), the insurance carrier must [~~shall~~] take one of the following actions no later than the 15th day after receiving [~~following receipt of~~] the notice of injury:

(1) initiate benefits as required by the Texas Workers' Compensation Act and the division's rules;

(2) file a notice of denial as described in this section; or

(3) provide the claimant and the division with notice as required under Labor Code §409.021(a-3) (Notice of Continuing Investigation) for a claim for benefits received on or after June 10, 2019.

(f) [~~(g)~~] When applying subsection (e) [~~(f)~~] of this section and Government Code, Chapter 607, Subchapter B, a "claim for benefits" means the first written notice of injury as provided in §124.1 of this title (concerning Notice of Injury).

(g) [~~(h)~~] The insurance carrier must [~~shall~~] issue a Notice of Continuing Investigation as a plain language notice in the form and manner prescribed by the division. The notification requirements of this section are not considered complete until a copy of the notice provided to the claimant is received by the division.

(1) A Notice of Continuing Investigation must [~~shall~~] include the following:

(A) a statement describing all steps taken by the insurance carrier to investigate the disease or illness before the notice was given;

(B) a list of any claim-specific evidence, releases, or documentation the insurance carrier reasonably believes is both relevant and necessary to complete its investigation; and

(C) contact information for the adjuster, including the adjuster's email address, fax [~~facsimile~~] number, and telephone number.

(2) An insurance carrier must [~~shall~~] provide a reasonable amount of time for a claimant to respond to the notice.

(3) The notice may not include a request for additional diagnostic testing, mental health records, generic requests (such as "the claimant's medical records"), or requests for records that are not directly related to either the disease or illness or eligibility for application of a statutory presumption.

(4) Notwithstanding the issuance of a Notice of Continuing Investigation, an insurance carrier must continue taking reasonable steps to acquire claim-specific information necessary to complete its investigation of the claim.

(h) ~~[(h)]~~ Notification to the claimant as required by subsections (c)-(e) ~~[(d)-(h)]~~ of this section requires the insurance carrier to use plain language notices in the form and manner prescribed by the division. These notices must ~~[shall]~~ provide a full and complete statement describing the insurance carrier's action and rationale. The statement must contain sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim. A generic statement that simply states the insurance carrier's position with phrases such as "employee returned to work," "adjusted for light duty," "liability is in question," "compensability in dispute," "under investigation," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(i) ~~[(i)]~~ In addition to the denial notice requirements in subsection (h), ~~[(h)]~~ if the insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, and ~~[or]~~ Emergency Medical Technicians), the denial must also include the following:

(1) if ~~[if]~~ the insurance carrier asserts that a statutory presumption does not apply, a statement explaining why and describing the claim-specific information that the insurance carrier reviewed;~~[-]~~

(2) alternatively, [~~Alternatively,~~] based on [~~upon~~] its investigation, if the insurance carrier concludes that a statutory presumption applies, but [~~that~~] a notice of denial will be issued, a statement explaining why and describing the claim-specific information reviewed before issuing [~~prior to issuance of~~] the notice_; that supports a reasonable belief that risk factors, accidents, hazards, or other causes not associated with their employment were a substantial factor in bringing about the injured employee's disease or illness, without which the disease or illness would not have occurred_; and [~~or~~]

(3) if [~~if~~] the insurance carrier provided a timely Notice of Continuing Investigation as permitted by law, the denial notice must also include a statement describing whether the claimant provided a timely response to the notice.

(j) [~~(k)~~] Notification to the division as required by subsections (b)-(e) [~~(e)-(h)~~] of this section requires the insurance carrier to use electronic filing, as that term is used in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Division) [~~Commission~~]; with the division, according to the requirements in Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

(1) In addition to the electronic filing requirements of this subsection, when an insurance carrier notifies the division of a denial, Notice of Continuing Investigation, or dispute of disability as required by this section, it must provide the division a written copy of the notice provided to the claimant as described under subsections (g)-(i) and (k) [~~(i)-(j)~~] of this section, as applicable.

(2) The notification requirements of this section are not considered completed until the copy of the notice provided to the claimant is received by the division.

(k) [~~(h)~~] Notification to the division and the claimant of a dispute of disability, extent of injury, or eligibility of a claimant to receive death benefits must [~~shall~~] be made as otherwise prescribed by this title and requires the insurance carrier to use plain language

notices in the form and manner prescribed by the division. These notices must ~~[shall]~~ provide a full and complete statement describing the insurance carrier's action and its reasons ~~[reason(s)]~~ for such action. The statement must contain sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim. A generic statement that simply states the insurance carrier's position with phrases such as "no medical evidence to support disability," "not part of compensable injury," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

~~[(m) The division shall send an acknowledgment to the transmitting trading partner detailing whether an electronically submitted record was accepted, accepted with errors, or rejected. The acknowledgment shall be provided directly to the trading partner submitting the transmission, not through the Austin representative box identified in §102.5 of this title. If the record was accepted with errors in conditional elements, the insurance carrier must correct the errors in accordance with §102.5 of this title.]~~

(l) ~~[(n)]~~ Except as otherwise provided by this title, insurance carriers must ~~[shall]~~ not provide notices to the division that explain that:

- (1) benefits will be paid as they accrue;
- (2) a wage statement has been requested;
- (3) temporary income benefits are not due because there is no lost time;
- (4) the insurance carrier is disputing some or all medical treatment as not reasonable or necessary;
- (5) compensability is not denied, but the insurance carrier disputes the existence of disability (if there are no indications of lost time or disability and the employee is not claiming disability); or

(6) future medical benefits are disputed (notices of which must ~~[shall]~~ not be provided to anyone in the system).

~~[(e) Written requests for a waiver of the electronic filing requirement for the Employer's First Report of Injury may be submitted to the commissioner or their designee for consideration. Waivers must be requested at least annually, and the requests must include a justification for the waiver, the volume of the insurance carrier's claims and total premium amounts, current automation capabilities, Electronic Data Interchange (EDI) programming status, and a specific target date to implement EDI. Waivers require written approval and shall be granted at the discretion of and for the time frame noted by the commissioner or their designee.~~

~~(p) If specifically directed by the division, such as through division advisory or the Texas Electronic Data Interchange Guide, the insurance carrier may provide the information required in subsections (c)–(g) of this section to the division in hardcopy or paper format.]~~

(m) ~~[(q)]~~ Notifications to the claimant and the claimant's representative must ~~[shall]~~ be filed by fax ~~[facsimile]~~ or electronic transmission unless the recipient does not have the means to receive such a transmission, in which case, the notifications must ~~[shall]~~ be personally delivered or sent by mail.

(n) ~~[(r)]~~ Each insurance carrier must ~~[shall]~~ provide to the division, through its Austin representative in the form and manner prescribed by the division, the contact information for all workers' compensation claim service administration functions performed by the insurance carrier either directly or through third parties.

(1) The contact information for each function must ~~[shall]~~ include mailing address, telephone number, fax ~~[facsimile]~~ number, and email address, as appropriate. This contact information may be provided either in the form of a single Uniform Resource Locator (URL) for a web page created and maintained by the insurance carrier that

contains the required information or through an online submission to the division. The claim service administration functions requiring contact information to be reported are:

(A) coverage [~~Coverage~~] verification (policy issuance and effective dates of the policy);

(B) claim [~~Claim~~] adjustment;

(C) medical [~~Medical~~] billing;

(D) pharmacy [~~Pharmacy~~] billing (if different from medical billing);

[and]

(E) preauthorization; and [~~Preauthorization;~~]

(F) workers' compensation health care network.

(2) If the web page option is used, the page must [~~shall~~] contain the date [~~on which~~] it was last updated and an email address or other contact information [~~to which~~] a user may report problems or inaccuracies to.

(3) The insurance carrier must [~~shall~~] update the contact information or URL within 10 working days after any such change is made.

(o) [~~s~~] All notices to a claimant required under this section must be stated in plain language and in no less than 12-point font. This subsection applies to notices sent on or after April 1, 2020.

(p) The section is effective July 26, 2023.

CHAPTER 124. INSURANCE CARRIERS: [REQUIRED] NOTICES, [AND MODE OF PAYMENT] PAYMENTS, AND REPORTING

SUBCHAPTER B. INSURANCE CARRIER CLAIM ELECTRONIC DATA INTERCHANGE REPORTING TO THE DIVISION

§124.100. Applicability.

(a) This subchapter applies to any claim transactions required to be reported to the division under §124.105 of this title on or after July 26, 2023.

(b) This subchapter applies to all insurance carriers as defined in Labor Code §401.011(27). All insurance carriers are required to report information prescribed by the commissioner under Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033 for each workers' compensation claim. All insurance carriers are required to notify injured employees and the division about claim actions as provided in §124.2 of this title (concerning Insurance Carrier Notification Requirements).

(c) This subchapter is effective July 26, 2023. Insurance carriers and trading partners must continue to submit claim EDI records to the division in the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Electronic Data Interchange (EDI) Release 1.0 standard before this effective date.

§124.101. Purpose. The purpose of this subchapter is to prescribe the reporting requirements for information and data submitted to the division and adopt by reference the implementation guide and specifications necessary for successful EDI transaction processing. The reporting of information and data is necessary to maintain information on every compensable injury; maintain a repository for statistical information on workers' health and safety; and compile, maintain, and use statistical data to detect practices or patterns of misconduct by system participants as required by Labor Code §§402.082, 411.033, and 414.003.

§124.102. Definitions. The following words and terms when used in this subchapter will have the following meanings, unless the context clearly indicates otherwise:

(1) Application acknowledgment code--A code used to identify the accepted or rejected status of the transaction being acknowledged.

(2) Claim EDI record--The accurate data associated with a single claim reported in a claim EDI transaction (first report of injury or subsequent report of injury) obtained from all sources, including the report of incident or injury and the insurance carrier's claim file.

(3) Claim EDI transmission--The data that is contained within the interchange envelope.

(4) Division--The Texas Department of Insurance, Division of Workers' Compensation or its data collection agent.

(5) EDI--Electronic data interchange.

(6) Edit Matrix--A table containing the edits applied to Texas' first report of injury and subsequent report of injury records.

(7) Element requirement table--A table containing data elements used in Texas' first report of injury and subsequent report of injury record layouts defining required and conditional data elements and how data edits apply to the elements.

(8) Event table--A table containing the reportable claim events for Texas' first report of injury and subsequent report of injury records and timeframes for reporting the information.

(9) Insurance carrier claim number--An identifier that distinguishes a specific claim within an insurance carrier's claim processing system and is used throughout the life of the claim.

(10) IAIABC--The International Association of Industrial Accident Boards and Commissions.

(11) Person--A person, partnership, corporation, hospital district, insurance carrier, organization, business trust, estate trust, association, limited liability company, limited liability partnership, or other entity. This term does not include an injured employee.

(12) Trading partner--A person entering into an agreement with the insurance carrier to format electronic data for transmission to the division, transmit electronic data to the division, and respond to any technical issues related to the contents or structure of an EDI file.

§124.103. Reporting Standards.

(a) Except as provided in this subchapter, the commissioner adopts by reference the IAIABC EDI Implementation Guide for Claims, Release 3.1.4, dated January 1, 2021, published by the IAIABC.

(b) The commissioner adopts by reference the:

(1) Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0;

(2) Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0;

(3) Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, dated June 30, 2023; and

(4) Texas Claim EDI Release 3.1.4 Event Table, Version 1.0. The Texas Claim EDI Release 3.1.4 Implementation Guide, tables, and the matrix are published by the division.

(c) The adopted division tables are on the division's website at www.tdi.texas.gov/wc/edi/index.html.

(d) In the event of a conflict between the IAIABC EDI Implementation Guide for Claims and the Labor Code or division rules, the Labor Code or division rules will prevail.

§124.104. Reporting Requirements.

(a) Insurance carriers must submit timely and accurate claim EDI records to the division. For the purpose of this section, a claim EDI record is considered accurately submitted when the record:

(1) receives an accepted application acknowledgment code;
(2) contains accurate claim EDI data, which may be obtained from all sources, including the report of incident or injury and the insurance carrier's claim file; and
(3) to the extent supported by the format, contains all data elements necessary to identify activity on a claim.

(b) Insurance carriers are responsible for correcting and resubmitting claim EDI records accepted with errors within 30 days of the acknowledgement or other the action that required reporting. The resubmitted claim EDI record must contain the same insurance carrier claim number as the previously accepted claim EDI record.

(c) The insurance carrier's receipt of a rejection does not modify, extend, or otherwise change the date the transaction is required to be reported to the division. The resubmitted rejected claim EDI record must contain the same insurance carrier claim number as the previously rejected claim EDI record.

§124.105. Records Required to be Reported.

(a) Insurance carriers must submit claim EDI records when the insurance carrier:

(1) takes action on or events occur in a claim as described in §124.2 of this title (concerning Insurance Carrier Notification Requirements);

(2) corrects division-identified errors in a previously accepted electronic record as provided in §124.104(b) of this title (concerning Reporting Requirements);

(3) corrects insurance carrier-identified errors in a previously accepted electronic record as provided in §124.2(b)(4) of this title;

(4) discovers that a claim EDI record should not have been submitted to the division, and the division had previously accepted the claim EDI record; or

(5) receives a request from the division for claim EDI records.

(b) Regardless of the application acknowledgment code returned in an acknowledgment, claim EDI records are not considered received by the division if the claim EDI record:

(1) contains data, which does not accurately reflect the code value or actions taken when the insurance carrier processed information or acted on the claim; or

(2) fails to contain a conditional data element and the mandatory trigger condition existed at the time the insurance carrier acted on the claim.

(c) Claim EDI records submitted in the test environment are not considered received and do not comply with the reporting requirements of this section.

(d) Claims with a date of injury on or after January 1, 1991, must be reported in accordance with the requirements of this chapter (concerning Insurance Carriers: Notices, Payments, and Reporting).

§124.106. Records Excluded from Reporting. Insurance carriers must not report claim EDI records for:

(1) claims where the jurisdiction state is not Texas;

(2) claims that do not meet the requirements of §124.2(b) of this title (concerning Insurance Carrier Notification Requirements);

(3) claims involving benefits payable under federal workers' compensation laws;
and

(4) claims with dates of injury before January 1, 1991.

§124.107. State Specific Requirements.

(a) Insurance carriers must submit claim EDI transactions according to the:

(1) IAIABC EDI Implementation Guide for Claims, Release 3.1.4;

(2) Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0;

(3) Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0;

(4) Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, dated June 30, 2023; and

(5) Texas Claim EDI Release 3.1.4 Event Table, Version 1.0.

(b) In addition to the requirements adopted under §124.103 of this title (concerning Reporting Standards), when the injured employee's Social Security number is unknown for reporting claim EDI transactions, it must be reported in accordance with Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0, as adopted in §124.103 of this title.

§124.108. Insurance Carrier EDI Compliance Coordinator and Trading Partners.

(a) Insurance carriers may submit claim EDI records directly to the division or contract with an external trading partner to submit the records on the insurance carrier's behalf.

(b) Each insurance carrier, including those using external trading partners, must designate one person to the division as the EDI compliance coordinator and provide the person's name, working title, mailing address, email address, and telephone number in the form and manner prescribed by the division. The EDI compliance coordinator must:

(1) be an employee of the insurance carrier with knowledge and experience in EDI reporting, who is responsible for EDI reporting;

(2) receive and appropriately disperse data reporting information received from the division; and

(3) serve as the central compliance control for data reporting under this subchapter.

(c) At least five working days before sending its first transaction to the division under this subchapter, the insurance carrier must send a notice to the division. The notice

must be in the form and manner prescribed by the division. The notice must include the name of the insurance carrier, the insurance carrier's FEIN, the insurance carrier's TXCOMP customer number, the name of the trading partners authorized to conduct claim EDI transactions on behalf of the insurance carrier, the FEIN of the trading partners, and the EDI compliance coordinator's signature.

(d) The insurance carrier must report changes required under subsections (b) and (c) within five working days of any amendment to data sharing agreements, including adding or removing any trading partners or changing the EDI compliance coordinator. Failure to timely submit updated information may result in the rejection of claim EDI records.

(e) At least five working days before sending its first test transaction to the division under this subchapter, the insurance carrier or trading partner sending the claim EDI transmission must send a notice to the division. The notice must be in the form and manner prescribed by the division. The notice must include the entity's name; FEIN; nine-digit postal code; address; and the technical contact's name, address, phone number, and email address. The insurance carrier or trading partner must report changes within five working days of any amendment to the information required to be reported.

(f) Insurance carriers and trading partners must successfully complete claim EDI Release 3.1.4 testing before transmitting any production claim EDI Release 3.1.4 data to the division. Trading partners must receive approval to submit data for at least one insurance carrier before initiating the testing process. Insurance carriers and trading partners must submit each transaction type during the testing process to ensure that it can be successfully processed by the division. The division will not approve an insurance carrier or trading partner for production submissions until the insurance carrier or trading partner has met the requirements for testing as described in the Texas Claim EDI Release 3.1.4 Implementation Guide.

(g) Once an insurance carrier or trading partner has met the requirements of subsection (f), the insurance carrier or trading partner is approved to report claim EDI data to the division. Only approved insurance carriers or trading partners may report claim EDI data to the division.

(h) The division may suspend the ability for an insurance carrier or trading partner to report claim EDI if it does not meet the requirements for an approved trading partner as described in the Texas Claim EDI Release 3.1.4 Implementation Guide. The division will notify the insurance carrier's claim EDI compliance coordinator in writing in advance of the suspension.

(i) Loss of approval to report claim EDI does not relieve an insurance carrier of the duty to report claim information or notices to the division under §124.2 of this title (concerning Insurance Carrier Notification Requirements).

(j) Insurance carriers are responsible for the acts or omissions of their trading partners. The insurance carrier commits an administrative violation if the insurance carrier or its trading partner fails to timely or accurately submit claim EDI records.

(k) An insurance carrier must provide to the division the EDI compliance coordinator's contact information required by this subsection no later than 90 days after the adoption of this subchapter. Except as otherwise provided by this subsection, an insurance company that obtains a certificate of authority to write workers' compensation insurance in Texas after the adoption of this subchapter, or an employer or group of employers who are authorized to self-insure by DWC or TDI after the adoption date of this subchapter, must provide the EDI compliance coordinator's contact information required by subsection (b) to the division no later than the 30th day after the insurance company's certificate of authority or authorization to self-insure becomes effective.

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

Issued in Austin, Texas, on December 13, 2021.

DocuSigned by:

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Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation