

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS
28 TAC §§102.4, 102.5, AND 102.8

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §§102.4, 102.5, and 102.8, relating to claim electronic data interchange (EDI) reporting. The amendments are adopted without changes to the proposed text published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8967). These amendments update the outdated workers' compensation claim EDI reporting standard from the currently required International Association of Industrial Accident Boards and Commissions (IAIABC)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 claim EDI reporting standard is adopted in Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division.

REASONED JUSTIFICATION. Amendments to §§102.4, 102.5, and 102.8 are necessary to relocate and update current claim EDI reporting requirements to newly adopted Chapter 124, new Subchapter B, 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. These rule amendments include various effective dates for the sections and subsections. The purpose of the various effective dates is to align claim EDI reporting requirements in this chapter with the effective date of other requirements in Chapter 124, Subchapter B. The amendments also correct typographical, 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."

Section 102.4 concerns General Rules for Non-Division Communications. The adopted amendments to §102.4(d) add email addresses as a type of required business service insurance carriers and health care providers must provide to receive required communication on workers' compensation claims. This change recognizes email as another mode of communication between injured employees and insurance carriers and health care providers. The adoption also amends "regarding" to "on" to conform language to the agency's current style.

The adopted amendments to §102.4(g) remove "numbers person" and clarifies the language by specifying that insurance carriers must employ or provide a sufficient number of personnel, including adjusters appropriately licensed by the Texas Department of Insurance, to meet their obligations under the Texas Labor Code and this title.

The adopted amendment to §102.4(m) removes the reference to "electronic communication." The term is no longer needed since the term "electronic transmission" adequately describes the type of communication.

The adopted amendments to §102.4(n) remove "number of" and add "numbers" to clarify that insurance carriers and health care providers must provide sufficient toll-free telephone numbers, fax numbers, or email addresses. The adopted language also amends §102.4(n) to conform with the changes made in subsection (d), which adds email addresses as a type of required business service insurance carriers and health care providers must provide to receive required communication on workers' compensation claims.

The adopted amendments to §102.4(o) remove "number of" and adding "numbers" to clarify that insurance carriers and health care providers must provide sufficient toll-free telephone numbers, fax numbers, or email addresses. The adopted language also amends §102.4(o) to add email addresses as a type of required business service..

The adopted language adds new subsection (q), which clarifies that the section is effective on adoption since other portions are effective on the same date Chapter 124, new Subchapter B requirements for claim EDI reporting.

Section 102.5 concerns General Rules for Written Communications to and from the Division.

The adopted amendments to §102.5(a) remove the ability for the injured employee to request communications from DWC to be delivered only to the injured employee's representative. DWC's claims management systems limit the ability for it to fulfill this kind of request.

The adopted amendments to §102.5(c) update language on where to send written communications to DWC. DWC no longer manages claims in specific field offices because technological enhancements allow DWC staff to receive and send documents to the appropriate program areas.

The adopted amendments to §102.5(d) clarify and update that DWC maintains the insurance carrier's Austin representative's box in an electronic format. The amendments also clarify that documents DWC transmits electronically are considered electronic transmission as defined by §102.5(h).

The adopted amendments to §102.5(e) clarify that EDI and other required notices under §124.2, concerning Insurance Carrier Notification Requirements, and Chapter 134, Subchapter I, concerning Medical Bill Reporting, are the types of notices required to be filed under the subsection. The adopted amendments to §102.5(e) also delete references to EDI reporting requirements related to timeframes, edit checks, rejected records, and resubmission of records with errors. The claim EDI reporting requirements are relocated and updated in Chapter 124, Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division.

The adopted amendments to §102.5(e) delete outdated and unnecessary references to claim and medical EDI reporting.

The adopted amendments to §102.5(h) abbreviate "electronic data interchange" as "EDI" because the term is defined earlier in the subsection. This amendment is nonsubstantive and conforms to the agency's current style. DWC reminds insurance carriers of 28 TAC §102.3(e) that states, unless otherwise specified by rule, any written or telephonic communications required to be filed by a specified time will be considered timely only if received before the end of normal business hours on the last permissible day of filing.

The adopted amendments add new subsection (i), which clarifies that subsection (e) is effective July 26, 2023, to align with the effective date of the claim EDI requirements in Chapter 124, Subchapter B. The other subsections are effective on adoption.

Section 102.8 concerns Information Requested on Written Communications to the Division. The adopted amendments to §102.8(a) delete "FEIN" because the abbreviation is not used elsewhere in the section.

The adopted amendments to §102.8(b) update references to Chapter 124, Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and delete references to mandatory and conditional data elements for claim EDI reporting. The claim EDI reporting requirements are relocated and updated in Chapter 124, Subchapter B. The adopted amendments to §102.8(b) also specify that the subsection refers to claim EDI and update the reference to the amended title of §124.2, concerning Insurance Carrier Notification Requirements.

The adopted amendments add new subsection (c), which clarifies that subsection (a) is effective on adoption. Amended subsection (b) is effective July 26, 2023, to align with the effective date of the claim EDI requirements in Chapter 124, Subchapter B.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments, and no oral comments. Commenters in support of the proposal were the Office of Injured Employee Counsel and Sentinel Government Affairs. DWC appreciates the supportive comments.

Comment on §102.5(i). One commenter remarked that the proposed effective date of July 23, 2022, does not provide insurance companies, their trading partners and vendors, and DWC with enough time to successfully complete the testing required by §124.108(f) and suggests the effective date be changed to October or November 2023.

Agency Response. DWC disagrees. The implementation date avoids overlap with other jurisdictions' implementation dates for claims EDI release 3.1. No other commenters expressed concern with the proposed implementation date during the comment period for the formal proposal. DWC published two informal proposals of the rule amendments and asked for feedback from stakeholders about the time needed for implementation. Only three stakeholders indicated that they needed more than 15 months to implement the changes.

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS. 28 TAC §§102.4, 102.5, AND 102.8.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§102.4, 102.5, and 102.8 under Labor Code §§401.024, 402.00111, 402.00116, 402.021, 402.061, and 411.032.

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 the powers and duties of DWC under the Labor Code and other laws of this state.

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.

TEXT.

§102.4. General Rules for Non-Division Communications.

(a) All written communications to a claimant (who is either an employee, an employee's legal beneficiary, or a subclaimant) must be sent to the most recent address or fax number supplied by the claimant. If an address has not been supplied by the claimant, the most recent address provided by the employer must be used.

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

(c) Insurance carriers must provide a toll-free telephone number for receipt of communication from claimants or their representatives with a sufficient quantity of lines to service their volume of business.

(d) Insurance carriers and health care providers must provide telephone numbers, fax numbers, and email addresses sufficient to service the volume of business for receiving required verbal and written communications on workers' compensation claims.

(e) Insurance carriers must ensure effective and timely communication with claimants and other parties in the system. If a claimant is unable to communicate with an insurance carrier due to a language barrier, and the claimant is unable to provide a person that he or she trusts to serve as a translator, the insurance carrier must provide a means to translate except as needed for a division proceeding. The claimant must not be required to contract with or otherwise employ a translator.

(f) When a claimant contacts an insurance carrier and requests a response on their claim, the response must be verbally provided or sent in writing by the insurance carrier within five working days of receiving the request, unless the request is redundant or the response duplicates information previously provided.

(g) Insurance carriers must employ or provide a sufficient number of personnel, including adjusters appropriately licensed by the Texas Department of Insurance, to meet their obligations under the Act and this title.

(h) Unless the great weight of evidence indicates otherwise, written communications will be deemed to have been sent on:

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

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

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

(j) An insurance carrier, employer, or health care provider that receives a written communication related to a workers' compensation claim must date stamp or otherwise note on the document the date the written communication was received.

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

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

(m) Electronic transmission is defined as transmission of information by fax, electronic mail, electronic data interchange (EDI), or any other similar method and does not include telephonic communication.

(n) If the division receives an allegation that an insurance carrier or health care provider has failed to provide sufficient toll-free telephone numbers, telephone numbers, fax numbers, or email addresses, or that an insurance carrier has not provided a sufficient number of adjusters as required by this section, unless the violation appears to be willful or intentional, the division will not issue a monetary penalty or other sanctions before:

(1) notifying the alleged violator of the allegation;

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

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

(o) A violation as described in subsection (n) will be considered willful or intentional if the violator has been advised of complaints such that the violator knew or should have

known that the toll-free telephone numbers, telephone numbers, fax numbers, email addresses, or number of adjusters was insufficient, and the violator cannot establish that it made good faith efforts to correct the deficiency or if the violator otherwise exhibited willful or intentional conduct.

(p) For purposes of determining the date of receipt for non-division written communications, unless the great weight of evidence indicates otherwise, the division will deem the received date to be five days after the date mailed through United States Postal Service regular mail, or the date faxed or electronically transmitted.

(q) This section is effective on adoption.

§102.5. General Rules for Written Communications to and from the Division.

(a) After the division is notified in writing that a claimant is represented by an attorney or other representative, all copies of written communications to the claimant will be sent to the representative as well as the claimant. Copies of settlements, notices setting benefit review conferences and hearings, and orders of the division will always be sent to the claimant regardless of representation status. All written communications to the claimant or claimant's representative will be sent to the most recent address or fax number supplied on either the employer's first report of injury, any verbal or written communication from the claimant, or any claim form filed by the insurance carrier through written notice or electronic transmission.

(b) All written communications to people other than insurance carriers and claimants will be sent to the most recent address or fax number reported to the division by the intended recipient or, in the absence of an address or fax number supplied by the intended recipient, to an address or fax number identified by the division.

(c) Unless otherwise specified by rule, written communications required to be filed with the division may be sent to the division headquarters or any division field office.

(d) For purposes of determining the date of receipt for written communications sent by the division, which require the recipient to perform an action by a specific date after receipt unless the great weight of evidence indicates otherwise, the division will deem the received date to be the earliest of: five days after the date mailed through United States Postal Service regular mail, the first working day after the date the written communication was placed in an insurance carrier's Austin representative's electronic box, or the date faxed or electronically transmitted as defined in subsection (h) of this section.

(e) EDI and other required notices must be filed or submitted in the format, form, and manner prescribed by the division under §124.2 of this title (concerning Insurance Carrier Notification Requirements), and Chapter 134, Subchapter I of this title (concerning Medical Bill Reporting).

(f) Unless the great weight of evidence indicates otherwise, written communications received by the division will be deemed to have been sent on:

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

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

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

(h) Electronic transmission is defined as transmission of information by fax, electronic mail, EDI, or any other similar method and does not include telephonic communication.

(i) Subsection (e) is effective July 26, 2023. All other subsections are effective on adoption.

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

(a) Unless the division-prescribed form, format, or manner of a written communication specifies otherwise, all written communications to the division about an injured employee or claim for benefits must include the following information, if known:

(1) the injured employee's full name, date of injury, address, and Social Security number. If no Social Security number has been assigned, insert the numerical digits "999" followed by the claimant's birth date or if unknown, the claimant's date of injury listed by the month, day, and year (MMDDYY). Do not use "999" in place of a valid Social Security number to meet timeliness of reporting requirements;

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

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

(4) the employer's name and address;

(5) the employer's Federal Employer's Identification Number;

(6) the insurance carrier's name;

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


(8) the insurance carrier's claim number.

(b) Written communications filed by claim EDI under §124.2 of this title (concerning Insurance Carrier Notification Requirements) must comply with the requirements of Chapter 124, Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

(c) Subsection (a) is effective on adoption. Subsection (b) is effective July 26, 2023.

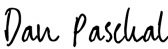
CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 17, 2022.

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Kara Mace
Deputy Commissioner for Legal Services
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The commissioner adopts amendments to 28 TAC §§102.4, 102.5, and 102.8.

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Texas Government Code §601.002
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Commissioner's Order No. 2022-7229