

1 **CHAPTER 102: PRACTICES AND PROCEDURES--GENERAL PROVISIONS**
2 **28 TAC §§102.4, 102.5, AND 102.8**

3
4 **TEXT.**

5 **§102.4. General Rules for Non-Division [~~Non-Commission~~] Communications.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (n) If the division ~~[Commission]~~ receives an allegation that an insurance ~~[a]~~ carrier
24 or health care provider has failed to provide ~~[a]~~ sufficient ~~[number of]~~ toll-free telephone
25 numbers, ~~[toll]~~ telephone numbers, fax numbers, ~~[or facsimile lines,]~~ or email addresses,
26 or that an insurance ~~[a]~~ carrier has not provided a sufficient number of adjusters as

1 required by this section, unless the violation appears to be willful or intentional, the
2 division [~~Commission~~] will not issue a monetary penalty or other sanctions before [~~prior~~
3 ~~to~~]:

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

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

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

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

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

22

23 **§102.5. General Rules for Written Communications to and from the Division.**
24 **[~~Commission~~]**

25 (a) After the division [~~Commission~~] is notified in writing that a claimant is
26 represented by an attorney or other representative, all copies of written communications

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

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

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

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

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

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

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

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

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

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

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

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

13

14 **§102.8. Information Requested on Written Communications to the Division.**

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

19 (1) the injured employee's full name, date of injury, address, and Social
20 Security [~~social security~~] number. If no Social Security [~~social security~~] number has been
21 assigned, insert the numerical digits "999" followed by the claimant's birth date or if
22 unknown, the claimant's date of injury[-] listed by the month, day, and year (MMDDYY)[-];
23 ~~use of~~ Do not use "999" [~~shall not be used~~] in place of a valid Social Security [~~social~~
24 security] number [~~in order~~] to meet timeliness of reporting requirements;[-.]

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

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

- 1 (4) the employer's name and address;
- 2 (5) the employer's Federal Employer's Identification Number; ~~[(FEIN)];~~
- 3 (6) the insurance carrier's name;
- 4 (7) the insurance carrier's policy number; and
- 5 (8) the insurance carrier's claim number.

6 (b) Written communications filed by claim EDI under [Electronic Data Interchange
7 ~~(EDI) pursuant to]~~ §124.2 of this title ~~(concerning [relating to] Insurance Carrier~~
8 ~~Reporting and]~~ Notification Requirements) must comply with the requirements of Chapter
9 124, Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data
10 Interchange Reporting to the Division). ~~[include all mandatory data elements and all~~
11 ~~applicable conditional data elements required by the International Association of~~
12 ~~Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation~~
13 ~~Guides.]~~

14

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

17