

## ADVISORY NO. 74

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### **TOPIC:       SIGNIFICANT RULE CHANGES AFFECTING WRITTEN NOTICE OF INJURY, TIMELY PAYMENT OF TEMPORARY INCOME BENEFITS AND NOTICE OF REFUSAL**

*(Replacing Advisories 13 & 35)*

The Commission has recently adopted three significant rules that substantially alter procedures relating to Written Notice of Injury, the timely payment of TIBs, and filing of a Notice of Refusal. *Rule 120.3* is the new Employer Supplemental Report of Injury Rule which went into effect on January 1, 1993, (and is contained in the 1993 Edition of the FO&L Texas Workers' Compensation Manual). *Rules 124.1* and *124.7* have been amended effective March 1, 1993, and pertain to Written Notice of Injury Defined and Initial Payment of Temporary Income Benefit, respectively. Copies of these latter two rules will follow shortly.

**WRITTEN NOTICE OF INJURY AND NOTICE OF REFUSAL** -- The significant change in Rule 124.1 results from language creating a presumption that the carrier received Written Notice of Injury on the date that the Texas Workers' Compensation Commission received written notice required by the statute or rules to be filed with the carrier and with the Texas Workers' Compensation Commission. Accordingly, if a written notice which is required to be filed with both the Texas Workers' Compensation Commission and the carrier (such as the TWCC Form-1 or TWCC Form-61) is received by the Texas Workers' Compensation Commission on March 1, 1993, the rule creates a presumption that the carrier also received it on the same date for purposes of invoking the seven and sixty-day Notice of Refusal deadlines contained in Article 8308-5.21 and Rule 124.6. This presumption applies even if the carrier did not actually receive the notice at the time it was received by the Texas Workers' Compensation Commission!! The rule further places the burden of proof on the carrier to establish that it did not receive or timely receive the written notice. As a result, there will now be cases where it will be presumed that the carrier's time deadlines for filing a Notice of Refusal are running even though the carrier is unaware that its deadlines have been invoked. In order to overcome this presumption, the carrier will either have to obtain an admission from the party forwarding the notice stating that they failed to send a copy to the carrier, or the carrier will have to establish that its mail procedures in-house are such that no notice could have been received without being processed to the claim file. We suspect that this will often be a difficult burden of proof on the carrier.

**TIMELY PAYMENT OF TEMPORARY INCOME BENEFITS** -- Rule 124.7 formerly provided that a carrier did not have to initiate TIBs until seven days after receiving written notice of injury stating that the claimant had suffered eight days of disability. This language has now been discarded and replaced with the following:

"A carrier who has received written notice of an injury and has not disputed the claim in accordance with Section 124.6 of this title (relating to Notice of Refused or Disputed Claim) shall initiate income benefits no later than the seventh day after the accrual date."

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This amendment clearly requires the carrier to immediately investigate and continue to monitor every written notice of injury regardless of lost time! The receipt of the Written Notice of Injury triggers the Notice of Refusal deadlines in Rule 124.6 (and do not forget the possible new presumption outlined above) and requires the carrier to continue to monitor the claim for the possible accrual of lost time which will require initiation of TIBs. *No longer can the carrier wait until some other party notifies them of eight days of disability--now the carrier must monitor the file and be aware of this occurrence.* Fortunately, new Rule 120.3 (Employers' Supplemental Report of Injury) will help since it requires the employer to send the TWCC Form-6 (the Texas Workers' Compensation Commission is still using the old law form at this stage) whenever there is a significant change in the employee's earnings or disability status. Be sure and educate your insureds concerning the requirements of Rule 120.3 since the timely compliance by employers with that rule will keep the carrier from inadvertently failing to timely initiate TIBs under Rule 124.7.

Obviously, a carrier will not obtain 100% compliance by its insureds in keeping the carrier timely informed about each and every claim. Additionally, a carrier cannot practically monitor each and every claim, including medical only files, on a daily or even weekly basis. Nevertheless, procedures will need to be instituted by carriers which will cause a medical only type file to be closely monitored when certain warning signs appear indicating a possible change in the disability status of the claimant. For example, further investigation and monitoring of a claimant's disability status should occur when there are concerns voiced by the insured, when there is a significant increase in medical billing or reporting, when there is a change in treating doctor, upon voluntary or involuntary termination of employment, or possibly the retention of legal counsel.

*ATTACHMENTS - RULE 124.1; RULE 124.7*