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To: Texas Workers' Compensation System Participants

From: Kara Mace, Deputy Commissioner, Legal Services

Date: July 19, 2021

RE: Senate Bill 22, 87th Legislature, Regular Session (2021) and New:

- Plain Language Notice PLN-15, *Notice of Request to Reprocess a SARS-CoV-2 or COVID-19 Claim Subject to Texas Government Code Section 607.0545*;
- *Sample Request to Reprocess a SARS-CoV-2 or COVID-19 Claim*; and
- Updated PLN-14, *Notice of Continuing Investigation*.

Senate Bill (SB) 22 adds new Texas Government Code Section 607.0545 to create a rebuttable presumption that a severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) injury or death is work-related for certain first responders. This includes detention officers, custodial officers, firefighters, peace officers, and emergency medical technicians. To qualify for the presumption, a first responder must meet certain conditions.

SB 22 applies to a claim for benefits filed on or after June 14, 2021. Under 28 Texas Administrative Code Section 124.2(g), a "claim for benefits" means the first written notice of injury as provided in Section 124.1 (concerning Notice of Injury).

SB 22 also allows certain first responders or their beneficiaries to timely file an initial claim for benefits by December 14, 2021, if the first responder contracted SARS-CoV-2 or COVID-19 between March 13, 2020, and June 14, 2021. The changes in law from SB 22 apply to these claims.

In addition, SB 22 provides a process to allow certain first responders or their beneficiaries, who previously filed a SARS-CoV-2 or COVID-19 claim for benefits and whose claim was denied by the insurance carrier, to request in writing that the insurance carrier reprocess the claim. Insurance carriers must apply the changes in law made under SB 22 to those reprocessed claims. Insurance carriers must reprocess a claim within 60 days after receiving a written request and must notify the injured employee or

beneficiary and the Texas Department of Insurance, Division of Workers' Compensation (DWC) whether the insurance carrier accepts or denies the claim and how to dispute any denial using a plain language notice (PLN) that DWC develops. Covered employees or their beneficiaries must request that the insurance carrier reprocess the claim by June 14, 2022.

DWC adopted a new document, *Sample Request to Reprocess a SARS-CoV-2 or COVID-19 Claim*, and new PLN-15, *Notice of Request to Reprocess a SARS-CoV-2 or COVID-19 Claim Subject to Texas Government Code Section 607.0545* (PLN-15), effective July 19, 2021. We posted the draft sample notice and PLN-15 for comment online from June 21, 2021, to July 12, 2021.

The adoption of this form and notice is necessary to implement SB 22.

Insurance carriers, including certified self-insurers, certified self-insurer groups, and governmental entities must use the adopted PLN-15 to respond to any request to reprocess a claim under SB 22 requirements beginning July 19, 2021.

The sample request document is not required to request that the insurance carrier reprocess a claim. The injured employee, beneficiary, or attorney may request that the insurance carrier reprocess the claim in any written form.

Both the sample request and the PLN-15 notice are on the [TDI website](#).

DWC also updated the font type and instructions on the PLN-14, *Notice of Continuing Investigation* to show that the notice applies to certain claims subject to SB 22. Insurance carriers, including certified self-insurers, certified self-insurer groups, and governmental entities, must use the adopted form no later than October 18, 2021. The form is also on the [TDI website](#).

2021 Tex. Sess. Law Serv. Ch. 505 (S.B. 22) (VERNON'S)

VERNON'S TEXAS SESSION LAW SERVICE 2021

Eighty-Seventh Legislature, 2021 Regular Session

Additions are indicated by **Text**; deletions by ~~Text~~ .

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

CHAPTER 505

S.B. No. 22

CERTAIN CLAIMS FOR BENEFITS, COMPENSATION, OR ASSISTANCE BY CERTAIN
PUBLIC SAFETY EMPLOYEES AND SURVIVORS OF CERTAIN PUBLIC SAFETY EMPLOYEES

AN ACT

relating to certain claims for benefits, compensation, or assistance by certain
public safety employees and survivors of certain public safety employees.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The heading to Subchapter B, Chapter 607, Government Code, is amended to read as follows:

<< TX GOVT pr. 607.051 c. 607 sc. B hd. >>

T. 6 Subt. A Ch. 607, Subch. B

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY **DETENTION OFFICERS, CUSTODIAL
OFFICERS**, FIREFIGHTERS, PEACE OFFICERS, AND EMERGENCY MEDICAL TECHNICIANS

SECTION 2. Section 607.051, Government Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a) and (1-b) to read as follows:

<< TX GOVT § 607.051 >>

(1) **“Custodial officer” means a person who is employed by the Board of Pardons and Paroles or the Texas Department of Criminal Justice as a parole officer or caseworker or who is employed by the correctional institutions division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates or defendants of the correctional institutions division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the department.**

(1-a) “Detention officer” means an individual employed by a state agency or political subdivision of the state to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution in this state.

(1-b) “Disability” means partial or total disability.

SECTION 3. Sections 607.052(a), (b), (e), and (g), Government Code, are amended to read as follows:

<< TX GOVT § 607.052 >>

(a) Notwithstanding any other law, this subchapter applies only to a **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician who:

(1) on becoming employed or during employment as a **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician, received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter;

(2) is employed for five or more years as a firefighter, peace officer, or emergency medical technician, **except for the presumption under Section 607.0545**; and

(3) seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician.

(b) A presumption under this subchapter does not apply:

(1) to a determination of a survivor's eligibility for benefits under Chapter 615;

(2) in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation;

(3) to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician that provides coverage in addition to any benefits or compensation required by law; or

(4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and:

(A) the firefighter, peace officer, or emergency medical technician is or has been a user of tobacco; or

(B) the firefighter's, peace officer's, or emergency medical technician's spouse has, during the marriage, been a user of tobacco that is consumed through smoking.

(e) A **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician who uses a presumption established under this subchapter is entitled only to the benefits or compensation to which the **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician would otherwise be entitled to receive at the time the claim for benefits or compensation is filed.

(g) This subchapter applies to a **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician who provides services as an employee of an entity created by an interlocal agreement.

SECTION 4. Section 607.054, Government Code, is amended to read as follows:

<< TX GOVT § 607.054 >>

Sec. 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS. **(a)** A firefighter, peace officer, or emergency medical technician who suffers from tuberculosis, or any other disease or illness of the lungs or respiratory tract that has a statistically positive correlation with service as a firefighter, peace officer, or emergency medical technician, that results in death or total or

partial disability is presumed to have contracted the disease or illness during the course and scope of employment as a firefighter, peace officer, or emergency medical technician.

(b) This section does not apply to a claim that a firefighter, peace officer, or emergency medical technician suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19).

SECTION 5. Subchapter B, Chapter 607, Government Code, is amended by adding Section 607.0545 to read as follows:

<< TX GOVT § 607.0545 >>

Sec. 607.0545. SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 (SARS-CoV-2) OR CORONAVIRUS DISEASE 2019 (COVID-19). (a) A detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that results in death or total or partial disability is presumed to have contracted the virus or disease during the course and scope of employment as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician if the detention officer, custodial officer, firefighter, peace officer, or emergency medical technician:

(1) is employed in the area designated in a disaster declaration by the governor under Section 418.014 or another law and the disaster is related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); and

(2) contracts the disease during the disaster declared by the governor described by Subdivision (1).

(b) The presumption under this section applies only to a person who:

(1) is employed as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician on a full-time basis;

(2) is diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19):

(A) using a test authorized, approved, or licensed by the United States Food and Drug Administration; or

(B) if the person is deceased:

(i) using a test described by Paragraph (A); or

(ii) by another means, including by a physician; and

(3) was last on duty:

(A) not more than 15 days before the date the person is diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) using a test described by Subdivision (2)(A); or

(B) if the person is deceased, not more than 15 days before the date the person:

(i) was diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) using a test described by Subdivision (2)(A);

(ii) began to show symptoms of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) as determined by a licensed physician;

(iii) was hospitalized for symptoms related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); or

(iv) died if severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) was a contributing factor in the person's death.

(c) This section does not affect the right of a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician to provide proof, without the use of the presumption under this section, that an injury or illness occurred during the course and scope of employment.

(d) Sections 409.009 and 409.0091, Labor Code, do not apply to a claim for compensation determined to be compensable or accepted by an insurance carrier as compensable using the presumption under this section. Notwithstanding this subsection, an injured employee may request reimbursement for health care paid by the employee as provided by Section 409.0092, Labor Code.

(e) This section expires September 1, 2023.

SECTION 6. Section 607.057, Government Code, is amended to read as follows:

<< TX GOVT § 607.057 >>

Sec. 607.057. EFFECT OF PRESUMPTION. Except as provided by Section 607.052(b), a presumption established under this subchapter applies to a determination of whether a **detention officer's, custodial officer's**, firefighter's, peace officer's, or emergency medical technician's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

SECTION 7. Section 607.058, Government Code, is amended to read as follows:

<< TX GOVT § 607.058 >>

Sec. 607.058. PRESUMPTION REBUTTABLE. (a) A presumption under Section 607.053, 607.054, **607.0545**, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(b) A rebuttal offered under this section must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a **detention officer, custodial officer**, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(c) In addressing an argument based on a rebuttal offered under this section, an administrative law judge shall make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's service as a **detention officer, custodial officer**, firefighter, **peace officer**, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(d) A rebuttal offered under this section to a presumption under Section 607.0545 may not be based solely on evidence relating to the risk of exposure to severe acute respiratory syndrome coronavirus 2 (SARS–CoV–2) or coronavirus disease 2019 (COVID–19) of a person with whom a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician resides. This subsection expires September 1, 2023.

SECTION 8. Subchapter A, Chapter 409, Labor Code, is amended by adding Section 409.0092 to read as follows:

<< TX LABOR § 409.0092 >>

Sec. 409.0092. HEALTH CARE REIMBURSEMENT PROCEDURES FOR CERTAIN INJURED EMPLOYEES. (a) An injured employee who is subject to Section 607.0545, Government Code, and whose claim for benefits is determined to be compensable by an insurance carrier or the division, may request reimbursement for health care paid by the employee, including copayments and partial payments, by submitting to the carrier a legible written request and documentation showing the amounts paid to the health care provider.

(b) Not later than the 45th day after the date an injured employee submits a request for reimbursement for health care to an insurance carrier under Subsection (a), the carrier shall provide reimbursement or deny the request.

(c) If an insurance carrier denies an injured employee's request for reimbursement for health care, the employee may seek medical dispute resolution as provided by Chapter 413 and division rules. Notwithstanding any other law, an employee's request for medical dispute resolution is considered timely if the employee submits the request not later than the 120th day after the date the carrier denies the employee's request for reimbursement.

(d) This section expires September 1, 2023.

SECTION 9. Section 409.022(d), Labor Code, is amended to read as follows:

<< TX LABOR § 409.022 >>

(d) In this subsection, the terms “**custodial officer,**” “**detention officer,**” “emergency medical technician,” “firefighter,” and “peace officer” have the meanings assigned by Section 607.051, Government Code. In addition to the other requirements of this section, if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from **a custodial officer's, a detention officer's,** an emergency medical technician's, a firefighter's, or a peace officer's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, the notice must include a statement by the carrier that:

- (1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and
- (2) describes the evidence that the carrier reviewed in making the determination described by Subdivision (1).

<< Note: TX LABOR § 607.0545 >>

SECTION 10. (a) The changes in law made by this Act apply to a claim for benefits pending on or filed on or after the effective date of this Act. A claim for benefits filed before that date is covered by the law in effect on the date the claim was made, and that law is continued in effect for that purpose.

(b) Notwithstanding any other law, a person subject to Section 607.0545, Government Code, as added by this Act, who on or after the date the governor declared a disaster under Chapter 418, Government Code, relating to SARS–CoV–2, coronavirus disease

2019 (COVID-19), but before the effective date of this Act, contracted SARS-CoV-2, coronavirus disease 2019 (COVID-19), may file a claim for benefits related to SARS-CoV-2, coronavirus disease 2019 (COVID-19), on or after the effective date of this Act, regardless of whether that claim is otherwise considered untimely and the changes in law made by this Act apply to that claim. A claim authorized under this subsection must be filed not later than six months after the effective date of this Act.

(c) Notwithstanding Subsection (a) of this section or Section 409.003, 409.007, 410.169, or 410.205, Labor Code, a person subject to Section 607.0545, Government Code, as added by this Act, who on or after the date the governor declared a disaster under Chapter 418, Government Code, relating to SARS-CoV-2, coronavirus disease 2019 (COVID-19), but before the effective date of this Act, filed a claim for benefits related to SARS-CoV-2, coronavirus disease 2019 (COVID-19), and whose claim was subsequently denied may, on or after the effective date of this Act, request in writing that the insurance carrier reprocess the claim and the changes in law made by this Act shall apply to that claim. A request to reprocess a claim as authorized by this subsection shall be filed not later than one year after the effective date of this Act.

(d) Not later than the 60th day after the date an insurance carrier receives a written request to reprocess a claim under Subsection (c) of this section, the insurance carrier shall reprocess the claim and notify the person in writing whether the carrier accepted or denied the claim. If the insurance carrier denies the claim, the notice must include information on the process for disputing the denial. The notice provided by the insurance carrier must use the notice provisions prescribed by the division of workers' compensation of the Texas Department of Insurance under Subsection (e) of this section.

(e) As soon as practicable after the effective date of this Act, the division of workers' compensation of the Texas Department of Insurance shall prescribe notice provisions for an insurance carrier to use when providing notice of the insurance carrier's acceptance or denial of a person's claim. The notice provisions must be clear and easily understandable.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

Passed the Senate on April 21, 2021: Yeas 31, Nays 0; May 25, 2021, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2021, House granted request of the Senate; May 30, 2021, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0; passed the House, with amendments, on May 20, 2021: Yeas 139, Nays 6, one present not voting; May 27, 2021, House granted request of the Senate for appointment of Conference Committee; May 30, 2021, House adopted Conference Committee Report by the following vote: Yeas 139, Nays 3, two present not voting.

Approved June 14, 2021.

Effective June 14, 2021.