

Texas HB7 & Health Care Network Implementation Employer School

Impact of HB7 on Texas Employers

I. WHAT HB7 MEANS TO YOU

On June 1, 2005 Governor Rick Perry signed into law the major workers' compensation reform legislation – House Bill (HB) 7. Governor Perry believes that “it will lead to significantly lower workers' compensation costs for Texas employers, control medical costs, expand access to care and improve benefits for those hurt on the job so they can return to work sooner.” It is still too early to quantify the savings, since many of the changes are ongoing and have yet to be interpreted by the Workers' Compensation Division (WCD) and the Courts.

- That being said, HB7 is a good piece of legislation for employers. Since many parts of the legislation are still being refined, we encourage employers to continue to stay actively involved to ensure there is no devil in the details.
- HB7 is not a passive bill. A key element of the legislation is for employers to participate in networks. If you do nothing else, work with us and your business units to ensure that we maximize this opportunity.

II. SUMMARY OF HB7

House Bill 7:

- creates the Workers' Compensation Division (WCD) administered as a division of the Texas Department of Insurance (TDI);
- creates the Office of Injured Employee Counsel;
- places greater reliance on the use of networks of medical providers;
- strengthens medical treatment guidelines;
- increases the maximum weekly temporary income benefits starting October 1, 2006 to \$674;
- attempts to reduce subjectivity in Supplemental Income Benefits entitlement by establishing work search standards and requiring “active” participation in vocational rehabilitation;
- provides strong return-to-work incentives for small employers; and
- creates a rebuttable presumption that a person is intoxicated based upon a blood test or urinalysis

Several key effective dates are provided below:

- September 1, 2005
 - The Act takes effect
 - TWCC is abolished and the Workers' Compensation Division of the Texas Department of Insurance is established.
 - The Office of Injured Employee Counsel is established.
 - The state average weekly wage becomes \$540 until September 30, 2006.
- October 1, 2005
 - The Governor shall appoint the Commissioner of Workers' Compensation of the Division of Workers' Compensation and the Injured Employee Public Counsel of the Office of Injured Employee Counsel.
- December 1, 2005

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- December 1, 2005
 - The Commissioner of Insurance shall adopt rules regarding the certification of workers' compensation networks.
 - The Commissioner of Insurance and the Commissioner of Workers' Compensation shall adopt rules relating to the transfer of TWCC programs to TDI.
- January 1, 2006
 - TDI shall accept applications from a workers' compensation network seeking certification.
 - Effective date for the creation of the small employer return-to-work pilot program at the Division of Workers' Compensation at TDI.
- February 1, 2006
 - The Commissioner of Workers' Compensation shall adopt rules regarding changes to Required Medical Examinations and Designated Doctor Examinations.
- December 1, 2006
 - The Commissioner of Workers' Compensation shall forward legislative recommendations regarding changes to the Work Comp Act to the legislature no later than this date every even-numbered year.
 - The Commissioner of Insurance shall issue the first report to the governor, lieutenant governor, speaker and the legislature on the impact of HB 7 on the affordability and availability of workers' compensation insurance for Texas employers.

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III. ADOPTION OF THE MEDICAL NETWORK ACT

Effective January 1, 2006, the Employee must treat within the Medical Provider Network for the life of the claim, unless the Employer or Insurer does not establish a medical provider network.

- Participation in a certified network is voluntary at the employer level. Employers may elect to provide workers' compensation coverage to employees through a certified network.
- If the employer contracts with a carrier that has a certified network, the employer's employees must participate and receive care for workplace injuries through that network if they live within the network's service area.
- The insurer must notify the injured employee in writing of the network requirements.
- For those injured employees with injuries on or after September 1, 2005, network coverage is determined by the election of the employer. If the employer elects coverage, an employee who was treating with a non-network provider for an injury that occurred before the employer's carrier established or contracted with the network must then select a doctor from the network within 14 days from receiving notice of the network selection of the network will assign a network treating doctor.
- For injured workers whose injuries are prior to September 1, 2005, the carrier shall choose whether to provide health care through a network. As soon as the carrier contracts with or establishes a network within the claimant's geographical region, the claimant automatically becomes subject to the network upon notice of the network.
- If the employee, prior to the injury, designated a primary care physician under the employee's HMO who is not on the carrier's network, the employee may retain the doctor as the treating doctor but the doctor must comply with the network contract and services reimbursed as a network service. This does not apply to Group Health PPO networks.
- Carriers are liable for non-network care involving:
 - Emergency care;
 - Care outside the service area;
 - Non-network care that has been referred and approved by the network; or
 - Non-network care where the employee has not received appropriate notice of network requirements.
- The amount of network reimbursement is determined by the contract between the network and the provider. Out of network providers are to be reimbursed at the Texas Work Comp fee schedule.
- The network must establish one or more service areas and demonstrate continuity, accessibility, availability and quality of services. Documentation must specify the counties and zip code service area and must include a complete provider directory.
- Providers and emergency care must be available and accessible 24 hours a day, seven days a week. Physical and occupational therapy and chiropractic services must be available and accessible within the network's service area.
- Prescription medications may not be delivered through a network.

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- Treating doctors or general hospitals must be accessible within 30 miles in non-rural areas and 60 miles in rural areas. The distance from any point in the network’s service area to a point of service by a specialist or specialty hospital is not greater than 75 miles.
- The network determines the specialty or specialties of doctors who may serve as “treating doctors” and who are primarily responsible for the employee’s health care for an injury.
- An employee who is dissatisfied with the initial choice of doctor may select an alternative from the network’s list by notifying the network. Subsequent requests require approval from the network.
- The Approved Doctor’s List (ADL) remains in existence at least until September 1, 2007 for non-network care.
- Employees must be notified of the network requirements within 3 days of hire and at the time of injury. Carriers must obtain a signed acknowledgement confirming the employee has received the notice. In addition, employers must post notice of the network requirements at each place of employment.

Impact / Considerations for Employers	Travelers Action Plan
<ul style="list-style-type: none"> • By participating in a network, the employer and carrier have more control over the medical treatment that is rendered which should decrease medical costs and provide for a more timely return to work. • You should see a significant increase in the network penetration rates for employees when the Medical Provider Network provision becomes effective and the networks are certified by the TDI/WCD. 	<ul style="list-style-type: none"> • Travelers is currently working with its contracted networks to meet the state requirements as they are defined by rule. • Travelers also has staff dedicated working with our contracted networks to ensure we have the best providers available and to bring your preferred physicians into the networks. • Travelers will ensure that its insured customers have all the necessary network acknowledgement forms and posting notices.

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IV. THE OFFICE OF INJURED EMPLOYEE COUNSEL (OIEC)

This new state agency's primary mission is to represent the interests of injured employees in the workers' compensation system. It will be administered by Public Counsel appointed by the Governor no later than October 1, 2005. It will be administratively attached to the TDI who will provide staff and facilities necessary to perform the duties. Duties of the OIEC include:

- Advocating on behalf of injured employees as a class during rulemaking related to workers' compensation.
- Providing ombudsman assistance during administrative dispute proceedings (i.e. Benefit Review Conferences). This is similar to the current system.
- Referring injured employees to local, state and federal financial assistance, rehabilitation and work placement programs and other social services.
- Identifying problems with the workers' compensation system from the perspective of injured employees and issuing a biennial report that includes proposed legislative and regulatory recommendations to address the problems.
- Submitting a notice of injured employee rights and responsibilities to TDI and the Division for adoption by the Commissioners of Insurance and Workers' Compensation.

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<ul style="list-style-type: none"> • As long as employers are participating in a network, injured employees who have sought legal representation from private attorneys will no longer have the option of changing doctors to one that has been "recommended" by the attorney. Therefore, we anticipate that the OIEC will be used by injured employees more so than the current Ombudsman program. 	<ul style="list-style-type: none"> • By making every possible attempt at providing 24-hour initial contact with injured employees, Travelers will continue to provide a timely explanation of their rights, responsibilities and benefits so that they do not feel the need to seek legal representation. When necessary, claim professionals will refer injured employees to the OIEC.

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V. CLAIM MANAGEMENT

HB7 has made several changes in the way that claims are administered by carriers. These changes impact both indemnity and medical benefits and the way in which disputes are resolved. Among the changes to the general operation of the administration of claims include:

- Created a rebuttable presumption that a person is intoxicated based upon a blood test or urinalysis.
- A carrier may request that an injured employee submit to a medical exam by the treating doctor to define the compensable injury. Treatment for disputed injuries must be preauthorized before the treatment is rendered and preauthorization may now be denied if the treatment is for an area of the body which has been disputed as compensable.
- As of September 1, 2005, the state average weekly wage is statutorily set at \$540 (a \$1 increase from the previous year). The maximum weekly temporary income benefit was increased to \$674 on October 1, 2006.
- The current 28 day waiting period is now reduced to 14 days.
- For Supplemental Income Benefit (SIBs) claims, work search standards will be established including the number of job applications required to meet the good faith criteria. In addition, "active" participation in vocational rehabilitation will be required.
- Parties must now document their efforts to resolve disputed issues prior to requesting a Benefit Review Conference (BRC). A BRC may only be reset once for the same issue.
- Carriers will be required to identify injuries potentially resulting in lost time from employment "as early as practicable" to determine if skilled case management is necessary for the claim.
- The State Office of Administrative Hearings (SOAH) will discontinue accepting appeals effective September 1, 2005. Cases not pending for hearing before SOAH on or before August 31, 2005 will not be set for hearing.

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<ul style="list-style-type: none"> • It is more important than ever that employers consider post-injury drug screens immediately following accidents or injuries and alert the carrier to any concerns that drugs or alcohol may have played a role in the injury. • Salary continuation policies may be impacted by the fact that the first week of disability will now be paid 2 weeks sooner than under the previous rule. 	<ul style="list-style-type: none"> • Our Investigative Claim Units (ICU) will continue to provide timely and effective investigations of all claims in which drugs or alcohol may have played a role in the injury. • Travelers will continue to use our Medical Case Managers to effectively manage claims involving lost time in order to facilitate a timely and effective return to work. • Travelers is constantly developing and providing training to all claim staff concerning the changes in the law. As future rules are written and adopted, additional training will be provided. These changes will also be communicated to those customers that have signed up for employer schools.

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VI. REQUIRED MEDICAL EXAMINATIONS (RME) AND DESIGNATED DOCTORS

The role of the Independent Medical Examiner has been limited whereas the role of the state-appointed Designated Doctor has been expanded as follows:

- Independent Medical Exams requested by carrier are limited to questions concerning the “appropriateness of care.” However, the RME provisions do not apply to health care provided through a network.
- The role of the Designated Doctor is expanded to include issues concerning Maximum Medical Improvement, extent of injury, disability and return to work. The Designated Doctor’s opinion still has presumptive weight. However, that weight is now based on the preponderance of evidence and if other evidence simply outweighs the opinion of the Designated Doctor, his/her opinion is not binding
- An employee’s failure to attend a Designated Doctor exam bars them from temporary income benefits and subjects them to a fine of up to \$10,000.
- If an employee is found to be at MMI or is released to return to work, the carrier may immediately suspend temporary income benefits.

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<ul style="list-style-type: none">• There will now be instances in which the employee will receive a release to return to work from the designated doctor instead of the treating doctor.	<ul style="list-style-type: none">• Travelers is conducting focused training for its claim management staff to make sure they understand the new roles and procedures so that we react accordingly.

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VII. MISCELLANEOUS

Exclusive Remedy:

An employer is now entitled to an exclusive remedy, even if the workers' compensation claim was disputed under one of the enumerated defenses (intoxication; willful attempt to injure self or unlawfully injure another person; act of third person intended to injure employee because of a personal reason and not directed because of employment; voluntary participation in an off-duty recreational, social or athletic activity; acts of God; and horseplay) or the failure to timely report the injury to the employer or failure to timely file a claim. However, there remains no exclusive remedy protection for injuries that are noncompensable for any other reason.

Return-to-Work Pilot Program:

Employers having at least two employees but fewer than 51 shall be subject to a pilot return-to-work program that became effective February 22, 2006. Participating employers will be reimbursed in amounts not to exceed \$2,500 for modification or provision of alternative work within a doctor's imposed work restrictions. Reimbursable expenses may include: modification equipment, devices, furniture or tools, and other costs necessary for reasonable accommodations.

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<ul style="list-style-type: none">• This pilot return-to-work program is a great opportunity for small employers to consider adopting a light/modified duty return-to-work program. You should work with your business units to establish return-to-work / alternate duty as standard.• You should access the Lost Time Days report from RMIS that indicates where supervisors have indicated that they can not accommodate return-to-work. These situations could represent savings opportunities for you, in addition to providing meaningful work for the affected Employees.	<ul style="list-style-type: none">• Travelers will work closely with you to make sure that you have the tools to find appropriate permanent, modified or alternative work.• Travelers will work with you to access job descriptions and the Job Bank.• Travelers claim professionals and medical case managers are trained to push for and obtain a light duty release with each doctor visit when appropriate.

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Provider Reimbursement:

- If the carrier contests compensability, the carrier is liable up to a maximum of \$7,000 for health care services provided before issuance of the required notification.
- Providers must file a claim for payment within 95 days after services are rendered.

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<ul style="list-style-type: none"> • This requirement will place a premium on speed and coordination of the claim reporting process so that the investigation and medical management can begin as quickly as possible. • This provision has the potential to shift costs to workers compensation. Some of these expenses may have previously shown up on your employee benefit plans (group health and STD). 	<ul style="list-style-type: none"> • Travelers is reinforcing our existing procedures and high standards to make sure the compensability investigations proceed as quickly as external factors will allow. • Travelers will conduct focused training for its claim management staff on this section. • Current medical bill processing edits will be updated to ensure that providers who do not submit their bills within 95 days after services are rendered are appropriately denied payment.