

**Workers' Compensation Physician Practice Update**  
**June 12, 2007**  
**By Michael Reed**  
**Texas Medical Association**

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**1. TDI – DWC Invites Stakeholders To Meeting in Austin to Discuss Important Comp Issues**

The Texas Department of Insurance, Division of Workers' Compensation is holding a stakeholder meeting on June 22 from 1:30 - 3:30. The meeting will be held in the Tippy Foster Room, 7551 Metro Center Drive, Suite 100, Austin, TX 78744.

Topics that will be discussed include the following:

Legislation  
Performance Based Oversight  
Disability Management  
Prospective Review of Medical Care Not Requiring Preauthorization Rule  
Customer Service

**2. TDI Memo to Physicians Addressing Carrier Denials for Medical Bills Not Timely Filed**

**MEMORANDUM**

**TO: Health Care Providers in the Workers' Compensation System**  
**FROM: Jaelene Fayhee, Executive Deputy Commissioner, Policy & Research**  
**RE: Carrier Denials for Medical Bills Not Timely Filed**

Health care providers (HCPs) have 95 days from the date of service to submit a medical bill to the insurance carrier. This time frame applies to medical services provided on and after September 1, 2005. HCPs who fail to meet this deadline forfeit their right to reimbursement. Since the implementation of this 95-day bill submission time frame, the Division of Workers' Compensation (Division) has received numerous HCP complaints regarding insurance carrier denial of medical bills as not timely submitted. These complaints are reviewed and processed through the Division's Medical Fee Dispute Resolution (MFDR) section.

**What Can HCPs Do?**

HCPs can reduce the likelihood that the carrier will return a bill as not complete by making sure that:

- (1) The bill is complete; that is, it contains all required fields as set forth in the billing instructions for the appropriate form [28 TAC §133.2(2)];
- (2) The bill is accurate; that is, it includes the correct billing codes from the Division fee guidelines in effect on the date of service [28 TAC§133.20(c)]; and
- (3) HCPs have included legible copies of the medical documentation listed in both part (a) and part (c) of 28 TAC §133.210.

**How to Dispute a Carrier Denial**

HCPs with disputes regarding carrier denials based on untimely submission may seek medical dispute resolution by completing form DWC060, Medical Fee Dispute Resolution Request, according to the instructions and sending two copies of both the completed form and the supporting documentation to MFDR.

If MFDR's review concludes that the bill was submitted within the 95-day time frame, it will order the carrier to process the bill according to the appropriate Division rule and forward a violation referral to Division's Legal and Compliance section.

If there are any questions about this dispute resolution process, contact the MFDR section at (512) 804-4812.

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**3. Prospective Review of Medical Care (PRM) Rule to be Repealed**

As the result of the adoption of treatment guidelines for the workers' compensation system, the Texas Department of Insurance (TDI) has announced that the prospective review of medical care not requiring preauthorization (PRM) rule (28 Texas Administrative Code §134.650) is no longer needed and will be repealed.

For recommended treatment that is not covered by, or is outside of, the Official Disability Guideline (ODG) treatment guidelines, health care providers must request preauthorization through the workers' compensation insurance carrier. TDI's preauthorization medical dispute resolution process is available if providers dispute a preauthorization denial by the carrier.

A repeal of the PRM rule will be submitted to the Texas Register. TDI will continue to accept PRM requests through June 18, 2007. However, as of May 1, 2007, workers' compensation system participants are required to follow the treatment guidelines and request preauthorization if necessary.

TDI adopted rules in December 2006 which designated the ODG as the official workers' compensation treatment guidelines for Texas. The treatment guidelines are applicable for health care provided on or after May 1, 2007.

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#### **4. Stakeholders Divided on Next Cycle of Provider Fees from Workcompcentral**

The first draft of suggested revisions of Texas' medical and hospital fees is still a few months away, yet stakeholders already appear to be far apart on what those revisions should do. Workers' Compensation Commissioner Albert Betts wants input from workers' compensation participants on revising the workers' compensation medical and hospital inpatient fee guidelines and on establishing a hospital outpatient fee guideline. But representatives of the Property Casualty Insurers Association of America (PCI) and Texas Hospital Association told WorkCompCentral Monday that finding agreement among insurers and hospitals is likely to prove difficult. Pre-proposal drafts of the fee guideline rules will be posted for comment this summer or early fall. Joe Woods, PCI vice president and regional manager in Austin, said "there will be battles" over the percentage of Medicare used as the basis for any revised fee guidelines. Woods believes the most important issue to be settled is the use of stop loss provisions in the guidelines. This practice of limiting exposure to medical costs is the reason for many hospital payment cases now in dispute, he said. Under the current fee system, hospitals are paid 75% of charges that exceed \$40,000. There have been allegations that some hospitals have increased their bill amounts to breach the \$40,000 limit. "As long as stop loss is a monetary target, that can be used to game the system," Woods said. Some "major adjustments" will be required to make the revisions workable from the insurance carriers' standpoint, he said. Charles Bailey, general counsel for the Texas Hospital Association in Austin agreed that stop loss provisions are a major concern for the providers, too. "There needs to be some continuation of stop loss," Bailey said. The current \$40,000 threshold could be moved to \$50,000, with exclusion of implantables, he said. But Bailey thinks the payment adjustment factor may be a larger issue for most hospitals. "We recognize that we generally need to follow the Medicare methodology," Bailey said. However, previous carrier suggestions that reimbursement be set at 100% of Medicare is completely unacceptable because Medicare underpays hospitals for their services, he said. Betts has asked the hospitals to help collect data on what hospitals are paid by commercial payers to assist in establishing fees for workers' compensation cases, according to Bailey. Betts sent a letter identifying some 20 to 25 diagnostic codes to be used for comparing payments hospitals received from Medicare, health maintenance organizations, preferred provider organizations and commercial payers. Betts asked that the information be provided to the division by July 15,

according to Bailey, who received a copy. The association anticipates targeting "the larger hospital systems" for those data to get the information quickly, he reported. Bailey said there is no public source for the data. Hospitals report their charges to the state, but not what they are paid by various payers, he said. The division noted that "numerous factors to be considered in formulating any workers' compensation health care policies and reimbursement guidelines" are specified in Labor Code Section 413.011. In general, the policies and guidelines must:

- \* Reflect standardized reimbursement structures found in other health care delivery systems.
- \* Achieve standardization with fees that reflect the most current Centers for Medicare and Medicaid Services reimbursement methodologies, models and values or weights.
- \* Include fees that also take into account economic indicators in health care, are fair and reasonable, are designed to ensure the quality of medical care and achieve effective medical cost control.

The Texas Workers' Compensation Act provides that the workers' compensation commissioner is required to review medical policies and fee guidelines every two years. The current medical fee guideline (28 Texas Administrative Code, Section 134.202) was implemented in 2003 by the former Texas Workers' Compensation Commission and sets workers' compensation reimbursement for health care professionals at 125% of Medicare reimbursement.

The Division of Workers' Compensation in 2005 replaced the commission, under House Bill 7. The current hospital inpatient fee guideline (28 TAC Section 134.401) was implemented in 1997, before the Workers' Compensation Act required that the guideline be based on Medicare standards. Access to health care also is a factor in revising medical fee guidelines, Betts noted. Labor Code Section 408.0252 provides that the commissioner may, by rule, identify underserved areas of Texas in which access to health care providers is less available and may adopt appropriate standards, guidelines and rules regarding the delivery of health care in those areas.

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## **5. Prospective Review Rule Scrapped**

The Texas Division of Workers' Compensation announced Monday that a rule on the prospective review of medical care not requiring preauthorization is being eliminated. The Texas Department of Insurance took the action after the adoption of treatment guidelines for the workers' compensation system. The division reported that "prospective review of medical care not requiring preauthorization (PRM) rule (28 Texas Administrative Code 134.650) is no longer needed and will be repealed." "For recommended treatment that is not covered by, or is outside of, the Official Disability Guideline (ODG) treatment guidelines, health care providers must request preauthorization through the workers' compensation insurance carrier," the division noted. The department's preauthorization medical dispute resolution process is available if providers dispute a preauthorization denial by the carrier. A repeal of the rule will be submitted to the Texas Register. The department will continue to accept prospective medical review requests through Monday. The treatment guidelines are applicable for health care provided on or after May 1, 2007, and participants as of that date must request preauthorizations, if necessary. The agency adopted rules in December 2006 that designated the ODG as the official workers' compensation treatment guidelines for Texas.

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## **6. DWC Medical Adviser Warns Providers, Carriers on Over-Use**

The Texas Division of Workers' Compensation medical adviser said his office will be looking for doctors who "over-utilize" the workers' compensation system, and also for insurance companies that allow doctors to do so. Dr. Howard Smith, a practicing physician since 1985 and a practicing attorney since 2002, reported in the division's latest newsletter that "several changes" to the medical quality review process are designed to make decisions "more transparent." As a practicing physician, Smith specialized in brain and spinal surgery. "The process does not involve simply doctors in the system but also insurance carriers, independent review organizations (IROs) and all those with responsibility for ensuring that patients get adequate and proper care and that overutilization is discouraged and minimized," Smith wrote. One important change in Medical Quality Review Panel deliberations is the blind selection of health care providers. The panel member responsible for choosing a provider to review will not know the identity of the provider, Smith explained. "In many cases, a review may simply reveal some challenging cases and not over-usage by the doctors. "However, in those instances where there is a difference of opinion as to how much care should be provided, more data will be sought and the doctor will be invited to present data," Smith said. Informal review conferences will be available for health care providers to present their point of views and any other data that may be useful in fully understanding the case, he said. "It is clear that overutilization is a system problem and not limited to simply one participant," Smith commented. "That is why we anticipate reviews of insurance carriers, IROs and other participants." Proper care of a patient and proper utilization of resources is also a systemic responsibility, Smith added. "It will be very important to ensure that, for instance, insurance carriers are not simply approving everything submitted to them, but indeed are doing a careful analysis of what is appropriate for the patient. "The Office of the Medical Advisor will be interested in speaking with those insurance carriers who have shown a pattern of practice of approving what appears to be overutilization." Smith said that by the office's efforts the division hopes to assist system participants to "render good medical care and to avoid overutilization, which is not simply a financial drain but also can cause substantial suffering on the part of the injured employee." The possibility of disability and a failure to return to work is "very deleterious to the injured employee," he concluded.

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## **7. The ADL is going away 9-1-2007 – TDI addresses Providers on the Approved Doctor List**

To: Providers on the Approved Doctor List  
From: Howard Smith, M.D., J.D.  
Date: May 3, 2007  
Re: Approved Doctor List

As you may know, House Bill 7 called for the use of the Division of Workers' Compensation's Approved Doctor List to expire on September 1, 2007.

In preparation for this change, the Division is extending ADL credentials (including Temporary Exceptions) until August 31, 2007 for providers whose credentials expire on or after May 1, 2007. **This means that providers with credentials expiration dates after May 1, 2007 are not required to re-register for the ADL.**

If the division denies an application to the ADL, the doctor will be notified of the intent to take such action. The doctor will be provided an opportunity to respond and will be notified of any final action of the Division, including any effect upon the doctor's credentials.

The Division will be in communication with providers to notify them of any system changes related to the expiration of the ADL. If you have any questions, please contact the Office of the Medical Advisor, Credential Management section at 1-888-489-2667, option 3.

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## **8. Training Offerings:**

- SAN ANTONIO - Workers' Compensation Educational Session Offered on June 18

AUSTIN, TX \* The San Antonio Field Office of the Texas Department of Insurance, Division of Workers' Compensation (Division) is hosting a brown bag educational session for health care providers, employers, human resource managers, claims adjusters, case managers and employee organizations on Monday, June 18, 2007. The topic is Disability Management. This free session will be held from noon to 1:30 p.m. at the Ed Cody Branch of the San Antonio Library, 11441 Vance Jackson. Following a presentation the session is an open forum in which participants may ask questions.

Due to limited space, registration is required. To register, participants must e-mail their name, telephone number and e-mail address to Natalie Messer, San Antonio Office Manager, at [Natalie.Messer@tdi.state.tx.us](mailto:Natalie.Messer@tdi.state.tx.us).

For more information, contact the Division's Public Information Office or Natalie Messer via e-mail or by calling 210-593-0070 extension 500. # # #

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## **9. TMA to offer workers' compensation training seminars soon:**

Accepting registrations soon for the following cities and dates:

August 7 – Fort Worth	August 9 – San Antonio	August 14 – Houston
August 16 – McAllen	August 28 – Dallas	August 30 – Tyler
September 5 – Lubbock	September 7 - Austin	