

No. 05-0924

Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas

Date: OCT 28 2005

Subject Considered:

RESPONSIBILITIES OF THE
THE TEXAS DEPARTMENT OF INSURANCE
AND THE DIVISION OF WORKERS COMPENSATION

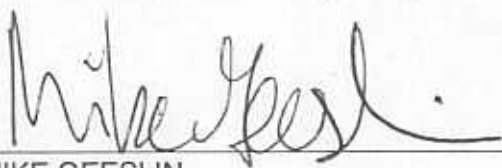
General Remarks and official action taken:

On this day came on for consideration by the Commissioner of Insurance, pursuant to authority granted under TEX. LABOR CODE §402.00111(c), the matter of delineating the responsibilities of the Texas Department of Insurance and the Texas Department of Insurance Division of Workers' Compensation and the respective Commissioners.

After consideration of this matter, the Commissioner of Insurance has determined that it is necessary to outline the responsibilities and the interaction between the Texas Department of Insurance and the Texas Department of Insurance Division of Workers' Compensation as set forth in Attachment A to this Order, which is incorporated by reference for all purposes.

IT IS THEREFORE ORDERED that the Texas Department of Insurance and the Texas Department of Insurance Division of Workers' Compensation and the respective Commissioners shall have the responsibilities described in Attachment A.

This Order notwithstanding, the Commissioner of Insurance retains the authority to act in all things and at all times with respect to the Commissioner of Insurance's statutory charge.


jg: MIKE GEESLIN
COMMISSIONER OF INSURANCE

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Pursuant to Sec. 402.00111 (c), Texas Labor Code, as enacted under House Bill 7, 79th Legislature, Regular Session, the following memorandum outlines the responsibilities and interaction between the Texas Department of Insurance (Department) and the Texas Department of Insurance, Division of Workers' Compensation (DWC).

The Commissioner of Insurance and Texas Department of Insurance shall:

- Provide staff and facilities necessary to enable the DWC to perform its duties of:
 - Regulating and administering the business of workers' compensation in Texas; and
 - Ensuring that workers' compensation laws are executed.
- Govern all provisions relating to workers' compensation health care networks, pursuant to Chapter 1305, Texas Insurance Code, including:
 - Certification of networks that provide workers' compensation medical benefits; and
 - Regulation of networks, including rule making, complaint resolution, investigations and enforcement of Chapter 1305, Texas Insurance Code, and other duties as provided by Chapter 1305, Texas Insurance Code.
- Process requests for reviews by Independent Review Organization (IRO) to resolve medical disputes relating to in-network medical care.
- Certify, register, and regulate IROs in accordance with Article 21.58C, Texas Insurance Code and Department rules.
- License and regulate workers' compensation utilization review agents (URAs) in accordance with Article 21.58A, Texas Insurance Code and Department rules.
- Administer the Workers' Compensation Research and Evaluation Group (Group) under Chapter 405, Texas Labor Code, and accept public comments on its research agenda. The Commissioner shall adopt rules, as necessary, for data reporting requirements to support the Group's research duties. The Group is also responsible for evaluation of networks and the issuance of consumer report cards as required under Chapter 1305, Texas Insurance Code.
- Investigate the conduct of the work of the DWC, which may include review of documents and/or staff inquiries.
- Provide advice, research, and comments regarding the adoption of rules by the Commissioner of Workers' Compensation.
- Cooperate with the Office of Injured Employee Counsel (OIEC) in providing services to injured workers.
- Report to the Governor, Lt. Governor, and Speaker of the House before December 1 of each even-numbered year regarding the impact of HB 7 on:
 - the cost and quality of medical care provided to injured workers; and
 - the affordability and availability of workers' compensation insurance for employers of this state.
- Administer the workers' compensation group self-insurance program under Chapter 407A, Texas Labor Code.

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- Issue certificates of authority for insurers to write workers' compensation insurance coverage.
- Conduct a public hearing to review workers' compensation insurance rates every biennium and take appropriate action on insurance company rate filings in accordance with Article 5.55, Texas Insurance Code.
- Issue bulletins on workers' compensation issues under the purview of the Department, coordinate with the Division regarding bulletins issued by the Commissioner of Workers' Compensation, and maintain the website and other contact information for the Division of Workers' Compensation.
- Administer and regulate other statutory functions assigned to the Department under the Texas Insurance Code or other applicable statutes.

The Commissioner of Workers' Compensation and the Division of Workers' Compensation (DWC) shall:

- Conduct the daily operations of the DWC and implement its policies, including:
 - Standardization of all DWC forms, letters, and brochures; and
 - Development and implementation of policies that ensure public participation and the appointment of advisory committees if necessary.
- Appoint deputies, assistants, and other personnel, and develop and implement policies that clearly define the responsibilities of the Commissioner and DWC staff.
- Exercise all authority specifically granted to the Commissioner of Workers' Compensation and the DWC under the Texas Labor Code to administer the workers' compensation system.
- Adopt rules to implement and enforce workers' compensation laws, including requirements that provide incentives for overall compliance in the system and emphasize performance-based oversight linked to regulatory outcomes. The Commissioner of Insurance may provide advice, research, and comment regarding the adoption of rules by the DWC.
- Consider and recommend legislative changes on workers' compensation issues pursuant to authority under Sec. 402.066, Texas Labor Code, and from the implementation of the agency's strategic management plan as required under Sec. 402.074, Texas Labor Code.
- Establish a complaint intake process with priorities for investigation.
- Perform workforce education and safety functions, including best practices for return-to-work programs.
- Administer the certified self-insurance program under Chapter 407, Texas Labor Code.
- Administer a process to administratively resolve income benefit disputes and non-network medical fee disputes.
- Process Independent Review Organizations (IRO) requests for non-network retrospective medical necessity and preauthorization disputes under Sec. 413.031, Texas Labor Code and DWC rules, and for a dispute over treatment plan under Sec. 413.011 (g), Texas Labor Code.

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- Adopt rules, in cooperation with the Commissioner of Insurance, regarding electronic submission and processing of medical bills by health care providers to insurance carriers and the delivery of health care in underserved areas.
- Administer the Approved Doctor's List (ADL) until its sunset date of September 1, 2007 or earlier as determined by the Commissioner of Workers' Compensation.
- Process and respond to requests for Required Medical Examinations (RMEs) in accordance with Sec. 408.004, Texas Labor Code.
- Administer the training of Designated Doctors (DD) and the maintenance of the DD list, including the scheduling of DD exams upon request by injured workers or insurance carriers.
- Monitor health care providers, insurance carriers, independent review organizations (IROs), and workers' compensation claimants who receive medical services to ensure compliance with rules adopted by the Commissioner relating to health care, including medical policies and fee guidelines. DWC shall report its monitoring of IROs to the Department, at least, quarterly.
- Adopt health care reimbursement policies and guidelines for non-network claims. Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control.
- Adopt a closed pharmaceutical formulary and a pharmacy fee guideline for both network and non-network claims.
- Adopt treatment and return-to-work guidelines for non-network claims. Treatment guidelines must be "evidence-based, scientifically valid, and outcome-focused."
- Enforces the Workers' Compensation Act and DWC rules including:
 - Maintaining an investigation unit to investigate possible violations of the Texas Labor Code and DWC rules, orders or decisions;
 - Developing key regulatory goals to be used in assessing the performance of insurance carriers and health care providers;
 - Developing regulatory tiers that distinguish among insurance carriers and health care providers who are poor performers, average performers, and high performers;
 - Adopting requirements that provide incentives for overall compliance in the system, and emphasize performance-based oversight linked to regulatory outcomes;
 - Compiling and maintaining statistical and other information necessary for the DWC to detect practices and patterns of conduct by system participants;
 - Imposing appropriate penalties and other sanctions; and
 - Instituting appropriate proceedings and referral of a system participant involved in a case subject to investigation to other appropriate authorities, including licensing agencies, district and county attorneys, or the Attorney General.
- Cooperate with the Office of Injured Employee Counsel (OIEC) in providing services to injured workers.

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- Administer the small employer return-to-work pilot program in accordance with Sec. 413.022, Texas Labor Code.
- Coordinate with the Department of Assistive and Rehabilitative Services (DARS) and report to the legislature on efforts to improve access to and the effectiveness of vocational rehabilitation services provided to injured workers in accordance with Sec. 419.012, Texas Labor Code.
- Establish a mechanism to refer income benefit recipients to the Texas Workforce Commission (TWC) and local workforce development boards for employment assistance and ensure that return-to-work data outcome data are collected in accordance with Sec. 413.025, Texas Labor Code.
- Administer the Subsequent Injury Fund (SIF), including the collection of fund revenue and the approval of fund expenditures, subject to the Appropriations Act.
- Administer and regulate other statutory functions assigned to the DWC under the Texas Labor Code or other applicable statutes.

Additionally, Section 402.00111(b), Texas Labor Code, allows the Commissioner of Insurance and the Commissioner of Workers' Compensation to delegate to each other any power or duty imposed on either commissioner by the Texas Workers' Compensation Act, including the authority to make final orders or decisions. Any delegation made under Section 402.00111(b) must be in writing.