



## Texas Department of Insurance

**Life, Health & Licensing Program– General Management**, Mail Code 107-2A  
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March 30, 2009

Dear :

The purpose of this letter is to notify workers' compensation carriers and certified workers' compensation health care networks that pursuant to HB 7 (79<sup>th</sup> Texas Legislature, Regular Session) SECTION 8.016, claims that occurred between the period of September 1, 2005 and the date that a claimant's employer elected to include network coverage in the employer's workers' compensation policy should not be enrolled in the certified networks. In certain instances such claims have been enrolled into certified networks. In order to address the situation, the Department is requiring that carriers identify any claim that occurred in the period described above. Any injured employee with a claim that arose **on or after** September 1, 2005, and was transitioned into a certified network **without** employer agreement or **prior to** the employer electing network coverage, must be released from network requirements.

Each carrier that has enrolled such injured employees into a certified network is required to prepare a corrective action plan and provide it to the Department within 20 days of the date of this letter. The corrective action plan must include:

1. How affected injured employees will be notified that they may seek care from non-network providers effective immediately. The injured employees should be advised that it may not be necessary to change their treating doctor if their current provider is willing to see non-network injured employees. Please provide a copy of the template letter that will be used.
2. A list of the affected injured workers with their Social Security Numbers and Dates of Injury. Please provide the complete list of affected injured workers within seven days after all required notices have been provided.
3. How all providers that provided services to these affected injured employees will be notified that the injured employee is not subject to network requirements and how and when restitution of claims payments will be made for any amounts that account for the difference between the network's contracted rate and the Division of Workers' Compensation adopted fee guidelines will be submitted to them. Please provide a copy of the template letter that will be used.
4. How carriers will pass on to policyholders the network premium credit described in Rule VI K. "Certified Workers' Compensation Health Care Network" provide the network endorsement credit required by Rule 6 (k) of the Texas Workers' Compensation and Employers Liability Manual to employers where an injured employee was moved into the certified network by the carrier **without** the employer's agreement or **prior to** the employer's

- election to participate in the carrier's network coverage. Please provide a copy of the template letter that will be used.
5. Confirmation from the carrier and network that the most recent data call submissions where the records were left blank for the date the employer elected network coverage is a factual representation that the employer did not elect network coverage.
  6. In any case where the most recent data call submissions did not accurately reflect the employer's election of network coverage, a copy of the policy declaration page and endorsement page must be submitted for review.

The Department expects that carriers will identify all claims that fit into the above described category and provide the injured employees, providers, and employers with the required notice no later than April 20, 2009.

As background information for this issue, in early 2006, the Department received multiple inquiries from workers' compensation carriers regarding the ability to move claims for injuries that occurred on or after September 1, 2005 into the newly created workers' compensation health care networks without the employer electing network coverage. The inquiries specifically addressed situations where employees were injured after August 31, 2005, but prior to the date networks were certified or contracted with by carrier.

In response to those requests, the Department posted a Frequently Asked Question (FAQ) and answer on the Department's website and included the response in a PowerPoint presentation at the workers' compensation health care network working group meeting in March 2006. The FAQ and the PowerPoint presentation stated that at the carrier's discretion carriers were permitted to enroll into a network these employees who were injured prior to the certification of and contracting with the network into a certified network.

The Department misinterpreted an enacting clause in the bill, House Bill 7, SECTION 8.016, related to implementation of Insurance Code Chapter 1305. The provision allows for workers' compensation health care claims to be part of a workers' compensation health care network if the following conditions are met:

- (1) The employer has elected to provide workers' compensation coverage,
- (2) The carrier has written a policy for workers' compensation coverage that includes an attached endorsement for treatment through a network, and
- (3) The injury upon which the claim for medical benefits is based occurs on or after the beginning of the policy period for a workers' compensation insurance policy that has an endorsement for network treatment.

Through subsequent data calls and conferences, the Department has determined that injured employees have been enrolled in the certified networks on the basis addressed by the FAQ information, and that injured employees have also been enrolled into certified networks when neither the situation addressed by the FAQ have occurred nor the factors contained in the enacting clause of HB 7 have been met.

The Department appreciates the cooperation of the carriers and the certified networks in this matter. Carriers should maintain copies of the election letters in the file associated with the claims addressed in the letter. Please be advised that appropriate

enforcement action will be pursued for failure to comply with the Department's request and erroneous network enrollment of injured employees.

Sincerely,

A handwritten signature in black ink, appearing to read "K Daniel".

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cc: All certified WC Networks