

TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.11

The Office of Injured Employee Counsel (OIEC) adopts new §276.11 concerning the cost and time frame of obtaining copies of an injured employee's medical documentation for use by an Ombudsman in assisting the injured employee in the Texas Department of Insurance, Division of Workers' Compensation's (DWC) administrative dispute resolution system. Section 276.11 is necessary to implement Labor Code §404.155(e) pursuant to House Bill (HB) 888, 80th Texas Legislature, Regular Session, 2007. Section 276.11 is adopted with a change as proposed in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2528).

New §276.11 is necessary to fulfill OIEC's mission critical function to assist an injured employee in DWC's administrative dispute resolution system pursuant to Labor Code §§404.101. Access to an injured employee's medical documentation is imperative to adequately assist an injured employee during a medical dispute resolution hearing. HB 724 as passed by the 80th Texas Legislature, Regular Session, 2007, provides for an administrative hearing subsequent to an Independent Review Organization's (IRO) decision in DWC's medical dispute resolution system. OIEC's Ombudsmen are anticipated to assist a majority of injured employees in these medical dispute resolution hearings as a result of an attorney's limited ability to get reimbursed for services rendered on medical issues within the workers' compensation system. In claims where compensability is contested, health care providers will benefit from an Ombudsman's assistance to an injured employee in proving up a compensable injury. In these cases, a health care provider's payment for services is dependent on an Ombudsman's access to medical documentation. Access to an injured employee's medical documentation is imperative in disputed claims to an injured employee's access to necessary and appropriate medical care which would allow them to get well and back to work.

Section 276.11 is adopted as proposed with the exception of a nonsubstantive change that increases clarity for the reader: the term "prescribed" replaced "governed" in the second sentence of the section.

Adopted §276.11 states upon written request a health care provider shall provide the Office of Injured Employee Counsel (OIEC) medical documentation regarding an injured employee at no cost within five business days of the date posted on the request. A health care provider shall be reimbursed by the insurance carrier for the cost of the medical documentation as prescribed by Division of Workers' Compensation Rule 134.120. If either party fails to comply, an administrative violation shall be enforced by the Commissioner of Workers' Compensation.

Prior to proposing §276.11, an informal version of the rule was sent to the following stakeholders: Texas Department of Insurance; Division of Workers' Compensation; Texas Medical Association; Insurance Council of Texas; American Federal of Labor and Congress of Industrial Organizations; Texas Association of Business; Texas Mutual Insurance Company; Liberty Mutual; Texas Chiropractor Association; Association of

Insurance Adjusters; Burns, Anderson Jury & Brenner L.L.P.; Flahive, Ogden & Latson, Attorneys at Law, P.C.; KSF Orthopedic Center; and various political subdivisions, employer, and injured employee representatives. OIEC contacted the above referenced organizations as suggested by the Texas Government Code, Chapter 2008, Negotiated Rulemaking Act. Numerous changes were made as a result of the feedback that was received to resolve potential issues and alleviate concerns.

OIEC received no public comments on this rulemaking initiative.

For: None

Against: None

Section 276.11 is adopted pursuant to Texas Labor Code §§404.155, 404.101, 404.151, and 404.106. Section 404.155 provides for the Public Counsel to adopt rules regarding a time frame for the provision of copies of an injured employee's medical documentation and any other matter relating to provision of those copies. Section 404.101 requires OIEC to assist injured employees, through the ombudsman program, in the DWC's administrative dispute resolution system. Section 404.151 requires an OIEC Ombudsman to assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system. Section 404.106 provides the Public Counsel rulemaking authority to adopt rules to implement Chapter 404 of the Texas Labor Code.

§276.11. Access to Injured Employee Medical Documentation.

Upon written request, a health care provider shall provide the Office of Injured Employee Counsel (OIEC) medical documentation regarding an injured employee within five (5) business days from the date posted on the request at no cost to OIEC. A health care provider's reimbursement from an insurance carrier for costs of documentation provided to OIEC are prescribed by the provisions of §134.120 of this title. A health care provider or insurance carrier that fails to comply with the requirements of this section commits an administrative violation. The Commissioner shall enforce a violation under this section in accordance with Chapter 415 of the Texas Labor Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 10, 2008.

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