

**Texas  
Department  
of Insurance**

# **Workers' CompUpdate**

*a publication of the Division of Workers' Compensation*

*volume 2, number 2 August 2008*

## **Division Amends Ambulatory Surgical Center Fee Guideline**

The Ambulatory Surgical Center (ASC) Fee Guideline in 28 Texas Administrative Code (TAC) §134.402 was recently amended by the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC). The amendments are necessary to comply with Texas Labor Code §413.011.

The statute requires the Commissioner of Workers' Compensation to adopt health care reimbursement policies and guidelines that reflect reimbursement structures found in other health care delivery systems with minimal modifications as necessary to meet occupational injury requirements. In addition, the statute requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the Centers for Medicare and Medicaid Services to achieve standardization. This standardization requirement includes applicable payment policies relating to coding, billing, and reporting, but allows modification to documentation requirements as necessary to meet the requirements of the Texas workers' compensation system.

The ASC Fee Guideline was last amended in December 2007 to include use of reimbursement structures and amounts of the Medicare ASC 2007 rates for ASC facility services provided in the Texas workers' compensation system from January 1, 2008 through August 31, 2008. This continuation afforded additional time for the Commissioner to determine and establish the appropriate ASC reimbursement methodology.

**The Texas Labor Code requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the Centers for Medicare and Medicaid Services to achieve standardization.**

The amendments align the reimbursement structure for ambulatory surgical centers providing facility services to injured workers with revised Medicare prospective payment system reimbursement methodologies, develop the most suitable reimbursement structure, and use appropriate conversion factors or other payment adjustment factors geared to the Texas workers' compensation system. The adopted amendments will be published in the *Texas Register* on August 22. The amendments are applicable for ASC facility services provided on or after September 1, 2008.

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# from the commissioner

REGULATION OF THE TEXAS WORKERS' COMPENSATION SYSTEM has undergone significant changes over the past three years. As a part of a vision for the system created by the Legislature in 2005, it has been my privilege to implement reforms as Commissioner. I am encouraged by the progress that has been made so far and the direction that the reforms are taking. TDI-DWC must continue to build on this momentum, however, and continue to work with system participants for further improvement.

Some of the most significant system changes that have taken place include:

- Creation of the DWC and successful merger into the Texas Department of Insurance
- Establishment of a strong, independent Commissioner of Workers' Compensation
- Creation of certified Workers' Compensation Health Care Networks
- Adoption of disability management and return-to-work guidelines for the treatment of injured employees
- Implementation of Performance-Based Oversight of system participants
- Provision of updated fee schedules for health care providers, hospital inpatient and outpatient services and new fee schedules for ambulatory surgical centers
- Revision of medical billing practices including preauthorization requirements for both healthcare providers and insurance carriers
- Initiation of e-billing processes between healthcare providers and insurance carriers

Many other initiatives must be completed including:

- Adoption of a pharmacy formulary and a pharmacy fee guideline for the workers' compensation system
- Initiation of treatment planning and case management for injured employees

Changes do not happen in a vacuum and do not always have an immediate effect. Each of the reforms put in place for the system is interconnected with other changes and it may take time before overall improved performance is reached. I urge all system participants to work with, not against, changes that are needed to achieve a better, more efficient system. From my viewpoint, it is the "all for one, one for all" cooperative approach that will yield the best results in the long-term.

In the future we need to find more ways to "un-complicate" workers' compensation. The system is often confusing to the injured worker, misunderstood by doctors, and insurance carriers must balance the requirement to follow statutes and regulations with efforts to control costs. This often leads to frustration when the outcome is not what is expected, resulting in disputes between the parties. Clear communication among parties and outreach by TDI-DWC to explain regulatory goals and expectations is crucial to minimizing these problems.

Workers' compensation regulation in Texas is headed in a positive direction and the vision created by the Legislature and signed into law by the Governor in 2005 is coming into focus.

**Albert Betts**  
*Commissioner of Workers' Compensation*

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To the best of the staff's ability, information presented in this newsletter is correct as of the publication date, but scheduled dates and proposed rules and amendments may change as the adoption process goes forward.

**Workers' CompUpdate** is available online at:

<http://www.tdi.state.tx.us/wc/publications.html> under "News and Publications."

## Research Underway on Pharmacy Formulary

TDI-DWC is currently preparing to propose rules related to an outpatient pharmacy closed formulary for the workers' compensation system.

TDI's Workers' Compensation Research and Evaluation Group (REG) recently completed a preliminary analysis of the use of pharmaceuticals in Texas. The analysis provided the agency with its first opportunity to review pharmacy activity in the workers' compensation system. The analysis found for calendar years 2005 and 2006, pharmacy payments for each year were approximately \$130 million and accounted for 13 to 14 percent of all medical payments in the system.

TDI-DWC staff is analyzing pharmacy information from its medical billing database. Elements of various existing drug formularies are being organized into the therapeutic groups identified in the TDI-REG descriptive analysis to allow comparisons and application of other formulary restrictions.

The University of Texas at Austin's College of Pharmacy is conducting a comparison review of system formularies to assist TDI-DWC in analyzing various formulary options.

A stakeholder meeting on the pharmacy closed formulary is planned for August 25, 2008 to allow for discussion and suggestion of topics for the agency to consider in rulemaking. TDI-DWC will then develop and post working draft rules to the agency website, and schedule additional stakeholder meeting(s) to discuss and accept comments regarding the informal working draft rules.

TDI-DWC staff, in consultation with the medical advisor, must review, amend and add rules that will address new applicability dates and definitions, the parameters of the closed formulary, the appeals process for the closed formulary, and maintenance of the closed formulary once it is established.

## Commissioner Repeals Former Inpatient Hospital Fee Guideline

**O**N JUNE 19, 2008, Commissioner of Workers' Compensation Albert Betts repealed 28 TAC §134.401 concerning the acute care inpatient hospital fee guideline, which covered reimbursement for inpatient hospital fees for services related to admissions prior to March 1, 2008.

The repeal of 28 TAC §134.401 was necessary due to the adoption of new rules setting standardized reimbursement structures in the workers' compensation system. These structures utilize the most cur-

rent methodologies, models, values and weights used by the Centers for Medicare and Medicaid Services (CMS). The new rules (28 TAC §134.403 and §134.404) apply to hospital admissions on or after March 1, 2008.

For more information on the Hospital Facility Fee Guidelines — Outpatient and Inpatient, visit the TDI website at [www.tdi.state.tx.us/wc/fee/feetraining.html](http://www.tdi.state.tx.us/wc/fee/feetraining.html).

## TDI-DWC Enhances Referrals of Injured Employees for Vocational Assistance

TDI-DWC has enhanced the process for referring injured employees to vocational services, as directed by the Texas Legislature. Referrals to the Texas Department of Assistive and Rehabilitative Services (DARS) are now occurring earlier in the workers' compensation claims process.

TDI-DWC has begun referring all injured employees to DARS who have received 12 weeks of Temporary Income Benefits (TIBs). This earlier referral will encourage injured employees to participate in the vocational resources offered by DARS.

Formerly, TDI-DWC issued referral letters to severely injured employees, usually 17 weeks prior to their eligibility for Supplemental Income Benefits (SIBs) and when specific types of injuries indicated the need for referral. The agency will continue to issue these referral letters in addition to the new 12-week referral letter. TDI-DWC expects total referrals to increase from about 4,000 per year to about 20,000 per year.

**A main goal of the workers' compensation system is to return Texans to work after a work-related injury or illness, when safe and medically appropriate.**

Changes to the TDI-DWC referral process for vocational services are in support of the system goal.

The new, 12-week referral letter will also provide injured employees information about services offered by the Texas Workforce Commission and the State's 211 Texas program. These programs provide additional resources to injured employees for services, which include: job search, job training, counseling, child care, rent assistance and utility bill assistance.

## Employer Safety Programs Recognized

**TWO TEXAS EMPLOYERS** were recognized in May with the TDI-DWC Peer Review Safety Award for exemplary safety programs. DETEX Corporation, of New Braunfels, and Wolf Creek Feedyard, of Perryton, were recognized during the TDI-DWC 12th Annual Safety and Health Conference in Austin.

The TDI-DWC Peer Review Safety Award Program recognizes Texas employers that have comprehensive safety programs. These programs can serve as models or standards of comparison for employers developing or reviewing their own workplace safety programs. Companies are nominated or can self-nominate, and qualify for the award by having proven safety programs in place and workplace and injury incidence rates below the national

averages for their industries for at least three years.

DETEX Corporation manufactures and distributes life safety and security hardware for entry and exit doors. The company is five-time recipient of the award and also participates in the Occupational Safety and Health Administration's OSHCON (Occupational Safety and Health Consultation Program) Safety and Health Achievement Recognition Program (SHARP).

Wolf Creek Feedyard is one of the nine feedyards owned and operated by Cactus Feeders based in Amarillo. Cactus Feeders is the world's largest cattle feeding company with ranches and feedyards in Texas, Kansas and New Mexico.

**The TDI-DWC Peer Review Safety Award Program recognizes Texas employers that have comprehensive safety programs.**

## Automation Efforts Guided by Stakeholder Comments

Workers' compensation system participants who use TDI-DWC services and foresee a benefit in the automation of those services are invited to participate in an ongoing Automation Focus Group which will set automation priorities at the agency for the upcoming biennium.

TDI-DWC hosted a workgroup meeting on May 8, 2008, to discuss key automation projects such as forms automation, EDI transactions and handling of official actions. The attendees agreed with agency plans to automate certain forms and processes to enhance their interactions with the TDI-DWC. A separate workgroup began meeting in July to discuss business process changes and possible automation solutions to parts of the designated doctor selection and scheduling process.

The workgroup focused on the appointment scheduling component of the design-

ated doctor process including a proposal for TDI-DWC to no longer schedule designated doctor appointments. The workgroup identified potential issues and discussed concepts for automation. Representatives for insurance carriers and doctors were in favor of an online submission of the DWC Form-032, *Request for Designated Doctor*, for the requesters, which would lead to more legible forms sent to the doctors for the appointments. In addition, online submission would reduce the need for paper handling for the carriers and TDI-DWC staff. TDI-DWC is studying the feasibility of creating an online DWC Form-32.

Information on this meeting and future meetings will be available on the TDI-DWC Business Process Improvement web page at <http://www.tdi.state.tx.us/wc/bpi/index.html#automation>.

## Monthly ODG Updates Available on Website

**The first monthly update details changes that occurred in February, March, April and May of 2008 and is available, at the following link:**  
[www.tdi.state.tx.us/wc/dm/documents/odgupdates.pdf](http://www.tdi.state.tx.us/wc/dm/documents/odgupdates.pdf).

TDI-DWC and the Work Loss Data Institute, publishers of the *Official Disability Guidelines - Treatment in Workers' Comp (ODG)*, have partnered to produce a monthly update to inform system participants of changes that have occurred in the online version of the ODG during the preceding month.

TDI-DWC adopted the ODG, excluding the return-to-work pathways, in December 2006 as the treatment guidelines in the Texas workers' compensation system. The treatment guideline rule was effective May 1, 2007 and applies to all injuries that occurred on or after January 1, 1991.

The online version of the ODG is frequently updated. Health care providers must use the most current edition of the

publication on the date medical service is rendered. The monthly updates are for informational purposes only and are not a substitute for the ODG.

TDI-DWC will post monthly updates to the online version of the ODG to the TDI website. The first monthly update details changes that occurred in February, March, April and May of 2008 and is available, at the following link: [www.tdi.state.tx.us/wc/dm/documents/odgupdates.pdf](http://www.tdi.state.tx.us/wc/dm/documents/odgupdates.pdf).

Information about the ODG is available at the following link: [www.worklossdata.com/PR\\_Texas.htm](http://www.worklossdata.com/PR_Texas.htm).

## Hospital Billing Review Underway

TDI-DWC recently initiated a review of charges submitted for inpatient hospital services in the Texas workers' compensation system.

Inpatient and outpatient hospital fee guidelines, effective March 1, 2008, are intended to help workers' compensation system participants control costs while ensuring fair reimbursement. However, under the prior 1997 acute care inpatient hospital fee guideline (28 TAC §134.401), the former Texas Workers' Compensation Commission (TWCC) and now TDI-DWC received numerous requests for medical fee dispute resolution involving hospital charges and reduced payments by insurance carriers. After reviewing some of the pending disputes, some of the charges appear to be significantly higher than the average charges seen for similar treatment or services by other hospitals participating in the Texas workers compensation system.

TDI-DWC will be reviewing the methodology that hospitals use to determine charge amounts and the reasons for any significant increases and/or inconsistency

in charges. The review will focus on charges for inpatient services, including implantable devices, and will use data maintained internally and information and data to be requested from a selected group of hospitals to determine the appropriateness of the billing practices and charges.

Texas Labor Code §415.005 provides that a health care provider commits a violation if the person charges an insurance carrier an amount greater than that normally charged for similar treatment outside the workers' compensation system, except for mandated or negotiated charges. If a review of the requested information indicates that a hospital has been overcharging for treatment and services or requesting unreasonable amounts of reimbursement in medical fee disputes within the workers' compensation system, TDI-DWC may take action including, but not limited to, enforcement action.

A memorandum describing the hospital billing review is posted on the agency website at: [www.tdi.state.tx.us/wc/hcprovider/documents/hospbillrev0508.pdf](http://www.tdi.state.tx.us/wc/hcprovider/documents/hospbillrev0508.pdf).

## Medical Fee and Dispute Resolution Update

**M**edical Fee and Dispute Resolution at TDI-DWC is continually being improved to refine processes, streamline procedures, and ensure that fee disputes are processed more timely. To date in 2008, more than 2,000 legacy fee disputes have been resolved, according to Mary Landrum, director of Medical Fee Dispute Resolution (MFDR) for TDI-DWC.

MFDR staff provide education through early intervention and Low Level Dispute Resolution via telephone with system participants. Landrum said this approach has resulted in the closure of 403 fee disputes in 2008.

TDI-DWC administers processes to resolve fee disputes, which are disagreements between system participants involving the entitlement to workers' compensation benefits and the amount to be paid. A fee dispute can be filed when an action has occurred, but one or more parties are dissatisfied with the outcome, i.e., a health care provider receives a denial Explanation of Benefits from the insurance carrier and does not agree with the denial of payment.

**To date in 2008, more than 2,000 legacy disputes have been resolved.**

Before filing a fee dispute, a party should determine if the issue is a dispute that should be addressed through TDI-DWC's hearings or MFDR processes, or through Health and Workers' Compensation Network Certification and Quality Assurance processes. For assistance in determining if an issue is a dispute that can be addressed in either of these processes, parties may review two PowerPoint presentations posted on the agency website at [www.tdi.state.tx.us/wc/mr/mfdr.html](http://www.tdi.state.tx.us/wc/mr/mfdr.html). Questions can also be directed to TDI-DWC staff at (512) 804-4812. TDI-DWC encourages system participants to discuss, address, and resolve issues before a formal fee dispute is submitted.

In order to initiate a fee dispute process, a party must complete the required DWC Form-060, *Medical Fee Dispute Resolution Request*, and submit it to TDI-DWC. Obtain the Texas Department of Insurance Dispute Form and Instructions at [www.tdi.state.tx.us/wc/mr/mfdr.html](http://www.tdi.state.tx.us/wc/mr/mfdr.html).

## Return-to-Work Pilot Program Reimburses Employer

Under the return-to-work pilot program for small employers, the TDI-DWC can reimburse small employers for expenses incurred for workplace modifications -- including special equipment, tools, furniture or devices, or other associated costs - - which can allow an injured employee to stay at work or return to work.

A small employer with workers' compensation insurance coverage and 2 to 50 employees may be eligible to receive reimbursement up to \$2,500 for qualified expenses. Passage of House Bill 886 (by Rep. Helen Giddings) in 2007 provides for a guaranteed repayment of expenses associated with workplace modifications that have been preauthorized by TDI-DWC.

The program recently reimbursed Art's Paint and Body Shop in San Antonio for

\$1,800 in expenses for the purchase of a scissor lift to enable an injured employee to continue to work on cars. The employee suffered an on-the-job knee injury which required surgery.

"The employer has incorporated the lift into their permanent procedures and plans to purchase additional lifts," said Danny Taylor, Return-to-Work Education Coordinator for TDI-DWC.

Employers may apply for reimbursement using the DWC Form-008, *Return-to-Work Pilot Program for Small Employers*. The form and instructions are located on the TDI-DWC website at [www.tdi.state.tx.us/forms/form20all.html#dwc008](http://www.tdi.state.tx.us/forms/form20all.html#dwc008). For more information, call (512) 804-5000.

## Division Conducts Fee Guidelines Seminars

TDI-DWC has conducted seminars in nine cities across the state to explain updated fee guidelines to workers' compensation system participants. Additionally, educational resources have been prepared to assist system participants to understand the new medical and hospital fee guidelines. These resources include answers to Frequently Asked Questions for the medical and hospital fee guidelines and a medical fee guideline training module.

TDI-DWC recently adopted rules to update medical fee guidelines for health care providers, to establish a hospital outpatient fee guideline, and to update a hospital inpatient fee guideline, for the Texas workers' compensation system (28 TAC §§134.1, 134.2, 134.203, 134.204, 134.403 and 134.404).

The medical fee guideline rules relate to professional service reimbursements to health care providers who provide medical treatments and services to injured employees on or after March 1, 2008. The outpatient and inpatient hospital fee guidelines rules apply to inpatient admissions and outpatient dates of service for injured employees on or after March 1, 2008.

In addition, the Ambulatory Surgical Center fee guideline, 28 TAC §134.02, has been adopted to be effective for dates of

service on or after September 1, 2008. TDI-DWC will conduct the following education seminars regarding the new Ambulatory Surgical Center fee guideline to facilitate the transition to the new fee guideline in the system:

- **Houston:** 8:30 a.m. to 11:30 a.m. on Wednesday, September 10, 2008 at UH SBDC, 2302 Fannin, Suite 200. To register online visit [www.sbdc.uh.edu/assnfe/ev.asp?ID=415](http://www.sbdc.uh.edu/assnfe/ev.asp?ID=415) or call 713-752-8488.
- **San Antonio:** 8:30 a.m. to 11:30 a.m. on Tuesday, September 24, 2008 at UTSA Downtown, Durango Building, Southwest Room at 501 W. Durango. To register visit [http://sasbdc.iedtexas.org/component/option,com\\_jcalpro/Itemid,72/extmode,view/extid,86/](http://sasbdc.iedtexas.org/component/option,com_jcalpro/Itemid,72/extmode,view/extid,86/), e-mail [sbdcworkshop@utsa.edu](mailto:sbdcworkshop@utsa.edu) or call 210-458-2047.
- **Dallas:** 8:30 a.m. to 11:30 a.m. on Thursday, October 4, 2008 at 1402 Corinth Street, Room 1530. To register call 214-860-5865.

The fee guideline rules and the fee guideline resources are located on the agency website at the following link: [www.tdi.state.tx.us/wc/fee/index.html](http://www.tdi.state.tx.us/wc/fee/index.html).

### Regional Safety Summits for 2008-09

TDI-DWC will host Regional Safety Summits across the state for both subscribers and non-subscribers of workers' compensation insurance. These one-day seminars will include accident prevention training sessions on transportation incidents, sprains and strains, and hazard prevention in the health care industry. For more information, call (512) 804-4610 or send e-mail to: [safety.training@tdi.state.tx.us](mailto:safety.training@tdi.state.tx.us)

<b>September 8, 2008</b>	Midland	Permian Basin Safety Summit
<b>October 2008</b>	Abilene	Big Country Safety Summit
<b>November 2008</b>	Beaumont	Spindletop Safety Summit
<b>January 2009</b>	Laredo . . . . .	Rio Grande Safety Summit
<b>February 2009</b>	Waco . . . . .	Brazos Safety Summit
<b>March 2009</b>	Tyler . . . . .	Rose Capital Safety Summit
<b>April 2009</b>	Houston . . . . .	Buffalo Bayou Safety Summit
<b>June 2009</b>	Amarillo . . . . .	Llano Estacado Safety Summit
<b>July 2009</b>	Bryan/College Station . . . .	Brazos Valley Safety Summit
<b>August 2009</b>	Dallas/Fort Worth . . . . .	DFW Safety Summit



# Division Sets 2009 Performance-Based Oversight Assessments

THE TEXAS DEPARTMENT OF INSURANCE, Division of Workers' Compensation (TDI-DWC) achieves compliance objectives for the Texas workers' compensation system through Performance Based Oversight (PBO), data monitoring, complaint handling, entity audits, and when appropriate, enforcement actions.

TDI-DWC conducted numerous meetings with insurance carriers and health care providers, and their representatives, to discuss the 2009 PBO assessment. The agency agreed to several changes from the 2007 assessment, including the addition of more performance measures, use of a formalized response process via a management response template available on the TDI website and implementation of a "summary of change process" to inform the insurance carriers and health care providers of reasons for changes to the initial data.

A full discussion of the 2009 assessments, including a listing of insurance carriers and health care providers selected for assessment, is posted on the agency website at: [www.tdi.state.tx.us/wc/pbo/documents/pbo2009.pdf](http://www.tdi.state.tx.us/wc/pbo/documents/pbo2009.pdf).

As in 2007, insurance carriers and health care providers will be placed into regulatory tiers: poor performers, average performers, and high performers. TDI-DWC will then focus its regulatory oversight on the poor performers.

The top 142 insurance carriers based on the volume of initial payment of Temporary Income Benefit (TIBs) transactions during Calendar Year 2007 were selected for the 2009 PBO assessment. The selected insurance carriers include: 89 commercial insurance carriers, three state entities, 40 self insured entities, and 10 certified self-insured entities.

The top 276 health care providers based on the volume of filings of both the DWC Form-069, *Report of Medical Evaluation*, and DWC Form-073, *Work Status Report*, during CY 2007 were selected for the 2009 PBO assessment. The selected health care



**Insurance carriers and health care providers again will be placed into regulatory tiers: poor performers, average performers, and high performers.**

## 2009 Performance-Based Oversight Measures

TDI-DWC's emphasis is on early detection of noncompliance and informal discussions to resolve any noncompliant issues. TDI-DWC will initiate enforcement actions, including Warning Letters and the assessments of penalties, when appropriate and necessary to ensure compliance and to deter future noncompliance.

Following are the measures for the 2009 PBO assessments:

### Insurance Carriers

- Timely payment of initial TIBs by the insurance carrier (40 percent weight)
- Timely processing of medical bills by the carrier (40 percent weight)
- Timely submission of Initial Payment data via Electronic Data Interchange (10 percent weight)
- Timely submission of Medical Bill Processing data via EDI (10 percent weight)

### Health Care Providers

- Timely filing of DWC Form-069, *Report of Medical Evaluation* (35 percent weight)
- Timely filing of DWC Form-073, *Work Status Report* (35 percent weight)
- Completeness of DWC Form-073, *Work Status Report* (30 percent weight)

providers for the 2009 PBO assessment include 274 medical or osteopathic doctors and two chiropractors. (See box for list of measures for the 2009 PBO assessments).

Texas Labor Code Section 402.075 mandates TDI-DWC to assess, at least biennially, the performance of insurance carriers and health care providers in meeting the key regulatory goals established by the Commissioner of Workers' Compensation. The regulatory goals align with TDI-DWC's general regulatory goals such as improving workplace safety and return-to-work outcomes, supporting timely payment of benefits and increasing communications.

TDI-DWC will afford incentives based on the results of the PBO assessments including limited audit exemption, modified penalties, publication of tiers/ results

*Continued on page 10.*

## Texas Employers Required to Report WC Subscriber Status

TDI-DWC is monitoring and taking enforcement action pursuant to non-subscriber reporting as required in House Bill (HB) 1, Article VIII (80th Legislative Session).

HB 1, Article VIII states that TDI-DWC will report on the compliance with notice requirements regarding workers' compensation insurance coverage status from non-subscribing employers and the administrative penalties levied against the non-complying employers under the provisions of Texas Labor Code §411.032 and 28 TAC §§110.1, 110.101 and 160.2. This information will be included in the agency's biennial report to Legislature in December 2008.

In July 2008, TDI-DWC issued letters to employers who were identified as having failed to file the DWC Form-005, *Employer's Notice of No Coverage or Termination of Coverage*, indicating they were

non-subscribing employers. The DWC Form-005 is due to the TDI-DWC annually by no later than the anniversary date of the original filing.

Also in July 2008, TDI-DWC issued educational letters to non-subscribing employers regarding the filing of the DWC Form-007, *Non-Covered Employers Report of Occupational Injury and Illness*.

Continued employer non-compliance with the filing of either of these forms may result in administrative penalties assessed subject to provisions in the Texas Labor Code §415.021 (penalties of up to \$25,000 per day per occurrence).

For more information regarding non-subscriber notice requirements, please visit the website at [www.tdi.state.tx.us](http://www.tdi.state.tx.us) or call 800-252-7031.

## OSHA Recognizes Data Collection Efforts

TDI-DWC was recently recognized by the Occupational Safety and Health Administration (OSHA) for efforts to collect data on occupational injuries and illnesses in Texas in 2006. TDI-DWC administers a grant from OSHA to collect injury and illness data from employers. The data is used by OSHA to target enforcement efforts. TDI-DWC was evaluated for meeting target deadlines and milestones and pursuing the highest standards of data quality throughout the collection. The agency received a Certificate of Achievement and Recognition Memo from OSHA.

In addition, OSHA recognized the TDI-DWC Occupational Safety and Health Consultation (OSHCON) Program at the National Consultation Conference for its contributions to the development of a new data system that will be used by consultation programs across the country. OSHA also recognized OSHCON's

involvement in developing and delivering training to other states on the current data system as well as the practical use of OSHA's employer safety management assessment tool.

## Performance-Based Assessments

*Continued from page 9*

on the agency website, awarding of a Top Performer logo for use as a marketing tool by those participants in the high performing tier, and/or reduced penalties for self-disclosure of non-compliance.

TDI-DWC's emphasis is on early detection of noncompliance and informal discussions to resolve any noncompliant issues. TDI-DWC will initiate enforcement actions, including warning letters, corrective action plans, and the assessments of penalties, when appropriate and necessary to ensure compliance and to deter future noncompliance.

## eBilling in Workers' Compensation

TDI-DWC is hosting an eBill Stakeholder Meeting on August 25. In preparation for this meeting, TDI-DWC Information Management Services staff conducted teleconferences with more than 23 eBill agents and health care information clearinghouses.

Feedback obtained during these teleconferences shows varying degrees of eBill compliance results. Some eBill agents have continued to see increasing numbers of electronically submitted medical bills while others have seen little or no progress. One common factor with successful eBill agents is their willingness to enter into agreements with other eBill agents or health care information clearinghouses. The entities that are actively pursuing these business relationships seem to be better positioned to receive bills from health care providers – a critical success factor for the eBill initiative. Another common factor is the variety of products offered. Entities that allow the health care

provider to select the product that best meets their business needs, whether it is a product that integrates into their existing practice management systems or one that permits web-based direct data entry, tend to realize better results with eBill.

TDI-DWC rules, 28 TAC §§133.500 and 133.501, require insurance carriers and health care providers to be able to exchange electronic medical bill transactions on and after January 1, 2008, unless an individual insurance carrier or health care provider is waived from the eBilling requirements. Any requests for waiver will be closely evaluated by TDI-DWC to ensure that the parties have shown that eBill implementation creates an unreasonable financial burden.

TDI-DWC encourages stakeholders to share their experiences and receive additional information regarding this important initiative.

## Medical Necessity Dispute Resolution Process Changed

On May 5, 2008, TDI-DWC adopted amended Medical Dispute Resolution (MDR) rules, 28 Texas Administrative Code (TAC) §§133.305, 133.307, and 133.308 to implement the statutory provisions of House Bill (HB) 724, HB 1003, and HB 2004 (80th Legislative Session, effective September 1, 2007). The rules create administrative-level hearings in the TDI-DWC Medical Dispute Resolution (MDR) process as a step between MDR or Independent Review Organization (IRO) review and judicial review.

The rules also provide for licensing and professional specialty requirements for doctors performing reviews for IROs.

For more information regarding the MDR process, contact TDI-DWC at 512-804-4812 or send e-mail to [mdrinquiry@tdi.state.tx.us](mailto:mdrinquiry@tdi.state.tx.us).

For more information on TDI-DWC rule-making activities, access the agency website at: [www.tdi.state.tx.us/wc/rules/tableofcontents/rulesoptions.html](http://www.tdi.state.tx.us/wc/rules/tableofcontents/rulesoptions.html).

### TDI-DWC Brown Bag



TDI-DWC scheduled brown bag educational sessions care providers, employers, human resource managers, claims adjusters,

case managers and employee organizations at 23 field offices throughout the state in July and August 2008. The topic for the sessions was *Designated Doctor: What They Do and What Is New*. New sessions covering required medical exams will be scheduled in September through November. For more information about brown bag sessions, visit the agency website at: [www.tdi.state.tx.us/wc/eventstraining.html](http://www.tdi.state.tx.us/wc/eventstraining.html).

## Companies Approved to Self-Insure for Workers' Compensation Claims

**UNDER TEXAS LAW**, certain large, private companies can self-insure for workers' compensation claims, while retaining the protection of the Texas Workers' Compensation Act for the company and for its employees. To qualify, a company must have a minimum workers' compensation insurance unmodified manual premium of \$500,000 and meet other requirements subject to annual review.

From January through June 2008, a total of 35 companies with approximately 247,000 employees in Texas were approved to self-insure for workers' compensation claims for a one-year period under TDI-DWC's Self-Insurance Program.

Commissioner of Workers' Compensation Albert Betts approved initial applications for Certificates of Authority to Self-Insure for:

- Associated Wholesale Grocers, Inc., Kansas City, KS
- Bronco Drilling Company, Inc., Edmond, OK
- E.I. du Pont de Nemours and Company, Wilmington, DE
- Wal-Mart Associates, Inc., Bentonville, AR

### Discount Rate and Interest Rate: July 1 thru September 30, 2008

TDI-DWC has determined, pursuant to the authority and direction given under Texas Labor Code Section 401.023, that any interest or discount provided for in the Labor Code shall be at the rate of 6.18 percent. This rate is computed by using the treasury constant maturity rate for one-year U.S. treasury bills as published by the Federal Reserve Board on June 16, 2008, (2.68 percent) plus 3.5 percent as required by Section 401.023. The rate shall be effective July 1, 2008 through September 30, 2008.

The following companies received renewals of existing self-insurance certificates:

- AAA Cooper Transportation
- ABF Freight System
- American Electric Power Company
- Ameron International Corporation
- Ascension Health
- Baptist Hospitals of Southeast Texas
- Cooper US
- Countrywide Home Loans
- Driver Pipeline Company
- Emerson Electric Company
- FedEx Freight East
- General Motors Corporation
- Guardian Industries Corporation
- International Paper Company
- Jacobs Engineering Group Inc.
- Johns Manville
- Leonard Family Corporation
- Louisiana-Pacific Corporation
- Lowe's Home Center
- Mount Vernon Mills
- PACCAR Inc.
- PPG Industries
- Starbucks Corporation
- Textron
- The Procter & Gamble Company
- The Sherwin-Williams Company
- Trinity Mother Frances Health System, Tyler, TX
- Unique Staff Leasing I
- Valero Energy Corporation
- VF Corporation
- Weyerhaeuser Company

For more information on applying to the Self-Insurance Program, visit TDI-DWC's website at [www.tdi.state.tx.us/wc/si/index.html](http://www.tdi.state.tx.us/wc/si/index.html).

# Consent Orders

*division of workers' compensation*

COMPANY	VIOLATION	ACTION TAKEN	ORDER NUMBER	DATE OF ORDER
<b>Ace American Insurance Company of Philadelphia, PA</b>	Failure to timely pay temporary income benefits; failure to timely take action on a properly completed medical bill (12 instances); failure to take final action on a correctly completed request for reconsideration; failure to pay for the reasonable and necessary medical costs after carrier gave preauthorization; inappropriate denial of a medical bill.	Fined \$21,000	DWC-08-0011	01/24/08
<b>Ace Fire Underwriter's Insurance Company of Philadelphia, PA</b>	Failure to take timely action in response to a medical bill (3 instances); failure to properly deny a medical bill.	Fined \$8,000	DWC-08-0013	01/24/08
<b>American Home Assurance Company of New York, NY; The Insurance Company of the State of Pennsylvania of Harrisburg, PA; and AIU Insurance Company of New York, NY</b>	Audits found failure to meet compliance standard for timeliness of payments of supplemental income benefits (SIBs), failure to make payment of SIBs at the proper rate, failure to pay correct interest amount when owed and failure to timely send the TWCC-52 form.	Fined \$49,765	DWC-08-0047	05/27/08
<b>American Insurance Company of Novato, CA</b>	Failure to timely comply with a Medical Dispute Resolution Order	Fined \$3,000	DWC-08-0006	01/14/08
<b>American Zurich Insurance Company of Schaumburg, IL</b>	Failure to timely respond to a request for reconsideration; failure to timely comply with an order to pay attorney fees.	Fined \$5,700	DWC-08-0003	01/14/08
<b>American Zurich Insurance Company of Schaumburg, IL</b>	Failure to comply with an order or decision of the commissioner to issue interest due; failure to timely pay, reduce, deny or determine to audit a health care provider's bill; failure to timely process and take final action on a properly completed request for reconsideration of a medical bill the carrier previously acted on within 21 days of receipt (three instances); failure to timely pay, reduce or deny a medical bill (two instances); failure to pay for medical services which were preauthorized.	Fined \$20,000	DWC-08-0034	03/31/08
<b>Amerisure Mutual Insurance Company of Farmington Hills, MI</b>	Failure to give sufficient explanation for a reduction of a medical bill.	Fined \$2,402	DWC-08-0048	05/27/08
<b>Assurance Company of America of Schaumburg, IL</b>	Failure to comply with a Division order to pay a health care provider for unpaid medical fees (three instances).	Fined \$25,500	DWC-08-0038	04/15/08
<b>Anil T. Bangale, MD of Fort Worth</b>	Failure to timely file a Report of Medical Evaluation with the carrier or carrier's agent.	Fined \$3,000	DWC-07-0142	12/07/07
<b>Brownsville Independent School District of Brownsville</b>	Failure to timely process a medical bill (two instances); failure to take final action on a correctly completed request for reconsideration of a medical bill.	Fined \$5,000	DWC-08-0021	02/29/08
<b>City of Dallas</b>	Numerous violations were found in a medical bill processing audit for failure to timely process and take final action on medical bills; failure to timely and accurately submit information electronically in the form and manner prescribed by the Division; failure to meet the 95 percent compliance standard in some categories.	Fined \$50,000	DWC-08-0002	01/09/08

# Consent Orders

division of workers' compensation

COMPANY	VIOLATION	ACTION TAKEN	ORDER NUMBER	DATE OF ORDER
<b>Deep East Texas Self Insurance Fund of Jasper</b>	Failure to timely refund an IRO fee upon receipt of an order from the Division regardless of whether an appeal had been filed.	Fined \$2,000	DWC-08-0028	03/20/08
<b>Dolgencorp of Texas, Inc., of Goodlettsville, TN</b>	Failure to give sufficient explanation for a reduction or denial of a medical bill; failure to timely take final action on a medical bill after the carrier received the complete medical bill; failure to take final action on a properly completed request for reconsideration of a medical bill within 21 days of receipt.	Fined \$9,000	DWC-08-0031	03/31/08
<b>Fort Worth ISD of Fort Worth</b>	Failure to timely refund an IRO fee upon receipt of an order from the commission regardless of whether an appeal had been filed.	Fined \$7,800	DWC-08-0024	03/19/08
<b>Uma R. Gullapalli, M.D., of Victoria</b>	Untimely or inappropriate filing of TWCC-69's in numerous cases discovered in an audit.	Fined \$4,000	DWC-08-0025	03/19/08
<b>Indemnity Insurance Company of North America of Philadelphia, PA</b>	Failure to timely take action on a properly completed medical bill (2 instances); failure to take final action on a correctly completed request for reconsideration; late payment on a medical dispute resolution order.	Fined \$8,000	DWC-08-0014	01/31/08
<b>Lumbermen's Underwriting Alliance of Boca Raton, FL</b>	Failure to timely pay, reduce, deny or determine to audit a HCP's claim; denial of a medical bill for an inappropriate reason.	Fined \$4,000	DWC-08-0033	03/31/08
<b>Onebeacon America Insurance Company of Boston, MA</b>	Untimely payment of temporary income benefits.	Fined \$4,000	DWC-08-0039	04/15/08
<b>Pacific Employer's Insurance Company of Philadelphia, PA</b>	Failure to pay an advance payment of income benefits ordered by the Division; failure to timely take action on a properly completed medical bill.	Fined \$18,000	DWC-08-0012	01/24/08
<b>Universal Underwriter's Insurance Company of Schaumburg, IL</b>	Failure to timely pay or deny a medical bill.	Fined \$1,500	DWC-08-0004	01/14/08
<b>Universal Underwriters of Texas Insurance Company of Overland Park, KS</b>	Failure to comply with a decision of a hearing officer during the pendency of an appeal to the appeals panel.	Fined \$12,000	DWC-08-0032	03/31/08
<b>Zurich American Insurance Company of Schaumburg, IL</b>	Failure to timely comply with a Medical Dispute Resolution Order; failure to timely respond to a request for reconsideration (two instances).	Fined \$12,800	DWC-08-0005	01/14/08

## Commissioner's Orders Online

<https://wwwapps.tdi.state.tx.us/inter/asproot/commish/da/dwclips2008.asp>

## Division of Workers' Compensation Contact Information

[www.tdi.state.tx.us/wc/dwcccontacts.html](http://www.tdi.state.tx.us/wc/dwcccontacts.html)

<b>Injured Employee Hotline (local field offices)</b> .....	<b>1-800-252-7031</b> or local office/(Austin) <b>512-933-1899</b>
<b>Workplace Safety/OSHCN</b> .....	<b>1-800-687-7080</b> (Accident Prevention Services; WC/Safety Resource Center; Workplace Safety)
<b>Safety Violations Hotline</b> .....	<b>1-800-452-9595</b>
<b>Fraud Hotline</b> .....	<b>512-463-6700</b> or <b>1-888-327-8818</b>
<b>EDI/TXCOMP HelpDesk</b> .....	<b>1-888-4-TXCOMP</b> (1-888-489-2667)
<b>Government Relations</b> .....	<b>512-463-6651</b>
<b>Human Resources</b> .....	<b>512-804-4450</b>
<b>Speakers' Bureau</b> .....	<b>512-804-4685</b>
<b>Open Records</b> .....	<b>512-804-4434</b>
<b>Public Information/Publications</b> .....	<b>512-463-6425</b> <b>512-804-4240</b>
<b>TDI-DWC Main Office</b> .....	<b>1-800-371-7713</b> <b>512-804-4000</b>
<b>Stay at Work/Return to Work</b> .....	<b>512-804-5000</b>
<b>Office of Injured Employee Counsel</b> .....	<b>1-866-EZE-OIEC</b> (1-866-393-6432)
<b>Other Helpful Numbers</b>	
<b>Texas Workforce Commission</b> .....	<b>1-800-832-2829</b>
<b>Department of Assistive and Rehabilitative Services</b> .....	<b>1-800-628-5115</b>

Links to other TDI publications:

**TDInSight**

 **HWCN**News