TDI HWCN Division

HWCN News

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Common WCNet Exam Findings

TDI conducts exams of WCNets as authorized by TIC §1305.251. In this article HWCN wishes to share common errors and omissions discovered in recent exams in order to assist WCNets in achieving compliance. This article includes the most common errors and omissions which relate to complaints, network adequacy and utilization review.

Complaints

During WCNet exams, HWCN examiners audit complaint files to measure compliance with applicable statutes and rules. TIC §1305.402 and 28 TAC §10.121(a) require networks to respond in writing to a complainant not later than seven calendar days after receipt of an oral or written complaint. The response must acknowledge the date the complaint was received and include a description of the network's complaint procedures and deadlines.

HWCN examiners often find that WCNets do not clearly document the date the complaint was received. Without this documentation, examiners cannot find that the WCNet responded to the complainant within the 7 day requirement. In many instances complaint files either do not contain an acknowledgment letter or the acknowledgment letter is in the file but the letter does not include the date the network received the complaint or the file does not contain a complete description of the complaint procedures and deadlines.

To demonstrate compliance a network's complaint file must include a copy of the complaint and clearly document its date of receipt. The file must also include a copy of the network's timely, written response to the complainant that acknowledges the date the complaint was received and includes a complete description of the network's complaint procedures and deadlines. If the network elects to provide these procedures in an enclosure, the response letter must note that the complaint procedures are enclosed.

There must be clear documentation of the date the complaint was received by the WCNet to ensure the complaint was resolved within the required thirty day timeframe.

TIC §1305.402 and 28 TAC §10.121(c) require a WCNet to investigate a complaint and issue a resolution letter to the complaint not later than the 30th calendar day after the network receives a written complaint. The letter must explain the network's resolution, include specific reasons for the resolution, state the specialization of any health care provider consulted, and explain that if the complainant is dissatisfied with the network's resolution or its complaint process, the complainant may file a complaint with TDI as described in 28 TAC §10.122.

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Inside This Issue

Newsletter Acronyms

TDI	Texas Department of Insurance/the Department
HWCN	Health and Workers' Compensation Network & QA
DWC	Division of Workers' Compensation
WC	Workers' Compensation
Non-Network	Workers' Compensation Non-Network
WCNet	Certified Workers' Compensation Networks
IRO	Independent Review Organization
URA	Utilization Review Agent
HMO	Health Maintenance Organization
TIC	Texas Insurance Code
TAC	Texas Administrative Code
TLC	Texas Labor Code
HB	House Bill
SB	Senate Bill

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Because WCNets often do not clearly document the date the complaint is received, HWCN examiners cannot find that the network has complied with the required thirty day timeframe to resolve complaints. Documentation of the complaint's received date must be included in the network's complaint file. In addition, HWCN examiners often find that the network's complaint file does not contain the resolution letter or the resolution letter on file does not include a clear resolution stating the specific reasons for the resolution. Examiners have also noted that many resolution letters do not advise dissatisfied complainants of their right to file a complaint with TDI. Networks should review their policies and procedures to be certain that their complaint resolution procedures are compliant with applicable statutes.

Network Accessibility and Availability

During WCNet exams, HWCN examiners review the network of providers by requesting current provider maps and lists to ensure the WCNet maintains adequate availability and access to care.

In accordance with TIC §1305.302(g), each WCNet is required to provide sufficient accessible and available network services. WCNets must ensure that the distance from any point in the network's service area to a treating doctor or general hospital is not greater than 30 miles in non-rural areas and 60 miles in rural areas. The distance from any point in the service area to a specialist or specialty hospital may not be greater than 75 miles in non-rural and rural areas. For portions of the service area in which the network identifies noncompliance with this subsection, the network must file an access plan with TDI in accordance with TIC §1305.302(h) and 28 TAC §10.80(f). A checklist summarizing access plan requirements is available at the following link: http://www.tdi.state.tx.us/forms/lhlhmo/lhl399rev0108.doc.

WCNets must ensure that the distance from any point in the network's service area to a treating doctor or general hospital is not greater than 30 miles in non-rural areas and 60 miles in rural areas.

HWCN examiners frequently discover provider maps that include non-contracted providers located in the WCNet's approved service area, and/or contracted providers who are located outside of the WCNet's approved service area. Provider maps may only include contracted providers located in the WCNet's approved service area. When providers are not contracted with the WCNet or they are contracted but they are located outside of the approved service area, they are not considered in-network providers and may not be included on a provider map. Instead, the WCNet must refer to those providers in an access plan. Provider maps that represent available providers as part of an access plan should be clearly titled "Access Plan Providers" or "Access Plan Maps."

When reviewing provider maps and lists, HWCN examiners often find that a WCNet's provider network does not evidence adequate availability and accessibility within the approved service area and the WCNet has not filed an access plan with TDI addressing the deficiencies. WCNet provider networks are continuously changing, so it is vital WCNets continuously monitor their provider networks and approved service areas to ensure adequate availability and accessibility from any point in the WCNet's service area and file access plans with TDI as required. Access plans must be submitted to TDI at least thirty days before implementation.

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Utilization Review

During WCNet exams, HWCN examiners audit utilization review files to measure compliance with applicable statutes and rules.

TIC §1305.353 requires WCNets to inform the requesting provider, employee and/or employee's representative of an adverse determination. The notification must include the principal reasons for the adverse determination, the clinical basis for the adverse determination, a description of or the source of the screening criteria used in making the determination, a description of the procedure for the reconsideration process, and notification of the availability of an independent review in the form prescribed by the commissioner.

HWCN examiners frequently note that notifications of adverse determinations do not include clear and accurate instructions for submitting a request for reconsideration or a request for an IRO.

HWCN examiners frequently find that notifications of adverse determinations do not include clear and accurate instructions for submitting a request for reconsideration or a request for an independent review by an IRO. Some notifications have incorrect timeframes, do not include reconsideration procedures, do not clearly explain the immediate availability of an IRO in life-threatening conditions, do not direct requestors to the URA to request an IRO, or do not include the IRO form prescribed by the commissioner. TIC §1305.354(a)(2) requires WCNets to allow the requesting provider or employee/employee's representative thirty days from the date of the adverse determination to request reconsideration. TIC §1305.353(g) requires that adverse determination notices advise requesting parties of their right to request an immediate IRO review for life-threatening conditions in the form prescribed by the commissioner. The IRO form prescribed by the commissioner and instructions on requesting an IRO review can be found at the following website: http://www.tdi.state.tx.us/forms/lhlhmo/lhl009urairoreq.pdf. It is imperative that all adverse determination notices provide clear instructions to the requesting party on how to request reconsideration by the URA and review by an IRO. HWCN also receives many telephone inquiries from providers and employees because their notices of adverse determination do not clearly explain the URA reconsideration or IRO processes. Requests for reconsideration and requests for IRO reviews must be submitted to the URA or carrier who determined that the requested services are not medically necessary. Adverse determination notices shall clearly notify requestors and provide the appropriate contact information to allow requestors to submit requests within required timeframes.

TIC §1305.354(a)(3) requires that an acknowledgement letter be sent to the party requesting reconsideration of an adverse determination not later than the fifth calendar day after receipt of the request. The letter must acknowledge the date the reconsideration request was received and include a reasonable list of documents the requesting party is required to submit. Review of utilization review files during WCNet exams has revealed an abundance of acknowledgement letters that are either not sent within five calendar days after receipt of the request or that do not provide the date the reconsideration request was received. Failure to clearly document in the utilization review file when the request for reconsideration was received can adversely affect exam scores because HWCN examiners are unable to confirm compliance if there is not sufficient documentation within the utilization review files. These common errors and omissions can be greatly reduced with appropriate documentation and by establishing (1) a structured process to acknowledge receipt of reconsideration requests as quickly as possible, but no later than five calendar days from receipt, and (2) by utilizing a template acknowledgement letter that includes the date the request was received and a request for additional documents. *Continued on page 4.*

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Credentialing

Most WCNet exams conducted to date were initial exams that did not include the auditing of credentialing and recredentialing files. HWCN will request credentialing and recredentialing files on future exams to audit and measure compliance with applicable statutes and rules. Please note 28 TAC §10.82 contains credentialing and recredentialing requirements applicable to WCNets. A checklist to assist with credentialing and recredentialing policy and procedure requirements is available at the following link: http://www.tdi.state.tx.us/forms/lhlhmo/LHL419.pdf.

Although this article does not explain all errors and omissions discovered during the exam process, HWCN hopes this information will assist WCNets in achieving compliance. Checklists are available to assist WCNets at the following website: http://www.tdi.state.tx.us/forms/form19.html. HWCN examiners believe WCNet compliance can be greatly improved with thorough documentation of processes, routine internal audits, continually educating staff, and routine monitoring of statutes and rules to update applicable policies and procedures. HWCN recognizes and appreciates the diligence WCNets put forth in preparation for a TDI exam.

The Difference between WCNet Complaint Appeals and Utilization Review (UR) Appeals

Texas WCNets are required to provide an avenue by which an employer, employee, a person acting on behalf of the employee, or the employee's requesting provider may request reconsideration of any unfavorable decisions or a WCNet's decision to deny medical services as not medically necessary.

There are two separate processes, the first involves complaints, and the other involves Utilization Review (UR).

How is a complaint defined?

A "complaint" is defined as any dissatisfaction expressed orally or in writing by a complainant to a network regarding any aspect of the network's operation. The term includes dissatisfaction relating to medical fee disputes and the network's administration and the manner in which a service is provided. The term does not include a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the complainant; or an oral or written expression of dissatisfaction or disagreement with an adverse determination. TIC §1305.004(5)(A)-(B).

What are the WCNet's responsibilities with regard to complaints?

- A network shall investigate each complaint received in accordance with the network's policies and in compliance with 28 TAC §10.121 and TIC §1305.401-405.
- After a network has investigated a complaint, the network shall issue a resolution letter to the complainant not later than the 30th calendar day after the network received the written complaint.

What if the complainant is dissatisfied with the resolution and wants to appeal the complaint decision?

- If the complainant is dissatisfied with the resolution of the complaint or the complaint process, the complainant may file a complaint with the Texas Department of Insurance (Department) as described in 28 TAC §10.122.

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The Difference between WCNet Complaint Appeals and Utilization Review (UR) Appeals

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How is an adverse determination defined?

An "adverse determination" is defined as a determination made through utilization review or retrospective review, that the health care services furnished or proposed to be furnished to an employee are not medically necessary or appropriate. TIC §1305.004(1).

What are the WCNet's responsibilities if an injured employee or health care provider wants to appeal an adverse determination?

- The WCNet and/or URA must issue an adverse determination within the timeframes specified in TIC, Chapter 4201 and 28 TAC Chapter 19. This determination must include among other things notification of a right to request reconsideration, not later than the 30th day after the date of written notification of an adverse determination and/or notification of a right to an immediate IRO for life-threatening conditions.
- A decision regarding reconsideration must be issued as soon as practical based on the injured employee's medical condition, but not later than the 30th day after the date the request was received. The reconsideration must be performed by a provider who did not previously review the case and who is of the same or similar specialty as the provider that requested the service.

What are the WCNet requirements, if it chooses to deny the reconsideration upholding its initial decision?

- The network must provide a notice of the requesting party's right to seek review of the adverse determination by an independent review organization and the procedures for obtaining that review in the form of notice referenced in 28 TAC §10.102(i), (relating to Notice of Certain Utilization Review Determinations; Preauthorization and Retrospective Review Requirements).

Subsequent WCNet Filings

Pursuant to 28 TAC §10.25 certified workers' compensation networks are required to file any information that amends, supplements, or replaces the items previously filed with the Department no later than 30 days *prior* to implementation. The following must receive Department approval before implementation:

- Changes to management contracts and information regarding fidelity bonds;
- Changes to the physical location of the network's books and records;
- Changes to network configuration; and
- Changes to existing service area.

A certified workers' compensation network is also required to file any change of information that amends, supplements, or replaces the 21 approved exhibits with the Department no later than 30 days after implementation as required by 28 TAC §10.25(b).

Subsequent filings and/or questions should be sent to:

Texas Department of Insurance
HWCN Division, MC103-5B
P. O. Box 149104
Austin, Texas 78714-9104

or emailed to the **WCAppCoordinator@tdi.state.tx.us** mailbox.

Fingerprint Requirement for URAs and IROs

The Department has received numerous phone calls from URAs/IROs wanting to know when it is necessary to submit fingerprints. If an existing URA/IRO submits a certification renewal, update or change to their application, the existing officer(s), director(s) or controlling shareholder(s) are not required to submit fingerprints.

Title 28 of the Texas Administrative Code §1.504 only requires new officer(s), director(s) or controlling shareholder(s), added after January 1, 2007, to submit fingerprints. It also requires an entity submitting an application to become a new URA/IRO, to provide fingerprints for all officer(s), director(s) or controlling shareholder(s). A medical director is only required to submit fingerprints, if he/she is an officer or a controlling shareholder.

FINGERPRINTS NOT REQUIRED Before January 1, 2007	**FINGERPRINTS REQUIRED As of January 1, 2007**
• Existing officers, directors or controlling shareholders of URAs/IROs	• URAs/IROs who add/change officers, directors or shareholders • Officers, directors, controlling shareholders of New URA/IRO applicants

Should you have questions regarding URA issues, please call the HWCN Division at **512-322-4266**, toll-free at **866-554-4926** or contact us via e-mail at **URAGrp@tdi.state.tx.us**.

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Meet TDI Staff Member Dina Bonugli

Dina Bonugli has been with the Texas Department of Insurance for 29 years, 17 of which have been with the Health and WC Network Certification & QA Division (formerly known as the HMO Division). During her tenure with the HWCN Division, she has performed a variety of duties, including certification of utilization review agents and independent review organizations. In January 2007, the HWCN Division began assigning all IRO requests received by the Department. Dina was a key member of the workgroup that implemented the plan for transitioning IRO assignments from the Division of Workers' Compensation to the HWCN Division. In early 2006, Dina was promoted to team lead of the Division's URA and IRO-related processes.

2009 Calendar of Events

We welcome you to participate in our open forum Network Applicant and/or Provider Office Manager Conference Calls as scheduled below.

Network Applicant Conference Call – 1-888-387-8235 - passcode 6622666
Thursday, July 2, 2009 2:00-3:00 p.m. CST

Provider/Office Manager Conference Call – 1-888-387-8235 - passcode 6622666
Tuesday, July 7, 2009 2:00-3:00 p.m. CST