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June 26, 2023

VIA EMAIL: ABetts@insurancecouncil.org

Albert Betts, Jr.

INSURANCE COUNCIL OF TEXAS

P. O. Box 15

Austin, TX 78767-0015

RE: June 22, 2023 Texas Department of Insurance, Division of Workers' Compensation
Quarterly Meeting
File No.: 283.37071

Dear Mr. Betts:

Please allow this to serve as a summary of the June 22, 2023, Texas Department of Insurance, Division of Workers' Compensation Insurance Carrier Quarterly Meeting.

Kate Sedora, the Division's Public Information Officer, gave a brief introduction and then introduced the first speaker, Debra Knight, the Commissioner of Compliance and Investigations.

Compliance and Investigations Update

Debra Knight, Deputy Commissioner of Compliance and Investigations, provided an update regarding complaints, compliance audits, fraud and prosecution and Enforcement.

In 2023, the Division has received 338 complaints. The complaints fell into the following categories:

- 14 regarding attendance;
- 290 regarding communications;

- 0 regarding fraud;
- 239 regarding indemnity benefit delivery;
- 224 regarding medical benefit delivery;
- 50 regarding quality of care; and
- 41 other.

Deputy Commissioner Knight explained the largest “bucket” of complaints received concerned communications. This is a large category and includes the failure of an insurance carrier to timely respond to a claimant’s inquire or notify a beneficiary of potential entitlement to death benefits. Communication complaints also involved complaints that are not related to workers’ compensation, such as matters concerning social security benefits and matters that are more appropriately handled by the Texas Medical Board, the Texas State Bar or the Texas Workforce Commission. The Division closed 969 complaints. Of those, 365 were confirmed as administrative violations. One-hundred eighty one complaints were closed with the issuance of an educational letter/warning letter. Deputy Commissioner Knight confirmed that, in instances of educational letters/warning letters, the Division does find that an administrative violation occurred and that the Division would not continue to issue educational letters/warning letters related to the same conduct by a carrier. In 423 cases, the Division found there was not a confirmed administrative violation. Deputy Commissioner Knight provided the following information regarding complaints:

Type of complaint	Injured employee	Insurance carrier	Health care provider	Employer	Attorney	Other
Attendance	4	4	1	0	5	0
Communications	0	113	65	52	59	1
Indemnity benefits	3	225	3	7	1	0
Medical benefits	0	187	36	0	0	1
Quality of care	N/A	1	49	N/A	N/A	0
Other	0	17	3	19	0	2

Deputy Commissioner Knight then took up compliance audits for 2023. The Division has initiated and completed 24 death benefits/lifetime income benefits audits. The Division has initiated 22 initial payment temporary income benefits (TIBs) audits, 15 of which have

been completed. The Division has also initiated 10 medical bill processing audits, 8 of which have been completed.

Regarding fraud, Deputy Commissioner Knight explained that, so far this year, there have been 1077 fraud referrals received. Forty-five fraud cases were opened. Fifty-two fraud cases were closed. There were 3 fraud referrals for prosecution.

In 2023, the Division has had 6 fraud convictions. Two convictions concerned employer fraud, 2 concerned injured employees, one concerned a health care provider and 1 concerned an attorney.

Deputy Commissioner Knight then addressed Enforcement. In 2023 there have been 369 cases closed, with 231 cases pending. Of the Enforcement cases that have been closed, the Division has issued 215 orders against insurance carriers and 15 orders against health care providers. Seventy-nine warning letters were issued to insurance companies and 30 were issued to health care providers. Deputy Commissioner Knight reminded system participants that Enforcement orders are published on the Division's website at www.tdi.texas.gov/wc/orders/index.html.

Deputy Commissioner Knight also brought up concerns related to insurance carrier's failure to timely pay medical bills related to designated doctor examinations. She reminded system participants that, under Texas Labor Code section 408.027 and Division Rule 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill. Labor Code section 408.0041 requires insurance carriers to reimburse designated doctors for examinations ordered by Division and that such examinations do not require preauthorization and are essential to the Texas workers' compensation system. The failure to pay designated doctor bills discourages designated doctors from practicing in the system. Enforcement is including findings in its final actions when the violation involves a designated doctor medical bill in order to call attention to this issue.

Regarding the payment of administrative penalties, Deputy Commissioner Knight explained that penalties could now be paid electronically through the Division's new Siron payment system. Approved administrative penalties imposed by the Division and audit billing invoices may now be paid using Vertafore's Siron solution. System participants should not pay before receiving the final order & invoice. System participants may sign up to pay an administrative penalties at:

<https://www.sircon.com/products/company/signup/>.

System participants may sign up to pay audit and billing invoices at:

<https://www.sircon.com/products/carrier/signup/>.

Questions regarding payment through the Siron payment system should be made through Customer Services at: 877-876-4430.

Health and Safety Update

Mary Landrum, Deputy Commissioner of Health and Safety, gave a brief update regarding health and safety. She began by addressing ongoing rule projects. The Division has formally proposed rules related to tele-dentistry that address legislative changes. The Division has also formally proposed rules addressing medical quality review. The Division continues to work on informal rule proposals regarding designated doctor reimbursement and is reviewing rules related to accident prevention services.

Deputy Commissioner Landrum noted recent issues have appeared in medical fee disputes regarding network claims. Medical fee dispute resolution does not address reimbursement based on network agreements. However, in some cases, insurance carriers are not providing information regarding whether a claim is a network claim in response to the request for medical fee dispute resolution. Deputy Commissioner Landrum encouraged carriers to provide applicable network information in their medical fee dispute resolution response so the Division can determine whether it can address the dispute through medical fee dispute resolution.

Deputy Commissioner Landrum introduced Chichi Onoriobe, Director of Health Care Business Management, who provided an update regarding the Office of Medical Advisor (OMA). Director Onoriobe explained that, this year, OMA has received 65 complaints. Forty-eight complaints were investigated by OMA, 48% of which were closed with no action, 23% resulted in letters of education, 8% initiated a medical quality review and 21% were referred to Enforcement. This year, OMA has initiated 10 medical quality reviews and 22 reviews were concluded. Of the concluded reviews, 23% were referred to Enforcement and OMA took other actions in the remaining reviews, including letters of education, referrals to medical licensing boards and closures with no action. This year, OMA sent one referral to Enforcement and one case was concluded by Enforcement (consent order/final order). There are 29 OMA cases pending at Enforcement and 3 OMA cases pending at the State Office of Administrative Hearings (SOAH).

Deputy Commissioner Landrum introduced Santiago Calderon, Director of Designated Doctor Operations. Director Calderon touched upon the recent changes to the designated doctor rules. To learn more about the rules, system participants may go to www.tdi.texas.gov/wc/dd/index.html. Director Calderon highlighted some of the rule changes, noting:

- Testing – as of April 30, 2023, any doctor who passed the test is no longer required to take test, but the doctor must still take certification training every two years;

- DD qualifications – additional physician specialties are now qualified to examine TBI; and
- Multiple certifications of Maximum Medical Improvement (MMI)/Impairment Rating (IR) by designated doctors –designated doctors will only complete multiple certifications of MMI/IR when the Division request it through a presiding officer's directive (POD).

Director Calderon also explained that information showing where the designated doctor should bill the insurance carrier will be included on the order appointing a designated doctor and carriers should insure this information is correct. Director Calderon briefly discussed the revisions to some of the designated doctor forms, including: DWC Form-032 (Request for Designated Doctor Examination [effective June 5, 2023]), DWC Form-068 (Designated Doctor Examination Data Report [effective June 5, 2023]), and DWC Form-067, (Designated Doctor Certification Application [April 30, 2023]).

Hearings Update

Gerri Lynn Thomas, Director of Northwestern Regions Hearings, gave a brief update regarding hearings. She discussed the impact of the rule changes regarding designated doctors. She confirmed that designated doctors will no longer automatically provide multiple certifications of MMI and impairment. For designated doctor exams after June 5, 2023, the designated doctor may provide multiple certifications only when directed by the Division. Before the dispute resolution process, most disputes will not have multiple certifications based on disputed conditions.

Regarding disputes involving extent of injury, MMI and impairment, the Division is implementing a new hearings process. The Division has created a new position, the Benefit Review Officer-1 (BRO-1). In disputes regarding involving extent of injury, MMI and impairment, the BRO-1 will reach out to the parties to confirm which conditions have been accepted as compensable and which conditions have been disputed. Depending on the facts of the case, the BRO-1 may issues a presiding officer's directive (POD) to the designated doctor to request clarification or an exam for multiple certifications. The goal is to obtain the relevant information from the designated doctor before the first benefit review conference is held.

Director Thomas explained that the new DWC Form-032 (Request for Designated Doctor Examination) will no longer provide a space to list all injuries accepted by insurance carrier as compensable.

Regarding matters other than designated doctors, Director Thomas explained that the Division continues to improve the timeliness of dispute resolution and is working to reduce continuances and encouraged parties to reduce last minute motions.

The Division will continue to provide “brown bag” seminars to discuss ideas related to the hearings process and get input from system participants.

Operations and External Relations Update

Kimberly Donovan, Deputy Commissioner of Operations and External Relations, gave an update regarding operations and external relations. She discussed the activities of the Research and Evaluation Group and provided a legislative update.

The Research and Evaluation Group recently published its Employer Participation Report. That report showed that 75% of private sector employers provide workers’ compensation coverage, which covers 83% of the private sector employees. The industry with the largest workers’ compensation subscriber rate is Mining/Utilities/Construction. Thirty-one percent of nonsubscribers are made up of small employers (less than 4 employees). Seventy-three percent of nonsubscribers provide employees with an alternative benefit plan rather than workers’ compensation coverage.

The Research and Evaluation Group recently published what it anticipates to be its last COVID-19 Fact Sheet and is working on publishing upcoming Return-to-Work Report.

Deputy Commissioner Donovan also briefly discussed legislation passed by the Texas Legislature during the 2023 regular legislative session. As a result of the Division’s legislative recommendations, the Legislature passed Senate Bill 1122, which addresses the exclusion of certain medical services performed to determine an appropriate level of workers’ compensation benefits from sales and use taxes.

Regarding first responders and Texas Military Forces, the Legislature passed the following bills:

- House Bill 90 — Texas military forces;
- House Bill 2468 - lifetime income benefits eligibility;
- House Bill 3335 - course and scope;
- House Bill 471 - employer benefits;

Other key bills affecting Texas workers’ compensation include:

- House Bill 679 — changes to experience modifiers;
- House Bill 2314 - death benefit filing to both carriers and the Division; and
- Senate Bill 1659 - sunset review dates for DWC, OIEC, TDI, and OPIC.

The Division is in the process of looking at the recent legislation to determine what forms or rules need to be implemented. If you would like any additional information regarding these or other legislative changes, please feel free to contact us.

EDI Updates

Martha Luevano, Director Enterprise Automation Services, provided an update regarding the implementation of EDI R3.1. Testing for the change is underway and all carriers must complete testing before July 26, 2023. Carriers that use an EDI vendor are automatically approved when the vendor completes the test plan. Small carriers that opt to use web entry are not required to test. Carriers that use an EDI vendor are automatically approved when that vendor completes the test plan. Small carriers that opt to use web entry are not required to test. General implementation information can be found at: www.txdwcedi.info/impl-info. EDI R3.1 is scheduled to go live July 26, 2023.

For technical questions regarding EDI 3.1, system participants are encouraged to email txdwcedi@iso.com. The Division continues to provide training regarding EDI R3.1. For inquiries regarding training, system participants are encouraged to email martha.luevano@tdi.texas.gov.

Director Luevano addressed billing relating to EDI R3.1. Data collection agent (DCA) may recover start-up costs and ongoing costs. Carriers must provide billing contacts to the DCA. Initial bills must be paid by July 26, 2023. Governmental entities are excluded from this requirement.

Closing

Jeff Nelson, Commissioner of the Division of Workers' Compensation, provided a closing to the stakeholders' meeting. He reiterated comments from some of the speakers at the meeting. Commissioner Nelson confirmed that the Division is reviewing the recent legislation passed by the Legislature and evaluating what forms or rules need to be implemented. The Division has been working on its various rules projects and anticipates putting out new rules in the near future.

Commissioner Nelson encouraged system participants to attend the 2023 Texas Workers' Compensation Conference. Over 670 people have already registered for the Conference.

Following Commissioner Nelson's closing remarks, the meeting was concluded with no questions being asked.

If we can provide additional information regarding the quarterly meeting or answer any questions, please let us know.

Very truly yours,

BURNS ANDERSON JURY & BRENNER, L.L.P.

Robert R. Graves, Jr.

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