Welcome to the Insurance Council of Texas 2020 Texas Workers’ Compensation Market Annual Report. We provide this annual overview as a service to our members who write workers’ compensation or are among the various workers’ compensation entities supporting the Texas market.

Any discussion of workers’ compensation insurance in 2020, like so many other issues, begins and ends with COVID-19. In March 2020, as the state and country shut down, we moved into a “new normal”; where in person interactions and proceedings between the various system stakeholders came to a standstill and moved to a virtual format, telemedicine expanded as a treatment option when possible, and many workers began working from home. In October 2020, ICT hosted the 2020 Workers’ Compensation Conference in a virtual format and heard from Workers’ Compensation Commissioner Cassie Brown and Injured Employee Counsel Jessica Barta on their respective agencies’ response and status six months into the COVID-19 pandemic.

Overall, COVID-19 presented many new challenges and speculation about its immediate and future impact on workers’ compensation. Despite fears of staggering costs to insurers due to anticipated COVID related claims, insurers did not experience significant increases in losses as compared to 2019. However, according to information from the Division, in 2020, the overall number of claims increased by 24% and Texas had 44,000 COVID related claims. Unfortunately, there were 200 COVID-19 related deaths.

While other jurisdictions rushed to enact changes to laws regarding presumption of injury for alleged workplace exposure to COVID-19 by emergency responders, healthcare workers, and others, the Texas legislature was not in session in 2020. As we prepared for the 2021 session, stakeholders anticipated similar legislation would be proposed here. At the time this report was being prepared, the session was nearing its final month and we have highlighted some of the pending legislation of interest, including proposed changes regarding presumption of injury for COVID-19. You can find more information on COVID-19 and overall response and impact on the Texas system later in this document.

Notwithstanding the COVID-19 issues, the Texas system has remained stable. This report highlights the slight reduction in premium volume and larger reduction in losses for insurers between 2019 and 2020. In addition, you will find updates on workers’ compensation networks, continued positive return to work trends, recent trends in medical costs, and the Division’s enforcement and compliance efforts. We also provide a brief overview of the Division’s various rule changes and other regulatory announcements for 2020.

Finally, throughout the past year, we worked with our workers’ compensation committee members and our workers’ compensation regulatory counsel, Burns Anderson Jury and Brenner, LLP., to discuss COVID-19 related issues and the Division’s proposed rulemaking. We appreciate the work of our workers’ compensation volunteers and counsel, and look forward to engaging them after the 2021 legislative session to assess and evaluate any new laws and related administrative rulemaking.

As always, if you have any questions about workers' compensation issues or need ICT’s assistance on a matter, please contact Angie Cervantes, Government and Legislative Affairs Manager at acervantes@insurancecouncil.org.

It is our pleasure to serve as your Texas association.
The number of insurers in the Texas market has remained fairly steady over the past four years.

In 2020 there were 98 groups (315 companies) that had direct written premiums for workers' compensation in Texas.

The top 10 insurance company groups write about 76% of the market.\(^3\)

The top writer, Texas Mutual Insurance Company, currently has 42% of the market and serves as the insurer of last resort.

Texas, at $2.2 billion in Direct Written Premium, is the 5th largest workers' compensation market in the nation.\(^1\)

California, New York, Florida, and Pennsylvania rank above Texas.

Premium volume declined slightly to $2.2 billion in 2020 from $2.5 billion in 2019.\(^2\)

Texas is 4.7% of the market for the US workers' compensation market:

- Direct Written Premium for US was $53 billion.\(^1\)

Direct losses paid for 2020 declined to $895,278,875 from $1,049,758,118 in 2019.\(^2\)

Below are the top 10 groups for direct written premium in Texas.\(^2\)

Premiums written has dropped throughout all the groups.

According to TDI data, only 7 groups in the top 25 saw a positive change from 2019 to 2020.

<table>
<thead>
<tr>
<th>RANK/GROUP NAME</th>
<th>MARKET SHARE (2020)</th>
<th>PREMIUMS WRITTEN (2020)</th>
<th>% Change 2019 to 2020 (PW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Texas Mutual Insurance Company</td>
<td>41.82%</td>
<td>$923,313,869</td>
<td>-13.65%</td>
</tr>
<tr>
<td>2. Travelers Group</td>
<td>6.18%</td>
<td>$136,327,646</td>
<td>-20.93%</td>
</tr>
<tr>
<td>3. Liberty Mutual Group</td>
<td>5.28%</td>
<td>$116,581,400</td>
<td>-9.89%</td>
</tr>
<tr>
<td>4. Hartford Fire and Casualty Group</td>
<td>4.88%</td>
<td>$107,838,678</td>
<td>-9.26%</td>
</tr>
<tr>
<td>5. Zurich Insurance Group</td>
<td>4.54%</td>
<td>$100,190,964</td>
<td>-19.99%</td>
</tr>
<tr>
<td>6. Chubb Limited Group</td>
<td>4.51%</td>
<td>$99,476,191</td>
<td>-2.44%</td>
</tr>
<tr>
<td>7. CNA Insurance Group</td>
<td>2.19%</td>
<td>$48,335,801</td>
<td>-2.58%</td>
</tr>
<tr>
<td>8. Old Republic Group</td>
<td>2.04%</td>
<td>$45,116,028</td>
<td>-1.76%</td>
</tr>
<tr>
<td>9. WR Berkley Corp. Group</td>
<td>1.98%</td>
<td>$43,702,801</td>
<td>-14.43%</td>
</tr>
<tr>
<td>10. BCBS of Michigan Group</td>
<td>1.86%</td>
<td>$41,109,183</td>
<td>-16.20%</td>
</tr>
</tbody>
</table>

Injury Rates and Claims:

- Total number of claims reported to DWC in 2020 was about 24% higher than in 2019.
- As of February 14, 2021, insurance carriers reported more than 44,000 COVID-19 claims and 200 fatalities to DWC. Nearly half of these claims and fatalities involve first responders and correctional officers.
- The majority (58%) of claims involved injured employees who tested positive or were diagnosed with COVID-19.
- Data call results show insurance carriers accepted almost half (49%) of COVID-19 positive test claims.
- Nearly half (47%) of the COVID-19 fatal claims involved first responders and correctional officers and half (50%) of fatal claims were processed by the State of Texas and its political subdivisions.

**COVID-19 Fatal Claims by Occupation**

- First responders: 17%
- Correctional officers/prison workers: 28%
- Health/social assistance workers: 37%
- Meat processing workers: 19%
- Others: 1%

**COVID-19 Fatal Claims by Insurance Carrier**

- Political subdivisions: 51%
- Commercial carriers: 31%
- State of Texas: 19%

Despite more than 10,000 denials of COVID-19 claims with positive tests or diagnoses, there were only 45 disputes filed with DWC as of February 14, 2021.

For COVID-19 claims, most of the benefits paid were indemnity benefits (particularly employer salary continuation), compared to medical benefits.

Insurance carriers paid a total of $13.4 million in medical costs on COVID-19 claims:

- $11.1 million (83%) in hospital/facility services
- $2.2 million (16%) in professional services
- $104,910 (1%) in pharmacy services

Most of these costs have been paid by political subdivisions (65%) followed by commercial insurance carriers (30%) and the State of Texas (5%).

(Source: DWC’s administrative data of February 3, 2021)
On March 13, 2020, Governor Abbott issued a statewide disaster proclamation due to the spread of COVID-19. In response to issues that arose because of the pandemic, DWC issued regulatory and process changes and emergency rules.

**Regulatory and Process Changes**

**March 25, 2020:** Commissioner Bulletin B-0010-20
- Ceased orders for DD exams and began holding requests.
- Suspended RME, DD, and referral exams that had already been ordered.
- Tolled medical billing deadlines due to catastrophic event exception.

**March 27, 2020:** Commissioner Bulletin B-0012-20 suspended:
- Work search compliance standards for supplemental income benefits under Labor Code Section 408.1415(a) and 28 Texas Administrative Code Section 130.102(d).
- Testing, training, and application requirements for designated doctor and maximum medical improvement and impairment rating recertification under 28 TAC Sections 127.110(b)(1) and (3), 127.110(d), and 180.23.
- Required medical exams under 28 TAC Section 126.6(a).

**April 10, 2020:** Commissioner Bulletin B-0019-20
- Governor Abbott waived certain reporting and testing requirements for emergency responders through the duration of the disaster declaration. The 10-day testing requirement in the Health and Safety Code applies to law enforcement.

**June 4, 2020:** Commissioner Bulletin B-0030-20 set dates for resuming certain DDs and RMEs:
- June 15, 2020: doctors with DD or MMI and IR certifications and referral doctors could resume scheduling and conducting DD examinations and RMEs previously ordered by DWC. Since work search requirements remain suspended under Commissioner’s Bulletin # B-0012-20, doctors could not perform any portions of the examination or reports related to the injured employee’s ability to return to work or disability as a direct result of the compensable injury. DWC will allow these examination issues to resume at a later date. DWC will issue new orders removing these issues from exams previously ordered but not yet completed.
- June 22, 2020: DWC could resume processing requests for DD examinations and RMEs except for the issues of return to work or disability as a direct result of the compensable injury. DWC will only order approved pending DD examination requests for the issues of MMI, IR, extent of injury, or other similar issues. Approved pending RME requests will only be ordered for the evaluation of a DD determination for the issues of MMI, IR, extent of injury, other similar issues, or requests to assess the appropriateness of health care.

**January 29, 2021:** Commissioner Bulletin B-0004-21 called for lifting the tolling of medical billing deadlines effective March 1, 2021.
On April 15, 2021, DWC announced they will resume in person Contested Case Hearings (CCHs) on August 2, 2021.
Emergency Telemedicine Rules

28 TAC §167.1 - Physical Medicine and Rehabilitation Services - Telemedicine and Telehealth Billing Procedures.
This emergency rule, issued April 13, 2020, builds on the existing telemedicine and telehealth rules by creating an exception to current CMS distant site practitioner requirements. This rule allowed health care providers licensed to perform physical medicine and rehabilitation services, including physical therapists, occupational therapists, and speech pathologists to bill and be reimbursed for services currently allowed under CMS telemedicine and telehealth billing codes. A 60-day extension of this rule was issued on August 10, 2020. The extension expired October 8, 2020.

28 TAC §35.1 - COVID-19 Emergency Rules
Upon direction of Governor Greg Abbott, on March 17, 2020, TDI issued emergency rule 28 TAC Section 35.1 related to telemedicine/telehealth, which required insurers cover telemedicine services, including mental health visits, at the same rate as in-person visits. The original emergency rule was set to expire July 14. With the 60-day extension, the rule remained in effect through September 12.

Governor Abbott Makes Telemedicine Emergency Item
At his biennial State of the State Address speech in February 2021, Governor Abbott called for legislation to permanently expand telemedicine. HB 4 by Rep. Four Price and SB 412 by Sen. Dawn Buckingham were filed this session and are making their way through the legislative process.

COVID-19 Data Call

On June 2, 2020, DWC issued Commissioner’s Bulletin #B-0029-20, a mandatory data call for certain information related to COVID-19 injuries reported to selected insurance carriers on or after December 1, 2019.

On January 14, 2021 the Commissioner’s Bulletin #B-0003-20 was issued, DWC extended the data call through June 2021 to ensure that they have sufficient information to determine the impact of COVID-19 injuries on the Texas workers’ compensation system.
Since 2006, when TDI began certifying workers’ compensation networks, about 1.1 million injured employees have been treated in workers’ compensation networks. Since 2006, when TDI began certifying workers’ compensation networks, about 1.1 million injured employees have been treated in workers’ compensation networks.1

As of June 1, 2020, there were 30 certified networks covering 254 Texas counties. 21 certified networks actively treated injured employees as of May 31, 2019. Almost half of all new claims are treated in networks, and the percentage of new claims treated in networks has not changed significantly since 2015.1

In 2020, 48% of new claims were in network, while 52% were non-network.1

**Networks at a Glance**

**Average Hospital Cost Per Claim, Six Months Post-Injury**
- Medical-Only Claim: Injury Year 2005: $803
  - Injury Year 2019: $1,886

**Lost-Time Claims:**
- Injury Year 2005: $4,505
  - Injury Year 2019: $8,798

In general, networks have lower medical costs than non-networks for claims at both six months and 18 months post-injury.

Networks' average medical cost for claims with six months maturity fell by 11% from 2010 to 2020. In 2020, the average medical cost six months post-injury for non-network claims was $2,710, while the average medical cost six months post-injury for network claims was $2,609.

In 2020, the average medical cost per network claim was about 9% lower at 18 months post-injury than non-network. The average 18 months post-injury cost for network claims was $3,397, while the average non-network claims was $3,696.

**Medical Costs**

Compared with other states, Texas experienced significant reductions in medical costs per claim because of legislative reforms to the workers' compensation system.

In 2001, Texas was among the highest nationally in terms of medical costs per claim, according to a multistate comparison by the Workers’ Compensation Research Institute.

Texas’ cost per claim with 12 months maturity is now approximately 24% less than the median cost of the 18 states analyzed in TDI’s biennial report, which included Florida, Pennsylvania, Louisiana, and Illinois.2

In 2018 inpatient hospital costs increased about 24%.2

Factors affecting this:

- Changes in injury severity and the mix of surgeries being performed in an inpatient setting.
- Changes in the Medicare inpatient prospective payment system may have also resulted in higher reimbursement rates for certain diagnostic related groups.

**Sources:** 1. Network Report Card 2. TDI Biennial Report 3. Setting the Standard Report
More injured employees receiving income benefits are getting back to work within six months:

83% 2021
74% 2004

In 2020, the Workers’ Compensation Research and Evaluation Group (REG), in conjunction with the Texas A&M University Public Policy Research Institute, surveyed 3,157 injured employees on their experience in the Texas workers’ compensation system.

A higher percentage of injured employees surveyed in 2020 - 76% in 2020 compared with 64% in 2005 - reported that they were employed at the time of the survey.

A significantly lower percentage of workers surveyed in 2020 - 8% in 2020 compared with 20% in 2005 - reported that they had not yet returned to work 12-24 months after their injuries.

Results from the 2020 Workers’ Compensation Network Report Card produced by REG indicate that injured employees treated in networks generally had higher initial return-to-work rates than injured employees treated outside of networks.

Overall, network claims had higher return-to-work rates than non-network claims.\(^1\)

Percentage of Injured Employees Who Indicated That They Were Currently Working at the Time They Were Surveyed:

<table>
<thead>
<tr>
<th></th>
<th>Network</th>
<th>Non-Network</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>82%</td>
<td>73%</td>
</tr>
</tbody>
</table>

Average Number of Weeks Injured Employees Reported Being Off Work Because of Their Work-Related Injury:

<table>
<thead>
<tr>
<th></th>
<th>Network</th>
<th>Non-Network</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 weeks</td>
<td>Network</td>
<td></td>
</tr>
<tr>
<td>10 weeks</td>
<td>Non-Network</td>
<td></td>
</tr>
</tbody>
</table>

Large employers consistently have the highest initial RTW rates within six months post-injury, averaging roughly 82%, they tend to have more robust RTW programs than small employers. They also have the highest sustained RTW rates (about two-thirds).\(^4\)

Public administration has the consistently highest initial RTW rates within six months post-injury at an average of roughly 87%. Employees in the mining/utilities/construction and agriculture sector have, on average, the lowest initial RTW rate at roughly 75%.\(^4\)

Sources:
1. Network Report Card
2. TDI Biennial Report
3. Setting the Standard Report
4. Return to Work
Pharmacy service payments decreased by 50% from 2013 to 2019.¹

<table>
<thead>
<tr>
<th>Year</th>
<th>Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>$125,398,786</td>
</tr>
<tr>
<td>2019</td>
<td>$62,430,311</td>
</tr>
</tbody>
</table>

These payment declines do not account for medical inflation that occurred during this time.

Average pharmacy cost per claim

<table>
<thead>
<tr>
<th>Claims Type</th>
<th>2005</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lost Time Claims</td>
<td>$320</td>
<td>$237</td>
</tr>
<tr>
<td>Medical Only Claims</td>
<td>$105</td>
<td>$148</td>
</tr>
</tbody>
</table>

In 2019, the small number and percentage of pharmacy disputes, 1%, is remarkable, given that DWC adopted a pharmacy closed formulary in 2011 that requires preauthorization for many “not-recommended” or “N drugs” before they can be dispensed to injured employees.²

Pharmacy Disputes: 1%

Employer Participation:

71% of Texas private-sector employers have workers’ compensation coverage and they employ about 81% of the Texas workforce.³

Employer non-subscription rates remained essentially flat from 2018 to 2020, from 28% to 29% of Texas year-round private-sector employers. However, employer subscription rates since 2016 remain the highest rates since the first employer survey in 1993.⁴

About 283,437 private-sector employers do have workers’ compensation coverage, and they employ approximately 9 million private-sector employees.  

Although employer non-subscription rates have declined over time, the percentage of Texas employees who work for non-subscribers has not declined at the same rate. In 2004, an estimated 24% of private-sector employees worked for non-subscribing employers, compared to 19% in 2020. This is the result of a continuing trend of larger employers (500+ employees) becoming non-subscribers despite large workers’ compensation insurance rate reductions since 2005.  

Overall, an estimated 878,000 private-sector employees in Texas do not have any employer coverage in the case of a work-related injury in Texas in 2020 - an increase from about 638,000 employees in 2018.  

Most frequently cited reasons by non-subscribing employers for not purchasing workers' compensation coverage:  

- Having too few employees 63%  
- Too few on-the-job injuries 56%  
- Workers’ comp not required by law 59%  
- Insurance premiums are too high 48%  

About one in five non-subscribing employers said that cutting costs because of the pandemic was an extremely important reason why they were non-subscribers.  

Sources: 1. TDI Biennial Report  2. Setting the Standard Report
COVID-19 Results in Multiple System Issues and Trends

Many of the trends identified below are a result of the COVID-19 pandemic, covered in-depth in this report. Some of these issues have impacted the Texas system through regulatory or legislative actions, while others are changes which have been made in other jurisdictions. Texas system stakeholders should monitor these issues for any future developments in Texas.

Legislative and Regulatory Changes

During this past year, many jurisdictions have considered or adopted statutory and administrative rule changes to provide for coverage for COVID-19 in certain occupations and circumstances.

Multiple states passed laws giving some employees, including nurses, firefighters, and other first responders, a presumption of eligibility for workers' compensation benefits without direct proof that the exposure happened during the course and scope of employment.

During the 2021 Texas legislative session, there have been multiple bills addressing presumptions for nurses and various public employees. See our section on the Texas Legislature for details.

Lowering Costs and Premiums

Initially, there was concern about the scope and costs of potential COVID claims. So far, these fears have not materialized and it appears the opposite occurred. NCCI reported that for the first three quarters of 2020, workers’ compensation payments and liabilities were 7.6% lower than in the same period of 2019. Some estimates forecast that workers’ compensation premium volume would drop 10% to 20% in 2020, with questions about growth in 2021 as the job market rebounds from COVID. In addition, during 2020, the changing workplace and greater use of remote working has meant other system-wide changes. Employers have experienced lower premiums as injuries declined due to changing workplace requirements.

As vaccines and other safety efforts have slowed the spread of COVID-19, questions will remain about the aftermath. For example, what happens with those workers who had COVID and have continuing complications when they return to the workplace? These individuals have been referred to as “long-haulers” and it remains to be seen what effect these employees have on future claims and workplace issues.
Changing Workplace Locations
As noted, many employees have worked remotely for the past year and may continue to do so or remain in a "hybrid" version of a few days in the office and a few remote. Remote work presents challenges as employers deal with potential injuries and workspaces that may not be ergonomically designed or be free of hazards. Further, claims investigations for injuries at home may present unique challenges.

Other System Issues

Remote Communications and Technology
Throughout 2020, companies and TPAs increased their use of technology in a remote environment. The pandemic required companies to adjust business processes and customer interactions to maximize technology needed to adjust and investigate claims, communicate with various system participants, and find efficiencies where possible.

System participants also conducted dispute resolution proceedings via various online tools and some of these proceedings will continue in a virtual environment. These changes are seen as cost and time efficient but have raised questions about the ability to connect in person and access to technology for some system participants.

Increased Use of Telehealth
COVID-19 has expanded the use of telehealth in workers’ compensation. During 2020, multiple states, including Texas, expanded the use of telemedicine, and the Texas legislature is considering proposals which would expand the use of telemedicine. Further, in February 2021, the US Congress House and Senate proposed legislation that would allow providers to bypass state and federal licensing requirements during public health emergencies, like COVID-19. The bill is known as the "Temporary Reciprocity to Ensure Access to Treatment (TREAT) Act".
ENFORCEMENT AND COMPLIANCE

COMPLAINTS

Insurance Carrier Complaints received in 2020: 1,754

436 confirmed closed (most confirmed in medical benefit delivery category)

657 DWC monitoring complaint

798 not confirmed

FRAUD

For fiscal year 2020, there were

1,584 fraud reports received

134 cases opened for investigation

6 cases referred for prosecution

10 convictions

DWC Helps Close the Door on Multi-Million Dollar Fraud Case

In March 2021 U.S. District Judge Zack Zouhary sentenced the remaining defendants in the Forest Park Medical Center health care fraud bribery scam, the final chapter in what was a $40 million fraud and bribery case that began in 2016. The DWC Fraud Unit identified Forest Park health care providers who billed within the state’s workers’ compensation system and provided data and investigation documents to the FBI for seven of the defendants. The Fraud Unit found that insurance carriers in the Texas workers’ compensation system alone were billed a little over $14 million and paid $2.6 million in this case.

AUDITS

For fiscal year 2021, Compliance and Investigations' goal is to improve system performance in the following key areas:

- timely and accurate benefit delivery;
- timely medical reimbursement; and
- timely and accurate reporting of electronic data to the DWC

Audits completed in 2020: 59

Sources: 1. TDI Fraud Statistics 2. 2020 PBO Results
Medical Quality Review (MQR) Audit Plan Review Categories

Members of the Medical Quality Review Process (MQRP) will review:
- Appropriateness and recordkeeping of an acromioplasty or distal clavicle resection procedure conducted as part of a shoulder rotator cuff repair surgery.
- MQRP will also assist with the Performance Based Oversight 2021 Assessment Health Care Providers to evaluate documentation of why an injured employee is prevented from returning to work as reported on the DWC Form-073, Work Status Report.

Utilization Review Agent (URA) Audit

Scope and Methodology:
- Includes insurance carriers or URAs who have prospectively approved spinal lumbar fusions for injured employees where the spinal lumbar fusions were billed to certain CPT and diagnosis codes, as well as where the spinal lumbar fusion was no earlier than 180 days from date of injury and not denied for lack of preauthorization by the insurance carrier.
- Procedures for determining the reasonableness of a doctor’s decision and recordkeeping regarding return to work are set forth in Section II of the Medical Quality Review Process, specifically, the adopted return to work guidelines.

Time Frame to Select Data - Identification will be as follows:
- Insurance carriers through medical bill and payment data
- URAs from medical records provided by selected insurance carriers.
- Cases through medical bill and payment data submitted to DWC with dates of service on or after January 1, 2018 through June 30, 2020 with certain CPT codes.

Case selection
- Identify bills where the injured employee had spinal lumbar fusion meeting the scope.
- Include one bill per each unique surgical event.
- Randomly select 30 bills.
DWC Biennial Recommendations to the 87th Legislature

As of publication in May 2021, the 87th Legislature is currently in session so the complete picture of legislation that passed is not available. DWC released their biennial report to the Texas Legislature in December 2020 and their recommendations have been filed as legislation.

- **Streamlining Legislative Reporting**
  DWC proposed that statutes be amended to require the network report card to be published biennially instead of annually and eliminate the requirement to issue certain legislative reports examining the impacts of the 2005 legislative reforms (HB 7). Chair of House Insurance, Rep. Tom Oliverson, has filed this recommendation as **HB 1753**.

- **Provide Flexibility to Hold Benefit Review Conferences Remotely**
  During the COVID-19 pandemic, DWC has been holding BRCs by video or phone. DWC proposed amending the Labor Code to provide for BRCs to be held by video conference or by phone, while providing “good cause” exceptions for a BRC to be held in person. Chair of House Insurance, Rep. Tom Oliverson, has filed this recommendation as **HB 1752**.

In addition to the recommendations, DWC staff presented emerging issues that might come before the legislature centered around COVID-19. One particular issue, presumption for COVID-19 has emerged as an issue this session. While many bills have been filed relating to presumption, most applied to public sector, HB 396 by Rep. Joe Moody was filed and applies to nurses. The presumption bills were heard in the House Business & Industry Committee on March 30, 2021.

The **Office of Injured Employee Counsel** recommended amending Labor Code, Section 410.005 to hold Benefit Review Conferences (BRC) by video conference or by phone, while providing “good cause” exceptions for a BRC to be held in person. HB 1752 addressed this recommendation, as noted above.

Other bills of interest that are pending as of the time of publication, but would mean significant changes:

- **HB 3120 by Rep. Giovanni Capriglione**: Amends Section 408.161(a), Labor Code (Lifetime Income Benefits) by amending the list of those that qualify.
- **HB 3042 by Rep. Jared Patterson**: Amends Section 413.011, Labor Code and gives the Commissioner the ability, through rule, to amend or replace treatment guidelines, return-to-work guidelines, or individual treatment protocols; it also would require an independent entity to conduct a comparative evaluation of the guidelines and the formulary.
- **HB 4385 by Rep. Jared Patterson**: Deletes the requirement for the Utilization Review (UR) program.
- **HB 3623 by Rep. Chris Turner**: Amends Section 408.0061, Labor Code to provide coverage for PTSD for certain health care providers.
- **HB 3098 by Rep. Jeff Cason**: Authorizes a medical examination conducted to certify an employee's maximum medical improvement or assign an impairment rating be performed using telemedicine or telehealth services.
- **HB 3818 by Rep. Ryan Guillen**: Requires insurance carriers to pay a set fee by the commissioner to the designated doctor or doctor selected if an employee fails or refuses to appear at the time scheduled for an examination.
Texas Supreme Court Ruling on Air Ambulance Reimbursement

This lengthy litigation finally resulted in a ruling by the Texas Supreme Court. At issue were, as of January of 2019, disputes over almost $50 million in Texas air ambulance charges. Texas air reimbursement guidelines are less than the amounts charged by air ambulance companies for services provided to injured workers. In the litigation, air ambulance companies claimed that the federal Airline Deregulation Act (ADA) preempted state workers’ compensation laws and insurers must pay billed charges for the services, and for Texas, the Texas medical fee guideline should not apply.

On June 26, 2020, the Texas Supreme Court issued its opinion in Texas Mutual Insurance Co., et al v. PHI Air Medical, LLC., No. 18-0216, (Tex. 2020). Briefly, as background, at the trial court level, the court decided that the ADA does not preempt the Texas fee guideline reimbursement provisions and insurers did not owe more than fee guideline (125% of the Medicare). The case was appealed to the court of appeals, which reversed the trial court decision and held that the ADA preempted the state’s workers’ compensation reimbursement provisions.

The Texas Supreme Court, addressing constitutional issues, federal law, and Texas law, held that the ADA did not preempt the fair and reasonable reimbursement standard under Texas law.

Texas Supreme Court Issues Ruling in Peace Officer Traveling and Course and Scope Case

The Texas Supreme Court addressed a complex course and scope and traveling case, Orozco v. County of El Paso, Self-Insured, No. 17-0381, (Tex. 2020), involving a peace officer driving home from an extra-duty assignment. The Court concluded the deputy was in the course and scope of employment.

Orozco, a deputy with the El Paso County Sheriff’s office, was involved in a fatal motor vehicle accident while driving home from an extra-duty assignment at the University of Texas at El Paso (UTEP). He was driving his sheriff’s office vehicle. Extra-duty employment was permissible, but must be approved and the Department permitted the use of patrol vehicles for extra-duty employment with approval. Orozco wore his uniform, badge, and gun to the extra-duty employment at UTEP and used his patrol car for his return travel home.

The decision discusses the provisions of Texas Labor Code §401.011(12) (which defines “course and scope of employment”) and §401.011(12)(A), the “coming-and-going” rule, which excludes travel to and from work from the course and scope of employment, unless certain exceptions are met. After reviewing these laws, the Court held Orozco was in course and scope of employment at the time of the accident. In addition, the Court found that the travel originated in the deputy’s employment and furthered the employer’s affairs (being in a marked patrol car relates to the Sheriff’s Department’s role in patrolling streets and having uniformed deputies works to preserve peace and respond to citizens in need). Then the Court looked to the “coming-and-going” rule, and although it applied, the Court found, that in this instance the exceptions to the coming and going rule applied.
DWC Adopts Amendments to 28 TAC §132.7
DWC adopted an amendment to 28 TAC §132.7. The adopted changes are meant to align DWC's rules on the duration of death benefits with the statutory changes made by HB 2503, which went into effect September 1, 2019. HB 2503 was passed by the 2019 Legislature and expanded eligibility of spouses who may receive death benefits for life, regardless of remarriage, to spouses of peace officers and intrastate fire mutual aid system team members or regional incident management team members. It only applies to an eligible spouse who remarries on or after September 1, 2019.

DWC Adopts Amendment to 28 TAC §133.307
DWC adopted amendments to rule 28 TAC §133.307 to allow health care providers and pharmacy processing agents to electronically submit requests for medical fee dispute resolution (MFDR). The amendments include accepting electronic filings through fax, secure file transfer protocol (SFTP), or encrypted email and deleting the requirements for filing paper copies. Amendments to subsection (c) (1) provide that a request will be filed on the date DWC receives the request. Currently, a request is determined to have been received when the MFDR Section receives the request. This change will remove potential uncertainties and delays if a request received by mail is not promptly forwarded from DWC’s mailroom to the MFDR Section. This change also will establish a uniform filing date, regardless of whether a request is submitted electronically or by mail or personal delivery. The rule went into effect February 22, 2021.

DWC Adopts Amendments to 28 TAC §§112.101, 112.102, 112.203, 112.301, and 112.401
DWC adopted amendments to the reporting requirements in 28 TAC §112.203; DWC Form-083, Agreement for Certain Building and Construction Workers; and DWC Form-084, Exception to Application of Joint Agreement for Certain Building and Construction Workers to conform with changes made by HB 1665, 86th Legislature. HB 1665 amended the Labor Code to require a hiring contractor and an independent contractor who have a joint agreement affirming their independent relationship to notify DWC of the agreement only if the Division requests notification. DWC also adopted amendments that update the agency’s name and terminology in 28 TAC §§112.101, 112.102, 112.203, 112.301, and 112.401, as well as deleted the headings for Subchapters B, C, D, and E in Chapter 112 to simplify how the rules are organized and make them easier to access and more user-friendly. The amendments were effective February 10, 2021.

DWC Adopts Amendment to 28 TAC §180.1
DWC adopted an amendment to 28 TAC §180.1, Definitions to align DWC’s definition of “appropriate credentials” with the statutory changes made by SB 1742, 86th Legislature. The Legislature added subparagraph (c) to §408.0043 to require that, when a health care service is requested, ordered, provided, or to be provided by a physician, a physician performing a peer review, utilization review, or independent review, it must be of the same or a similar specialty as that physician who requested or performed the health care service. The amendment was effective February 10, 2021.

- ICT submitted comments asking for clarification of what was meant by a "similar specialty." DWC disagreed that the term similar specialty should be defined in the section.
DWC Adopts Amendments to 28 TAC §116.11
DWC adopted amendments to 28 TAC §116.11, to require insurance carriers to electronically submit requests for SIF reimbursement using forms specific to their request:

- DWC Form-095, Overturned Order or Designated Doctor Opinion;
- DWC Form-096, Refund of Death Benefits;
- DWC Form-097, Multiple Employment; and
- DWC Form-098, Pharmaceutical.

This change was effective February 11, 2021.

DWC Adopts 28 TAC §§142.13 and 142.19
DWC adopted 28 TAC §142.13, concerning Discovery, and §142.19, concerning Form Interrogatories, to update the interrogatories to increase the time to respond to the interrogatories and to describe the questions that a party may ask using the interrogatories. In these amendments, DWC increases the time to respond to an interrogatory from five days to 10. To accommodate the additional five days to respond within the allotted time for a contested case, interrogatories would now be required to be presented no later than 25 days before a hearing, unless the parties agree otherwise. This amendment was effective February 18, 2021.

DWC Readopted the following in 2020 as part of their routine rule review:

- **28 TAC Chapters 129-137**: On January 21, 2021, DWC readopted all sections in 28 TAC 129-137, which were up for rule review. In November 2020, ICT submitted comments to DWC on the rules supporting readoption, except for Rule §133.309, dealing with Alternative Medical Necessity Dispute Resolution by Case Review Doctor because it may have been held unconstitutional by a District Court in Travis County.
- **28 TAC Chapters 126, 127, and 128**
- **28 TAC Chapters 140-144, 147-148, 150, 152, and 156**

**REG TOPICS FOR 2021**

- Analyze the initial impact of COVID-19 on the Texas workers’ compensation system, including claim frequency, claim costs, disputes, and return-to-work outcomes.
- Study the use of telemedicine in the Texas workers’ compensation system, including trends on the types and cost of services being performed, the types of health care providers providing these services, and the demographic trends of injured employees receiving telemedicine services.
The Insurance Council of Texas is a nonprofit trade association that promotes the property and casualty insurance industry by providing relevant information and resources to its members, the public, regulators and the media.

Find us online at insurancecouncil.org, and follow us on Twitter, LinkedIn, and Facebook.

Download the ICT mobile app to receive important property and casualty updates delivered straight to your device. Available on Apple and Android platforms.

Join us September 23, 2021 at the ICT Workers’ Compensation Conference! Find more information and register online at ictworkcompconference.org.

RESOURCES

Biennial Report to the Texas Legislature

Setting the Standard 2020 report

Network Report Card, September 2020

Return to Work

TDI Market Report, March 2021

iii Factbook for 2021
https://www.iii.org/publications/2021-insurance-fact-book

2020 PBO Results
https://www.tdi.texas.gov/wc/pbo/pboreg.html#sysrslt

COVID Report

REG research agenda

MQR audit plan

URA audit