ICT is pleased to bring you the annual State of Texas Workers' Compensation report. For this year’s edition, we have changed format and content to provide you with a broad overview of the Texas system.

In addition to changes in this report, the new year brings about changes and enhancements to our workers’ compensation services. ICT has contracted with the law firm of Burns Anderson Jury & Brenner, LLP to provide regulatory counsel on matters related to the industry, bringing their expertise and representing ICT’s membership at DWC and helping to keep our members up to date on critical workers’ compensation litigation, legislative, and regulatory meetings. The firm provides updates, analysis and reports enabling ICT to share timely and relevant information to members. In March, we are proud to host Joe Anderson, founding partner of Burns Anderson Jury & Brenner, LLP, as part of our monthly webinar series, discussing the State of the Workers’ Compensation System. Webinars are free to members and more information may be found at insurancecouncil.org.

In January 2020, Angie Cervantes joined ICT as Government and Legislative Affairs Manager and, among other duties, will be monitoring DWC activities and workers’ compensation legislation providing updates and analysis to our workers’ compensation committee and members. Angie will coordinate with Burns Anderson Jury & Brenner, LLP as needed.

In 2020, you will continue to receive the monthly Workers’ Compensation News Digest, the Quarterly Carrier Update, Quarterly Regulatory Update, our daily Tex-Clips, weekly News To Know, highlighting the top stories impacting the Texas property and casualty marketplace across our state and the nation. This year’s Workers’ Compensation Conference takes place on September 17. Our annual meeting brings together experts, stakeholders and leaders of our industry – it’s a time to learn and network with colleagues who share a mutual commitment to serving the people of Texas. More information will be posted at insurancecouncil.org soon.

We hope you find this report valuable as we are committed to supporting your workers’ compensation needs.

Wishing you continued success here in this state we call home.
Texas workers' comp system loss ratios are at historically low levels.

After consecutive years of declining premium, the Texas market experienced growth between 2017 and 2018: $2.33 billion to $2.5 billion.

The number of policies increased significantly from 229,372 in 2017 to 249,594 in 2018, a 9% increase.

From 2017 to 2018, losses rose over 6%, from approximately $930 million to over $1 billion.

The Texas market offers employers a variety of insurers from which to choose. In 2018, there were 94 groups (308 companies) that had direct premiums written for workers' compensation in Texas.

Below are the top 10 groups for direct written premium in Texas.

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<tr>
<td>1 Texas Mutual Insurance Company</td>
<td>43.81%</td>
<td>$1,097,243,791</td>
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<tr>
<td>2 Travelers Group</td>
<td>7.16%</td>
<td>$179,300,969</td>
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<tr>
<td>3 Liberty Mutual Group</td>
<td>5.66%</td>
<td>$141,798,205</td>
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<tr>
<td>4 Zurich Insurance Group</td>
<td>4.94%</td>
<td>$123,673,736</td>
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<tr>
<td>5 Hartford Fire and Casualty Group</td>
<td>4.89%</td>
<td>$122,409,728</td>
</tr>
<tr>
<td>6 Ace Limited Group</td>
<td>3.79%</td>
<td>$94,884,177</td>
</tr>
<tr>
<td>7 American International Group</td>
<td>2.06%</td>
<td>$51,617,868</td>
</tr>
<tr>
<td>8 Old Republic Group</td>
<td>1.97%</td>
<td>$49,439,057</td>
</tr>
<tr>
<td>9 CNA Insurance Group</td>
<td>1.87%</td>
<td>$46,783,586</td>
</tr>
<tr>
<td>10 Service Life Group</td>
<td>1.85%</td>
<td>$46,409,381</td>
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Texas networks have reduced per claim medical cost to lower levels than the medical costs for non-network injured employees, especially at 18-months maturity.

Overall, networks have reduced most hospital and pharmacy utilization measures to lower levels than for non-network.

Most networks reported higher return-to-work rates than non-network.

The percentage of new claims treated in networks (48% in 2019) is up from 20% in 2010.

Generally, the percentage of new claims treated in workers' compensation networks has ranged between 47% and 50% since 2015.

In March 2006, TDI began certifying workers’ compensation networks.

As of June 1, 2019, there were 30 certified networks covering 254 Texas counties.

Among the certified networks, 20 were treating injured employees as of May 31, 2018.

Since the formation of the first network, 1,026,796 injured employees have been treated in workers’ compensation networks.

Percentage of New Claims in Workers’ Compensation Networks 2010-2019

Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2019.
The biggest decline happened between 2016-2018.

And then a slight increase between 2018-2019.

Medical cost in network remains lower than non-network cost.

The network average medical cost for claims with six months maturity fell by 15% from 2010 to 2019.

The non-network average medical cost increased by 11% from 2010 to 2019.

NETWORKS AT A GLANCE

DWC releases 2019 Workers’ Compensation Network Report Card results

On September 30, TDI-DWC released its 2019 Workers’ Compensation Network Report Card Results. The report was prepared by the Workers’ Compensation Research and Evaluation Group (REG) and compares the quality, costs, health care provider availability, and other factors of workers’ compensation health care networks with each other and with medical care provided outside of networks. Among the report highlights:

- For 2019, 48% of new claims are being treated in a network.
- Average medical costs at 18 months remain lower in network than non-network ($3,091 vs $3,396)
- Injured workers being treated in a network reported higher satisfaction with care

Since 2012, network claims return-to-work rates consistently have been 3.5 percentage points higher than non-network claims.

94% 2019 network RTW rate

90% non-network RTW rate

Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2019.
The DWC first implemented a pharmacy closed formulary to manage drug prescriptions to injured employees in 2011.

Overall, the Texas pharmacy formulary has shown significant success in reducing the prescribing of opioids and other “N” drugs under the Texas formulary. The following information is based upon DWC’s Analysis of Injured Employee Outcomes After the Texas Pharmacy Closed Formulary.

Here are a few highlights:

The average **return-to-work rate** for network and non-network employees increased after the pharmacy closed formulary.

The number of workers’ compensation **medical disputes** decreased significantly, 38% between 2011-2019.

The formulary has not impeded injured employees ability to receive prescriptions.

According to DWC survey, 78% of injured employees report they had no problem receiving their prescription.

**COSTS ARE DOWN**

Total pharmacy costs declined 15% between injury years 2011-2012.

**“N” drug costs declined 78%**

Average drug cost per claim declined 35%

*Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2019.*
IMPACT OF THE TEXAS PHARMACY FORMULARY

Total number of prescriptions
-11%

Total number of claims receiving pharmaceuticals
-2%

Total number of claims receiving not recommended "N-drugs"
-67%

Total number of N-drug prescriptions
-77%

Prescriptions and use of N-drugs down.

Total number of claims receiving high levels of N-drug opioids decreased from almost 15,000 in 2009 to less than 500 in 2015, a nearly 97% decrease!

Those receiving high levels of other opioids decreased from 8,804 to 4,883, a nearly 50% decrease!

Other states are looking at the Texas pharmacy drug formulary as a way to improve treatment and encourage better outcomes for injured employees.

Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group, 2019.

NATIONAL COUNCIL OF INSURANCE LEGISLATORS ADOPT MODEL ACT

Recently, NCOIL adopted a model law for workers’ compensation drug formulary for consideration by other states.

During the December 2019 NCOIL annual meeting in Austin, Texas, the organization adopted the NCOIL Workers’ Compensation Drug Formulary Model Act sponsored by Indiana Representative Matt Lehman, 2020 NCOIL President. It passed without objection by both the workers’ compensation and the NCOIL executive committees. The initial discussion draft of the Model was based on Indiana SB 369, which Rep. Lehman sponsored and was signed into law in March 2018. The Indiana law requires the adoption of the Official Disability Guidelines Workers’ Compensation Drug Formulary Appendix A published by MCG Health and prohibits workers’ compensation reimbursement for drugs specified in said formulary as “N” drugs, except during a medical emergency.

The purpose of the Model Act is “to require the establishment of a drug formulary for use in a states' workers’ compensation system in order to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease,” according to a press release from NCOIL.
The subscription rate for large employers remains steady.

PREMIUMS
For large employers, the percentage with declining premiums is the highest it’s been in years.

Texas is an opt-in state for employers. Employers can choose to secure workers’ compensation coverage from an insurer or have no coverage. This makes Texas unique in the United States. In the last few years, other states, (Oklahoma, for example) have considered some version of a non-mandatory workers’ compensation program.

However, the rate of non-subscription for small employers has increased slightly.

82% of private sector employers are subscribers to the Texas workers’ compensation system.

DID YOU KNOW?
The Workers’ Compensation REG pulled a random probability sample of Texas employers from Texas Workforce Commission data.

The employer subscription rate fell from 78 percent in 2016 to 72 percent in 2018, but these two years remain the highest subscription rates since 1993.

- Among large subscribers in 2018, the percentage that experienced premium decreases was the highest in eight years, the percentage that experienced increases was the lowest in eight years, and the percentage with unchanged premiums increased by 4 percent from 2016.

- Higher percentage of non-subscribers are smaller employers, less than 9 employees

- Largest percentage of non-subscribers are private employers are in health/education (39%)

- Large percentage increase (10–21% from 2016–2018) in subscribers who reported they purchased workers’ compensation coverage due to rates being lower

- Non-subs generally expressed higher levels of satisfaction when compared to subscribers
ENFORCEMENT AND COMPLIANCE

COMPLAINTS
Earlier this year, DWC announced that they had taken proactive steps in reducing its backlog of pending complaints, with the current average number of days to resolve a complaint was 114 days.

FIGHTING WORKERS’ COMPENSATION FRAUD
For 2019, DWC received 2,062 fraud referrals, with eight referred for prosecution. 279 fraud cases remain open. (based on data received as of July 18, 2019) Throughout the year, DWC encouraged carriers to contact them when making fraud referrals to address what materials DWC may find helpful. Also, for the 2019 prosecution stats, there were 9 indictments and 12 convictions (based on data received as of July 18, 2019).

ENFORCEMENT
As of September 30, 2019 DWC had approximately 210 enforcement cases pending regarding carriers and 93 regarding health care providers. There were a total of 361 enforcement cases pending. (through September 30, 2019)

For medical providers, in CY 2019, DWC initiated 18 medical quality reviews and concluded 38 with 61% referred to enforcement.

PERFORMANCE BASED OVERSIGHT
DWC announced changes to the selection process for carriers. Selection will be based on volume of the assessment period data, January 2020 through June 2020.

DWC also modified the weights it affords specific criteria. The new weights:

- Timely payment of initial TIBs –50% (formerly 60%)
- Timely processing of medical bills –30% (formerly 20%)
- Timely processing of requests for reconsideration of medical bills –10%
- Timely submission of initial payment data via EDI –5%
- Timely submission of medical bill processing data via EDI –5%

AUDITS
In October 2019, DWC announced their 2020 audit plan with the goal of DWC Compliance and Investigations 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 Texas Department of Insurance, Division of Workers’ Compensation (DWC).

For 2019, DWC completed 59 audits with almost half being initial TIBs payments.
Expanding workers’ compensation benefits for first responders and law enforcement

In 2019, like the past few sessions, the Texas legislature considered and passed multiple bills resulting in changes in benefits and benefit eligibility for first responders. For example, effective September 1, 2019, post-traumatic stress disorder (PTSD) is now compensable if caused by one or more events occurring in course and scope of employment for first responders. This was after a 2017 bill, attempted to do the same but required clarification in 2019. Other legislative changes continued the trend over the last few legislative sessions of expanding death benefit eligibility for survivors of first responders and law enforcement officers.

The legislature passed bills creating certain presumptions for an extended list of cancers as being for firefighters and emergency medical technicians, and extending presumptions diseases as work related to include certain peace officers. See Senate Bills 2551 and 1582, respectively. At issue is Chapter 607, Subchapter B, of the Government Code, which addresses diseases or illnesses suffered by firefighters and emergency medical technicians. Section 607.055 of the Government Code provides that a firefighter or emergency medical technician who suffers from cancer resulting in death or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a firefighter or emergency medical technician in certain prescribed circumstances.

This trend of separate benefit eligibility for first responders, firefighters, and peace officers is not unique to Texas. Various other states have passed legislation relating to coverage for first responders with mental-only injuries, as well as certain disease and exposure presumptions.

Although this issue has been limited to political subdivisions, we urge our members to monitor these changes for broader workers’ compensation system impacts and potential implications for private sector employers.
Medical Marijuana
Texas has not legalized marijuana for medical or recreational use but in 2019, the legislature considered various bills which would have allowed the use of low-THC cannabis for certain patients and diagnoses, and passed a bill allowing licensed physicians to prescribe low-THC cannabis to patients with epilepsy, multiple sclerosis, or spasticity if the physician was licensed, dedicated a significant portion of clinical practice to the evaluation and treatment of a patient's medical condition, and met certain other requirements. See HB 3703.

Although none of the bills directly addressed marijuana, our members should continue to monitor the upcoming 2021 session for any bills discussing the intersection of legalized marijuana and workers' compensation. As of 2019, over 30 states had legalized the use of marijuana for medical purposes. Other states have considered legislation allowing for the reimbursement of medical marijuana. Kentucky has exempted workers' compensation from reimbursement requirements for marijuana. Other states, Kansas, Maine, New Jersey, New York, and Vermont require workers' compensation to reimburse.

This trend had led to questions of how legalized marijuana use affects workers' compensation laws regarding intoxication in the workplace and carrier liability for payment of medical benefits associated with prescribed marijuana.

Lower premiums and market competition

The Texas workers' compensation market continues to be very competitive with over 300 companies writing workers' compensation in Texas. One company, Texas Mutual Insurance Company with approximately 44% of the market, dominates the Texas market. Overall, Texas insurers are experiencing falling premiums and near record low loss ratios.

For 2018, the last full year data is available, direct written premiums were up slight over the past couple of years but still below 2013-15 levels. The overall Texas market had nearly $2.5 billion in premium for 2018.
Technology

Technological changes and potential disruption in the workers' compensation workforce drive much of the conversation about “what's next for workers' compensation”. Artificial intelligence, gig economy, and “big data” are changing the way we define the “workplace”, who is an employee, how claims are administered, how we detect fraud, and how to provide care to injured workers.

For example, a recent study from the National Institute for Occupational Health and Safety and the Ohio Bureau of Workers' Compensation used AI to auto-code over one million workers' compensation claims to create a new resource of injury intelligence that insurers, brokers and employers can use to better understand injury trends and to get ahead of common work-related injuries. There are other reports of AI being used to create care plans for injured workers and to detect claims that may be at a high-risk for litigation.

In addition, with the advent of AI, there are concerns about what it may mean for the future of industry jobs, specifically in the claims arena.
Texas insurers continue to watch the appellate courts for resolution of the disputes between air ambulance companies and the Texas workers’ compensation fee guideline. These disputes began in 2013 and total millions of dollars in disputed reimbursement amounts. This issue has a long procedural background and have been heard in various levels of administrative and court litigation.

Most recently, in December 2019, the Texas Supreme Court agreed to hear where the issue is whether the Airline Deregulation Act of 1978 (ADA) preempts state laws governing how much an air carrier can charge for emergency medical transports of injured workers.

Generally, Texas Mutual Insurance, DWC, and others argue that under the McCarran-Ferguson Act, which exempts the business of insurance from most federal regulation, the ADA cannot preempt the Texas Workers’ Compensation Act’s fee guidelines.

Oral arguments were set for February 25 appealing a lower appellate court’s January 2018 ruling in favor of the air ambulance provider PHI Air Medical Inc. At issue is a reimbursement dispute over the amount owed to PHI for transports of injured workers who were covered by workers’ compensation insurance.

The Third Court of Appeals in Austin rejected the trial court’s holding that Texas Mutual owed no more payments over the Texas fee guideline amount, 125% of Medicare. The air ambulances argue that the ADA requires insurers to pay the air ambulances’ full-billed charges. The appellate court held that PHI qualified as an “air taxi operator” and therefore the ADA’s preemption provision, prohibiting a state from enacting any laws or rules “related to a price, route, or service of an air carrier that may provide air transportation”, applied.

Texas is not alone in considering this issue. Other jurisdictions have held that the federal ADA does not invalidate state workers’ compensation fees. Many of these cases are pending in state and federal courts around the country.
The DWC is active in their rulemaking activities. Listed below are the key changes in rules for 2019.

**DWC is readopting all sections with TAC**
DWC readopted chapters 102, 104, 109, 110, 112, 114, and 116. These chapters deal with state employee coverage, self-insurance, required notices of coverage, and the subsequent injury fund. This readoption complies with Texas Government Code requiring a state agency to review each of its rules every four years.

**DWC adopted rules to implement SB 935**
The rules establish requirements for processing medical bills for services provided to an injured employee by a federal military treatment facility (FMTF), as well as a separate medical dispute resolution process over charges billed by FMTFs. The amended rule applies to health care services provided to an injured employee on or after January 1, 2020, regardless of the date of injury.

**DWC Revises Work Status Report Form**
DWC has revised DWC Form-073, Work Status Report, to align the form with a legislative change that provides that advanced practice registered nurses (APRNs) may complete and file the form as authorized by HB 387. The form was adopted for use beginning September 1, 2019.

**DWC Adopts New Form: DWC Form-029, Request for Standard Detailed Data Reports**
DWC is in the process of adopting a new form, DWC Form-029, to allow insurance carriers, including certified self-insurers, certified self-insurer groups, and governmental entities to request claim-level data already submitted to the agency. The reports provide the detail related to the insurance carrier performance scorecards for: timely payment of initial temporary income benefits (TIBs) and EDI reporting; timely processing of medical bills and EDI reporting; and timely processing of reconsideration medical bills and EDI reporting. The new form will replace the current process for requesting standard detailed data reports through DWC’s open records portal. DWC will establish a secure file transfer protocol (SFTP) box to provide data to the requestor.
2019 REGULATORY ACTIVITIES

DWC Readopts "Old Law" Rules
DWC readopted all sections within the “Old Law” chapters, Chapters 41-69, of Title 28, Part 2 of the Texas Administrative Code. This readoption complies with Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years and to readopt, readopt with amendment, or repeal the rule.

ICT submitted written comments supporting the readoption of the rules. ICT recommended that the rules be amended at a future date to adopt the current medical fee guidelines.

TDI Issues Order to Retain WC Classification Code 0923
TDI issued an order to retain Workers' Compensation Classification Code 0923 (domestic workers—payroll basis). The order was issued in response to a petition filed by Texas Mutual Insurance Company (TMIC) that requested TDI continue to permit workers' compensation carriers to use either Code 0923 (payroll basis), or Codes 0913 and 0908 (per capita basis) for residential domestic employees. TMIC asserted that retaining this flexibility will allow carriers and their policyholders to continue to benefit from the availability of both payroll and per capita rate basis.

TMIC’s petition was filed after TDI reclassified domestic workers from a payroll basis to a per capita basis, based on petitions from the National Council on Compensation Insurance (NCCI). Those orders eliminated Code 0923 (payroll basis), effective July 1, 2019, and reclassified domestic workers to Code 0913 (per capita basis). A later order established Code 0908 for part-time domestic workers on a per capita basis, and revised Code 0913 to include only full-time domestic workers on a per capita basis. The associated amendments to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance to retain Code 0923 were effective on July 1, 2019.

DWC Finalizes Physical Medicine and Rehabilitation Services Plan-Based Audit
On May 31, 2019, DWC announced the finalization of the Physical Medicine and Rehabilitation (PM&R) Services Plan-Based Audit. The audit plan was adopted after having solicited and receiving input from system stakeholders. DWC will audit the health care providers who rendered the majority of PM&R services to injured employees who subsequently participated in a work hardening/conditioning program.
2019 REGULATORY ACTIVITIES

Reduction in workers' compensation classification relativities
Commissioner’s Order No. 2019-5949, dated April 26, 2019, adopted revised Texas workers’ compensation classification relativities. The order decreased the classification relativities by an average of 15 percent overall from the July 1, 2018, level. The change for any given classification is between -36.3 percent and 6.3 percent. For workers' compensation policies with effective dates on or after July 1, 2019, the order requires each workers' compensation insurer to use the revised classification relativities unless the insurer files one of the following alternative classification rate bases:
- An insurer's own independent insurer-specific classification relativities.

Insurers may not use any prior years' relativities or loss costs as the basis of their rates for policies with an effective date on or after July 1, 2019.

TDI approves revisions to NCCI manuals
On April 26, 2019, TDI approved changes in requirements for withdrawal by a certified self-insurer from workers’ compensation self-insurance in these National Council on Compensation Insurance (NCCI) publications:
- Basic Manual for Workers' Compensation and Employers Liability Insurance
- Experience Rating Plan Manual for Workers' Compensation and Employers Liability Insurance
- Statistical Plan for Workers' Compensation and Employers Liability Insurance

The changes apply to new and renewal workers' compensation policies effective on and after May 1, 2019.

Revised Designated Doctor Performance Review Process Adopted
The Commissioner of Workers' Compensation adopted a revised procedure for evaluating designated doctor performance effective immediately. The evaluation procedure provides for the review of the quality of designated doctor decisions, as required by law. DWC may take necessary action to deny renewal of a designated doctor's certification based on the integrity of these decisions. The evaluation procedure will also help DWC increase training and testing quality by identifying areas for designated doctor performance improvement.

DWC adopts amendments to 28 TAC §§180.26 and 180.8
DWC adopted amendments to 28 TAC §§180.26 and 180.8, regarding communications to parties receiving administrative penalties from DWC. ICT submitted comments and gave testimony at the agency's hearing on this rule. ICT recommended a provision that required a party to agree in every consent order that DWC “appropriately” determined the penalty amount. That recommendation was adopted in the final version.
DWC adopts amendments to 28 TAC §148.17
DWC adopted amendments to 28 TAC §148.17, Special Provisions for Sanctions. The amendments retitle and amend the rule to apply to all administrative sanctions, including monetary penalties, delete the requirement for paying the penalty or posting a bond in order to seek judicial review, and provide for other forms of payment of penalties, as approved by DWC.

DWC adopts self-insurance amendments

DWC adopts rule amendments to conform to SB 2551 changes
DWC amended rules 28 TAC 124.2 and 124.3, to address both an insurance carrier's obligation to investigate and the notification process for presumption claims for first responders.

DWC adopts rule amendments to conform to SB 935 changes
DWC adopts amendments to 28 TAC 134.150 and 134.155, with 134.150 concerning reimbursement of services provided by a federal military treatment facility (FMTF), and rule 134.155, concerning FMTF disputes.

RESEARCH AND EVALUATION GROUP
For 2020, DWC has adopted the 2020 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG). This year's agenda includes:

• An update of the 2018 biennial study to estimate employer participation in the Texas workers' compensation system (required by Insurance Code §2053.012 and Labor Code §405.0025). The report is due on December 1, 2020.
TDI Proposes to Repeal Workers' Comp Relativities Rule
SB 1336 from the 86th Legislature (2019) eliminated the department's statutory requirement to develop workers' compensation classification relativities. As part of implementation of this bill, TDI proposes to amend 28 TAC §5.9332 by eliminating paragraph (7)(B). Comments are due by March 23, 2020.

DWC Review of 28 TAC Rules
DWC is conducting a routine review of all sections within 28 Texas Administrative Code (TAC) Chapters 120, 122, and 124. Per Texas Government Code §2001.039, DWC solicits public comments on whether rules within 28 TAC Chapters 120 (concerning Compensation Procedure - Employers), 122 (concerning Compensation Procedure - Claimants), and 124 (concerning Carriers: Required Notices and Mode of Payment) still apply or should be repealed, readopted, or readopted with amendments. The comment period for this closed on March 3, 2020.

NCCI clarification on dispute resolution services
The National Council on Compensation Insurance (NCCI) filed revisions to the Texas Dispute Resolution Process and Texas Amendatory Endorsement. This file clarifies how NCCI’s dispute resolution services work in Texas. The comment period for this closed on February 21, 2020.

PLNs
DWC has updated its English and Spanish plain language notices to reflect recent DWC rule changes that require all PLNs sent by insurance carriers be in plain language and in no less than 12-point font as required by 28 TAC §124.2(s). The new font size requirement is for PLNs sent on or after April 1, 2020.

Proposed New 121 Form
DWC is proposing a new form: DWC Form-121, Claim Administration Contact Information. Insurance carriers, including certified self-insurers, certified self-insurer groups, and governmental entities will be required to use the form to provide new or updated claim administration contact information through their Austin representative. The comment period for this closed on February 27, 2020.
During the 2019 session, the legislature considered nearly 60 workers’ compensation related bills with very few passing. Of those that passed, the significant changes related to first responder benefits and cancer presumptions for firefighters and emergency medical technicians (EMTs).

The following is a brief overview of key bills that passed in 2019:

**House Bill 387.** Work status reports (DWC Form 73) regarding an injured employee's ability to return to work can now be completed and signed by an advanced practice registered nurse licensed in Texas, when the treating doctor delegates the authority to complete the report. This bill went into effect on September 1, 2019; thus, advanced practice registered nurses have been authorized to sign work status reports since that day. DWC adopted rule §129.5 (concerning Work Status Reports) to conform to the revised statute on February 10, 2020.

**House Bill 1665.** Deletes the reporting requirement for DWC-84, Exception to Application of Joint Agreement for Certain Building and Construction Workers. The bill amended Labor Code §406.145 (f), and hiring contractors are no longer be required to file the DWC-84 with DWC. Effective for new notifications on or after 5/23/2019. This form will continue to be sent to the hiring contractor's insurance carrier and will be available to DWC, if requested.

**House Bill 2143.** Post-Traumatic Stress Disorder for first responders is now recognized as being compensable if caused by one or more events occurring in the course and scope of the first responder's employment. Effective for injuries occurring on or after 9/1/19.

House Bill 2503. Death benefit eligibility for certain spouses of certain employees killed in the line of duty laws amended to include spouses of persons described by Section 615.003(l), Government Code, or Section 501.001(5) (F) of the Government Code. Amends Sec. 408.183, Labor Code, to include not only first responders but also all law enforcement officers of the state, parole officers, county jail officials, and other similar types of law enforcement and fire fighters. The eligible spouse is entitled to lifetime death benefits even if the spouse remarries. Effective for remarriages occurring on or after 9/1/19.

**Senate Bill 619.** Sunset Advisory Commission review date for DWC and OIEC changed from September 1, 2021 to September 1, 2023.

**Senate Bill 935.** Establishes new reimbursement requirements for Federal Military Treatment Facilities (FMTF) who have treated an injured employee and provides that FMTFs are exempt from workers' compensation statutory requirements related to network participation, medical billing, and reimbursements. The reimbursement rates are as provided by federal law. Requires DWC to adopt a rule to establish a separate medical dispute resolution process to resolve disputes over charges billed directly to an injured employee must be adopted. Effective for healthcare services provided by an FMTF on or after 1/1/20. DWC adopted rule §134.150 (concerning reimbursement of services provided by a FMTF) and §134.155 (concerning FMTF disputes) with changes from the proposed rule on November 21, 2019. ICT submitted comments on the proposed rule.
2019 LEGISLATIVE CHANGES

**Senate Bill 1336.** Eliminating workers’ compensation relativities. The bill amended the Insurance Code and the Labor Code to remove the requirement for the Texas Department of Insurance (TDI) to establish classification relativities for purposes of the workers’ compensation hazard classification system. Among other provisions, the bill removes the requirement that TDI revise the classification system at least once every five years. Effective 9/1/19. The proposed rule to amend 28 TAC §5.9332 to conform to this was filed on February 5, 2020. The rule amendment is proposed to be effective on July 1, 2020, the same time that section of the Insurance Code goes into effect. Comments on the proposed rule are due to the Department on March 23, 2020.

**Senate Bill 1582.** Amends the Government Code and Labor Code to extend statutory presumptions that certain diseases are work-related to peace officers listed in Texas Code of Criminal Procedures Article 2.12 (presumptions previously applied only to firefighters and emergency medical technicians). The statutory presumptions include smallpox or other diseases that can be immunized, tuberculosis or other respiratory diseases, and heart attacks and strokes. The bill also entitles peace officers to preventative immunization for any disease that they may be exposed to at work. Effective 9/1/19. The rules for SB 2551, which were adopted on December 23, 2019 apply to all first responders covered by Subchapter B (including peace officers as amended by SB 1582). Because of this no further rulemaking was necessary to implement SB 1582.

**Senate Bill 1742.** Peer Review, Utilization Review and Independent Review physicians must be of the same or similar specialty as physician who requested, ordered, or provided the medical service under review. Utilization Review Agents must conduct utilization review under the direction of a physician licensed to practice medicine in Texas. In addition, physicians performing utilization, concurrent, or independent review must be licensed in Texas. Effective 9/1/19. A proposed rule on this is expected soon.

**Senate Bill 2551.** Amends the cancer presumption law (Texas Government Code section 607.055) to provide that a firefighter or emergency medical technician, who suffers from cancer resulting in death or total or partial disability, is presumed to have developed the cancer during the course and scope of their employment. The amendment includes 11 specified cancers that will now be covered by the presumption law.

In addition to clarifying cancers subject to the presumption, the bill made other changes. Under certain conditions, a carrier would not be required to comply with deadlines to either initiate benefits payments or provide a notice of refusal. In order to qualify for this exemption, the carrier would need to send both the employee and DWC an explanation within 15 days describing the steps it had taken to investigate the employee’s injury and any evidence it believed would be necessary to complete its investigation of the compensability of the injury.
2019 LEGISLATIVE CHANGES

Senate Bill 2551 authorizes a self-insured political subdivision or a political subdivision risk pool to establish an account for the payment of lifetime income benefits and death benefits for a compensable injury caused by cancer to a firefighter or EMT.

There are changes to how DWC administers penalties related to cancer presumption claims handling. DWC has to consider certain factors in determining whether to assess an administrative penalty for refusal to pay benefits in response to a claim for compensation under the bill.

Finally, the bill clarifies that political subdivisions do not have sovereign immunity for sanctions, administrative penalties, and other remedies authorized under chapter 415 of the Act. Also, creates liability for attorney fees under Labor Code section 408.221. Effective 6/10/2019 and DWC required to adopt rules by 1/1/20. A stakeholder meeting was held on August 21, 2019. DWC published proposed amendments to §180.8 (concerning notices of violation; notices of hearing; default judgement), §180.26 (concerning criteria for imposing, recommending, and determining sanctions, other remedies), §124.2 (concerning General Rules for written communications to and from the commission), §124.3 (concerning investigation of an injury and notice of denial/dispute) on October 25, 2019. In response to comments, DWC published amendments and held a hearing on November 20, 2019. ICT submitted comments on November 25, 2019 to express concern over the requirement that all notices under rule 124.2 be on carrier letterhead. The amendments were adopted with changes on December 23, 2019 and went into effect January 12, 2020. The requirement that carrier letterhead be used was removed and was not included in the adopted amendments.

You should review the statutory changes and any related administrative rulemaking to ensure compliance.

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