

ADVISORY NO. 384
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TOPIC: HB 7 IMPLEMENTATION DATES

Please see attached TDI Bulletins relating to HB 7 implementation dates.

TDI Bulletin B-0035-05A clarifies that the changes in medical billing procedure apply to medical bills with dates of service that occur on or after September 1, 2005. This applies to the 95-day deadline for submitting a medical bill or requesting a refund, and other deadlines in the processing of the bill.

In TDI Bulletin B-0039-05, the Commissioner announced that current workers' compensation rules regarding preauthorization and concurrent review remain in effect until new preauthorization and concurrent rules are adopted by the Commissioner of Workers' Compensation.

House Bill 7 changed the circumstances for which carriers could request an RME opinion, and changed the scope of the designated doctor exam and the presumptive weight of the designated doctor's opinion. With respect to the RME and designated doctor process, HB 7, §8.007 states as follows:

"The commissioner of worker's compensation shall adopt rules to implement the changes in law made to Sections 408.004 and 408.0041...on or before February 1, 2006. The changes in law made to Sections 408.004 and 408.0041...are effective on the date provided by commissioner rule."

Accordingly, there will be no change in RME and designated doctor exams until the Division adopts new rules. We will continue with the current processes that have been in use for the last several years. At the time that the Commissioner adopts a rule, the rule will undoubtedly prescribe the effective date of the change and whether the change will apply retroactively to all cases, or to a limited subset of cases. TDI/DWC is working on staff drafts of these rules

Under HB 7, §8.020 the general effective dates are to be as follows:

Except as otherwise provided by this Article, this Act takes effect on September 1, 2005.

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Therefore, the firm is of the opinion that the following changes are effective September 1, 2005:

- 401.011. New Definitions for Case Management, Evidenced Based Medicine and Healthcare Reasonably Required effective for all dates of injury and for medical services on or after September 1, 2005
- 401.013. Rebuttable Presumption of Intoxication for all dates of injury (arguably limited to dates of injury on or after Sept 1, 2005).
- 408.0042. Compensable Injury Exam permitting the carrier to request a report from the treating doctor identifying the extent of the employee's injury. The carrier may insist on preauthorization for treatment to body parts not identified as a part of the compensable injury. This is statutorily directed preauthorization, it is different than the preauthorization governed by TWCC/DWC rule, and accordingly, notwithstanding the TDI Bulletin deferring changes in preauthorization pending Commissioner Rule, is probably effective immediately. In TDI Bulletin B-003705A, TDI clearly states:

If a conflict does exist between the statute and existing workers' compensation rules, the rules, the statute takes precedence. Failure to comply with these statutory changes may constitute an administrative violation.

Carriers should be able to request these exams and/or reports at this time, regardless of date of injury, and that carriers may refuse to preauthorize medical treatment for injuries determined by the treating doctor to not be part of the compensable injury.

- 408.047. State average weekly wage of \$540 for injuries on or after September 1, 2005
- 408.082. Shortened TIBs waiting period for dates of injury on or after September 1, 2005
- 413.021. Mandatory case management for injuries potentially resulting in "lost time from employment"
- 415.021. \$25,000 per day potential violation for any noncompliance for acts committed on or after September 1, 2005