

**ADVISORY NO. 395**  
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**TOPIC:       LEGISLATIVE MONITORING OF HOUSE BILL 7**

The Texas Legislature is closely monitoring the implementation of House Bill 7. They scheduled a Committee hearing of the Insurance and Business & Industry Committees on Tuesday, May 9, 2006. The Legislature invited Commissioner Geeslin, Commissioner Betts and Public Counsel Norman Darwin to testify. In addition, Amy Lee was invited to testify on behalf of the research group about various statistical studies that are underway.

There was a great deal of negativity about insurance carriers in general. From comments only, it would appear that two or three members of the Committee believe that medical bills are only submitted for medically necessary care and that they are always billed in the proper amounts. No one broached the question of whether a fee dispute meant that the provider was charging too much or that a necessity dispute was because of unnecessary care.

The Committee was very interested in the progress of implementing networks. They were highly interested in the adequacy of the network configuration and whether there were adequate numbers of specialists available to treat injured workers. Chairwoman Giddings was concerned that there was poor representation from orthopedics and neurosurgeons in medical networks. Rep. Bill Zedler claimed that, according to his information, for one network in the Dallas – Fort Worth area, a network had only six orthopedics and four neurosurgeons. None of the orthopedics was in Fort Worth.

Chairwoman Helen Giddings reiterated the position of the Legislature that workers' compensation should look more like group health. She quoted from a PPO named Health Select and pointed out that they listed a full page or two of orthopedics within their network. It was not clear whether this was identified per region, per city, or was for the entire state. The comment certainly suggested that Chairwoman Giddings believed that there should be a great number of specialists within each network and not a small number of specialists

Another member of the Committee expressed a concern that they do not want the network limited to "company friendly physicians" or only those physicians willing to accept the cheapest rates possible. On the question of adequacy of the network, Commissioner Geeslin reminded the committee that in addition to the number of providers within the network, carriers had to have access plans to provide for continuity of care in the event that the patient could not be treated within a network. That comment did not provoke any follow up and it may be that the Committee failed to understand the safety net created by HB 7 and required of networks by TDI

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rules. TDI promised to provide specific numbers with respect to specialists in each service area, and will probably address the contention with respect to urban areas.

A second issue before the Committee was the number of pending medical disputes. Commissioner Betts testified that there were 13,000 pending disputes, some of which were 5 to 6 years old. The Committee immediately suspected that these were medical necessity disputes, and that in each case, the employee did not receive necessary medical treatment and they expressed that in the strongest terms. Commissioner Geeslin, reacting to the Committee concern, stated TDI/DWC might shift the burden of proof from providers to carriers creating the presumption that the amount billed by a provider is payable unless the carrier proves otherwise.

Commissioner Betts was quick to point out that almost all of these cases were medical fee disputes. He did not make it clear that in most medical fee disputes, the carrier paid some amount that it thought to be appropriate, and the providers filed a dispute seeking additional payments. Both Commissioner Geeslin and Commissioner Betts will be sending a joint letter to carriers and providers pressuring both to resolve their disputes. One representative wanted to know if the letter to be sent by Commissioners Geeslin and Betts would “be used as leverage to force providers to accept less than a carrier should pay.”

Commissioner Betts further testified that the DWC will be developing additional rules to “fill in the gaps” in the fee guidelines. He intends to thus eliminate most of the issues creating the disputes. The largest part of the dispute backlog has to do with fee disputes concerning hospital stop loss cases, hospital outpatient services, and the 1992 – 1997 hospital fee disputes. It is quite possible that these three issues represent more than 10,000 of the pending 13,000 cases.

Rep. Burt Solomons, the primary author of HB 7 and the most active legislator in monitoring the progress at DWC and TDI, requested a status report on the various legislative initiatives contained in the bill. He is particularly concerned about the Medical Quality Review Panel and Commissioner Betts was able to report a great deal of progress in recruiting doctors and establishing a functional panel providing expertise to the Division. He was both concerned about the overall progress of the two agencies, was very informed about the issues and the progress of the work, and was complimentary of both commissioners for the amount of work done so far. He did point out that there was a great deal left to be done.

The DWC and TDI will report again to the Legislature in October and will address progress in implementing changes to the designated doctor process, changes to the Act, the affordability of workers’ compensation coverage, report regarding PPO providers, and complete a study of required interdisciplinary pain programs.

Norman Darwin is the new Public Counsel for Injured Employees. He reported that one of his highest priorities is to address “problems with the peer review process.” All peer review documents received by ombudsmen must be directed to him personally and they are preparing a database to deal with physicians who demonstrate a bias or prejudice impairing their credibility. Peer review doctors are required to retain peer review reports for a period of twelve months and they will probably request copies of those reports for a further data source.

Mr. Darwin will hire three attorneys within the next few months. He will implement a training program of all ombudsmen who will be “unlike any program they have ever seen.” He has personally developed the training regiment. This program will occur in July.

David Bragg, an Austin attorney representing Vista hospitals, appeared before the committee and complained about the non payments of services to Vista. He represented that Vista provided services for preauthorized hospital stays and then paid Vista nothing. This is not factually true. On all of the compensable cases, carriers reimbursed Vista according to the carrier’s interpretation of the hospital stop loss rule. He testified that Vista has approximately 4,340 cases in dispute. It is possible that Mr. Bragg was referring only to stop loss disputes and there may be a number of other Vista cases pending.

In the entire hearing, there was no reference to employer comments. All of the complaints mentioned during the hearing were from employees and providers. But for David Bragg’s testimony, these are anecdotal and isolated complaints, and there was no explanation mentioned or requested. Overall, TDI and DWC could not be more responsive to the interests of the Legislature in the changes mandated by HB 7 as well as other problems with servicing the needs of employees and providers, and it is clear that they intend to remain very involved in the progress of the newly reconfigured agencies. It is also clear that much of what the Legislature believes about carriers stems from complaints that they receive from constituents.