

ADVISORY NO. 404
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TOPIC: NEW MEDICAL DISPUTE RESOLUTION RULES

The Division has promulgated new rules “intended to improve efficiency and consistency” in the medical dispute resolution process. Those rules were published in the December 22, 2006 Texas Register and are effective January 15, 2007. The text of the rules may be found on the Division’s website at:

<http://www.tdi.state.tx.us/wc/rules/adopted/adopted.html>

The purpose of this Advisory is not to detail the changes created by those rules. A more detailed description of the changes will soon be forwarded in an additional advisory and in the next volume of *Folio*. In the meantime, there are several aspects of the rules that need your immediate attention.

We had previously forwarded to you Commissioner’s Bulletins # B-0046-06, # B-0047-06 and # B-0048-06, all dated December 22, 2006. These three bulletins were addressed separately to healthcare providers, insurance carriers/utilization review agents (URAs) and to all independent review organizations (IROs). These bulletins presaged the transfer of oversight of IRO functions from the DWC to the Texas Department of Insurance Health & Workers’ Compensation Network & Quality Assurance Division (TDI-HWCN), effective January 15, 2007. The bulletins noted two important major changes to the steps in the IRO process.

Beginning January 15, 2007, the DWC-60 form will no longer be accepted by TDI-HWCN for requests for an IRO (Request for Medical Necessity Dispute Resolution). The DWC-60 will still be the form used by providers and claimants to request medical fee disputes through the DWC Medical Fee Dispute Resolution Division.

According to Commissioner’s Bulletin # B-0046-06, the carrier or URA is required to provide a copy of the new form LHL009 to the claimant, claimant’s representative and the healthcare provider with each and every medical necessity adverse determination (original and upon reconsideration). This requirement applies to all patients covered by workers’ compensation policies, whether network or non-network.

Within forty five (45) days of receipt of the final adverse determination, the party appealing the adverse determination must return the LHL009 to the carrier (if the carrier is acting as a URA) or the URA.

Upon receipt of the LHL009, the carrier or URA “shall immediately notify the

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Department” (TDI-HWCN) of the request for an independent review. No specific time is given for this task other than “immediately.”

It is very important to note that on or after January 15, 2007, carriers or their URAs must transmit the completed LHL009 to TDI-HWCN through an online system and form on the TDI website. Utilization of this process requires immediate response on your part.

Effective December 11, 2006, URAs, health insurance carriers and HMOs were required to submit a request for an IRO through the TDI online IRO request system. That same requirement will now be required effective January 15, 2007 for all workers’ compensation cases, network or non-network.

A preliminary step requires a carrier and a URA to access the TXCOMP system to register and obtain a password to access the online form. Carriers, third party administrators, and URAs are allowed to register for access. The administrator of each of those entities can designate other individuals (such as FO&L) to act on their behalf in submitting this documentation. However, the first step is to make the application and obtain confirmation of acceptance of that application. That process may take 7 – 10 days, if you have not already initiated it. This application process was described in Commissioner’s Bulletin #B-0047.06. **You must confirm with your URAs or the persons acting as an URA for a carrier that they have completed this application process before its implementation beginning January 15, 2007.**

The online website address for obtaining instructions for the TXCOMP system access, the link to the IRO request system and instructions on how to complete the online IRO request form may be found at: http://www.tdi.state.tx.us/company/iro_requests.html. In the “Companies” section on that page, you will find links under the “Forms” box. There, you can obtain instructions on how to go to the TXCOMP system and obtain access and a password. The OLRQ link is to the online request system and requires the user ID and password obtained in the previous step. Also in the “Forms” box is the OLRQI link. This is a link to a 61-page instruction manual on how to complete and transmit the 3-page IRO Request Form (LHL009). The link to a copy of the LHL009 can be found at: <http://www.tdi.state.tx.us/forms/lhlhmo/lhl009urairoreq.doc>.

After review of the completed LHL009, TDI-HWCN will notify the carrier or URA of the assignment of an IRO. As required by Insurance Code Art. 21.58 A, § 6(a) and DWC Rule 133.308 (j), the carrier or URA has only three (3) working days to submit the required supporting documentation listed in Rule 133.308(j) to the IRO. The documentation required at that stage is the documentation used to make the initial adverse determination.

Following discussions with the IROs, we have the expectation that the IROs will continue to request additional information, giving us the opportunity (as we have in the past) to submit medical records, analysis, previous IRO/SOAH decisions and medical literature that supports our position. But note that under this new process (LHL009 submission), FO&L may not be listed as the party to be noticed on behalf of the carrier/URA, as we currently are in the DWC-60 process. It is important in the short term that FO&L's Medical Review Department be notified of the receipt of the request for the IRO, the IRO's request for documentation and relevant records so that we can, at your request, provide a complete submission to the IRO.

Significant Change: In the past, we have advised that IRO decisions regarding preauthorization/concurrent review were binding pending appeal. That was based upon Labor Code Section 413.031(d) and (m). In the past however, carriers did not routinely pay bills in following an adverse retrospective medical necessity review (IRO decision) pending appeal by the carrier. There was no statutory basis for paying such bills pending appeal. However, Rule 133.308(q) now requires the carrier (upon receipt of the adverse IRO decision) to review, audit and process the bill for payment. The carrier shall tender payment consistent with the IRO decision and issue a new EOB reflecting payment within 21 days of receipt of the IRO decision. Of course, the carrier may raise appropriate fee disputes in that EOB.

In the preamble to Rule 133.308(q), the Division dismissed comments about the illegality of this proposal by citing Labor Code 413.031(m) (which makes IRO decisions binding pending appeal), without noting that that subsection is limited to reviews covered by subsection (d) (which covers only prospective reviews, not retrospective). While we believe this change has no statutory basis, the DWC has the expectation the rule will be applied as written.

Significant Change: Note that in life-threatening situations (as defined in Rule 133.305(a)(2)), an immediate IRO review is allowed, not requiring the request for reconsideration process.

We will follow up with more detailed and complete information regarding these new rules. If you have any questions about these significant changes, please call FO&L (Steve Tipton) at (512) 435-2162 or e-mail: smt1@fol.com.