

ADVISORY NO. 442
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**TOPIC: TDI CHANGES ITS INTERPRETATION OF HCN LEGACY CLAIMS;
REQUIRES ACTION PLAN AND RETRANSFERS BY APRIL 20, 2009**

The Texas Department of Insurance has issued a time-sensitive notice to any Texas workers' compensation carrier, health care network or certified self-insurer who uses a Texas HCN. This requires your immediate attention if you are responsible for managing HCN claims. **You must review the Department's March 30, 2009 notice and respond to this notice no later than April 20, 2009.**

This notice appears to apply to any network legacy claim with an injury date between September 1, 2005 and the date that a claimant's employer elected to include network coverage in the employer's workers' compensation policy.

A copy of the Department notice is attached to this advisory. The Department has changed its interpretation of the Texas Insurance Code regarding the transfer of certain legacy claimants into the HCN.

Pursuant to this TDI notice you must prepare a corrective action plan and file it with the agency no later than April 20, 2009. This action plan must address the following items.

1. You must provide the Department with a list containing the identity of every legacy claimant who is affected by this notice. This list must include the employee's name, social security number and date of injury.
2. You must advise every affected injured employee that they may seek care from non-network providers effective immediately. You are permitted to advise such affected employees that it may not be necessary to change their treating doctor if their current provider is willing to see non-network injured employees.
3. You must provide the Department with a copy of the template letter to the injured worker.
4. You must maintain copies of the election letters in the file associated with the claims addressed in the Department's letter.
5. You must advise the Department how all health care providers who provided services to the affected injured employees will be notified that the injured employee is not subject to network requirements.
6. You must advise the Department how and when restitution of claims payments will be made to all network health care providers who provided services to the affected injured employees if there is a difference between the network's contracted rate and the Division's adopted fee guidelines.

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7. You must provide the Department with a copy of the template letter to the affected health care providers.
8. You must describe to the Department how you will pass on to policyholders the network premium credit described in Rule VI K. "Certified Workers' Compensation Health Care Network".
9. You must provide the network endorsement credit required by Rule 6 (k) of the Texas Workers' Compensation and Employers Liability Manual to employers where an injured employee was moved into the certified network by the carrier **without** the employer's agreement or **prior to** the employer's election to participate in the carrier's network coverage.
10. You must provide the Department with a copy of the template letter used to notify affected employers.
11. The carrier and the network must confirm that the most recent data call submissions where records were left blank for the date the employer elected network coverage is a factual representation that the employer did not elect network coverage.
12. In any case where the most recent data call submissions did not accurately reflect the employer's election of network coverage, you must provide for the Department's review a copy of the policy declaration page and endorsement page.

The Department's notice of this requirement contains several ambiguous statements. We are requesting clarification concerning those statements and will provide you with further information as it becomes available.

The Department's letter concludes: "Please be advised that appropriate enforcement action will be pursued for failure to comply with the Department's request and erroneous network enrollment of injured employees."

This Department notice contains an April 20, 2009 deadline. You must give this agency directive your immediate attention if you have transitioned legacy employees into an HCN.