

**ADVISORY NO. 443**  
**###**

**TOPIC: TDI CLARIFIES LEGACY CLAIM RETRANSFER REQUIREMENTS**

The Texas Department of Insurance has clarified the meaning of its March 30, 2009 letter, which we alerted you to last week in FOL Advisory No. 442. The clarification came during a meeting between our office and TDI staff yesterday afternoon.

**Claims that are not affected by the Department's March 30, 2009 Letter**

TDI has confirmed that legacy claimants who were transitioned into a network under the following two situations were properly transferred:

1. Where the injury dates occurred before September 1, 2005 and the carrier has a network/carrier agreement; and
2. Where the injury dates occurred on or after September 1, 2005 and during the policy period of an employer who has elected to participate in a network. The injury date in these cases must have occurred after the network endorsement took effect. (If the network endorsement was effective on the date it was placed on the policy, the date of injury must be after that date. If the network endorsement was applied retroactively to the beginning of a policy period, the date of injury must be after the date of the beginning of the policy period.)

**Work that Must be Completed by the April 20, 2009 Deadline**

TDI has clarified the April 20, 2009 obligation described by the letter. On or before April 20, 2009 carriers must:

- 1) Identify all employees affected by the letter by name, Social Security Number, and date of injury.**
- 2) Send the list of such affected employees to the Department along with its Corrective Action Plan.**
- 3) Draft and send TDI the three template letters along with its Corrective Action Plan. The three template letters should be directed to affected injured employees, affected health care providers and affected policyholders.**
  - i) The employee's letter must address continuity of care issues.

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- ii) The employee's letter must advise employees of their right to select a non-network treating doctor.
- iii) The employee's letter should enclose a DWC-52 and instruct the employee to complete the form and file it with the DWC field office managing the claim if the employee elects to select a different treating doctor.
- iv) The employee's letter may advise the employee that it is permissible for the employee to retain the network doctor as his treating doctor if the doctor is willing to treat non-network injured employees.
- v) The employee's letter should advise the employee that any future health care provider who treats the employee for this injury will be compensated at non-network rates rather than network rates.
- vi) The employee's letter should advise the employee that the carrier will or has contacted his treating doctor separately to advise him of the employee's right to change doctors or to retain the treating doctor at non-network rates.
- vii) The employee's letter should advise the employee that the employee will not be liable to pay any costs of health care associated with his decision to stay with his existing treating doctor or his decision to change treating doctors.

**4) Develop and send TDI its Corrective Action Plan.**

- i) The Corrective Action Plan must address continuity of care issues.
- ii) The Corrective Action Plan must identify a contact person at the carrier who can facilitate discussions regarding continuity of care issues.
- iii) The Corrective Action Plan must describe how and when the carrier will advise affected injured employees that they are no longer subject to network obligations.
- iv) The Corrective Action Plan must describe how and when the carrier will advise affected health care providers that the affected injured employee whom the policyholder is treating is no longer subject to network requirements.
- v) The Corrective Action Plan must describe how and when the carrier will make restitution of claims payments to 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.

- vi) The Corrective Action Plan must describe how and when the carrier will advise affected policyholders that the affected injured worker is no longer subject to network requirements.
- vii) The Corrective Action Plan must describe how and when the carrier will pass on the network premium credit described in Rule VI K of the Workers' Compensation and Employers Liability Manual.
- viii) The Corrective Action Plan must describe how and when the carrier's template letter to the employee will be distributed.
- ix) If the carrier has, for some reason, not identified every employee affected by the Department's letter, the Corrective Action Plan must establish a time by which all such employees will be identified.

**5) Identify any omissions in Column W of the agency's November 10, 2008 network data call.**

**6) Confirm to TDI that any omissions in Column W of the data call are factual representations that the employer did not elect network coverage.**

- i) If a carrier identifies erroneous omissions in Column W of the data call, the carrier should file a corrected response to the data call as soon as possible and should refer to the corrected data call when confirming the factuality of the representations.

The Department advises that it will review every template letter submitted to it and that it will notify every carrier submitting template letters whether the letters are satisfactory or not. Carriers should be prepared to send the template letters to affected injured employees, health care providers and policyholders within 5 working days of receipt of the Department's notice of approval of the template letter.

As a practical matter, by April 20, 2009 carriers should identify the name, address, social security number, date of injury, policyholder name, policyholder contact name, policyholder address, and the name and address of every health care provider who the carrier paid under the network contract for providing care to an affected injured worker on or after the date that the affected injured worker was transitioned into the network.

TDI has advised that the April 20, 2009 deadline may be extended to May 4, 2009 in certain circumstances. Carriers wanting such an extension should request that extension in writing and explain why the extension is required.

### **Other Questions Posed to TDI**

TDI responded to several questions that we posed to them with the following information:

**Question No. 1:** What response is expected if a carrier has no legacy claims affected by the letter?

Claims with injury dates that are on or before August 31, 2005 are not covered by TDI's March 30, 2009 letter.

For any case with an injury date that is on or before August 31, 2005, carriers need only advise the Department that they do not have any claims that are covered by the March 30, 2009 letter. Carriers can send that message by email or by letter. We would suggest something along the following lines:

\_\_\_\_\_ (carrier) has no legacy claims with an injury date after August 31, 2005 and before the date that a policyholder agreed to participate in a network.

Carriers should send that email to:

Matthew Tarpley  
Insurance Specialist  
Texas Department of Insurance  
Health and WC Network Certification & QA  
333 Guadalupe  
PO Box 149104  
Mail Code 103-6A  
Austin, TX 78714-9104  
[matthew.tarpley@tdi.state.tx.us](mailto:matthew.tarpley@tdi.state.tx.us)

**Question No. 2:** Is your response different if the carrier has no network contract?

No.

**Question No. 3:** What response is expected from risk pools who do not participate in Chapter 1305 networks?

Risk Pools may respond on behalf of their members. In order to do so, the risk pool should write a letter or send an email to TDI which verifies that their pool members have no claims that have been rolled into a chapter 1305 network under the Legacy provisions of that statute. They should attach a list of their pool membership to the letter or email. The letter or email should be directed Matthew Tarpley at the address listed above.

**Question No. 4:** What does the following passage in the March 30, 2009 letter mean?

“The corrective action plan must include:

\* \* \* \* \*

4. How carriers will pass on to policyholders the network premium credit described in Rule VI K. “Certified Workers’ Compensation Health Care Network” 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. Please provide a copy of the template letter that will be used.”

TDI advises that its intent behind this request is to afford policyholders the benefit of the network discount where the policyholder enjoyed the benefit of a network discount for improperly enrolled employees.

We have pointed out to the Department that the agency’s March 30, 2009 letter explicitly requires carriers to refund any such network discounts to health care providers. Because the benefit of the discount is being returned, there is an inconsistency in passing along a premium credit.

We have asked agency staff to remove the obligation to pass along the network premium credit or to remove the obligation to adjust provider payments because of this inconsistency. We expect further communications from the Department regarding this issue.

**Question No. 5:** Are providers who were paid more than fee schedule required to reimburse carriers?

We have posed this question to the Department in writing and expect to receive further guidance from the agency soon.

As a reminder, the conclusion to the Department’s March 30, 2009 letter provides: “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.”

The work required by the Department’s notice is still substantial. You must give this agency directive your immediate attention.