



## ADVISORY NO. 526

### TOPIC: 2022 Performance Based Oversight (PBO)

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On August 5, 2022, DWC selected the insurance carriers that are subject to the 2022 PBO assessment. DWC issued its preliminary assessment based on claim and Medical Electronic Data Interchange (EDI Data) submitted from January 1, 2022 through June 30, 2022.

All carriers must acknowledge their receipt of the preliminary assessment work book by sending an email to [pbo@tdi.texas.gov](mailto:pbo@tdi.texas.gov). This would include the insurance carrier name and “PBO” in the subject line. Please provide your name, title and contact information in the email.

If a carrier disagrees with its “late findings” on the following measures, it has through September 9, 2022 to submit management responses:

1. Initial payment of TIBs;
2. TIBs initial payment reported via EDI.

If a carrier does not respond by September 9, 2022, the preliminary assessment and regulatory tier rating will become final.

The carriers are placed into one of three tiers (categories) of either the high tier (cumulative score of 95% or greater), the average tier (cumulative score between 80% and 94.99%) and the poor tier (anything below 80%).

The initial payment of TIBs constitutes 50% of the cumulative score. Thus, the carrier’s primary consideration should be to rebut the late initial payment findings.

The following are some tips for reviewing and rebutting the late initial payment findings:

1. Make sure that the EDI data that was submitted with the initial payment of TIBs is correct with respect to “notice of injury” and “lost time began”
2. DWC tracks the first date of disability and uses that first date to track the eighth day of disability. The significance of the eighth day of disability is that it is the accrual date, meaning that if a claimant does not have at least eight days of disability, TIBs never accrue. The Division takes the first date of disability and then adds the next seven consecutive days to that date to arrive at a “proxy accrual date”. If the claim involves split lost time at any point in those first eight days, then DWC will be wrong every time on the actual accrual date;
3. DWC will treat any day in which there is any lost time as a day of disability. Thus, if there is any lost time, the carrier needs to reach out to the employer to determine if that

lost time was due to the work related injury. If it was not, then the carrier needs to rebut the finding and provide proof to support the carrier's position;

4. If there is split lost time in those first alleged eight days of disability, the carrier needs to provide proof of those dates in which the claimant did not have a loss of time and a loss of wages. The proof would be through the wage statement, the post injury earnings and the time cards identifying the number of hours worked per day;
5. The IP deadline is met if either the initial payment of TIBs or the PLN-11 disputing is timely;
6. For those carriers handling Chapter 607 presumption claims under the Government Code, check to see if a DWC-14 was filed within 15 day of first notice of injury and whether within 60 days of first written notice, the carrier filed a PLN-11 disputing disability or initiated TIBs. DWC is likely to find late initial payments under those circumstances in spite of the actions being taken timely;
7. Check to see if any late initial payment of TIBs findings involve claims in which the claimant was receiving salary continuation. If so, DWC might pull those claims from the PBO assessment. DWC's Audits & Investigations group when dealing with salary continuation cases has previously taken the position that on the first day that salary continuation is no longer paid, the carrier is to add seven days to that date and that will be the initial payment of TIBs deadline;
8. In prior years, DWC's Audits & Investigations team made the PBO assessments; however, this year, a group led by Joseph McElrath, Deputy Commissioner for Business Process, is doing the PBO assessment. They are not experts on the issue of initial payment of TIBs, but we have been informed that Mr. McElrath's group will reach out to DWC's Audits & Investigations group for assistance.

**Make sure you file the Management Response no later than September 9, 2022. DWC will not allow any extensions.**

If you should have any questions, please contact James Sheffield by telephone at (512) 435-2169 or email [jrs@fol.com](mailto:jrs@fol.com).