

Overview of the Texas Department of Insurance, Division of Workers' Compensation



History of Workers' Compensation in Texas

- 1913 - Texas enacted its first workers' compensation law administered by the Industrial Accident Board (IAB)
- 1917 - the U.S. Supreme Court ruled that states could legally require employers to provide compensation to injured employees.
 - Texas has chosen to retain voluntary employer participation in the system
- 1989 - Legislators adopted a new Texas Workers' Compensation Act (SB 1) which created the Texas Workers' Compensation Commission (TWCC) and eliminated the IAB
- 1995 – TWCC undergoes sunset review and is continued for 12 years

History of Workers' Compensation in Texas

- 2001 - Legislators approved HB 2600 which enacted significant reforms to the workers' compensation system. This bill also changed TWCC's next sunset review to 2005 instead of 2007
- 2004 – Three legislative committees conducted interim studies on workers' compensation issues
 - The Senate Select Interim Committee on Workers' Compensation;
 - The House Business and Industry Committee; and
 - The House Economic Development Committee
- 2005 - TWCC underwent sunset review HB 7 abolished TWCC and created the Division of Workers' Compensation (DWC) within the Texas Department of Insurance and the Office of Injured Employee Counsel (OIEC)
- April 2006 – first workers' compensation network certified by TDI

History of Workers' Compensation in Texas

- May 1, 2007 – effective date of adoption of treatment and return-to-work guidelines
- September 2007 – first network report card published
- March 1, 2008 – effective date of new professional service, inpatient and outpatient hospital fee guidelines
- March 2009 – new work search requirements adopted for Supplemental Income Benefits (SIBs)
- December 2010 – pharmacy closed formulary adopted, effective for new injuries on or after September 1, 2011
- 2011 – DWC undergoes sunset review and is continued for 6 years

Division of Workers' Compensation (DWC) Responsibilities

- General administration/rulemaking
- Enforcement
- Workplace safety
- Medical services
- Return to work
- Dispute resolution
- Self-insurance regulation



Division of Workers' Compensation (DWC)

- Governed by the Commissioner of Workers' Compensation (Rod Bordelon) appointed by the Governor
- Central office located in Austin, but have field offices throughout the state, which handle:
 - dispute resolution proceedings;
 - official actions on claims; and
 - customer assistance

Coverage Requirements

Who is required to carry workers' compensation coverage in Texas?

- Texas is the only state that allows any private employer the option of whether to purchase WC insurance.
- Many states require that private employers purchase WC insurance if they have more than a minimal number of employees; some others exempt specific industries from coverage requirement.
- Governmental entities in Texas (e.g., the state and political subdivisions) and employers that want to contract with governmental entities are required to have workers' compensation coverage.

Eligibility for Benefits

Workers' compensation will provide benefits if:

- The injury or occupational disease occurred in the course and scope of employment; and
- The employer has workers' compensation coverage.

Benefits

Two General Types of Benefits Available to Injured Employees:

- Income Benefits
- Medical Benefits

Income Benefits

What is Disability?

The inability, because of compensable injury, to obtain and/or retain employment at wages equivalent to the pre-injury wage.

Average Weekly Wage (AWW)

- Determines the amount of income benefits
- Based on the total wages earned in the 13 weeks prior to the injury
- Also includes fringe benefits, such as health insurance
- Reported by employer via wage statement

Temporary Income Benefits (TIBs)

- Paid during the period of temporary disability while the employee is recovering from an on-the-job injury.
- TIBs are paid weekly and equal 70 percent of the difference between employee's average weekly wage and the weekly wage after the injury.
- An injured employee becomes eligible for TIBs on the eighth day of disability.
- Benefits are not paid for the first week of lost wages unless disability lasts for two weeks or more.

Temporary Income Benefits (TIBs)

- Entitlement to TIBs ends at the earlier of:
 - the date the employee returns to work at wages equivalent to pre-injury wages, or
 - the date the employee reaches maximum medical improvement (MMI).
- Maximum Medical Improvement (MMI) is reached:
 - when the employee is certified by a doctor as being not likely to have further material recovery from the injury (clinical),;
 - at the expiration of 104 weeks from the date income benefits began to accrue, if the employee has not previously reached clinical MMI (statutory); or
 - as determined by DWC when the employee has had, or has been approved for, spinal surgery within 12 weeks of the expiration of 104 weeks and has not been previously determined to be at clinical MMI.

Impairment Income Benefits (IIBs)

- Paid to injured employees for permanent impairment as a result of an on-the-job injury.
- Employees may receive IIBs once TIBs have ended; however, employees may receive IIBs (unlike TIBs) while back at work.
- IIBs are paid weekly and are equal 70 percent of the employee's average weekly wage.
- An injured employee becomes eligible for IIBs the day after the employee reaches maximum medical improvement (MMI).

Impairment Income Benefits (IIBs)

- IIBs are calculated based on the injured employee's impairment rating, which is assigned by a doctor using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 4th edition.
- Employees receive three weeks of IIBs for every percentage point of impairment assigned.
 - For example, if an injured employee has an impairment rating of 6 percent, the employee would receive 18 weeks of impairment income benefits.

Supplemental Income Benefits (SIBs)

- Paid to certain injured employees for ongoing disability after IIBs have been exhausted.
- SIBs are paid on a monthly basis and equal 80 percent of the difference between 80 percent of the employee's average weekly wage and the weekly wage after the injury.
- Injured employees must meet SIBs eligibility requirements on a quarterly basis
 - the first quarter the DWC makes the SIBs eligibility determination
 - all subsequent quarters, the injured employee must apply to the insurance carrier for eligibility, but may dispute to DWC if denied

Supplemental Income Benefits (SIBs)

- An injured employee may receive SIBs if:
 - the employee has an impairment rating of 15 percent or more; **and**
 - the employee has not returned to work because of the impairment, or has returned to work but is earning less than 80 percent of his pre-injury average weekly wage because of the impairment; **and**
 - the employee did not take a lump sum payment of impairment income benefits; **and**
 - the employee has met specific work search requirements based on Texas Workforce Commission standards OR is actively participating in a vocational rehabilitation program.

Important notes about the limits on income benefits in Texas:

- Weekly benefits of all types are capped (historically, based on the State Average Weekly Wage).
- By law, all eligibility to receive income benefits (except LIBs and Death Benefits) ends 401 weeks (approximately 8 years) from the date of injury.
- If the employee has an occupational illness, eligibility ends 401 weeks from the date the employee first became eligible to receive income benefits.

Lifetime Income Benefits (LIBs)

- These benefits are paid for the life of the injured employee for specific catastrophic injuries as set out in Section 408.161 of the Texas Labor Code.
 - total and permanent loss of sight in both eyes;
 - loss of use of both feet or hands or loss of use of one foot and one hand;
 - an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;
 - a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or
 - third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

Lifetime Income Benefits (LIBs)

- LIBs are paid weekly, monthly or by annuity and equal 75 percent of the employee's average weekly wage, with a 3 percent cost of living increase each year.
- An injured employee becomes eligible for LIBs whenever a work-related injury or illness causes the employee to meet the conditions specified in Section 408.161 of the Texas Labor Code.

Death Benefits

- Death benefits replace a portion of lost family income for the eligible family members of employees killed on the job.
- A family member may get death benefits if:
 - the family member is the spouse, dependent child or grandchild, or another eligible family member of an employee killed on the job
 - if no other eligible beneficiaries, then benefits may be paid to non-dependent parents.

Death Benefits

- The length of time a family member may receive death benefits depends on the family member's relationship to the employee (see Section 408.183 of the Texas Labor Code for eligibility requirements).
- Death benefits equal 75 percent of the deceased employee's average weekly wage.
- If no beneficiaries, payments are made into the Subsequent Injury Fund (SIF) – maximum of 364 weeks of death benefits paid into the SIF.

Burial Benefits

- Burial benefits pay up to \$6,000 of the deceased employee's funeral expenses.
- Burial benefits are paid to the person who paid the funeral expenses.

Medical Benefits

How are medical benefits paid in Texas?

- Insurance carriers must pay for any medical care that is “reasonable and necessary” to treat a work-related injury or illness, no time or dollar limits (also known as “lifetime medical”).
- “Reasonable and necessary” medical care is decided on a case by case basis by the insurance carrier, or in the case of a medical dispute, by an Independent Review Organization (IRO).
- For non-network claims, medical provided in accordance with DWC’s adopted treatment guidelines – the Official Disability Guidelines (ODG) published by the Work Loss Institute – is presumed reasonable by statute.

How are medical benefits paid in Texas?

- Medical benefits are paid on a “fee for service” basis in Texas.
 - Health care providers submit bills and receive payment for each service they deliver to injured employees
 - No co-payments, deductibles, or co-insurance arrangements allowed in workers’ compensation
- Insurance carriers must pay medical bills according to the DWC medical fee guidelines, which dictates the exact payment amount for individual services.
 - Pharmacy services may be paid at a contractual rate

How are medical benefits paid in Texas?

- A doctor or health care provider may not bill an injured employee for treating a work-related injury or illness.
- However, if an injured employee has been enrolled into a certified network and seeks health care from non-network providers without the network's approval, then the employee may be liable for the cost of that health care.

Non-Network Selection of Treating Doctor

- In Texas, an injured employee has the right to select his or her own treating doctor from any doctor who is willing to treat them, as long as the doctor was not specifically removed from the former Approved Doctor's List for cause.
- An employee may request to change their treating doctor; subject to approval by the DWC.

Network Selection of Treating Doctor

- An injured employee must live in the network's service area and be provided a notice of the network's requirements, otherwise the employee is exempted from network participation.
- Injured employees must choose a treating doctor from the network's list and may change treating doctors once without the network's approval – subsequent changes of doctor require network approval.

Dispute Resolution

Two Types of Dispute Resolution Processes:

- Income Benefit Dispute Resolution
- Medical Benefit Dispute Resolution

How are income benefit disputes resolved in Texas?

- Benefit Review Conference (BRC)
- Contested Case Hearing (CCH)
- Appeals Panel review (AP)
- Judicial review

Benefit Review Conferences (BRC)

- Informal conferences basically designed to mediate and resolve disputes
- Identify disputed issues or information needed to resolve disputes
- Benefit review officer is an impartial individual trained to help parties resolve disputes
- Two BRCs per disputed issue (max.)

Contested Case Hearings (CCH)

- Formal hearings in which evidence is presented and testimony is taken
- Hearing officers (who are attorneys) issue written decisions on disputed issues



Appeals Panel (AP)

- Three judges assigned to a single panel to review appeals of CCH decisions
- Review is limited to the evidence admitted during the CCH
- The CCH Hearing Officer's decision is allowed to become final or reversed, remanded or a combination of these actions
 - Affirmations allowed in limited situations dictated by statute



Judicial Review

- Must be filed with appropriate court in county of injured employee's residence at the time of the injury or death
- Must be filed simultaneously with the court, DWC and served on any opposing party
- The court's decision must take into account the appeals panel decision on each dispute issue

How are medical fee disputes handled in Texas?

- Non-network: Disputes regarding the fee for a particular non-network medical service are handled internally by DWC staff. Non-network fee dispute decisions can be appealed to the State Office of Administrative Hearings (SOAH) and then to district court.
- Network: Fee disputes are handled through the network's complaint resolution process. Providers may also file a complaint with TDI.

How are medical necessity disputes handled in Texas?

- Non-Network and Network: Disputes regarding the prospective or retrospective denial of medical care are reviewed by Independent Review Organizations (IROs), which are independent panels of doctors who also review group health disputes in Texas.
- IRO decisions can be appealed to a DWC Contested Case Hearing and then to district court.

Questions?