

# The 21st Texas Workers' Compensation Educational Conference

## Overview of the Workers' Compensation System

Important Note: Applicable statute and Division rules often address specific exceptions or circumstances that may differ from this general training tool. An applicable statute and/or Division rule is the controlling authority.

# Overview

- Overview and Goals of the Workers' Compensation System
- Regulatory Oversight
- Front Office Management
- Enforcement
- ODG/MDA Guidelines
- Designated Doctor Issues

# What is Workers' Compensation?

A state-regulated insurance program that pays covered **medical benefits** and specified **income benefits** for employees with work-related (*compensable*) illnesses and injuries-regardless of fault.

- Not mandatory except for public employees and required statutory coverage like certain building or construction contractors

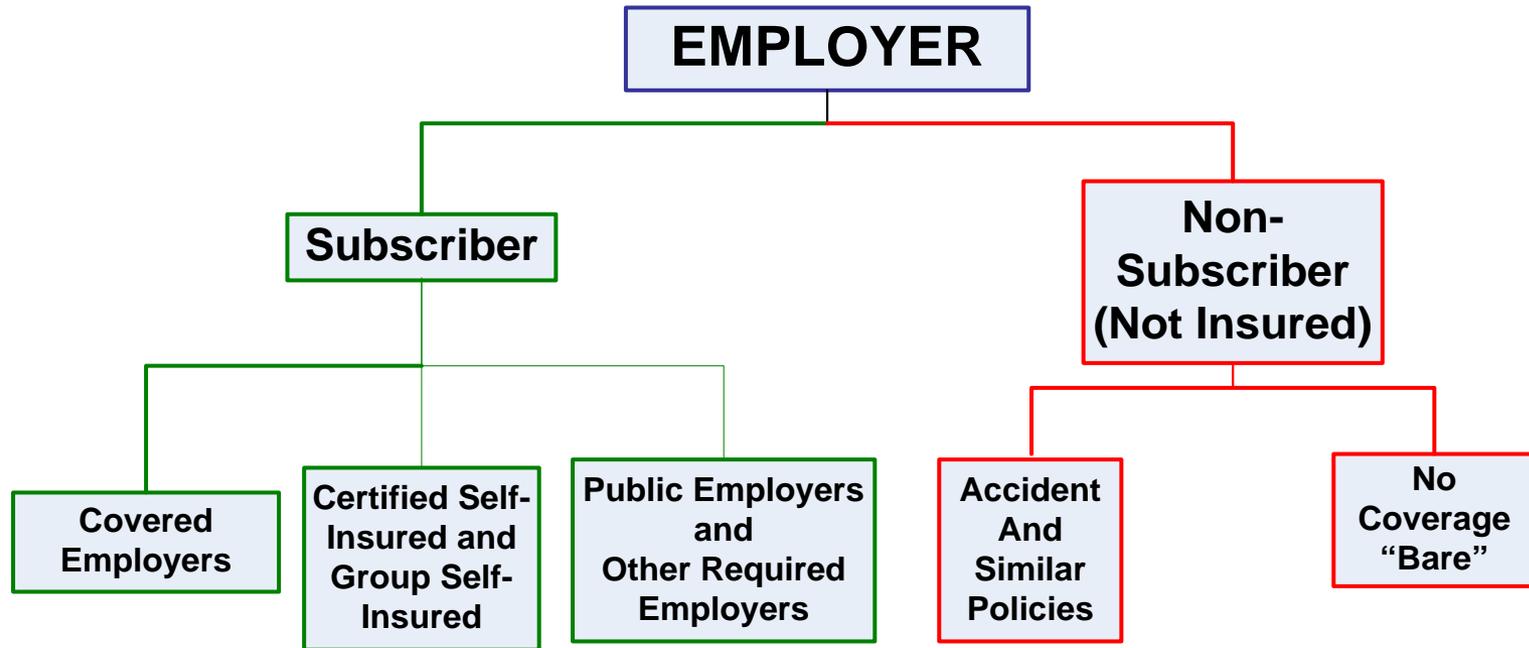
# Workers' Compensation System

Covered employers typically pay premiums to...

Insurance companies that pay benefits to...

- Injured employees, or their families.

# Types of Coverage



§406.002 – Except for public employers and as otherwise provided by law, only employers who **elect** to obtain workers’ compensation coverage are subject to the Labor Code<sup>1</sup>

# Goals of the Workers' Compensation System

## Texas Labor Code §402.021

- Each employee will be treated with dignity and respect when injured on the job
- Each injured employee shall have access to prompt, high quality medical care under the Act.
- Each injured employee shall receive services to facilitate return to employment as soon as considered safe and appropriate by the employee's health care provider

# Division of Workers' Compensation (DWC) Responsibilities

- **Regulation/Administration of the Texas Workers' Compensation system**
  - **Texas Workers' Compensation Act (Texas Labor Code or TLC)**
  - Education
  - Rulemaking
  - Difference between TLC and Division rules
- **Enforcement**
- **Workplace safety**

# Division of Workers' Compensation (DWC) Responsibilities

- **Medical services**
  - Treatment Guidelines
  - Fee Guidelines
  - Monitor system participants
- **Disability Management/Return to work**
  - Return-to-Work Guidelines
  - RTW Reimbursement Program
  - Assistance in Developing RTW Programs
- **Dispute resolution**
  - Indemnity
  - Medical

# Definitions

- **Designated doctor** - a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.
- **Doctor** - a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

# Definitions

- **Evidence-based medicine** - the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients

# Definitions

- **Health care reasonably required** - health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with:
  - evidence-based medicine; or
  - if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

# Definitions

- **Impairment rating** - the percentage of permanent impairment of the whole body resulting from a compensable injury.

# Definitions

- **Maximum medical improvement** - the earlier of:
  - the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
  - the expiration of 104 weeks from the date on which income benefits begin to accrue; or
  - the date determined as provided by Section 408.104.

# Definitions

- **Sanction** - a penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule, order, or decision of the commissioner.

# Definitions

- **Treating doctor** - the doctor who is primarily responsible for the employee's health care for an injury.
- **Verifiable means** - Written notice is verifiable when it is provided from any source in a manner that reasonably confirms delivery to the party. This may include an acknowledged receipt by the injured employee or insurance carrier, a statement of personal delivery, confirmed by e-mail, confirmed delivery by facsimile, or some other confirmed delivery to the home or business address.

# Definitions

Examples of verifiable means:

- Fax confirmation sheets
- Sent email confirmations
- Electronic notifications
- USPS Green Cards
- Hand signatures

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## Types of Doctors and Their Responsibilities

# Doctor Types

- Treating/Referral Doctors
- Designated Doctors
- Required Medical Exam Doctors

# Treating Doctor

- Provide reasonable and necessary health care.
- Approve and recommend all health care rendered to the injured employee.
- Maintain efficient utilization of health care.
- Communicate with the employee, employer, and insurance carrier about the employee's ability to work or any work restriction on the employee.

# Treating Doctor

- If an employee has permanent impairment and, if so, either certify Maximum Medical Improvement and assign an Impairment Rating as appropriate, if authorized to make a referral to a doctor who is authorized.
- Utilize the AMA Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Edition for determining an impairment rating.
- Timely file required reports.
- Make referrals for treatment or testing as necessary.
- *Provide consultations/second opinions as requested by the treating doctor.*

# Designated Doctor

- Assigned by DWC to help resolve any questions about the medical condition of the injured employee.
- Requires special training and must be unbiased.
- May not initiate or provide treatment to an injured employee examined by the designated doctor.
- Conduct an exam to address the issue(s) identified on the DWC-32. Issues a designated doctor may be asked to address are maximum medical improvement, impairment rating, extent of injury, disability, return-to-work and similar issues.

# Designated Doctor

- Utilize *The Medical Disability Advisor* (MDA) as guidelines for the evaluation of expected or average return-to-work time frames.
- Utilize the *AMA Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Edition* for determining the impairment rating.
- Timely file required reports/forms.
- Timely respond to letters requesting clarification of exam reports.

# Required Medical Exam Doctors

- Conduct exam based on issues identified by the RME notice issued by the Division.
- Appropriateness of care: exams typically limited to not more than once every 180 days
  - MMI, IR, Extent of injury, disability, RTW only after Designated Doctor exam
- Utilize *The Medical Disability Advisor* (MDA) as guidelines for the evaluation of expected or average return-to-work time frames.
- Utilize the *AMA Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Edition* for determining an impairment rating
- Timely file required reports/forms

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Effects of Doctor  
Non-Compliance

# Effects of Doctor Non-Compliance

- Over/under payment of income benefits
- Non-payment of medical bills due to lack of preauthorization or late filing
- Over/inappropriate utilization of services
- Delay in returning the injured employee to work
- Sanctions

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## **Common Forms**

# Common Forms

- DWC-32 Request for Designated Doctor
- DWC-69 Report of Medical Evaluation
- DWC-73 Texas Workers' Compensation Work Status Report
- DWC-74 Description of Injured Employee's Employment

# DWC-32 Request for Designated Doctor

- Used to request a Designated Doctor appointment
- May be requested by the injured employee, the insurance carrier or the Division
- Exam for MMI, IR, Extent of Injury, Disability, Return-to-Work and similar issues
- May only be conducted once every 60 days unless good cause exists as determined by DWC
- Designated Doctor selected by DWC
- Exam scheduled by DWC with notice to all parties

# DWC-69 Report of Medical Evaluation

- Used to report if the injured employee has reached MMI and, if so, the assigned impairment rating (IR)
- Filed by an authorized **Treating Doctor** when MMI is certified and/or IR is certified.
- Filed by **Designated Doctor** regardless of certification of MMI if directed to address issue of MMI and/or IR.
- Filed by **RME doctor** when the doctor certifies the injured employee has reached MMI and/or assigned an impairment rating
- Filed by the **Certifying Doctor** no later than the 7th working day after the date of the certifying exam or the receipt of all the medical information required

# DWC-69 Report of Medical Evaluation

- DWC rules set time limits when additional testing is needed.
- Filed with the injured employee, the injured employee's representative (if known), the insurance carrier and the DWC by facsimile or electronic transmission.
- Designated Doctor and RME Doctor sends to the treating doctor

# DWC-73 Texas Workers' Compensation Work Status Report

- Filed by **treating doctor** or referral doctor after initial visit/treatment and afterward when there is a change in the injured employee's work status or change in activity restrictions or when requested by the carrier
- Provided to the injured employee at the time of the exam and sent to the employer and carrier not later than the 2<sup>nd</sup> working day after the exam

# DWC-73 Texas Workers' Compensation Work Status Report

- Filed by the **Designated Doctor** after an examination regarding the ability of the injured employee to return to work
- Filed within 7 days of the date of the examination
- Filed with the injured employee, the injured employee's representative (if known), the treating doctor, the carrier, and DWC

# DWC-73 Texas Workers' Compensation Work Status Report

- Filed by the **RME Doctor** after an examination regarding the ability of the injured employee to return to work
- Filed within 7 days of the date of the examination
- Filed with the injured employee, the injured employee's representative (if known), the treating doctor, the carrier

# DWC-74 Description of Injured Employee's Employment

- Requested by the treating doctor
- Completed by the employer
- Employer may file without a request by the treating doctor
- Provides a description of the employee's pre-injury duties, job functions, specific tasks, work activities and physical responsibilities.
- Provides the employer the opportunity to identify other duties the employee may be able to perform

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Questions