



Texas Department of Insurance

Division of Workers' Compensation

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MEMORANDUM

DATE: December 17, 2010

TO: Workers' Compensation System Participants

FROM: Christopher Bean, Workers' Compensation Counsel Section Chief

RE: Adoption of Rule Amendments on Emergency Basis: 28 TAC §134.503 regarding the Pharmacy Fee Guideline

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) is adopting rule amendments on an emergency basis to 28 TAC §134.503 regarding the Pharmacy Fee Guideline. The amendments are being adopted under Government Code §2001.034 and §2001.036 and subsection (e) of §8.005 of House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). These amendments shall be effective on January 1, 2011. The rule amendments may remain in effect for a maximum of 180 days if renewed.

The adopted amendments permit insurance carriers to continue to reimburse prescription drugs dispensed on or after January 1, 2011 at rates either above or below the fees determined by the Division's fee guideline using written contracts between insurance carriers and pharmacies or their processing agents, if applicable. In the absence of a negotiated or contracted rate, insurance carriers shall reimburse prescription drugs using the lesser of the fees established under the Division's pharmacy fee guideline or the health care provider's billed amount. If an amount to calculate the prescription drug cannot be determined using contracts or through the fees determined by the Division's fee guidelines, reimbursement shall be determined in accordance with 28 TAC §134.1.

The Division has determined it is necessary to adopt these amendments on an emergency basis to continue uninterrupted dispensing and payment of prescription drugs after January 1, 2011 and for the Division to meet the statutory mandates of Labor Code §408.028(g)(2) and §413.011(d) that require that the Division's pharmacy fee guidelines must ensure the quality of and adequate access to prescription medication services. Furthermore, the emergency adoption of these amendments is necessary to ensure that the Division meets the Labor Code §402.021(b)(4) requirement that the workers' compensation system of Texas provide timely, appropriate, and high-quality medical care that supports the restoration of the injured employee's physical condition and earning capacity. If the Division does not adopt these amendments on an emergency basis, uncertainty regarding insurance carriers' continued authority, after January 1, 2011, to negotiate for contracts that permit them to pay for prescription medications and services at the fee rates currently permitted under the Labor Code could lead to mass expiration of currently existing insurance carrier contracts and the inability to negotiate new contracts in their place. Furthermore, alternate mechanisms to negotiate pharmacy payment under this uncertain statutory authorization for pharmacy contracting cannot be implemented before January 1, 2011. This mass market dislocation and disruption, without any clearly authorized and implementable alternative, would result in pharmacies and/or their agents being confused about their ability to be paid and the appropriate reimbursement rates for prescription

medications and services after January 1, 2011. This confusion would drastically delay, limit, or alter injured employees' access to prescription medications services and, therefore, place them in near-term imminent peril after January 1, 2011.

These amendments, however, are only intended to temporarily resolve any uncertainty regarding payment and reimbursement of pharmacy and pharmaceutical services while the Legislature considers possible statutory changes to clarify the reimbursement of pharmaceutical services within the workers' compensation system. Additional rulemaking will be necessary at the conclusion of the 82nd Legislative session to adopt a long-term pharmacy fee guideline that can conform with all applicable law.

These amendments implement statutory amendments to Labor Code §408.028 and §413.011 under HB 7 and House Bill 473, enacted by the 80th Legislature, Regular Session, effective September 1, 2007.

If there are any questions regarding the information in this memo contact Christopher Bean (512) 804-4704 or by e-mail at Christopher.Bean@tdi.state.tx.us.