

Executive Summary

TEXAS WORKERS' COMPENSATION HOUSE BILL 7

November 2005

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The 79th Texas Legislature enacted workers' compensation reform through House Bill 7, signed by Governor Perry on June 1, 2005 with its key provisions effective September 1, 2005. The bill endeavors to deal with problems in the Texas workers' compensation system; specifically, high medical costs, poor return-to-work outcomes, and the state's agency oversight. House Bill 7 abolished the Texas Workers' Compensation Commission (TWCC) and transferred most of its functions to the newly created Division of Workers' Compensation (Division) at the Texas Department of Insurance (TDI). The Division is governed by a Commissioner of Workers' Compensation appointed by the Governor.

As of this writing, many of the defining regulations are still under development and are targeted for release over the next 30 to 60 days. Although final rules are not yet published, the fundamental objectives for reforming the Texas workers' compensation system have been clearly articulated:

- treating injured employees with dignity and respect;
- providing a fair and accessible dispute resolution process;
- providing access to prompt, high quality medical care within the statutory framework; and,
- providing services to facilitate an injured employee's return to work as soon as it is considered safe and appropriate by the employee's treating doctor.

The intent of HB 7 is obvious—improve return-to-work outcomes while providing appropriate, high quality care to injured employees. To this end, the state will be focused on measurements of program performance and outcomes. To underscore its expect-

tation, HB 7 provides broad new authority to TDI to impose sanctions on carriers who do not pass on savings to employers in the form of lower premiums.

This document summarizes the key legislative changes to date and delineates Intracorp's strategy to assist employers and their injured employees under the new workers' compensation system in Texas. As additional regulations are adopted over the coming months, Intracorp's HB 7 Team will provide our customers with ongoing clarification to enable informed decision-making during 2006 and in subsequent years.

Major legislative changes are intended to benefit the state and Texas businesses

This legislation is expected to offer employers new options for managing their workers' compensation risk in Texas. The state is looking to carriers¹ in the state to fully exploit the opportunities to manage care utilization and cost and for returning employees to work through case management and in turn, pass on the savings to Texas employers in the form of premium reductions.

The state is also looking to save its own administrative expense through the Workers' Compensation Health Care Network option, signed by the Commissioner of Insurance on November 15, 2005. It is difficult to fully assess the administrative responsibilities against the anticipated benefits since the state has not released an estimate of the full financial impact of House Bill 7. However, according to the May 28, 2005 Legislative Budget Board report, several state entities have assessed the financial impact of the use of networks to their individual departments:

1. Carriers are broadly defined as insurance companies, third-party administrators, and self-insured employers.

- Texas Department of Transportation estimates savings to medical costs and indemnity benefits of \$394,100 in fiscal year 2006; \$506,880 in fiscal year 2007; and \$563,200 in each year thereafter;
- University of Texas System estimates medical cost savings of \$910,903 per year;
- Texas A&M University System estimates medical cost savings of \$150,000 per year.

Intracorp has analyzed the legislation in the context of the new risk management opportunities to carriers and employers in Texas. We are fully prepared to offer solutions to our client companies in whichever option works best for their business. Previously businesses had to choose between opting into or out of the state's workers' compensation system. In today's HB 7 environment, Texas companies now have three distinct options as a result of HB 7:

1. Certified Workers' Compensation Health Care Network (WCHC) Subscriber
2. Standard Workers' Compensation Subscriber
3. Nonsubscriber

We are prepared to file for certification as a Workers' Compensation Health Care (WCHC) Network on January 1, 2006, as well as support our customers who elect to remain in the traditional workers' compensation system and leverage newly defined managed care options through our best practice services. We will continue to customize our best practices to meet the needs of the nonsubscribing employer.

SUBSCRIBER OPTION 1

CERTIFIED WORKERS' COMPENSATION HEALTH CARE NETWORK (WCHC)

Chapter 1305, Insurance Code

The most talked about change in the new legislation is the carrier's and self-insured's ability to establish health care networks for the treatment of work related injuries and illnesses and the defined standards of certification, administration and evaluation of these network programs. With the inclusion of services such as medical case management and utilization review, the WCHC network aligns more closely with programs such as California's Health Care Organizations (HCO) than California's Medical

Provider Networks (MPN), a program governing network access only.

Key provisions of WCHC networks include:

- Network of contracted, credentialed providers
- Provider coverage based on where employee lives
- Medical case management by certified case managers
- Network-defined utilization review
- Network-defined treatment and return-to-work guidelines
- Network-defined specialties to act as treating physicians
- Employee's option to designate his or her health care HMO primary care physician to act as treating physician
- Quality of care/quality improvement programs
- Complaint resolution system for all issues, including provider fee disputes
- Employee communication plan
- State-published annual Consumer Report Card on network performance

The state will begin accepting certification applications on January 1, 2006.

Among the touted benefits of the WCHC network program is the employer's ultimate medical control of workers' compensation claims, demonstrated by the requirements that:

- All treatment must occur within the network except:
 - In an emergency
 - If the employee designates his HMO primary care provider
 - If the employee lives outside of the network service area
- HMO designated providers must adhere to all aspects of the network program
- Employees injured before the WCHC network is implemented must select an in-network provider within 14 days or the employer may assign a provider
- All out-of-network treatment must be pre-approved

However, there are added employer and carrier responsibilities associated with implementation and administration of WCHC networks:

- Carriers with multiple network partners for the same service area must be certified even if the networks are certified individually
- A process to obtain and maintain a copy of the

employee's signed acknowledgment of receipt of the employee communication materials

- A process to provide the employee communication materials at the time of injury notification
- A process to include the employee communication materials and acknowledgment of receipt form in new hire orientation
- A process to produce and distribute a complete provider directory to all employees at least quarterly
- A process to address employees who claim to live outside of the network service area

These additional responsibilities should be considered when making a decision regarding participation.

An initial response to this legislative opportunity may be to develop a small network to limit the employee's choice of providers. However, provider accessibility is a defined standard for WCHC network certification. Therefore, there must be a sufficient number of providers and provider specialties to ensure choice, access and quality of care. Such specialties must include physical therapy, occupational therapy and chiropractic medicine.

With all of these factors to be considered, designing the right solution is not just integral to obtaining certification but also to ensuring program success.

Intracorp Solution: Intracorp will file its application seeking statewide certification as a WCHC network on January 1, 2006—the first day the state begins accepting applications.

Intracorp's program will include all components necessary for certification along with these unique features:

Objectively Profiled Providers

- *Intracorp's profiling follows a case-mix adjustment methodology which allows for provider-to-provider or provider-to-peer group comparisons that are more equitable than unadjusted comparisons.*

Proprietary Optimal Treatment Guidelines

- *Intracorp's internally-developed Optimal Treatment Guidelines® (OTGs) are evidence-based, medically-sound guidelines that are embedded in our Intracorp Claims Management System® (ICMS). These guidelines are accessed by case managers to assess medical necessity and establish maximum medical improvement and return-to-work timeframes.*

Customized Online "Find-A-Provider Service"

- *Intracorp will unveil a sophisticated web-based provider search engine that was designed specifically for the Texas WCHC network program and allows users to easily locate and identify profiled preferred providers.*

In designing our proposed WCHC network solution, Intracorp leveraged years of experience in developing state-certified managed care programs that draw on a comprehensive portfolio of network options and URAC-accredited case management and utilization review. Additionally, since Intracorp does not own the network and has no financial interest in the providers rendering treatment, Intracorp's proposed WCHC network includes a unique provider profiling feature that brings objectivity in provider performance evaluation.

Our software and guidelines incorporate decades of managed care experience to ensure cost-effective solutions for difficult workers' compensation claims. Intracorp guidelines focus on "best practices" for treatment and disability durations. Our case management staff is the most tenured in the industry and this level of experience enhances the outcomes we deliver.

For carriers and self-insured employers who believe a customized network offering is their best option, Intracorp will work consultatively to develop a focused network made up of objectively evaluated providers with demonstrated best practices in line with state accessibility requirements.

In managing the balance of quality and accessibility, Intracorp can help customers realize the ultimate goal of total medical and indemnity savings. Intracorp's proposed WCHC network goes beyond provider choice and accessibility to the forefront of controlling treatment utilization and managing return to work.

Pharmacy Related Provisions

Labor Code 408.028 and 413.0111

The state will be adopting a pharmacy fee guideline for pharmaceutical services. It will be a closed formulary for prescription medications by rule. The formulary will outline a process for treating doctors to appeal if a determination is made and documentation is provided indicating that a drug not on the formulary is medically necessary. Pharmacy services are excluded from WCHC networks under HB 7, therefore the above formulary and fee schedule will apply to both in and out-of-network treatment.

Intracorp Solution: Once the pharmacy fee schedule is adopted, Intracorp's bill review guidelines and software will be updated to include the application of pharmacy fee schedule rates during the bill review process.

Intracorp successfully implemented other state pharmacy fee schedules and our Compliance Specialists will respond in kind to ensure bill review recommendations are in line with Texas pharmacy fee schedule guidelines.

However, according to the 2004 NCCI Rx Expenditure Study, "any successes achieved from efforts to control costs through price reduction alone will be diluted or eliminated if utilization is not effectively controlled." Therefore, Intracorp offers a pharmacy program that not only helps in reducing unit pharmacy costs, but more effectively manages total medical and indemnity spending. Through drug utilization management, Intracorp's pharmacy solution integrates case management and pharmacy management, which affords a more complete picture of the injured employee's total treatment plan and leads to more comprehensive care coordination and appropriate drug therapy. As pharmacy cost and utilization of prescription drugs increase and become a larger portion of an employer's total medical spend, managing the cost and utilization of prescription drugs is becoming equally as critical as managing the medical treatment injured employees receive.

Supplemental Income Benefits

408.1415 Labor Code

HB 7 clarifies its eligibility requirements for Supplemental Income Benefits (SIBs) and requires that the Division adopt rules regarding the level of activity an injured employee must have with the Texas Workforce Commission (TWC) and the Department of Assistive and Rehabilitative Services (DARS), as well as the number of job applications that must be submitted by an injured employee each quarter to meet minimum work-search requirements.

Intracorp Solution: Intracorp's vocational case managers in Texas currently provide essential vocational services relating to SIBs verification of TWCC-52 as well as vocational assessment, labor market survey, job seeking skills, job development and job placement services to assist injured employees in return to work with an earning capacity goal of 80% or better of their pre-injury wage. All Intracorp vocational case managers are registered with the Division as Private Providers of Vocational Rehabilitation and will continue to provide this best-in-class vocational service.

SUBSCRIBER OPTION 2

STANDARD WORKERS' COMPENSATION SUBSCRIBER

Intracorp realizes that clients may opt not to participate in a certified WCHC network since it is not mandatory. Furthermore, clients who do plan to participate in a network but are waiting for network certification from the state can take advantage of other managed care services today as a result of HB 7. The managed care services outlined below are clearly addressed in the HB 7 legislation and can provide customers with immediate savings.

Case Management

401.011 (5-a) and 413.021, Labor Code

Case management and return-to-work service are addressed consistently within HB 7, as these functions embody the letter and the spirit of the reforming legislation. The legislature set out in spirit to put a system into place that would ensure employers and insurers:

- Treat injured employees with dignity and respect,
- Provide access to prompt, high quality medical care within the statutory framework, and
- Provide services to facilitate an injured employee's return to work as soon as it is considered safe and appropriate by the employee's treating doctor.

HB 7's objectives are consistent with the essence of the case management discipline as case management is clearly defined within 401.011 (5-a) of the Texas Labor Code as follows:

"Case management means a collaborative process of assessment, planning, facilitation and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes."

Texas Labor Code 413.021 states that the insurance carrier must evaluate every compensable injury that could result in lost time as early as practical to determine if skilled case management is necessary to address return-to-work issues. Case managers who are appropriately licensed to practice in this state must be used to perform these evaluations. A claims adjuster may not be used as a case manager.

Return-to-work coordination services may include job analysis to identify the physical demands of a job;

job modification and restructuring assessments as necessary to match job requirements with the functional capacity of an employee; and, medical or vocational case management to coordinate the efforts of the employer, the treating doctor, and the injured employee or achieve timely return to work.

The commission shall adopt rules necessary to collect data on return-to-work outcomes to allow full evaluations of successes and of barriers to achieving timely return to work after an injury. The State will continue to utilize both the Department of Assistive and Rehabilitative Services (DARS) and private providers of vocational rehabilitation services to work with individuals requiring vocational rehabilitation services.

HB 7 requires networks to adopt return-to-work guidelines for employers who elect to utilize a certified WCHC network. The state will mandate return-to-work guidelines for those subscribers that do not choose the WCHC network option.

The intent of the case management and return-to-work language in HB 7 is unambiguous. Managing the injured worker to return to regular, modified or alternate duty as soon as possible following the injury is key to the ultimate success of this reforming legislation.

Intracorp Solution: Intracorp was the first, and continues to be, the leading case management service provider in the country. Intracorp's workers' compensation case management program is nationally accredited by URAC and we have over 80 qualified medical and vocational case managers located throughout the state of Texas. Twenty-six of our case managers in Texas are bilingual. Our experienced case managers are supported by a robust infrastructure of knowledgeable managers and sophisticated tools and technology that fuel return-to-work and case management activities. From our case management software to web-enabled return-to-work resources, Intracorp's case managers are armed with an array of decision-support tools that expedite workers' compensation claim resolution and facilitate optimal medical outcomes. Once the State adopts its treatment and return-to-work guidelines for non-network treatment, Intracorp will ensure that our case managers have access and training on these guidelines and will incorporate these guidelines into all case management activities.

Intracorp offers a "Day One" return-to-work approach that advances this legislation's defined return-

to-work hierarchy to include transitional work assignments at the original worksite as well as at non-profit organizations contracted throughout the state of Texas. Our certified case managers leverage return-to-work options contained within our Web-accessible database of 16,000 standardized transitional work assignments to enable us to immediately create a return-to-work plan tailored to the individual employee and to the worksite.

Intracorp customers enjoy a 3:1 return on their investment with our best-in-class managed care programs.

Utilization Review

408.0042 and 413.014, Labor Code

While the state allows a WCHC network to define its own rules for appropriate care utilization, the State has defined the rules for utilization review for those employers who do not choose to participate in a WCHC network.

A recently released emergency rule requires prospective and concurrent review of health care for services rendered on or after December 1, 2005, outside of networks certified under insurance code chapter 1305. Physical and occupational therapy, as well as any treatment for diagnoses not typically accepted as compensable have been added to the list of treatments and services requiring preauthorization. The State stipulates that pre-authorized treatments and services will not be subject to retrospective review for medical necessity.

Preauthorization will not be required for the first two physical or occupational therapy visits following evaluation when treatment is rendered within the first two weeks immediately following the date of injury or a surgical intervention previously approved by the insurance carrier. In addition, all treatment and services that required preauthorization in Texas prior to HB 7 will remain in effect.

Intracorp Solution: Intracorp currently offers its nationally recognized best-in-class utilization review service from our Dallas Care Center in Texas. Intracorp is certified as a Texas Utilization Review Agent (URA) and is nationally accredited by the Utilization Review Accreditation Commission (URAC) for Workers' Compensation Utilization Review. Intracorp is prepared today to review all HB 7 mandated treatments within our best-in-class utilization review program. In accordance with the regulations, Intracorp added

physical and occupational therapy to the list of treatments requiring reauthorization effective December 1, 2005. Additionally, our best practices for utilization review will be incorporated into our WCHC network offering.

Peer Review

408.0231, Labor Code

As of this writing, rules regarding peer review are in pre-proposal draft only and do not apply to networks certified under insurance code chapter 1305. The legislation requires physicians providing peer review services to be Texas licensed. By HB 7 definition, a “peer review” doctor retrospectively reviews health care provided to injured workers at the request of the insurance carrier. The peer review doctor may also review the appropriateness of the health care provider’s qualifications. The term “peer review” does not apply to doctors performing prospective or concurrent reviews for a Texas licensed URA.

The peer review doctor shall:

- be appropriately licensed and in good standing with Texas licensing board,
- maintain or have maintained within the last three years an active medical practice treating workers’ compensation patients,
- perform unbiased evaluations of health care rendered to injured workers,
- have not previously treated or examined the injured worker and have no known conflicts of interest with the health care provider who rendered the care being reviewed,
- only address medical necessity of the care provided on dates of service submitted for peer review, and
- not address any ongoing, proposed or future health care. A peer review doctor to the extent possible should have the same or similar specialty as the health care provider who provided the health care.

The division may impose sanctions on doctors performing peer reviews (408.0231(f)) and the commission may prohibit a doctor from conducting peer reviews for any of the following violations:

- non-compliance with 180.22(g),
- failure to properly consider all records available for review,
- history of improper or unjustified decisions regarding the medical necessity of health care reviewed as evidenced by findings reversing the

peer review issued by an Independent Review Organization (IRO) or judicial review, or

- any other violation of the Texas Labor Code or division rules.

Final peer review rules have not yet been adopted by the state. The above summary was extracted from the pre-proposed draft to provide the reader insight on the direction the State has given to date.

Intracorp Solution: Intracorp is an experienced peer review services provider, which is critical to compliance with legislative requirements. Intracorp has twenty-one employed physicians with a full complement of clinical specialties tailored to address HB 7 defined peer review expectations: Orthopedists (spine, hand, foot subspecialties); Neurosurgeons; Occupational Medicine Specialists; Internists; Physiatrists; Emergency Medicine Specialists; Psychiatrists; and Chiropractors. Seventeen of our employed physicians work onsite in our Dallas Care Center, hold Texas licenses to practice medicine, and are all ADL Level 2 certified. In addition, we have access to over 400 directly contracted physicians nationally (95% in active practice) with more than 40 different specialties, as well as additionally contracted vendor relationships representing more than 2,500 physicians nationally.

Intracorp has leveraged physicians to review treatment plans retrospectively—as the State currently defines peer review—throughout our 35-year history. Our physician advisors routinely assist the case management process by addressing disability duration, functional ability to return to work, medical necessity and appropriateness of care, documenting the clinical validity for all recommendations and citing Intracorp’s Optimal Treatment Guidelines or State-mandated guidelines to support their well-developed recommendations.

Medical Billing and Payment

HB 7 made significant changes in the timeframes for medical billing and payments for workers’ compensation claims. The Commissioner signed emergency rules for provider billing procedures [Provider billing procedures (134.801)] and dispute and audit of medical bills by insurance carriers [Medical dispute and audit of bills by insurance carriers (133.301, 133.302, and 133.304)] on November 2, 2005. The amendments permit expedited compliance with statutory changes to Texas Labor Code 408.027 and 408.0271 (new). Provider bill procedures require that providers

must submit claim for payment no later than 95th day from date service was rendered for all services rendered on or after September 1, 2005. Providers must submit claims for payment on or before the first day of the 11th month from date service was rendered for all services rendered on or before August 31, 2005.

Medical dispute and audit of bills by insurance carriers outlines the process and timeframes for making provider payments, requesting additional information, audit of medical bills, retrospective review of medical bills, refunds and provider process for requesting reconsideration and dispute resolution.

Highlights of changes effective for dates of service September 1, 2005 include:

- An Insurance Carrier has 45 days of receipt of a medical bill to request additional information or make final payment on a medical bill.
- The Health Care Provider has 15 days of receipt of request for additional information to submit the requested documentation or notice to the requester that the documentation was not readily available. If the Insurance Carrier decides to conduct an onsite audit, notice to the HCP must be made within 45 days of receipt of the medical bill. The Insurance Carrier shall pay 85% of the Maximum Allowable Reimbursement (MAR), contracted amount or billed charge for services without an MAR. Final payment, reductions or denials must be made within 160 days of receipt of the audited bill.

Intracorp Solution: Intracorp continuously monitors all jurisdictional bill review changes and employs dedicated resources responsible for ensuring our bill review services are in compliance with all state-mandated requirements. Our Texas bill review guidelines and software have been updated to reflect the above changes to assist our current bill review customers in meeting the timeframes set forth by the State. Intracorp's AccuMed/AuditPlus® proprietary software provides customers with fee schedule and UCR reductions, integrating our ICMS technology and Optimal Treatment Guidelines to ensure our customers maximize their savings penetration. Year over year we have consistently demonstrated improved gross savings to our customer population. We realize that speed and information are also critical to success. We scan provider bills and related documentation to reduce turnaround time and enable

online retrieval from a password-protected Web site. Detailed reports, also available online, present a clear and concise picture of overall savings and impact.

Electronic Medical Billing

408.02151 of the Texas Labor Code states that rules shall be adopted requiring insurance carriers to accept medical bills from providers electronically. These rules are targeted for adoption on January 1, 2006. On or after January 1, 2008, rules may be adopted requiring insurance companies to pay medical bills to providers electronically. A draft for electronic medical billing, reimbursement and documentation is currently available and outlines the proposed electronic formats and processes for electronic medical bill processing. (Note: California is also in the process of prorogating rules to mandate EDI IAIABC 837 requirements.)

Intracorp Solution: Intracorp has been working closely with the State to ensure our readiness to exchange medical bill data electronically on behalf of our bill review customers. Intracorp was named in an October 28, 2005 DWC statement as being one of the Texas trading partners which has moved closer to becoming approved for the medical EDI IAIABC 837 format.

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OPTION 3 NONSUBSCRIBERS

The new legislation does not remove an employer’s option to not subscribe to its workers’ compensation system. However, the legislation does dictate that an employee’s post-injury waiver can no longer be signed immediately following an injury and, in fact, can not be signed before the tenth business day after the date of initial report of injury. How, and if, this change will impact the current population of non-subscribing employers is unclear but is a subject we will be following over the coming months.

Intracorp Solution: Intracorp serves many employers who have opted out of the Texas workers’ compensation system by providing our best-in-class managed care services and unique “Day One” return-to-work program which drives optimal care and disability outcomes. Our experience with nonsubscribing employer programs underscores the need for custom-designed programs that optimize each employer’s plan. Intracorp remains available to consult with employers considering the nonsubscriber option to ensure that plans are developed to maximize savings opportunities and return-to-work outcomes for each customer’s environment and workforce.

CONCLUSION

House Bill 7 clearly gives Texas employers options to enhance their medical and return-to-work outcomes while promoting employee satisfaction. We believe each option can result in significant savings through decreased claim spending and increased employee productivity. Intracorp is available for consultation to assist employers in analyzing each approach to determine the right choice for your unique business needs. We understand the opportunity resident in each option offered through the new legislation and have proven experience in executing successful solutions.