

The following information are excerpts from the June 2005 TXANS Update. TXANS (Texas Association of Responsible Nonsubscribers). We have provided this information with TXANS' permission. To learn more about the 79th legislative session, please go to their website at www.txans.org

May 2005 / The 79th Session is now Over and Legislative Reform has Little Impact on Texas Nonsubscribers!

Employers in Texas are still free to choose to be Responsible Nonsubscribers

The big topic of discussion during the 79th legislative session was Workers' compensation reform. And as many had hoped, measures designed to "reform" workers' compensation and reduce workers' compensation-related costs were passed.

The first bill relating to reform the Texas workers' compensation system was **Senate Bill 5**, authored by State Senator Todd Staples (R-Palestine). SB 5 was based on the recommendations of the Senate Select Interim Committee on Workers' Compensation, whose report and recommendations can be found at this website address:

<http://www.senate.state.tx.us/75r/senate/commit/c780/downloads/pdf/SICWC2004.pdf>

SB 5 proposed to change the governance structure of the Texas Workers' Compensation Commission (TWCC) by replacing the current six member commission with one commissioner appointed by the Governor. SB 5 would also establish medical networks in an effort to reduce excessive workers' compensation-related medical costs, which currently average approximately \$13,000 per claim in Texas. The bill would also allow the Texas Department of Insurance (TDI) to study workers' compensation-related issues, which we expect to include additional surveys/studies of Texas nonsubscribers. SB 5 also restricts nonsubscribing businesses from offering post-injury waiver agreements until the 10th day after an injury is reported.

The second bill relating to the reform of the workers' compensation system was **House Bill 7**, authored by State Representative Burt Solomons (R-Carrollton). HB 7 was based upon the recommendations of the Texas Sunset Advisory Commission whose report and recommendations can be found at the following web address: <http://www.sunset.state.tx.us/79threports/twcc/twcc.pdf>

HB 7 would abolish the TWCC and move regulatory functions to the TDI. It also creates a new agency, the Office of Injured Employee Counsel, which would be responsible for providing injured employees with legal representation and assistance. HB 7 would also allow healthcare networks in workers' compensation, apply group health laws and rules to the workers' compensation system and streamline dispute resolution processes by addressing some of the current administrative burdens. HB 7 also promotes prompt pay for health care providers and consumer protection for patients.

Although both SB 5 and HB 7 passed out of committee relatively early in the session, they languished in the legislative process for such a long time that some were concerned no workers' compensation legislation would be passed. As a result Governor Perry's office became involved, working on a compromise; but even then it seemed doubtful. But in the end, with only a few days remaining in the 2005 legislative session, a deal was reached and compromise language and individual provisions from both SB 5 and HB 7 were incorporated into House Bill 7 and passed.

To follow, are some of the primary provisions of the House Bill 7, the workers' compensation reform bill.

- HB 7 strives to address excessive medical costs through the use of state authorized medical networks. Although the state considered nonsubscriber networks during their efforts, the network provisions in HB 7 differ somewhat. For example:
- Under HB 7 workers' compensation insurance carriers will establish networks or contract with medical networks and employers can elect to contract with an insurance company for the provision of medical care.

- The selection of networks will be limited to the extent that the network meets stringent certification guidelines established by the state.
- Employees will maintain the ability to choose a doctor initially but they must choose a doctor from within the network.
- Employees that are dissatisfied with their first choice of doctor may choose an alternate, but the alternate must also be from within the network. If the employee is still dissatisfied, there are ways to once again change doctors but he/she must obtain authorization from the network before doing so.
- Employees that have a pre-existing relationship with a health care provider may continue to obtain medical services from their provider, even if the provider is not a part of the network.
- Employees may obtain emergency care outside of the network.
- Employees with chronic, life-threatening injuries or chronic pain may apply to use a non-primary care physician/specialist from within the network.

HB 7 also abolishes the Texas Workers' Compensation Commission and moves the agency's regulatory functions to a new Division of Workers' Compensation at the Texas Department of Insurance (TDI). Rather than a six member commission the new department will be led by a single commissioner, the Commissioner of Workers' Compensation, who will be appointed by the Governor and serve under the Commissioner of Insurance. A new state agency will be created, the **Office of Injured Employee Counsel**. The new agency will employ attorneys to advocate on behalf of injured workers. The service will be funded through premium tax assessments.

HB 7 also increases the level of benefits available to injured employees and allows for the implementation of procedures to improve the delivery of benefits to injured employees.

A few provisions in HB 7 relate directly to Texas nonsubscribers:

- TDI is authorized to conduct additional workers' compensation-related studies, which will allow the state to conduct additional studies on nonsubscription. Based on the way TDI handled its last nonsubscriber study, it is doubtful we can expect future studies to represent a fair assessment of responsible nonsubscription. For more information in TDI's opinion of responsible nonsubscription in Texas, take a minute to look at the information regarding nonsubscriber programs on their website address: <http://www.tdi.state.tx.us/consumer/consum38.html>
- HB 7 contains a provision that regulates nonsubscriber post-injury waiver agreements. Specifically, the new law requires that an employee cannot be required to sign a post-injury waiver agreement until the expiration of 10 days following the initial report of injury and during which time the employee has undergone a medical evaluation. The language in the waiver agreement must also be offered in a manner that it is intended to provide the employee a clear understanding of all of the waiver-related issues.
- HB 7 also requires Texas nonsubscribers to continue post notices in the workplace regarding their nonsubscriber status and file the necessary nonsubscriber forms, specifically the annual notification of non-coverage and injury reports. **Because a new agency will administer these laws nonsubscribers should expect changes to the posting and notification requirements in the months to come.** TXANS will be involved in the potential rulemaking changes and will report new developments/requirements to members as they become available.

HB 7 now moves to the Governor's desk and since it was the Governor's efforts that ultimately led to the compromise, we expect Governor Perry will sign the bill. **Barring any unforeseen legal challenges, the provisions of HB 7 will become effective September 1, 2005.**

Comp Solutions www.compsolutionsnetwork.com is a proud supporter of TXANS. TXANS worked hard during this legislative session to represent the interests of responsible nonsubscribers. We feel strongly that agents who market nonsubscriber programs to their insurance clients should join TXANS along with their nonsubscriber clients. Being a member of TXANS ensures that there will be a voice in Austin from the many responsible nonsubscribers in our great state. Our Texas Legislators need to know how they truly feel and know that they want to keep the options open. For more information, please call the TXANS office at 512-477-7357 or log on to the website at www.txans.org