



OIEC QUARTERLY REVIEW

October - December 2009 (Issue 16)

Letter from the Public Counsel

Dear Friends:



During the past year the Office of Injured Employee Counsel (OIEC) has made considerable progress in the development of programs that will enable us to provide better service to injured employees. Our Customer Service and Ombudsman Programs have increased their capacity to offer early intervention in disputes prior to moving them into the formal dispute resolution process. They have processed over 270,000 incoming telephone inquiries and assisted injured employees in nearly 16,000 proceedings in the field offices.

Since September 1, 2009 (the first quarter of FY 2010), our Customer Service and Ombudsman Programs have resolved 1288 disputed issues (43%) prior to them entering dispute resolution at the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC). At that rate, OIEC employees will resolve approximately 5000 disputed issues this fiscal year.

We have created a "brief bank" for our Regional Staff Attorneys and Ombudsmen to give them access to research that has been done in other claims. The briefs are indexed and filed according to subject matter so that a request for legal precedence may be made available on short notice.

Our Regional Staff Attorneys have developed communications with various medical schools' outreach resources to give our customers access to the latest evidence-based medical research. Injured employees and their health care providers only prevail in approximately 22% of the medical necessity disputes. This medical research can provide information on recognized treatment and diagnosis protocols that hopefully will improve the outcomes in those medical necessity disputes.

I am also pleased to report that all attorneys employed at OIEC are now members of the State Bar College.

Professional growth is an ongoing and never-ending process at OIEC. As we build on experience, it is my hope and intention that we will continue to accomplish what our statutory mandates require.

Sincerely,

Norman Darwin, Public Counsel

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Please provide feedback, ask questions, or send a request to be added to the Quarterly Review distribution list at OIECinbox@oiec.state.tx.us.

Saving Money and Trees

Quarterly Review No Longer Offered in Paper Format



In the past, OIEC has provided its stakeholders with paper copies of its *Quarterly Review*. However, due to budgetary constraints, OIEC will no longer be making paper copies of its *Quarterly Review* newsletter.

The Governor, Lt. Governor, and Speaker of the House have asked all state agencies to carefully review and develop a plan to reduce their expenditures over the 2010-2011 biennium. Reducing our printing costs is one way that OIEC can reduce its expenses.

The *Quarterly Review* will continue to be sent out in electronic format to everyone on its distribution list. If you do not currently receive an email from OIEC when the *Quarterly Review* is published, please send an email to OIECInbox@oiec.state.tx.us and ask to be added to the distribution list. Also, when it is published, the *Quarterly Review* is posted on the Publications page of the OIEC website at www.oiec.state.tx.us/resources/publications.html.

OIEC appreciates your support of this cost-saving measure. If you have any questions about this change, please contact Deputy Public Counsel Brian White at brian.white@oiec.state.tx.us or 512-804-4170.

Sunset Advisory Commission Review Update

The evaluation of OIEC by the Sunset Advisory Commission is well underway, and Sunset staff has contacted many OIEC staff to obtain information about OIEC and to learn more about the Texas Workers' Compensation System.

In October, Sunset staff provided a helpful overview of the Sunset review process to OIEC management, and OIEC provided an overview of OIEC operations to Sunset staff. Brian White, Deputy Public Counsel, provided Sunset staff with an overview of the agency's rules, mission, goals, funding, and history. Norman Darwin, Public Counsel, provided Sunset staff with an overview of the policy issues that were included in OIEC's Self-Evaluation Report. Each Director presented Sunset staff with an overview of their section, performance measures, and accomplishments. An overview of OIEC's future initiatives was also included in the presentation.

Sunset staff has solicited input from interest groups and professional organizations and has encouraged public input and discussion of agency functions. Sunset requested system participant feedback about OIEC, TDI-DWC, and HB 7 reforms by December 18, 2009, so that they could have adequate time to review the feedback as part of the Sunset review process.

A questionnaire was due from stakeholders by January 8, 2010. Responses from the questionnaire will help Sunset staff determine what issues they would like to address during the 82nd Legislative Session, which begins January 2011. *Continued on page 3.*



Additional key events that will take place during the Sunset process include the following:

- **January – February 2010:** Potential issue discussion, data requests, and Sunset staff interviews with OIEC management.
- **Draft issues:** Sunset staff presents OIEC with draft issues and recommendations. OIEC will have a chance to make amendments, corrections, and provide further information to Sunset staff.
- **April 2010:** The Sunset staff report is issued.
- **May 25 – 26, 2010:** Public hearings are held. This is one opportunity for the public and stakeholders to provide verbal comment to the Sunset Advisory Commission about OIEC, TDI, DWC, and Office of Public Insurance Counsel (OPIC). OIEC management will provide a response to the Sunset Advisory Commission.
- **July 6, 2010:** Decision hearing is held. The Commission makes a formal vote on the Sunset staff recommendations. No public testimony is allowed.
- **January 2011:** 82nd Legislative session begins. Sunset bill is filed.
- **May 2011:** 82nd Legislative session ends. At this point OIEC will know the full extent of the Sunset reforms, which must be fully implemented by the end of calendar year 2011.

Information about the Sunset process, including information on Sunset Commission meetings, can be found at: www.sunset.state.tx.us.

How You Can Provide Comments About OIEC

Throughout the Sunset review process, every Texan has the opportunity to suggest ways in which the mission and operations of OIEC can be strengthened.

If you would like to share your ideas about the agency, you may send an email to the address below, use the comment form on the Sunset Commission website, or contact Chloe Lieberknecht of the Sunset staff.

Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711
512/463-1300
Fax: 512/463-0705
Email:
sunset@sunset.state.tx.us

Utilization Review Advisory Committee

OIEC's Deputy Public Counsel Brian White was appointed as one of the committee representatives to TDI's Utilization Review Advisory Committee. This appointment was made by TDI Commissioner of Insurance Mike Geeslin pursuant to Texas House Bill 4290 of the 81st Legislature.

Department Deputy Commissioner Debra Diaz-Lara said, "the Texas Department of Insurance is currently working on revising the utilization review rules in effect for both health and workers' compensation. The rule revision is driven in part by recent legislative changes including the passage of HB 4290 which added retrospective reviews and denials based on experimental and investigational criteria to reviews eligible for an Independent Review by an Independent Review Organization." She further noted that, "the Utilization Review Advisory Committee was appointed by Commissioner Geeslin to assist the department by making recommendations to the Commissioner on the content of the rule(s)."

Mr. White's appointment enables OIEC to advocate on behalf of injured employees as the Utilization Review Advisory Committee advises the TDI Commissioner on the development of rules necessary to implement Texas House Bill 4290 and advise him on other changes and additions to the existing rules regulating utilization review that the department determines are needed to administer Chapter 4201 of the Texas Insurance Code.

The Advisory Committee will continue meeting in 2010 to accomplish their objectives. The Advisory Committee members' terms expire on December 31, 2010.



TDI Enforces Statutory Change

Change to Statute was a Result of OIEC's Legislative Recommendation



OIEC made a legislative recommendation for the 80th Texas Legislature, 2007, which would require all health care providers participating in the workers' compensation system to have a Texas medical license. HB 1003 was passed based on OIEC's legislative recommendation and requires all health care providers performing peer reviews to hold a medical license issued by the Texas Medical Board.

As a result, Section 413.031, Labor Code, Subsections (d) and (e) were amended and Subsection (e-2) was added to read as follows:

(d) A review of the medical necessity of a health care service requiring preauthorization under Section 413.014 or commissioner rules under that section or Section 413.011(g) shall be conducted by an independent review organization under Chapter 4202 [Article 21.58C], Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e) Except as provided by Subsections (d), (f), and (m), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Chapter 4202 [Article 21.58C], Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e-2) Notwithstanding Section 4202.002, Insurance Code, an independent review organization that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state.

OIEC works closely with TDI-DWC to refer administrative violations and to assist its enforcement efforts. This quarter, TDI announced that enforcement actions ordered by Commissioner Geeslin against CompPartners Inc., of Irvine, California became final in September. TDI fined CompPartners \$17,500 for allegedly failing to comply with requirements for independent review organizations. This included the requirement that doctors performing review of health care services must be licensed in Texas.

Leadership Conference



Norman Darwin, OIEC's Public Counsel, has made it a priority to ensure that all OIEC supervisors have the resources they need to be effective leaders. In keeping with that commitment, all agency Directors, Associate Directors, and Supervisors met in early November for a two-day Leadership Conference.

Erick Dunaway, Associate Director of Operations, said that the conference was "especially helpful because it gave the supervisors a chance to have subject matter experts answer questions, and then build on each others' questions so that the result was a very clear understanding of what was expected."

Topics discussed included employee relations, performance measures, tracking disputes, and daily workload processes. Additionally, an Employee Relations Handbook was presented to all supervisors that provides a reference for hiring, leave, performance evaluation, and employee discipline issues. The most valuable exchange came through the supervisors sharing ideas and best practices to ensure that everyone across the state is providing effective, efficient, and consistent assistance to their customers.



OIEC on Facebook and Twitter

Social media (such as Facebook and Twitter) are becoming mainstream ways for businesses and government to reach out to their customers. OIEC is now on Facebook and Twitter as another way to educate its customers about OIEC and its services.

Facebook. Facebook is a free social networking website on which users can set up personal or professional pages. The OIEC Facebook page has its contact information, explanation of services, upcoming events (monthly public outreach), as well as other helpful information. When a person becomes a "Fan," they will automatically be notified when something is added to the OIEC page.

Twitter. Twitter is a free social networking service that enables its users to send and read messages known as tweets. Tweets are text-based posts of up to 140 characters displayed on the author's profile page and delivered to the author's subscribers who are known as "Followers" via mobile texting, instant message, or the web. It is increasingly being used by businesses, universities and government agencies to keep in better touch with their customers. If you are on Twitter, you can become one of OIEC's followers at <http://twitter.com/OIEC>.

OIEC Website Enhanced

Website Now Offers More Language Options

OIEC is committed to assisting all injured employees of Texas. As such, OIEC has added an option on the OIEC Internet for its customers to translate the agency's web pages into other languages.



At the top of the page in the upper right hand corner is a link that says "Translate Page." This will bring the user to the bottom of the page where they can select the language they wish to use and then translate the page. The OIEC HTML web pages will then be translated into other languages including: Portuguese, Spanish, French, Italian, German, Dutch, Swedish, Russian, Greek, Arabic, Simplified Chinese, Traditional Chinese, Korean, and Japanese.

This enhancement will ensure that more customers have access to the main information on OIEC's website.

Facebook and Twitter are free social media services that help users get news from people, businesses and agencies.

Question of the Quarter

Q: About six months ago, I tripped and fell at work, injuring my back. The workers' compensation insurance carrier has been paying my doctor's bills related to my back problems and I have been getting better. However, as I have gotten back to my normal activities, I have noticed my right wrist is sore and weak. I caught myself with that hand when I originally hurt my back, but my back bothered me so much I didn't notice my wrist pain until now. Is it too late to add this to my workers' compensation claim?

A: There is not a time limit to pursue the "extent" of a workers' compensation injury, which is what this would be. You should talk to your treating doctor and see if he believes your hand injury is part of the original fall. If so, ask if he will put that in writing and send it to your insurance carrier adjuster. If he or she agrees it is enough information to support the wrist injury is related, the carrier will accept the compensability of the injury to the right wrist. If not, then you might need to get additional supporting documentation from your doctor. Don't forget that OIEC can help you with your dispute if you are unable to work it out with your adjuster.



Customer Service Success Continues

Customers Helped Quickly With Early Intervention Process



Often times injured employees fail to receive the benefits they are entitled to simply because of misunderstandings, lack of information, or lack of communication — no actual dispute is involved. That was the case in three recent situations:

- Recently while make fatality outreach calls, Waco Customer Service Representative, Monica, learned that the widow and small children of a recently deceased injured employee were not receiving the death benefits to which they were entitled. Monica quickly identified and resolved the issue. The wife and her children had recently moved, but because she did not know she was entitled to death benefits she had not provided her new address to the adjuster. The adjuster had been sending the death benefit checks to the family's old address as she was unaware that the wife and children had moved.
- Lubbock Customer Service Representative, Cindy, assisted an injured employee who said that the insurance carrier would not approve the surgery that his treating doctor had requested. When she looked into it, the adjuster stated that the surgery had been approved. However, the treating doctor wanted written confirmation that the surgery would be paid for because he thought an extent-of-injury dispute was being filed. The adjuster said that there was no extent-of-injury dispute that involved the part of the injury for which surgery had been approved. After several days of calls to the surgeon and the adjuster, Cindy was able to work out an agreement between the doctor and adjuster and the surgery was performed.
- Victoria Customer Service Representative, JaneAnn, was contacted by an injured employee who stated he had never received the impairment income benefits to which he was told he was entitled. After reviewing the claim history and a payments printout from the adjuster with the injured employee, JaneAnn was able to help him understand that he **had** actually received impairment income benefits. He just had not understood what the checks were at the time.

By listening to our customers and being proactive, OIEC's Customer Service Representatives are often able to act quickly and make a difference in workers' compensation claims.

Case Study: Contribution

Ronald Bailey v. Texas Mutual Insurance Company

The central question in *Bailey v. Texas Mutual Insurance Company* was whether or not the Insurance Carrier was entitled to a reduction of Claimant's impairment income benefits based on contribution from an earlier compensable injury and if so, by what proportion.

The Claimant was injured in May of 2008 when he slipped while mopping a floor. He sustained head, neck, thoracic, and lumbar injuries in the fall. He was diagnosed with lumbosacral radiculitis, cervical radiculitis, and a closed head injury, and received a 24% impairment rating. The Claimant had also sustained work-related injuries in March and May of 1987. Of these injuries, the one sustained in March was a no-lost-time injury resulting from a motor vehicle accident. The second injury, sustained in May, was a more significant injury to the spine which resulted in an anterior discectomy and fusion at L5-S1. Three months after this procedure (for the May 1987 injury), Dr. R found no nerve root involvement and an excellent fusion at L5-S1. Furthermore, in January of 1990, Dr. N found that while the Claimant noted some low back and lower extremity pain, no lumbar sensory deficits existed and the Claimant exhibited a normal straight leg raising test. *Continued on page 7.*



Case Study (Continued)

In cases involving contribution, an insurance carrier may only seek contribution for impairment income benefits or supplemental income benefits for a documented impairment from an earlier compensable injury. Insurance carriers must also satisfy their burden of proof by showing “cumulative impact”—that a previous compensable injury continues to impair the injured employee at the time of the new compensable injury (Texas Labor Code § 408.084). The appeals panel also requires that cumulative impact be used to show how an old and new injury work together. Prior to the 1989 Texas Workers’ Compensation Act, the burden of proof was rarely met by insurance carriers seeking contribution. In many instances, insurance carrier representatives erroneously believed that they were entitled to contribution for any injury that occurred to the same body part. Following the 1989 Act, an increased effort was made on the part of insurance carriers to seek contribution by obtaining expert testimony from a peer review doctor who would indicate that the symptoms of the original compensable injury complicated the new, compensable injury.

In the instant case, a peer review report was issued by Dr. B which claimed that the prior lumbar injury had a cumulative impact on the lumbar component of the 24% impairment rating. The Hearing Officer, however, found key deficiencies in the report of Dr. B. Most importantly, Dr. B’s opinion regarding contribution from the May 1987 compensable injury references “clinical data presented from the 1987 date of injury”; however, no listing exists of these records in his report. Additionally, Dr. B did not provide any specifics on how, in the absence of radiculopathy, the Insurance Carrier could be entitled to contribution. In considering the facts of the case, the Hearing Officer found that Dr. B did not deliver a persuasive analysis of the cumulative impact of the prior compensable injury to the present 24% impairment rating. The Hearing Officer concluded that the Insurance Carrier was **not entitled** to a reduction of the Claimant’s benefits for the May 2008 compensable injury based on contribution from an earlier compensable injury. This decision was not appealed.

Program Area Employee Spotlight Enedina Medina (Customer Service), Denton Customer Service Representative

Enedina grew up in Commerce—an East Los Angeles suburb—with six sisters and one brother. She was the middle child, and as the siblings on either end of the age spectrum required the most attention, she described herself as being a quiet and well-behaved child who helped take care of her younger siblings. Her parents, a machine operator and homemaker, were strict and hardworking people who, nevertheless, instilled a deep sense of compassion in Enedina. After high school, Enedina worked two jobs—one as a waitress and the other as a front desk clerk. She also improved her computer skills at a trade school. For the next six years she worked for the California Department of Rehabilitation.

In 2005, Enedina and her husband, Isaias, moved to Dallas with their two boys, Geovanni and Aaron. Enedina took a job with the City of Dallas in the Special Supplemental Nutrition Program for Women, Infants, and Children. This seemed to be a logical continuation of Enedina’s need to help others through her work.

Before working for OIEC, however, Enedina worked as an ambulance billing clerk for the Lewisville Fire Department. Perhaps unknown to her, this line of work proved to be the opposite of the type of employment for which she was most suited. Her supervisor, Shawnee Ray, recalled that during Enedina’s interview, Enedina was clear in her purpose for wanting to work for OIEC—she wanted to help people. Empathetic was the best word Shawnee could use to describe Enedina. When asked about a case that stood out in her mind, Enedina recalled a recent case where a carrier had finally agreed to pay for an MRI for an injured employee after she had vigorously pursued the issue.

Enedina is currently the Customer Service Representative in Denton. Since living in Texas, Enedina and her husband have had a third son, Aiden, who, at two years old, leaves them little spare time outside of work. She also shared an interesting story about her last name. As a child, she had an inexplicable dislike of the name Medina, and she told herself that she would never marry someone with that name. To remember such a childish concoction as an adult shows that Enedina is neither forgetful nor judgmental.

