

**In this issue ...**

★ **Sunset  
Recommendation  
for the Division of  
Workers'  
Compensation  
Includes Effort to  
Increase  
Nonsubscribers  
Reporting**

★ **Alliance  
Continues  
Preparations for  
Legislative  
Review of  
Divisions of  
Workers'  
Compensation**

★ **TDI Adopts  
2010 Research  
Agenda**

★ **Federal Health  
Care Reform  
Begins in 2010**

★ **New Member  
Recruitment  
Luncheon Slated  
for Houston**

★ **Federal  
Legislation of  
Interest**

★ **Important  
Compliance  
Information for  
Nonsubscribers**

★ **Dates of  
Future Board  
Meetings**

**Sunset Recommendation for the Division of Workers'  
Compensation Includes Effort to Increase Nonsubscriber  
Reporting**

The Texas Sunset Advisory Commission has released its staff report of recommendations for policy changes regarding the functions and continuation of the Texas Department of Insurance/Division of Workers' Compensation. The recommendations are part of a required Sunset Review of the agency that will occur when the legislature convenes in 2011.

Among the more than two dozen recommendations contained in the report is one aimed at increasing the number of nonsubscribers who file statutorily required reports to DWC. The issue of a lack of reporting of DWC-5 and DWC-7 forms has been discussed during previous legislative sessions, and the Sunset recommendations are expected to elevate the issue. According to the Sunset report, "Only 10 percent of nonsubscribing employers make required reports to DWC, including information on workplace injuries."

The Alliance has expressed support and commitment for increased reporting during committee hearings and in correspondence to legislative leaders. The organization has also encouraged DWC to work with other state agencies to continue its outreach and education efforts to ensure employers are aware of the filing requirements. Providing employers the option to file the required forms electronically is also a suggestion that the Alliance has made to the Sunset Commission and DWC.

While the Sunset recommendation would not require a statutory change, it does recommend management action to achieve the following. Recommendation 6.1: "The Division should closely coordinate with other state agencies to include nonsubscription reporting requirements in their print and electronic publications."

To support the recommendation, the report states:

*DWC receives statutorily required information regarding subscription choice and on-the-job injuries from very few nonsubscribing employers. Due to the voluntary nature of workers' compensation in*

*Texas, employers may not understand that, even though they do not provide workers' compensation coverage, the law still requires them to report that choice to DWC. Further, an employer that fails to report its choice to not subscribe to DWC is more likely to similarly fail to report workplace injuries and deaths. This lack of information negatively impacts the Legislature's ability to evaluate the workers' compensation system and to monitor the safety of Texas employees.*

*DWC's efforts to identify noncompliant employers and increase reporting have not been effective. Despite stepped up efforts to identify noncompliant employers and encourage reporting, compliance is still low. Through its own data and its data share agreement with TWC, the Division identifies employers that have not reported and attempts to gain voluntary compliance. The Division initiates administrative enforcement proceedings only after an employer refuses to comply after multiple contacts. The Division levied no fines in fiscal year 2009, despite pursuing 44 enforcement actions, since the employers ultimately complied with the reporting requirement. While such compliance is good, this extensive process targets individual employers only after they have failed to report and has so far shown little impact on overall reporting compliance by nonsubscribing employers.*

*To make reporting easier and encourage compliance, DWC has begun work on an online system for employers to report their choice regarding workers compensation subscription. As DWC works on the creation of its online reporting form, opportunities exist both to coordinate education efforts with these agencies and to provide links to this form electronically through these agencies' websites.*

The Sunset Commission will consider the staff report at a public hearing scheduled for May 25-26, 2010 and will adopt the report with possible modifications at its July 6, 2010 meeting. To view the full Sunset report on the DWC go to:

[http://www.sunset.state.tx.us/82ndreports/wcd/wcd\\_sr.pdf](http://www.sunset.state.tx.us/82ndreports/wcd/wcd_sr.pdf)

### **Alliance Continues Preparations for Legislative Review of the Division of Workers' Compensation**

Alliance lobbyist Richard Evans has been busy briefing members of the Sunset Advisory Committee in advance of the lawmakers' required Sunset Review of the state's Division of Workers' Compensation (DWC). The review is scheduled to occur during the 2011 legislative session, but preparations are underway and recommendations that were recently released are slated to be formally considered in May. While the Sunset Review is intended to focus on the agency that oversees the state's workers' compensation system, the study presents the opportunity for other workers' compensation issues, including topics related to nonsubscription, to be considered.

In addition to educating legislators on the nonsubscription process, the

Alliance has made known the organization's commitment to increasing the reporting among nonsubscribers of DWC-5 and 7 forms. In a letter delivered to each member of the Sunset Commission, the organization reinforced its full support for current efforts by the DWC to improve compliance by educating nonsubscribers about reporting requirements. The Alliance has suggested that compliance might improve significantly if the state included a notice about the filing rules with the annual tax rate notice the Texas Workforce Commission sends to all employers. The Alliance has also suggested to agency officials that allowing companies to file required forms electronically could improve compliance. As previously referenced, one of the Sunset staff recommendations would direct the agency to pursue additional alternatives to increase reporting compliance. Currently employers must submit the forms by certified mail or in person.

In its communication to Sunset Commission members, the Alliance expressed its concern with the possible inclusion of other issues involving nonsubscribers during the Sunset Commission's review. In a letter to Sunset Advisory Commission Chair Sen. Glenn Hegar, the organization's leadership said nonsubscribers continue to oppose failed bills from past sessions that would require nonsubscribers to submit additional data reporting and restrict the use of arbitration for dispute resolution.

The Alliance's legislative outreach will continue as the organization monitors the Sunset Commission's consideration of the recommendations and other related issues. Members of the Alliance are invited to be a part of the Alliance's legislative efforts by participating in the development of a statewide network of nonsubscriber advocates. To participate, please contact [tim@nonsubscriberalliance.org](mailto:tim@nonsubscriberalliance.org).

### **TDI Adopts 2010 Research Agenda**

The Texas Department of Insurance/Research and Evaluation Group has adopted its 2010 Research Agenda. The full text of the adoption order including the agency's responses to comments is below.

The agenda includes the biennial update of the nonsubscriber survey to determine employer participation in the workers' compensation system. The survey instrument is developed by the agency, and the survey will be conducted by Texas A&M University later this summer.

Also included in the research agenda are reviews of access to care for injured employees in the workers' compensation system, an update of return to work outcomes, and an update on the impact of workers' compensation networks on the cost and quality of health care services. <http://www.tdi.state.tx.us/wc/regulation/roc/documents/WCResearchAgenda2010.pdf>

## **Federal Health Care Reform Begins in 2010**

While most of the major provisions of the recently enacted federal health care reforms will not take effect until 2014, the following provisions are effective in 2010:

- Group health plans in effect on March 23, 2010 are “grandfathered” or exempt from some of the new requirements. Employers can check with their plan issuer for clarification.
- Group health plans, including “grandfathered” plans, effective on or after September 23, 2010, are prohibited from placing pre-existing conditions exclusions on children under the age of 19.
- Any group health plan beginning on or after September 23, 2010, including “grandfathered” plans, offering coverage to dependents must extend that coverage to them until age 26.
- Lifetime limits on the dollar value of coverage are prohibited on all group plans beginning on or after September 23, 2010.
- Annual limits on the dollar value of coverage for the “essential benefits package” on all group plans are prohibited except for a “restricted annual limit” as established by the Secretary of HHS. The prohibition applies to “grandfathered plans.” Annual limits will be prohibited
- All group health plans effective on or after September 23, 2010 are prohibited from cancelling an individual’s coverage once it has been issued unless the insured commits fraud or makes an intentional misrepresentation of material fact.
- Group health plans in effect on or after September 23, 2010 may not include cost-sharing requirements for certain preventive services. “Grandfathered” plans are exempted.
- Group health plans in effect on or after September 23, 2010 are required to maintain internal claims appeals and external review processes that meet federal requirements. “Grandfathered” plans are exempted.
- A temporary reinsurance program is established for employers offering health coverage to retirees between the ages of 55 and 64. The program is effective June 21, 2010 through January 1, 2014.

## **New Member Recruitment Luncheon Slated for Houston**

The Alliance will conduct its second new member outreach luncheon on May 12<sup>th</sup> in Houston. The event is scheduled for noon at the Pappadeaux restaurant located 2525 South Loop West. For additional information

please contact [tim@nonsubscriberalliance.org](mailto:tim@nonsubscriberalliance.org).

Other law firms that are members of the Alliance include:

**Adkerson Hauder & Bezney – Dallas**

[www.ahblaw.net](http://www.ahblaw.net)

**Law Offices of Travis Brewer – Austin**

[www.travisbrewerlaw.com](http://www.travisbrewerlaw.com)

**Cox Smith Matthews Incorporated – San Antonio**

[www.coxsmith.com](http://www.coxsmith.com)

**Gibson McClure Wallace & Daniels LLP – Dallas**

[www.gmwd.com](http://www.gmwd.com)

**McCathern Mooty – Dallas**

[www.mccathernmooty.com](http://www.mccathernmooty.com)

**Owen & Fazio, P.C. – Dallas**

[www.owenfazio.com](http://www.owenfazio.com)

**Federal legislation being monitored by the Alliance is listed below:**

**HR 635** by Rep. Baca (D-CA)

**Description:** Establishes the National Commission on State Workers' Compensation Laws.

**STATUS:** Referred to the House Committee on Education and Labor on January 22, 2009.

**HR 991** by Rep. Gutierrez (D-IL)

**Description:** *Consumer Fairness Act of 2009* - Amends the Consumer Credit Protection Act to treat as an unfair and deceptive trade act or practice under federal or state law any written provision in a consumer transaction or contract that requires binding arbitration to resolve a controversy arising out of or related to the transaction or contract, or the failure to perform any part. Declares such a provision unenforceable. Permits a written agreement to determine an existing controversy by binding arbitration if the parties agree after the controversy has arisen.

**STATUS:** Referred to the House Committee on Financial Services on February 11, 2009.

**HR 1020** by Rep. Johnson (D-GA)

**Description:** *Arbitration Fairness Act of 2009* - Declares that no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of: (1) an employment, consumer, or franchise dispute, or (2) a dispute arising under any statute intended to protect civil rights. Declares, further, that the validity or enforceability of an agreement to arbitrate shall be determined by a court, under federal law, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement. Exempts from this Act arbitration

agreements in collective bargaining agreements.

**STATUS:** Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

**HR 1237** by Rep. Sanchez (D-CA)

**Description:** *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

**STATUS:** Referred to the House Committee on Judiciary on February 26, 2009.

Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

Referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Crime, Terrorism, and Homeland Security on July 23, 2009.

**S 512** by Sen. Martinez (R-FL)

**Description:** *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

**STATUS:** Read twice and referred to the Committee on the Judiciary on March 3, 2009.

### **Important Compliance Information for Nonsubscribers**

State law requires employers in Texas that do not carry workers' compensation insurance to file DWC Form-5 with the Texas Department of Insurance-Division of Workers' Compensation (TDI-DWC). Additional information on DWC Form-5 is available at: <http://www.tdi.state.tx.us/forms/dwc/dwc005nocov.pdf>.

Nonsubscriber employers with four or more employees are also required to use form DWC Form-7 to report each work-related injury resulting in more than one day of lost time, all occupational diseases of which the employer has knowledge (regardless of lost time), and all fatalities occurring during the calendar month. The completed form reporting all such injuries that have occurred during a calendar month must be filled with the TDI-DWC no later than the 7th day of the following month. For more information on DWC Form-7 go to: <http://www.tdi.state.tx.us/forms/dwc/dwc7.pdf>.

Failure to comply with either requirement is an administrative violation and could result in administrative penalties. The Alliance encourages

its members and all nonsubscribers to comply with these requirements.

Links to DWC-Forms 5 and 7 are available on the Alliance Web site at:  
**[www.nonsubscriberalliance.org](http://www.nonsubscriberalliance.org)**.

**Future Board Meetings (All calls are 1:00 p.m. CST)**

- **May 19, 2010 – Conference call**
- **July 21, 2010 – Conference call**
- **September 15, 2010 – Conference call**
- **October 20, 2010 – Annual meeting in Dallas**



**The Texas Alliance of Nonsubscribers**

An employer-driven, nonprofit trade association dedicated to ensuring that nonsubscription interests are better prepared, more cohesive, and strategically proactive in preserving their choice to manage occupational injury claims.

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