28 Texas Administrative Code

Chapter 137 - Disability Management

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http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=137

SUBCHAPTER A - GENERAL PROVISIONS

§137.1. ***Disability Management Concept.***

(a) Disability management is a process designed to optimize health care and return to work outcomes for injured employees to avoid delayed recovery in the Texas Workers' Compensation System.

(b) This chapter is designed to provide disability management tools, such as treatment and return to work guidelines, treatment protocols, treatment planning, and case management to benchmark, manage, and achieve improved outcomes. The Division may use these tools for the following purposes, including, but not limited to:

(1) resolving income benefit disputes;

(2) resolving medical benefit disputes;

(3) establishing performance-based tiers;

(4) defining performance-based incentives;

(5) determining sanctions or penalties;

(6) performing medical quality reviews; or

(7) assessing other matters deemed appropriate by the Commissioner of Workers' Compensation.

(c) The Division will utilize this chapter to implement and interpret specific provisions contained in Labor Code §413.011(a) and (e), and this chapter takes precedence over any conflicting payment policy provisions adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program.

(d) Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to Medical Dispute Resolution by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over adopted treatment guidelines, treatment protocols, treatment planning and Medicare payment policies.

The provisions of this §137.1 adopted to be effective January 18, 2007, 32 TexReg 163.

§137.5. ***Case Manager Certification.***

(a) This section applies to all case management services as defined by Labor Code §401.011(5-a) that are provided under Labor Code Title 5 to injured employees by an insurance carrier on or after September 1, 2011.

(b) This section does not apply to case management services:

(1) subject to Insurance Code Chapter 1305;

(2) subject to Labor Code §504.053(b)(2); or

(3) of a health care provider subject to §134.204 of this title (relating to Medical Fee Guideline for Workers' Compensation Specific Services).

(c) Case managers who are certified must be certified by an established accredited organization including the National Commission for Certifying Agencies, the American Board of Nursing Specialties, or other national accrediting agencies with similar standards for case management certification. Case managers must be certified in one or more of the following areas:

(1) case management;

(2) case management administration;

(3) continuity of care;

(4) disability management;

(5) occupational health; or

(6) rehabilitation case management.

(d) When conducting evaluations to determine if case management services are required, insurance carriers shall utilize case managers who are certified in accordance with subsection (c) of this section.

(e) When providing case management services other than those specified in subsection (d) of this section, an insurance carrier shall utilize case managers who are:

(1) appropriately certified in accordance with subsection (c) of this section; or

(2) skilled, non-certified case managers as specified in subsection (f) of this section.

(f) Skilled, non-certified case managers are eligible to provide services other than those identified in subsection (d) of this section if:

(1) they meet all of the requirements of subsection (c) to sit for a case management certification examination, with the exception of work experience; and

(2) they are working under the direct supervision of an identified case manager that is certified in accordance with subsection (c) of this section in order to meet the experience requirements to sit for a case management certification examination.

(g) Individuals may only be employed or contracted as skilled, non-certified case managers as specified in subsection (f) of this section for an aggregate total of 24 months, beginning with the first month in which the individual first performs case management related services that occurs after the effective date outlined in subsection (a) of this section. After accrual of the 24 months, these individuals shall not conduct case management services until a certification is obtained in accordance with subsection (c) of this section.

(h) Insurance carriers shall be responsible for verifying and documenting in writing compliance with the requirements of subsections (d), (e) and (f) of this section. Insurance carriers shall provide this verification and documentation information to the division upon request.

(i) Claims adjusters shall not be used as case managers. This does not prohibit claims adjusters from performing claims services that are within the scope of licensure in accordance with the Insurance Code Chapter 4101.

(j) Reimbursement policies and maximum allowable reimbursement rates set forth in the adopted fee guidelines

under §134.204 of this title between the treating doctor and other health care providers does not apply to the reimbursement of case managers employed or contracted by insurance carriers under this section.

(k) If the requirements of this section are not met, the insurance carrier may be held liable for administrative violations in accordance with Labor Code provisions and division rules.

The provisions of this §137.5 adopted to be effective September 1, 2011, 35 TexReg 11378.

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SUBCHAPTER B - RETURN TO WORK

§137.10. *Return to Work Guidelines.*

(a) Insurance carriers, health care providers, and employers shall use the disability duration values in the current edition of The Medical Disability Advisor, Workplace Guidelines for Disability Duration, excluding all sections and tables relating to rehabilitation, (MDA), published by the Reed Group, Ltd. (Division return to work guidelines), as guidelines for the evaluation of expected or average return to work time frames.

(b) Information on how to obtain or inspect copies of the Division return to work guidelines may be found on the Division's website: www.tdi.state.tx.us.

(c) The Division return to work guidelines provide disability duration expectancies. The Division return to work guidelines shall be presumed to be a reasonable length of disability duration and shall be used by:

(1) health care providers to establish return to work goals or a return to work plan for safely returning injured employees to medically appropriate work environments;

(2) insurance carriers as a basis for requesting a designated doctor examination to resolve an issue regarding an injured employee's ability to return to work as well as a basis to initiate case management and to refer an injured employee to vocational rehabilitation providers; and

(3) employers, insurance carriers, health care providers, and injured employees to facilitate and improve communications among the parties regarding the return to work goals or plans established by health care providers.

(d) The health care provider, insurance carrier, employer, and Division may consider co-morbid conditions, medical complications, or other factors that may influence medical recoveries and disability durations as mitigating circumstances when setting return to work goals or revising expected return to work durations and goals.

(e) Disability duration values in the guidelines are not absolute values and do not represent specific lengths or periods of time at which an injured employee must return to work; the values represent points in time at which additional evaluation may take place if full medical recovery and return to work have not occurred. System participants may, however, determine additional evaluation is appropriate at any time during a claim. The disability duration values depict a continuum from the minimum time to the maximum time for most individuals to return to work following a particular injury. An insurance carrier may request additional return to work information from a health care provider at any time. An insurance carrier may not use the Division return to work guidelines as the sole justification or the only reasonable grounds for reducing, denying, suspending or terminating income benefits to an injured employee.

(f) For all diagnoses or injuries that are not addressed by the Division return to work guidelines, system participants shall establish disability duration parameters and return to work goals in accordance with the principles of evidence-based medicine as defined by Labor Code §401.011(18-a).

(g) This section is effective on or after May 1, 2007.

The provisions of this §137.10 adopted to be effective January 18, 2007, 32 TexReg 163.

§137.41. *Purpose.*

The purpose of §§137.41 - 137.51 of this title (relating to Disability Management) is to set forth the terms, conditions, and requirements for the return-to-work reimbursement program for employers.

The provisions of this §137.41 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be

effective February 7, 2008, 33 TexReg 930; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.42. *Definitions*.

The following words and terms shall have the following meanings only for the purposes of the return-to-work reimbursement program for employers:

(1) Allowable expense--An expenditure of funds, costs incurred, or costs that will be incurred by an eligible employer for workplace modifications or other costs that are necessary to reasonably assist an injured employee's doctor-identified restrictions that are intended to facilitate the early and sustained return to work of an employee who has a compensable injury. An indemnity benefit, medical benefit, or health care for which an insurance carrier is liable is not an allowable expense under the program.

(2) Applicant--The employer requesting funds from the return-to-work reimbursement program.

(3) Application--The return-to-work reimbursement program application provided by the division for reimbursement, preauthorization, or advancement of funds used or proposed to be used by employers for workplace modifications.

(4) Alternative duty--Job duties that are different from the injured employee's normal or regular pre-injury job duties and that are assigned specifically to facilitate the injured employee's doctor-identified work restrictions or limitations.

(5) Eligible employer--Any employer that:

(A) is not a state agency or political subdivision of the state;

(B) employed at least two but not more than 50 employees on each business day during the preceding calendar year; and

(C) has workers' compensation insurance coverage in Texas.

(6) Division--The Texas Department of Insurance, Division of Workers' Compensation.

(7) Modified duty--The injured employee's normal or regular pre-injury job with workplace modifications to facilitate doctor-identified work restrictions or limitations.

(8) Return-to-work reimbursement program (program)--The division's program for the reimbursement, preauthorization, or advancement of funds to eligible employers for allowable expenses which facilitate the early and sustained return to work of an employee who has a compensable injury.

(9) Return-to-work reimbursement program administrator (administrator)--The administrator of the Texas Department of Insurance, Division of Workers' Compensation return-to-work reimbursement program for employers.

(10) Single employer--An employer operating one or more businesses under the same federal employer identification number. In the absence of a federal employer identification number, a single employer is established by the employer's social security number.

(11) State appropriation year--The State of Texas' fiscal accounting year that begins September 1 and ends August 31 of the following year.

(12) Workplace modification--Physical modifications to the worksite; equipment, devices, furniture, or tools; or other reasonable costs necessary to facilitate an employee's return to restricted, modified or

alternative duty.

The provisions of this §137.42 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.43. ***Return-to-Work Reimbursement Program Administrator.***

The Commissioner of Workers' Compensation shall appoint a qualified employee of the Texas Department of Insurance, Division of Workers' Compensation to serve as the return-to-work reimbursement program administrator to implement the provisions of this subchapter.

The provisions of this §137.43 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.44. ***Return-to-Work Reimbursement Program for Employers.***

(a) Disbursements of funds for the program are dependent on the availability of funds identified by the division.

(b) The disbursement that any single employer may receive from the program may not exceed $5,000 for all workplace modification expenditures made during the state appropriation year for all injured employees.

(c) Disbursements from the program to approved eligible employers shall be made on a reimbursement basis, or at the discretion of the commissioner or the commissioner's designee on an advancement basis, subject to verification of employer eligibility, receipts and expenditures, workplace modifications, the employee's return to work, approval of the employer's application, and any other requirements listed in §§137.45 - 137.50 of this title (relating to the Return-to-Work Reimbursement Program).

(d) Applications shall be processed in the order that completed applications are received by the division.

(e) Approved applications shall be funded from the program as funds become available.

(f) Applications may be denied in whole or in part due to the lack of available funds for the program or if the division determines that all or part of the application does not meet the requirements listed in §§137.45 - 137.50 of this title.

The provisions of this §137.44 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.45. ***Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program.***

(a) In order to be eligible to receive a disbursement from the program, an employer must:

(1) be an eligible employer that has incurred or will incur an allowable expense;

(2) have Texas workers' compensation insurance coverage in effect on the date the employee is injured and be able to provide proof of coverage;

(3) submit an application for funds from the program;

(4) timely provide any additional or supplemental information to the administrator that may be deemed necessary by the division; and

(5) the application must be approved by the division.

(b) In order for an expense to be eligible for a disbursement from the program, the expense must not have been incurred by the employer beyond one year prior to submitting the application to the division. For good cause, the division or the administrator may extend this one year requirement.

(c) After approval of an application by the division, release of funds are contingent upon the approval of the Texas Comptroller of Public Accounts. Approval of an application by the division is not a guarantee of release of funds from the Texas Comptroller of Public Accounts.

The provisions of this §137.45 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.46. ***Application for Funds from the Return-to-Work Reimbursement Program.***

(a) An eligible employer seeking funds from the program shall submit to the division an application as defined in §137.42 of this title (relating to Definitions).

(b) Applications shall be available on the division's website (www.tdi.state.tx.us/wc) and through the division. Upon request, the division shall provide an application form to an employer.

(c) Applications shall be submitted to the division in the form prescribed by the division and must meet the minimum requirements provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications).

(d) The date the completed application is received by the division shall be the official date for purposes of processing the application. An application shall not be processed for approval until all required or requested documentation has been received by the division and any other applicable requirements listed on the application have been met.

(e) An application that has information missing or that does not include the information described in §137.47 of this title, receipts, or other documentation necessary to support the application and to justify the workplace modification may be returned to the employer for completion, documentation supplementation, or the application may be denied.

The provisions of this §137.46 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.47. ***Criteria for Return-to-Work Reimbursement Program Applications.***

In order to be processed and approved by the division an application must contain at a minimum:

(1) The date the employee returned to work or will return to work, and the injured employee's name, date of injury, and Texas Department of Insurance, Division of Workers' Compensation claim number.

(2) An employer's statement or certification that the injured employee returned to work or will return to work in either a modified or alternative duty capacity.

(3) An employer's statement or certification that the employer was able or will be able to sustain the employment of the injured employee as a result of the workplace modification.

(4) A copy of the division's "Work Status Report" as provided by §129.5 of this title (relating to Work Status Reports) from the injured employee's doctor that specifies the injured employee's physical

restrictions or limitations, which necessitated the provision of a workplace modification in order for the employee to return to work in a modified or alternative duty capacity and additional documentation, if any.

(5) A detailed description of the workplace modification, including any supporting information such as receipts, photos or diagrams of the modification, and how the modification facilitates the doctor-identified physical restrictions or limitations.

(6) Documentation of the expenses, including receipts, that provided the workplace modification or other costs necessary to facilitate the injured employee's return to work or the estimated costs in making those proposed workplace modifications.

(7) A signature by the employer or the employer's authorized representative.

The provisions of this §137.47 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.48. ***Return-to-Work Reimbursement Program Administrator Determinations.***

(a) The administrator shall make determinations regarding the following:

(1) the employer's eligibility to participate in the program;

(2) the appropriateness of the workplace modification in facilitating the injured employee's return to work based on doctor-identified restrictions;

(3) the effectiveness of the workplace modification in facilitating the injured employee's early and sustained return to work;

(4) the cost of the workplace modification in relation to usual and customary costs of the same or similar modification; and

(5) the appropriateness of other costs incurred or to be incurred by the employer to return the injured employee to work in a modified or alternative duty capacity.

(b) The administrator or designee may make an on-site evaluation or request information from the employer or providers of a workplace modification in order to verify that:

(1) the workplace modification was or will be provided;

(2) the workplace modification was or will be a reasonable modification and expenditure; and

(3) the injured employee returned to work as a result of the workplace modification.

(c) The administrator may utilize the National Institute of Health's "Searchable Online Accommodation Resource," U.S. Department of Labor resources, Texas Department of Assistive and Rehabilitative Services resources, or similar resources in evaluating and verifying workplace modifications and associated costs. The administrator may consult with a rehabilitation counselor or specialist when verifying the appropriateness of workplace modifications and costs.

(d) The administrator may approve or deny in whole or in part the employer's request for funds from the program pursuant to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program), and §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications).

(e) Decisions regarding approval or denial of applications, the reason for approval or denial of an application, and the amount to be disbursed from the program are final, may not be appealed, and are the discretion of the administrator.

(f) Upon completion of the application evaluation, the employer will be notified in writing of the approval or denial of the application by the administrator.

The provisions of this §137.48 adopted to be effective February 22, 2006, 31 TexReg 1037; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.49. *Optional Preauthorization Plan*.

(a) An eligible employer, as provided by §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), who participates in the return-to-work reimbursement program for employers may apply to the division for a preauthorized reimbursement of allowable expenses from the program prior to making workplace modifications designed to accommodate an injured employee's return to work.

(b) To apply for a preauthorized reimbursement of allowable expenses, an eligible employer must submit to the division a properly completed application as provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications). The application may be obtained from the division as provided by §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program).

(c) Applications will be reviewed in accordance with §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations).

(d) Upon receipt of division approval of the application, the employer may begin all approved workplace modifications set out in the approved application. Upon completion of the approved workplace modifications, the employer may obtain reimbursement from the program by submitting to the division sufficient documentation and receipts to show that the approved workplace modification has been completed.

(e) Upon receipt of the information described in subsection (d) of this section and subject to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), the division shall reimburse the employer the costs incurred by the employer in making the approved workplace modifications unless the division determines that the modifications differ materially from the employer's application.

(f) Release of funds are subject to §137.45(c) of this title.

The provisions of this §137.49 adopted to be effective February 7, 2008, 33 TexReg 930; amended to be effective April 25, 2010, 35 TexReg 3061.

§137.50. *Optional Advance of Funds Plan*.

(a) An eligible employer, as provided by §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), who participates in the return-to-work reimbursement program for employers may apply to the division for an advance of funds for allowable expenses from the program prior to making workplace modifications designed to accommodate an injured employee's return to work.

(b) To apply for an advance of funds for allowable expenses, an eligible employer must submit to the division a properly completed application as provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications). The application may be obtained from the division as provided by §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program).

(c) Applications will be reviewed in accordance with §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations).

(d) Upon receipt of a completed application and subject to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), the division may advance funds to the employer to make approved workplace modifications. The employer shall not make workplace modifications that materially differ from the employer's approved application unless the employer receives written approval from the division for the materially different modifications.

(e) Upon the receipt of the advanced funds from the division, the employer shall complete all approved workplace modifications set out in the approved application within six months of receiving funds from the division. For good cause, the division or the administrator may extend this six-month requirement. Any extension of time for completing workplace modifications must be granted by the division in writing and for a determinable period of time.

(f) Upon completion of the approved workplace modifications, the employer shall submit to the division all receipts for the payments made by the employer for the approved modifications. Any funds not spent after the six-month time frame must be immediately returned to the division.

(g) Release of funds are subject to §137.45(c) of this title.

The provisions of this §137.50 adopted to be effective April 25, 2010, 35 TexReg 3061.

§137.51. ***Monitoring and Enforcement.***

(a) Once an application is submitted, the commissioner or the commissioner's designated representative(s), including the administrator, may inspect the applicant's business to insure that the funds have been or will be spent according to what was or could be authorized. The commissioner or the commissioner's designated representative(s), including the administrator, are authorized to make a complete on-site review of the operations of each applicant at the place of business where the workplace modification has been or will be made, as often as is deemed necessary.

(b) At a minimum, notice of an on-site inspection shall be in writing and be presented by the commissioner or the commissioner's designated representative(s), including the administrator, upon arrival. On-site inspections shall not be conducted during legal holidays as defined in the Government Code §662.003(a).

(c) During an on-site review or upon written request of the commissioner or the commissioner's designated representative(s), including the administrator, the applicant shall make available all records relating to the requested or spent funds. Employers must maintain all relevant records for at least one year from the date of disbursement from the division.

(d) An employer commits an administrative violation if any part of the reimbursed or advanced funds are not used for the purpose or in the manner that the division previously approved in writing. Any unused funds must be returned to the division within six months of disbursement and any funds that are used not in accordance with the plan approved by the division must be immediately returned to the division.

The provisions of this §137.51 adopted to be effective April 25, 2010, 35 TexReg 3061.

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SUBCHAPTER C - TREATMENT GUIDELINES

§137.100. ***Treatment Guidelines.***

(a) Health care providers shall provide treatment in accordance with the current edition of the Official Disability Guidelines - Treatment in Workers' Comp, excluding the return to work pathways, (ODG), published by Work Loss Data Institute (Division treatment guidelines), unless the treatment(s) or service(s) require(s) preauthorization in accordance with §134.600 of this title (relating to Preauthorization, Concurrent Review and Voluntary Certification of Health Care) or §137.300 of this title (relating to Required Treatment Planning).

(b) Information on how to obtain or inspect copies of the Division treatment guidelines may be found on the Division's website: www.tdi.state.tx.us.

(c) Health care provided in accordance with the Division treatment guidelines is presumed reasonable as specified in Labor Code §413.017, and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a).

(d) The insurance carrier is not liable for the costs of treatments or services provided in excess of the Division treatment guidelines unless:

(1) the treatment(s) or service(s) were provided in a medical emergency; or

(2) the treatment(s) or service(s) were preauthorized in accordance with §134.600 or §137.300 of this title.

(e) An insurance carrier may retrospectively review, and if appropriate, deny payment for treatments and services not preauthorized under subsection (d) of this section when the insurance carrier asserts that health care provided within the Division treatment guidelines is not reasonably required. The assertion must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established by Labor Code §413.017.

(f) A health care provider that proposes treatments and services which exceed, or are not included, in the treatment guidelines may be required to obtain preauthorization in accordance with §134.600 of this title, or may be required to submit a treatment plan in accordance with §137.300 of this title.

(g) The insurance carrier shall not deny treatment solely because the diagnosis or treatment is not specifically addressed by the Division treatment guidelines or Division treatment protocols.

(h) This section applies to health care provided on or after May 1, 2007.

The provisions of this §137.100 adopted to be effective January 18, 2007, 32 TexReg 163.

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