

TENNESSEE: NEW RULES GOVERN COMMUNICATIONS BETWEEN EMPLOYERS AND MEDICAL PROVIDERS

By Barry Layton

In an effort to resolve Workers' Compensation claims more quickly and efficiently, the Tennessee legislature has passed the Overstreet Bill (SB 1574/HB1472). Effective July 1, 2009, the law establishes procedures for "reasonable" access to a worker's medical records, thus changing the rules regarding written and oral communications between an employer, insurance carrier, or attorney, and a plaintiff's authorized treating physician in Workers' Compensation claims. To assist Willis clients in understanding and complying with this new law, the rule is summarized below.

EMPLOYER AND EMPLOYER REPRESENTATIVE RIGHTS AND OBLIGATIONS

If the employer, employer's attorney, insurance carrier, third-party administrator, case manager or utilization review agent **has obtained a proper medical authorization** form (Form C-31) signed by the employee and provided it to the

authorized medical provider/treating physician, SB 1574 allows the employer to communicate with the authorized medical provider/treating physician under the following terms:

WRITTEN COMMUNICATIONS

The employer may send written communications to the authorized medical provider/treating physician, but must copy the employee or the employee's attorney on the correspondence along with any attached materials and must provide the employee or the employee's attorney with copies of the physicians' responses within seven days of receipt.

ORAL COMMUNICATIONS

The employer may communicate orally with the authorized medical provider/treating physician, but must send the employee or the employee's attorney a written summary of the opinions or statements of the physician within seven days of the request by the employee or the employee's attorney.

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The employer's attorney may communicate orally with the authorized medical provider/treating physician, but must provide written notice to the employee or the employee's attorney at least seven days prior to the communication and must provide the employee or the employee's attorney with written summary of all opinions expressed by the physician within seven days of the communication.

An individual medical authorization form is required, by statute, for each authorized medical provider and/or treating physician. The Medical Waiver and Consent form (C-31) is prescribed by the Commissioner and is available on the Tennessee Department of Labor & Workforce Development, Workers' Compensation Division's (Division) website. **(in English) and (in Spanish)**

Your insurance carrier, TPA or other employer representative should assist you in completing this form following the first report of injury, after the employee receives initial medical treatment and following visits with each additional authorized medical provider. We encourage you to contact authorized employer representatives to ensure proper steps are being taken to comply with this law.

The bill does require injured employees to provide their employer with a signed, written medical authorization form for injuries occurring on or after July 1, 2009. The form must be addressed to a specific provider authorized by the employer. For additional assistance, please discuss with your insurance carrier, TPA and other authorized employer representatives the steps you need to take to be in compliance with this new law.

Failure to comply with these requirements shall result in the continued application of the implied confidentiality, prohibition against ex parte communications, and privacy of medical records in the custody of the authorized medical provider with respect to employers, employer's attorneys, insurance carriers and case managers.

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