

When an Emergency Responder is Exposed to a Reportable Communicable Disease

1 Step

For all exposures to a communicable disease

Step 1—(Encouraged)

- Immediately report incident to your employer. (Volunteers may be covered and required to report. Please check with Human Resources.)
- Ask for written statement from employer confirming (a) the date of exposure, (b) that it was reported to the employer, and (c) workers' compensation insurance carrier information.
- Also refer to Texas Health and Safety Code, Chapter 81 (or 85) and Texas Department of State Health Services rules 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

2 Step

Step 2—Obtain INITIAL medical treatment/testing from health care provider.

- Tell health care provider:
 - Exposure is **related to work**.
 - **Bill under workers' compensation**.
 - Workers' compensation insurance carrier name and contact information (should have poster in employer's common area with information or contact Human Resources).
- Ask for health care provider to administer **preventive test and/or medication**.
 - **Blood test must be performed with a negative** result within 10 days after exposure. (Although 10 days is the requirement it should be done within 7 days of exposure to ensure payment for test and initial treatment - \$134.501)
 - Need the negative test result to show you did not have the disease before the exposure. This will help establish a valid workers' compensation claim if you are later diagnosed with the disease.
- Provide employer with **sworn affidavit** including:
 - Date of exposure
 - Circumstances of exposure (**helpful to be detailed including job duties at time and where, when, and how exposure occurred.**)
 - Results of the blood test.

3 Step

Only required if the exposure manifests into a communicable disease (and therefore becomes an actual injury)

Step 3—Notify employer about disease within 30 days of the date of injury.

- Tell supervisor (or someone in supervisory capacity) about diagnosis of the disease.
 - Should follow up any verbal conversation in writing.
 - The **date of injury** for an occupational disease is the date *you knew or should have known* the disease was work-related.

4 Step

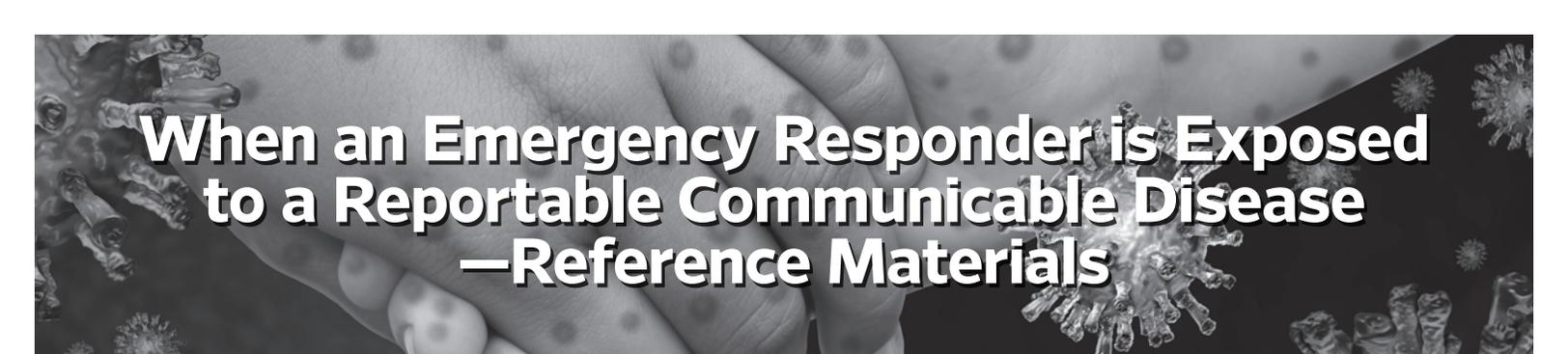
Step 4—File a claim with the Division of Workers' Compensation within one year of the date of injury.

- Fill out and submit the DWC Form-041, **Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease**. A copy of the form can be found at www.tdi.texas.gov/forms/form20numeric.html or the form can be completed online at www.tdi.texas.gov/wc/txcomp.html.

5 Step

Step 5—Get ONGOING medical treatment for disease.

- Choose a doctor to treat the work-related disease.
 - If employer is in a **Workers' Compensation Health Care Network**, then must choose doctor from **network list**.
 - If **non-network, any doctor** may treat under workers' compensation medical fee guidelines and medical criteria.



When an Emergency Responder is Exposed to a Reportable Communicable Disease –Reference Materials

Who are First Responders?

Certain Fire Fighters, Peace Officers, Emergency Medical Technicians and other governmental employees who operate an ambulance or respond to emergency medical calls. *Some* volunteers may be covered and should verify coverage with their employer. (Texas Labor Code, Sections 406.098, 501.026, and 504.012)

What constitutes exposure?

The Texas Health and Safety Code defines a communicable disease as “an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.”

Reportable communicable diseases include:

- Acquired immune deficiency syndrome (AIDS);
- Botulism--adult and infant;
- Cholera;
- Encephalitis;
- Lyme disease;
- Measles;
- Malaria;
- Tetanus;
- Tuberculosis;
- Yellow fever, and many more.

Given the definition, many workers’ compensation first reports of injury claiming exposure do not constitute a workers’ compensation injury, because the communicable disease is not actually contracted. However, if the employee (who was exposed to the communicable disease) later receives a confirmed diagnosis of that disease, then an actual workers’ compensation injury has occurred.

Since prevention treatment may require more than the 7 days which workers’ compensation provides pharmaceutical services when no confirmed injury has occurred, please refer to employer bloodborne pathogens exposure prevention program for more assistance (29 CFR Part 1910.1030).

- Additionally, some manufacturers have discount programs which may provide prevention treatment at drastically reduced prices or free.
- Workers’ compensation carriers must pay for tests regardless of the test result. (28 TAC 110.108)
- Exposure to HIV/AIDS: <https://www.nastad.org/prepcost-resources/prep-assistance-programs>
- Contact workers’ compensation carrier and/or health care provider about the possibility of providing *voluntary* pharmacy services beyond the first 7 days (Texas Labor Code Sec. 413.014 and 28 TAC 134.600)

Emergency Situations

Medical emergency (Texas Insurance Code Sec. 1305.004 and 28 TAC Rule 133.2) means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

- (A) placing the patient's health or bodily functions in serious jeopardy; or
- (B) serious dysfunction of any body organ or part.

The Preauthorization process is bypassed in the case of a medical emergency. (Texas Labor Code Sec. 413.014)

First Responders with a Serious Bodily Injury

In the event of a bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ, first responders are eligible for expedited provision of medical benefits.

- The purpose is to ensure that an injured first responder's claim for medical benefits is accelerated. (Texas Labor Code Sec. 504.055)
- Expedited proceedings in medical disputes, including disputes regarding denial of treatment if the first responder provides notice to DWC that the dispute involves a first responder.

Reimbursement (if applicable)

Ins. Code 1305.451, Section 134.504 (Pharmaceutical Expenses)

- An injured employee may request reimbursement from the insurance carrier when the injured employee has paid for health care provided for a compensable injury, unless the injured employee is liable for payment.
- Request shall be legible and include documentation (receipts, bills, etc.)
- Carrier shall pay or deny within 45 days.
- **NOTE:** Unless claim denied when treatment received (and later deemed a compensable claim) or a medical emergency, medical provider must have secured preauthorization for services to allow for first responder to receive reimbursement.

Initial Pharmaceutical Coverage §134.501

(a) For injuries which occur on or after December 1, 2002, the insurance carrier (carrier) shall pay for specified pharmaceutical services sufficient for the first seven days following the date of injury, regardless of issues of liability for or compensability of the injury that the carrier may have, if, prior to providing the pharmaceutical services, the health care provider (HCP) obtains both a verification of insurance coverage, and an oral or written confirmation that an injury has been reported. For purposes of this rule, specified pharmaceutical services are prescription drugs and over-the-counter medications prescribed by a doctor that cure or relieve the effects naturally resulting from the compensable injury, promote recovery, or enhance the ability of the employee to return to or retain employment.

- (1) In determining the first seven days following the injury, the date of the injury is not counted. The first day after the date of injury shall be counted as "day one." The last day of the seven-day period shall be known as "day seven."

Initial Pharmaceutical Coverage §134.501 *(continued)*

- (2) If the pharmaceutical services are provided after day one, the carrier's reimbursement under this section is limited to the date the pharmaceutical services were actually provided through day seven. (Example: The pharmaceutical services were provided on day four. The carrier's liability for payment under this section would be for pharmaceutical services in an amount prescribed that would be the quantity sufficient for days four, five, six and seven.)
 - (3) Payment for the specified pharmaceutical services for the first seven days following the date of injury shall be in accordance with §134.503 of this title (relating to Reimbursement Methodology). The dispensing fee for the initial prescription shall not be denied, prorated, or reduced even if the HCP provided pharmaceutical services beyond the first seven days following the date of injury and the carrier disputes or denies the pharmaceutical services beyond the first seven days following the date of injury.
- (b) The carrier may be eligible for reimbursement from the subsequent injury fund (SIF) for payments made under subsection (a) as provided in Chapter 116 of this title.
- (c) The HCP can verify insurance coverage and confirm the existence of a report of an injury by calling the employer or the carrier. Upon request, the employer and/or the carrier shall verify coverage and confirm any report of an injury. For verifying insurance coverage, the HCP can also review the commission's internet-based coverage verification system.

 - (1) The HCP shall document verifications and confirmations not obtained in writing by indicating how the verification or confirmation was obtained (date obtained, from whom, etc.).
 - (2) The HCP shall affirm on the bill for the pharmaceutical services, in the form and manner prescribed by the commission, that the HCP verified that there is insurance coverage and confirmed that an injury has been reported.
- (d) Notwithstanding any other provision of this section, the HCP may dispense prescription or nonprescription medications in the amount ordered by the prescribing doctor in accordance with applicable state and federal law (not to exceed the limits imposed by §134.502 of this title (relating to Pharmaceutical Services)).
- (e) The HCP and carrier may voluntarily discuss approval of pharmaceutical services beyond the seven days following the date of injury as provided in Texas Labor Code §413.014(e) and §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care).
- (f) Communication is important to ensure prompt delivery of pharmaceutical services.

 - (1) Injured employees (employees) are encouraged to immediately report their injury to their employer.
 - (2) Employees are encouraged to ask for, and employers to provide, a written statement that confirms an injury was reported to the employer and identifies the date of injury (as reported by the employee) and the employer's insurance carrier. Verifying that there is insurance coverage and/or confirming that an injury was reported does not waive the employer's right to contest compensability under Texas Labor Code §409.011 should the carrier accept liability for the payment of benefits.
 - (3) The carrier's verification of coverage and/or confirmation of a reported injury does not waive the insurance carrier's right to further review the claim under Texas Labor Code §409.021 and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute).

SECTION 122.3. Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders

Texas Administrative Code (Last Updated: August 1, 2019)

TITLE 28. INSURANCE, PART 2., CHAPTER 122.

http://txrules.elaws.us/rule/title28_chapter122_subchaptera

- (a) This section applies to all law enforcement officers, fire fighters, emergency medical service employees, paramedics, and correctional officers who are either state employees or employees covered under workers' compensation insurance (to include those who are providing services as a volunteer and are covered by workers' compensation insurance).
- (b) For purposes of this section "reportable disease" means communicable diseases and health conditions required to be reported to the Texas Department of Health by the Texas Health and Safety Code, §81.041, as amended, including: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism--adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; Chlamydia trachomatis infection; cholera; cryptosporidiosis; dengue; diphtheria; ehrlichiosis; encephalitis; Escherichia coli O157:H7; gonorrhea; Hansen's disease (leprosy); Hemophilus influenzae type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis, acute viral; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (Rubeola); meningitis; meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; Rocky Mountain spotted fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; streptococcal disease, invasive Group A; syphilis; tetanus; trichinosis; tuberculosis; tuberculosis infection in persons less than 15 years of age; typhus; Vibrio infection; viral hemorrhagic fevers; and yellow fever. This list of diseases may change from time to time. To determine the most current list of reportable diseases and exposure criteria refer to Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases.
- (c) An employee listed in subsection (a) of this section will not be entitled to workers' compensation benefits for a reportable disease unless the employee:
- (1) had a test performed within 10 days of an exposure to the reportable disease that indicated the absence of the reportable disease (Exposure criteria and testing protocol must conform to Texas Department of Health requirements. This rule does not prohibit a decision-maker's consideration of other factors.); and
 - (2) provided the employer with a sworn affidavit of the date and circumstances of the exposure and a copy of the results of the test required by paragraph (1) of this subsection.
- (d) The employer's insurance carrier, including state and political subdivision employers, shall be liable for the costs of test(s) required by subsection (c) of this section, regardless of the results of the test(s), in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules. The cost of a state employee's testing, regardless of the results of the test, shall be paid from funds appropriated for payment of workers' compensation benefits to state employees.
- (e) Section 110.108 of this title (relating to Employer Notice Regarding Work-Related Exposure to Communicable Diseases/HIV: Posting Requirements; Payment for Tests) requires each employer with employees covered by this section to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.
- (f) Emergency responders and employers of emergency responders should also refer to the Texas Health and Safety Code, Chapter 81 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

Source Note: *The provisions of this §122.3 adopted to be effective October 15, 1997, 22 TexReg 9682. Reference Lab C §409.001, 409.002, 409.007, 409.008*

SECTION 122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements

- (a)** This section applies to all employees of the state of Texas.
- (b)** A state employee shall not be entitled to workers' compensation benefits for a work-related exposure to human immunodeficiency virus (HIV) infection unless the employee:
 - (1)** had a test performed within 10 days of an exposure to HIV that indicated the absence of HIV infection (Exposure criteria and testing protocol must conform to Texas Department of Health requirements.); and
 - (2)** provided the employer with a written statement of the date and circumstances of the exposure to HIV and a copy of the results of the test required by paragraph (1) of this subsection.
- (c)** The cost of a state employee's test(s) required by subsection (b) of this section, regardless of the results of the test(s), shall be paid from funds appropriated for payment of workers' compensation benefits to state employees, in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules.
- (d)** Section 110.108 of this title (relating to Employer Notice Regarding Work Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests) requires each state agency to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.
- (e)** State employers and state employees should also refer to the Texas Health and Safety Code, Chapter 85 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

Source Note: *The provisions of this §122.4 adopted to be effective October 15, 1997, 22 TexReg 9682. Reference Lab C §409.001, 409.002, 409.007, 409.008*