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**Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas**

Date:

Subject Considered:

**An Annual Research Agenda for the Workers' Compensation Research and
Evaluation Group at the Texas Department of Insurance**

General remarks and official action taken:

On this day came on for consideration by the Commissioner of Insurance (Commissioner), a proposal for the Fiscal Year (FY) 2009 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (Department). House Bill 7 (79th Legislature, Regular Session, 2005) included the enactment of Labor Code §405.0026, which requires the REG to prepare and publish annually in the Texas Register a proposed workers' compensation research agenda for the Commissioner's review and approval. It also requires the Commissioner to accept public comments and hold a public hearing on the proposed research agenda if requested by interested persons.

In January 2009, the REG distributed a draft of the proposed FY 2009 Research Agenda to legislative offices and the Division of Workers' Compensation for their review and input prior to the proposal of the FY 2009 Research Agenda in the Texas Register and on the agency's website.

The proposed FY 2009 Research Agenda was published for comment on the Department's website and in the March 6, 2009 issue of the *Texas Register*. There was one withdrawn request for a public hearing and comments from one stakeholder.

The Commissioner delegated the acceptance and review of the public comments to the Department staff. The Department received comments regarding the proposed research agenda from Richard Evans with Texas Alliance Of Nonsubscribers. The comments and the Department's responses are as follows:

Comment: The commenter states that FY 2009 Research Agenda number six is not required by statute and believes that it is not likely the types of benefit data nonsubscribers collect or the methods used by nonsubscribing employers to evaluate the cost and quality of their benefit programs will be part of an upcoming legislative review. The commenter gives the following reasons: higher levels of nonsubscriber employer and employee satisfaction in the nonsubscriber environment; substantial injury benefits paid to injured employees of

nonsubscribers; no supporter of workers' compensation or opponent of nonsubscription has produced any evidence that contradicts such research findings.

Agency Response: The Department appreciates the comment. The employer participation study reports subscribing and nonsubscribing employer satisfaction but not employee satisfaction levels. Other TDI studies have reported employee experience in the workers' compensation system, but not employee experience in the nonsubscriber work environment.

Comment: The commenter states that TDI already collects information from nonsubscribers through the filing of DWC-5 and DWC-7 forms that provide information on whether an employer is a nonsubscriber and as well as selected information on lost-time injuries, occupational disease, or death. To elaborate on the point above, TDI also performs a bi-annual survey of nonsubscribers that includes information on nonsubscription rates by size and type of industry, reasons why employers purchase workers' compensation, satisfaction levels of nonsubscribers, benefits provided by nonsubscribing employers and other subscription information. The commenter states that this information is adequate to meet the needs of stakeholders and legislative committees, therefore TDI resources would be better utilized on enforcement activity to ensure that nonsubscribers comply with requirements to file DWC-5 and DWC-7 forms.

Agency Response: The Department appreciates the comment. However, the 2009 Research Agenda project number six evaluates the methodology used by the nonsubscriber in collecting data and evaluating the cost and quality of benefits programs. Thus, the research project collects valuable information on nonsubscriber practices that are not otherwise collected in the bi-annual survey to which the commenter refers. The REG proposed the research project pursuant to its statutory charge in Texas Labor Code §405.0025 to conduct professional studies and research related to the delivery of benefits and the quality and cost of medical benefits.

Comment: The commenter states that data collection from nonsubscribers is difficult and more complex than in the workers' compensation system, primarily because multiple payors may be involved in the payment of claims associated with one injury. Many nonsubscribing employers utilize one or more third party administrators to provide benefits to injured employees while other nonsubscribing employers administer injury benefits in-house. The commenter also states that there are many different types of nonsubscriber benefit plans, with variations in eligibility rules, forms of benefits, limitations, exclusions, and claim procedures. The commenter further states that the data collection challenges are compounded by the variation in the methodologies used to classify claims and collect information.

Agency Response: The Department appreciates the comment. Texas Labor Code §405.0025 requires the REG to conduct professional studies and research on the delivery of benefits and the quality and cost of medical benefits. The REG must collect the information outlined in the FY 2009 Research Agenda in order to fulfill this statutory duty. The data collection is not meant to be unduly burdensome, but it is designed to give the REG the information necessary to meet its statutory obligation.

Comment: The commenter states that while the agency may have sufficient resources to complete this project, TDI should focus those resources on enforcement and educating employers on their filing responsibilities under the Labor Code. The commenter also offered to work with TDI to help disseminate information to nonsubscribing employers regarding these requirements.

Agency Response: The Department appreciates the comment and the offer to work with TDI on these issues. The Department will utilize the data collected pursuant to the FY 2009 Research Agenda to properly focus regulation efforts by identifying the areas that need enforcement and education.

. FY 2009 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance

1. Completion and publication of the third edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502 and Labor Code §405.0025).
2. Continuing examination of the frequency of employers and workers' compensation claims participating in certified health care delivery networks.
3. An annual update of return-to-work outcomes for injured workers using data from the Texas Workforce Commission, including an examination of the characteristics associated with injured workers and employers who could benefit most from return-to-work outreach and coordination efforts.
4. An analysis of the expanded role and impact of designated doctors in the Texas workers' compensation system since the passage of House Bill (HB) 7 in 2005 in resolving new issues such as extent of injury; the ability of a worker to return-to-work; and whether a worker's disability is a direct result of the compensable injury.
5. A preliminary analysis of the impact of the adoption of the *Official Disability Guidelines-Treatment in Workers' Comp* (ODG), published by Work Loss Data Institute (WLDI) in accordance with §413.011, Labor Code, on non-network treatment utilization, medical costs, and other injured worker outcomes.
6. A survey of the types of benefit data nonsubscribing employers currently collect for occupational injuries and illnesses and a survey of the methods used by nonsubscribing employers to evaluate the cost and quality of their benefit programs.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the FY 2009 Annual Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance, as specified herein, is hereby approved and adopted, effective immediately.

AND IT IS SO ORDERED.

TEXAS DEPARTMENT OF INSURANCE

MIKE GEESLIN
COMMISSIONER OF INSURANCE

RECOMMENDED BY:

D.C. Campbell
Director
Workers' Compensation Research and Evaluation Group

Attest:

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

Commissioner's Order No. _____