

**Texas Department of Insurance  
Division of Workers' Compensation**



**Legacy Claims  
Plan-Based Audit**

February 28, 2014

## **Section I: General Statement and Overview**

The Division of Workers' Compensation (DWC) is required by Texas Labor Code (TLC) §413.002 to "monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the Commissioner relating to health care, including medical policies and fee guidelines." Furthermore, Texas Labor Code §413.0512 allows the Medical Quality Review Panel (MQRP) to recommend to the medical advisor appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations. The DWC will manage the medical quality review process in a manner that is fair to all workers' compensation system participants, open, and transparent to the extent consistent with state confidentiality laws, and provide the subject of a review the opportunity to participate throughout the review process as set forth in the Medical Quality Review Process. Medical quality reviews aid the DWC both to monitor compliance with the Texas Workers' Compensation Act (Act) and DWC Rules and to help ensure that injured employees in the workers' compensation system receive medically necessary and appropriate health care that is timely and cost-effective, and facilitate functional recovery and appropriate return-to-work outcomes.

The 79<sup>th</sup> Texas Legislature passed House Bill 7, which amended TLC §408.028 concerning *Pharmaceutical Services*. The pertinent provisions stated: "The commissioner by rule shall adopt a closed formulary under Section 413.011." The pharmacy closed formulary rules were adopted in December 2010. Injured employees injured on or after September 1, 2011 have been subject to the closed formulary beginning September 1, 2011. However, beginning September 1, 2013, prescriptions for injured employees who were injured before September 1, 2011 (known as "legacy claims") will also be subject to the closed formulary. Since 2010 the DWC has urged system participants through educational sessions, meetings, and letters to begin preparing for the legacy claim transition into the pharmacy closed formulary in order to be in compliance with 28 Texas Administrative Code (TAC) §134.510. Specifically, that in order to ensure continuity of care, an insurance carrier and a prescribing doctor may enter into an agreement regarding the application of the pharmacy closed formulary for individual legacy claims on claim-by-claim basis.

## **Section II: Purpose for Plan-Based Audit**

- Promote the delivery of quality health care in a cost-effective manner, including protection of injured employee safety; and
- Ensure that health care providers adhere to the *Official Disability Guidelines – Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary* and medically accepted standards of care for prescribing drugs, including status "N" drugs.

## **Section III: Scope and Methodology for Plan-Based Audit**

- Health care providers who have prescribed status "N" drugs to legacy claims through August 31, 2013 where the:
  - health care provider has not reached an agreement with the insurance carrier on a legacy claim; and
  - legacy claim was selected as part of the Data Call managed by the Workers' Compensation Research and Evaluation Group (REG).

- Status “N” drugs will be identified as published in the ODG.
- The procedure for determining the medical necessity and appropriateness of health care services is set forth in Section II of the Medical Quality Review Process. See also TLC §413.002.
- Legacy claims will be identified through Medical State Reporting data (i.e., Medical EDI data).

## **Section IV: Selection Criteria for Plan-Based Audit**

- Time frame to select data:
  - The REG has identified legacy claims pursuant to the Data Call based on legacy claims that were prescribed as status “N” drugs dispensed September 1, 2012 through August 31, 2013.
  - Data Call results will be utilized to identify health care providers that have reached an agreement with insurance carriers on the selected legacy claims.
  - Data Call results will be validated through the Medical EDI data.
- Exclusion:
  - Health care providers who have less than 10 claims that meet the selection criteria.
- Subject Selection, based on the REGs Data Call and validated through Medical EDI data:
  - Select no more than 10 health care providers who have prescribed status “N” drugs that had:
    - the lowest percentage of:
      - (legacy claims with agreements as of August 31, 2013 as reported in the data call) divided by (total number of legacy claims as identified in the REGs Data Call and validated through Medical EDI data); and
      - the highest number of legacy claims per the selection time frame in the event of a tie from the lowest percentage above.
- Case Selection:
  - Select no more than 7 cases per each health care provider.
  - Cases selected are those legacy claims where an agreement has not been reached and the legacy claim has continued on prescribed status “N” drugs through August 31, 2013.
- The request for medical records will offer the health care provider an opportunity to:
  - explain their reasons for continuation of “N” status drugs; or

- provide a copy of a written agreement prior to August 31, 2013 in lieu of sending medical records for any of the selected legacy claims.

## **Section V: Roles and Responsibilities**

### Information Management Services (IMS), DWC

- Provides a list of health care providers based on the scope, methodology, and selection criteria.
- Selects the subjects and case files for medical quality review based on selection criteria.

### Health Care Quality Review (HCQR), DWC

- Notifies subjects chosen for medical quality review and requests documents.
- Requests from IMS another subject or case if the nurse investigator verifies in writing that a subject or case was not selected in accordance with the approved plan-based audit criteria.
- Selects MQRP members to perform a review in accordance with TLC §§408.0043, 408.0044, and 408.0045 and 28 TAC §180.1 and §180.22.
- Provides an Executive Summary to the Commissioner of Workers' Compensation upon conclusion of the plan-based audit.

### Medical Advisor, DWC

- Develops questions for the MQRP Experts. Those questions shall be approved by all undersigned parties prior to any records being sent to the MQRP Experts.

## **Section VI: Conflicts**

This Legacy Claims Plan-Based Audit will follow the approved Medical Quality Review Process in effect. However, if a specific conflict exists between this plan-based audit and the Medical Quality Review Process, this plan-based audit prevails.

**Section VII: Approvals**

This Legacy Claims Plan-Based Audit is respectfully submitted by:

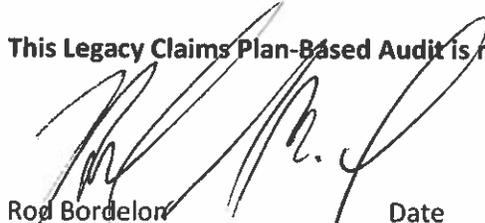


David G. Davis, M.D.  
Medical Advisor

Date

2/28/14

This Legacy Claims Plan-Based Audit is respectfully approved by:



Rod Bordelon  
Commissioner of Workers' Compensation

Date

2/28/14