

No. 2420

**Official Order**  
***of the***  
**Texas Commissioner of Insurance**

**Date: April 3, 2013**

**Subject Considered: FY 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance**

The commissioner of insurance considers the proposed fiscal year (FY) 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance. Labor Code §405.0026 requires the commissioner to adopt an annual research agenda for the REG. To accomplish this, TDI must publish a proposed research agenda in the *Texas Register* for public review and comment. Upon request, the commissioner must hold a public hearing on the proposed research agenda.

In October 2012, on TDI's website, the REG requested research agenda suggestions from stakeholders and the general public. The REG also asked legislative offices for input on the FY 2013 Research Agenda.

TDI published the proposed FY 2013 Research Agenda for comment on the TDI website and in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9684). TDI received five comments from two individuals in support of the proposed FY 2013 Research Agenda with additions, and no requests for a public hearing.

**Comment:**

A commenter requested that TDI expand FY 2013 Research Agenda Item No. 2 to include a comparison of the health care provided by a health care provider when treating an injured employee through a workers' compensation health care network to the health care the same provider uses to treat an injured employee outside of a workers' compensation health care network. The commenter suggested using the International Classification of Diseases, Ninth Revision (ICD-9) codes to compare treatments and determine whether injured workers receive different treatments based on their network or non-network coverage status.

**Agency Response:**

TDI appreciates the comment. FY 2013 Research Agenda Item No. 2 currently addresses network participation, as Insurance Code §2053.012(a) and Labor Code §405.0025(b) require. Neither of these statutes authorizes a study comparing treatments offered to network and non-network claimants by individual health care providers. As a result, such a comparison would require TDI to adopt an additional agenda item that is not included in the current research budget. TDI declines to add the

requested study to the FY 2013 Research Agenda, but will consider the commenter's suggestion for inclusion in the FY 2014 Research Agenda.

**Comment:**

A commenter requested that the REG conduct research to examine the extent to which physicians that treat injured employees for chronic pain comply with the requirements and recommendations of the Texas Medical Board rules in Title 22, Texas Administrative Code, Part 9, Chapter 170 (Pain Management). Specifically, the commenter recommended that the research project examine how frequently Texas physicians perform the documentation, consent, agreements, reviews, consultations, and referrals required or recommended by the Texas Medical Board. The commenter suggested that the Medical Quality Review Panel and the Texas Medical Board could assist the REG in this project.

**Agency Response:**

TDI appreciates the comment and recognizes the value of such a project. TDI would need to conduct a data call or survey to collect sufficient information for the project. Approximately 18,000 medical doctors treat injured employees in Texas, so collecting data for even a randomized selection of a representative sample would require resources that are not included in the current research budget. TDI declines to add this project to the FY 2013 Research Agenda, but will consider the commenter's suggestion for inclusion in a future research agenda.

**Comment:**

A commenter requested repeating the study conducted for the 2001 report *Striking the Balance: An Analysis of the Cost and Quality of Medical Care in the Texas Workers' Compensation System*.

**Agency Response:**

TDI appreciates the comment. In 2001, the Research and Oversight Council on Workers' Compensation (ROC) produced the above-named report. That report was commissioned and funded by HB 3697, 76th Legislature, Regular Session, 1999, and required the ROC to contract with a primary investigator that was selected through a competitive bidding process. The administrative data sources in that study included eight states other than Texas, four large multi-state employers, and a large group health insurance carrier in Texas covering the State of Texas Employees Retirement System. In addition to the administrative data, the study collected survey data from a random, stratified sample of injured employees in Texas and the comparison states.

While it would be cost-prohibitive to duplicate all elements of the 2001 ROC study this fiscal year, other recent REG projects have addressed some of the same issues in similar ways. For example, the 2012 REG report, *Health Care Cost and Utilization in the Texas Workers' Compensation System, 1998 - 2011*, examines medical costs and utilization trends in the workers' compensation system, including pharmacy and dental services.

In addition, the annual workers' compensation network report card required under Insurance Code §1305.502(a) - (d) and Labor Code §405.0025(b) reports annual medical costs, utilization, access to care, satisfaction, and return-to-work results for network and non-network claims, with a particular focus on the medical service groups identified in the 2001 study as being consistently over-utilized in Texas.

Finally, the biennial report, *Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System*, published by the REG in December 2012, used many of the same methodologies and injury groupings as the ROC's 2001 study to compare medical costs, utilization, access to care, satisfaction with care, return-to-work outcomes, and functional outcomes before and after implementation of HB 7, 79th Legislature, Regular Session, 2005. TDI will continue to explore research opportunities to update the findings from the 2001 report.

**Comment:**

A commenter requested an analysis of the cost of durable medical equipment (including implantables) delivered and billed through medical facilities versus the cost of durable medical equipment (including implantables) billed directly to the carrier or payor as required by Labor Code §413.011(i).

**Agency Response:**

TDI appreciates the comment and will consider the feasibility of such a study in a future research agenda. Because the requested analysis would require an additional agenda

item that is not included in the current research budget, TDI cannot include it in the FY 2013 Research Agenda.

**Comment:**

A commenter requested an analysis of the prescribing patterns for Schedule II and Schedule III opioids in the Texas workers' compensation system based on similar research performed in the California Workers' Compensation Institute study, *Prescribing Patterns of Schedule II Opioids in California Workers' Compensation* (March 2011).

**Agency Response:**

TDI appreciates the comment. In 2011, the REG published a report, *Pharmaceutical Utilization and Costs, 2006 - 2010*, which examined prescription patterns for claims across a variety of factors, including network status, injured body part, and drug type. In particular, the REG examined and reported on the utilization and costs of Schedule II opioids in Texas.

In 2012, another REG report, *Impact of the Texas Pharmacy Closed Formulary: A Preliminary Report*, examined the early impact of the recently implemented closed formulary on utilization and cost of "N-drugs" and other drugs in Texas. The report showed that the number of prescriptions for opioids classified as "N-drugs" decreased by 57 percent while the number of prescriptions for other opioids decreased by nine percent during the study period.

FY 2013 Research Agenda Item No. 7 is an update of the analysis of the impact of the closed formulary requirement on the utilization and cost patterns in pharmacy prescriptions for new claims, as well as a trend analysis for legacy claims. Pending available time and resources during this legislative session, TDI will consider conducting separate analyses for Schedule II and Schedule III opioids.

The commissioner adopts the following FY 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group:

**FY 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance**

1. Completion and publication of the seventh edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502(a)-(d) and Labor Code §405.0025(b)).
2. An annual examination of the frequency of employers and workers' compensation claims participating in certified health care delivery networks (required under Insurance Code §2053.012(a) and Labor Code §405.0025(b)).
3. An annual update of medical costs and utilization in the Texas workers' compensation system (required under Labor Code §405.0025(a)(4)).

4. An annual update of return-to-work outcomes for injured employees, including an examination of the impact of pharmaceutical utilization on return-to-work rates (required under Labor Code §405.0025(a)(4)).
  
5. An analysis of the impact of the Division of Workers' Compensation's adopted treatment guideline on non-network treatment utilization, medical costs, and other outcomes (required under Labor Code §405.0025(a)(4)).
  
6. An analysis of income benefit disputes, focusing on outcome trends for disputed issues, such as impairment ratings, compensability, extent of injury, and the ability of an injured employee to return to work (required under Labor Code §405.0025(a)(4)).
  
7. An analysis of the impact of the closed formulary requirement on utilization and costs patterns in pharmacy prescriptions for new and legacy claims (required under Labor Code §405.0025(a)(4)).

The commissioner orders that the FY 2013 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance, as specified above, is approved and adopted, effective immediately.

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Eleanor Kitzman  
Commissioner of Insurance

Recommended by:

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DC Campbell, Director  
Workers' Compensation Research and Evaluation Group

Attest:

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Sara Waitt, General Counsel  
Texas Department of Insurance

Commissioner's Order No. \_\_\_\_\_