

No. 3935

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

Date: APR 28 2015

FY 2015 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) 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance. Labor Code §405.0025 authorizes the REG to conduct professional studies and research related to the delivery of benefits; litigation and controversy related to workers' compensation; insurance rates and ratemaking procedures; rehabilitation and reemployment of injured employees; the quality and cost of medical benefits; employer participation in the workers' compensation system; employment health and safety issues; and other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

Insurance Code §1305.502 requires the REG to develop and issue an annual informational report card that identifies and compares, on an objective basis, the quality, costs, health care provider availability, and other analogous factors of workers' compensation health care networks operating under the workers' compensation system of this state with each other and with medical care provided outside of networks. Labor Code §405.0026 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.

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In September 2014, the REG posted an informal request for suggestions for its FY 2015 research agenda on the TDI website to get input from stakeholders and the general public. The REG also asked legislative offices for input.

After considering the four responses to the informal request for suggestions, TDI published a proposed research agenda in the November 28, 2014, issue of the *Texas Register* (39 TexReg 9390) for public review and comment. TDI received five comments from four commenters and no hearing requests.

Comment:

A commenter supports the adoption of the proposed FY 2015 research agenda.

Agency Response:

TDI appreciates the supportive comment.

Comment:

A commenter suggests research on the commenter's perception that designated doctors are reluctant to issue maximum medical improvement (MMI) findings in cases where the treating doctor plans future medical treatments. The commenter states that perhaps a more expansive understanding of MMI introduced by the Texas Department of Insurance, Division of Workers' Compensation (Division), which would explain the divergence from the American Medical Association Guides, Official Disability Guidelines Treatment in Workers' Comp (ODG), and the Medical Disability Advisor parameters. If not, the commenter suggests a research opportunity to review randomly selected designated doctor evaluation reports as related to the designated doctor's conceptual understanding of MMI.

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 information for the project. There are approximately 850 designated doctors in the Texas Workers' Compensation system, 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 a research project on designated doctor evaluation reports and how they relate to the designated doctor's conceptual understanding of maximum medical improvement.

Comment:

A commenter would like the REG to research how often implantable devices and items are billed separately from the hospital bill, the types of implants being billed (as an aggregate, by the hospital and separately), and what system medical costs are associated with implantable devices and items as an aggregate, as billed by hospitals and as billed separately. As part of the study, the commenter requests that the REG review and report on the frequency of refills for implanted pain pumps and the system medical costs associated with refills.

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 2015 research agenda.

Comment:

A commenter wants to add to FY 2015 research agenda item 3. The commenter states the REG should compare the health care provided by a health care provider when treating an injured worker through a workers' compensation health care network to when the health care provider treats an injured worker outside of a workers' compensation health care network. The commenter states the research should compare injured workers with the same International Classification of Diseases (ICD-9) codes and the treatment should be identified with current procedural terminology (CPT) codes to determine if there are different treatments being provided based on network or non-network status.

The commenter states the REG should examine the issues adjudicated by contested case hearing (CCH) officers and determine the percentage of cases resolved in favor of the carrier and the percentage resolved in favor of the injured employee. The commenter states the REG should also determine how many employees were able to get doctors to testify on their behalf or write detailed reports showing how the on-the-job injury caused the condition that the employee is claiming as part of his or her workers' compensation injury among the cases that were resolved in favor of the injured employee.

The commenter states the REG should examine the number of on-the-job injuries covered by workers' compensation insurance in FY 2012 and total the number of PLN 1 and PLN 11 forms in those cases. The commenter states the REG should do the same for 2013 and 2014 to see if the number of denials are increasing, remaining the same, or decreasing in light of the decision in *Texas Mutual Ins. Co v. Ruttiger*, 381 S.W.3d 430 (Tex.2012).

Agency Response:

TDI appreciates the comment. The 2014 Workers' Compensation Report Card compares the health care provided by a network provider with the care provided by a nonnetwork provider. Medical cost, utilization of care, and administrative access to care measures were calculated using the Division's medical billing and payment database, a collection of approximately 100 medical data elements including charges, payments, and CPT and ICD-9 codes for each injured employee. The FY 2015 research agenda item 3 currently addresses access to medical care in the workers' compensation system, including an initial analysis of access to medical care through TDI-certified Workers' Compensation Health Care Networks. This does not cover issues adjudicated by CCH officers or comparing the number of on-the-job injuries covered by workers' compensation and the total number of PLN1 and PLN11 forms. This comparison would require TDI to adopt an additional agenda item that is not included in the current research budget. TDI respectfully declines to add the requested study to the FY 2015

research agenda, but will consider the feasibility of such a study in a future research agenda.

Comment:

A commenter states that pharmacy benefit managers, more than adjusters, are denying approval or requiring preauthorization and medical necessity letters even for Y drugs. This is happening with antidepressants, which ODG supports for post-traumatic stress disorder and depression. The commenter requests that we track the costs of these demands and delays on the system. Examples of costs include delayed access to medications, which delays recovery and requires extra weeks of temporary income benefits; labor costs resulting from extra phone calls by doctors, adjusters, and pharmacies; and time for doctors to write letters and their staff to deal with the extra work. Most of the time the pharmacy benefit manager approves the medications, but not until as much as a four week delay.

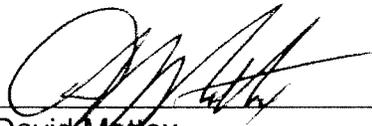
Agency Response:

TDI appreciates the comment and recognizes the value of such a project. Currently, the Division tracks the prescription costs of N drugs and other drugs and the costs and utilizations by drug groups (see *Impact of the Texas Closed Formulary August 2014* - <http://www.tdi.texas.gov/reports/wcreg/documents/Pharma-aug2014.pdf>). TDI would need to conduct a data call or survey to collect sufficient information on the costs of delayed access to medications and extra weeks of temporary income benefits; labor costs of phone calls by doctors, adjusters, and pharmacists; and time for doctors to write letters and deal with the extra work. Collecting data for even a randomized sample would require resources that are not included in the current research budget. TDI declines to add this project to the FY 2015 research agenda, but will consider the commenter's suggestion for inclusion in future agendas.

The commissioner adopts the following FY 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance:

1. Completion and publication of the ninth edition of the Workers' Compensation Health Care Network Report Card.
2. The annual update of medical costs and utilization in the Texas workers' compensation system.
3. An analysis of injured employee access to medical care provided under the workers' compensation system, including an initial analysis of access to medical care through TDI-certified workers' compensation health care networks.
4. The annual update of return-to-work outcomes for injured employees, including an examination of injured Texas employees' initial and sustained return-to-work rates and wage-recovery rates.
5. An updated analysis of the impact of the pharmacy closed formulary on the utilization and costs patterns in pharmacy prescriptions for new and legacy claims.

The commissioner approves and adopts the FY 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance, as specified above, effective immediately.



David Mattox
Commissioner of Insurance

Recommended by:

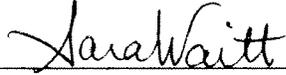


Amy Lee, Special Deputy Commissioner
Policy and Research, DWC

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Attest:



Sara Waitt, General Counsel
Texas Department of Insurance

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