

No. 08 - 0458

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

**Date: JUN 15 2009**

**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*. The Department received a request for a public hearing on the FY 2009 Research Agenda from one stakeholder, but this request was later withdrawn. Additionally, the Department received written comments on the proposed FY 2009 Research Agenda from a different stakeholder.

The Commissioner delegated the acceptance and review of the public comments to Department staff. The Department received comments regarding the proposed research agenda from the 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 but disagrees that nonsubscribing employer data collection and data reporting compliance issues are not of interest to policymakers. During the 80th and 81st legislative sessions, the Texas Legislature placed an appropriations rider on the Department's budget requiring the Department to monitor nonsubscribing employers' compliance with existing data reporting requirements in the Labor Code and report agency compliance efforts to the Legislature as part of its biennial report. Additionally, several bills were proposed during the 80th and 81st legislative sessions to increase data reporting requirements for nonsubscribing employers; however, these bills failed to pass. The continued proposal of legislation directed at increasing data reporting requirements for nonsubscribing employers, coupled with the legislature's directive to the Department to monitor and report on the compliance of nonsubscribing employers with current data reporting requirements, demonstrates legislative interest in the information that will be compiled by this research project.

Additionally, the Department anticipates that there will be continued interest from the legislature and system stakeholders regarding nonsubscriber data reporting issues during the Division of Workers' Compensation's (Division) upcoming Sunset Review in 2011. This research project was developed with the intention of providing policymakers with objective information regarding the methods that nonsubscribing employers utilize to collect and evaluate claim and benefit data.

**Comment:** The commenter states that the Department 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 as well as selected information on lost-time injuries, occupational disease, or death. To elaborate on the point above, the Department also performs a biennial 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 Department 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 data collection and program evaluation practices that are not otherwise collected in the biennial survey to which the commenter refers. The REG proposed the research project pursuant to its statutory charge in the Labor Code §405.0025 to conduct professional studies and research related to employer participation in the Texas workers' compensation system, as well as 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, but the comment suggests that the Department's intent with this project is to actually collect claim-level data from nonsubscribing employers. As a point of clarification, the purpose of 2009 Research Agenda project number six is to survey nonsubscribing employers regarding the types of data they collect for work-related injuries as well as better understand the methods that these employers utilize to evaluate the effectiveness of their occupational injury benefit programs. The scope of this project does not necessarily include collecting actual claim data from nonsubscribing employers, but rather to better understand how nonsubscribing employers organize, collect and evaluate their own claim data. The information collected as part of this project will help policymakers and regulators better understand the complexities and variations in nonsubscriber data collection as described by the commenter and how current data reporting requirements impact those complexities.

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

**Agency Response:** The Department appreciates the comment and the offer to work with the Department on these issues. The Department will utilize the data collected pursuant to the FY 2009 Research Agenda to identify methods to allow nonsubscribing employers to more effectively fulfill their statutory data reporting responsibilities under the Labor Code.

### **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.

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**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

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