

Texas Department of Insurance  
Division of Workers' Compensation



Medical Quality Review Procedure

January 01, 2011

**TEXAS DEPARTMENT OF INSURANCE**  
**DIVISION OF WORKERS' COMPENSATION**

**Medical Quality Review Procedure**  
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## **Section I: General Statement and Overview**

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) is required by Texas Labor Code §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." The TDI-DWC will manage the medical quality review process in a manner that is fair to all 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.

Medical quality reviews may be initiated from either a complaint, a plan-based audit, or monitoring resulting from a consent order. The TDI-DWC's Medical Advisor oversees the medical quality review process conducted by the Medical Quality Review Panel (MQRP). Experts and Arbiters comprise the MQRP. Medical quality reviews performed by the MQRP Experts (Expert) aid the TDI-DWC both to monitor compliance with the Texas Workers' Compensation Act (Act) and 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 facilitates functional recovery and appropriate return-to-work outcomes. The Arbiters represent the Medical Advisor in Informal Settlement Conferences and make recommendations for proposed consent orders. The Expert's and Arbiter's full responsibilities are further defined in Section II.

This document describes procedures that the TDI-DWC will employ to monitor the quality of medical services provided by system participants within the Texas workers' compensation system.

## **Section II: Roles and Responsibilities**

### **A. Medical Advisor**

Pursuant to Texas Labor Code §413.0511, the TDI-DWC employs or contracts with a Medical Advisor who is a doctor as defined by the Texas Labor Code §401.011. The Medical Advisor assists in the TDI-DWC's efforts to implement provisions of the Act related to health care for injured employees, ensures the quality of health care provided in the system, and recommends sanctions when indicated. The Medical Advisor provides feedback and recommendations to the TDI-DWC through the medical quality review process with the assistance of the MQRP.

### **B. Associate Medical Advisors**

Associate Medical Advisors work under the direction of the Medical Advisor and assist the Medical Advisor in performing the Medical Advisor's duties under the Act.

### **C. Health Care Quality Review (HCQR)**

HCQR staff is comprised of a director, nurse investigators, and administrative staff who assist in the implementation of the TDI-DWC's medical quality review process. The director and administrative staff of HCQR provide the Medical Advisor and Associate Medical Advisors with administrative support.

The nurse investigator initiates the evaluation of quality of care complaints received from system participants or the public regarding medical services provided to injured employees in the workers' compensation system. The nurse investigator may seek assistance from an Associate Medical Advisor as part of the evaluation and to make a recommendation of disposition for a complaint. During a quality review, the nurse investigator serves as the point of contact for the Experts and the subject under review. The interactions of the Medical Advisor and the HCQR program area are referred to "Office of the Medical Advisor" (OMA) for purposes of this document.

#### **D. Quality Assurance Committee (QAC)**

The Medical Advisor appoints a Quality Assurance Committee (QAC). The QAC provides a level of quality assurance when a nurse investigator makes a recommendation to close a complaint or review with no further action. This QAC oversight ensures that actions are appropriate, consistent, and fair to system participants.

An Associate Medical Advisor will chair and participate on the QAC along with a TDI-DWC Executive Deputy Commissioner and a TDI Enforcement attorney. The QAC will meet on an a regular basis and recommend to the Medical Advisor whether a complaint should be closed with no further action or continue with the medical quality review process.

#### **E. Medical Quality Review Panel (MQRP)**

Texas Labor Code §413.0512(a) requires the Medical Advisor to "establish a medical quality review panel of health care providers to assist the Medical Advisor in performing the duties required under section 413.0511."

The OMA solicits qualified individuals (or "Applicants") through a Request for Qualifications (RFQ). A RFQ is a solicitation document requesting submittal of qualifications or specialized medical expertise in response to the scope of services required. Under the direction of Texas Labor Code §413.0512(b), the Medical Advisor seeks input for MQRP candidates from the Texas Medical Board, the Texas Board of Chiropractic Examiners, and their respective professional associations. The Medical Advisor also seeks MQRP candidate input from labor, business, and insurance organizations. The Medical Advisor determines a need for additional health care providers in certain specialties.

The OMA submits a request to issue a RFQ to TDI Legal Counsel and the TDI Director of Purchasing. Legal Counsel develops the RFQ document with the OMA's assistance. The RFQ provides:

- a list of minimum qualifications;
- a list of preferred qualifications;
- the services being requested for the MQRP Expert to perform;
- grounds for disqualification;
- the contract terms (payment and period);
- conflicts of interests; and
- other terms as applicable under the contract.

A RFQ solicitation is posted on the TDI website, on at least a biennial basis, to seek responses from applicants interested in providing professional services to the TDI-DWC. When reviewing applications,

the Medical Advisor will consider an applicant's training, education and experience; previous participation in the Texas workers' compensation system; whether the panel needs the applicant's expertise; any sanctions or other disciplinary actions taken by the applicant's licensing board or TDI-DWC; and feedback from system participants when making decisions about selecting a health care provider to serve on the MQRP.

A contract is offered to all selected applicants. All MQRP contracts must be approved by the Commissioner of Workers' Compensation (Commissioner). Once the Expert's contract is approved, a MQRP orientation/operations manual is provided to the Expert. All Experts must participate in a MQRP orientation from the Medical Advisor and HCQR staff prior to any reviews being assigned.

Experts conduct clinical reviews of medical case files to assess the medical necessity and appropriateness of the medical care provided to injured employees. Experts also perform reviews of utilization and peer review decisions, Independent Review Organization medical dispute decisions, as well as reviews of doctors who perform designated doctor and required medical examinations.

As a basis for determining appropriate care or medical decisions, Experts use their professional expertise, knowledge, and:

- the treatment guidelines adopted by the TDI-DWC (the *Official Disability Guidelines; Treatment in Work Comp published by the Workloss Data Institute*);
- the return-to-work guidelines adopted by the TDI-DWC (the *Medical Disability Advisor, Workplace Guidelines for Disability Duration published by the Reed Group*) for return-to-work outcomes;
- nationally recognized, evidence-based medicine standards of medical care; and
- the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> edition (AMA Guides)*.

The Experts may recommend to the Medical Advisor appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations pursuant to Texas Labor Code §413.0512(b). The Medical Advisor will provide the Experts with the status on the number and types of final dispositions of enforcement cases originating from medical quality reviews.

#### **F. Quality Assurance Panel (QAP)**

The QAP is an independent body comprised of MQRP Experts selected by the Medical Advisor based on their medical expertise, specialty backgrounds, and their experience in utilization review and quality assurance. QAP members (Arbiters) are also selected to ensure that the panel is comprised of health care professionals from diverse health care backgrounds.

Once the Arbiters' contract is approved, an orientation/operations manual is provided to the Arbiters. All Arbiters must participate in an orientation from the Medical Advisor and HCQR staff prior to any duties being assigned.

The Arbiters may provide to the Medical Advisor the following professional services:

- serve as a representative for the Medical Advisor in informal settlement conferences;
- provide input from experiences in the informal settlement conferences;
- guidance on medical trends in the workers' compensation system; and
- an additional level of medical expertise and quality assurance.

Arbiters may serve on the panel for a period of two years and may be appointed for additional terms at the Medical Advisor's discretion. Arbiter meetings will be held at least on a quarterly basis. The Arbiter meeting is presided over by the Medical Advisor. The Medical Advisor will provide the Arbiters with status on the number and types of final dispositions of enforcement cases originating from medical quality reviews.

Arbiters do not routinely conduct medical quality reviews. However, the Medical Advisor may appoint an Arbiter to perform a quality review if no other Expert is available in a specific area of expertise. In these unique situations the Arbiter would be recused from sitting on the informal settlement conference for the subject the Arbiter reviewed.

### **Section III: Quality of Care Complaint Process**

1. All complaints must be in writing and may not be anonymous. Complaints may be filed in one of the following ways:
  - a. Electronically submitted using the complaint form found at [www.tdi.state.tx.us/consumer/complfrm.html](http://www.tdi.state.tx.us/consumer/complfrm.html);
  - b. faxed to TDI-DWC Complaint Resolution at 512-490-1030;
  - c. mailed to TDI-DWC Complaint Resolution at TDI-DWC, Consumer Protection (111-1A), P.O. Box 149091, Austin, TX 78714-9091;
  - d. hand delivered to the TDI-DWC; or
  - e. in person to the TDI-DWC and the complaint will be reduced to writing.
2. Complaints regarding the medical necessity or appropriateness of care as well as other quality of care issues will be directed to TDI-DWC's System Monitoring and Oversight (SMO) Section. Once received, SMO logs all complaints into the TDI Complaint Inquiry System (CIS) database for tracking purposes.
3. SMO will refer quality of care complaints to the OMA for evaluation and possible investigation.
4. The OMA provides the complainant and the subject with an acknowledgment letter at the time a complaint is received from SMO.
5. A nurse investigator evaluates each quality of care complaint to determine whether a potential violation has occurred:
  - a. An investigation may be initiated based on any of the following:
    - i. The complaint is of an egregious nature such as:
      - sexual misconduct;
      - criminal activity; or
      - imminent danger to the public (e.g., emergency, fatality).
    - ii. The information and evidence gathered is sufficient to support that a quality of care violation of the Act or rules has occurred, including but not limited to failure to follow adopted guidelines where applicable or failure to practice according to the generally accepted standard of care.
    - iii. Complaint and disciplinary history of the subject as collected and maintained by the TDI-DWC.

- iv. The complaint is of a behavioral nature (inappropriate non-egregious behavior or unprofessional conduct) not involving standard of care issues and the subject has had repeated behavioral nature complaints within the previous 12-months from the receipt of the complaint.
- v. The complaint and disciplinary history of the subject (for health care practitioners only) maintained by his/her licensing board.
- b. A complaint may be closed from the OMA based on the following:
  - i. The complaint is not of a quality of care nature. The complaint will be referred back to SMO for investigation.
  - ii. The subject (for health care practitioners only) is not licensed in Texas and services were rendered outside Texas. This subject may be referred to his/her state licensing board.
  - iii. The complaint is of a behavioral nature and the subject has no prior history or repeated complaints (non-egregious complaints) in the previous 12-months from the receipt of the complaint.
  - iv. Documentation provided with the complaint or obtained through a complaint investigation supports that the standard of care has been met.
- 6. A nurse investigator may request and obtain additional information as necessary from the:
  - a. complainant;
  - b. subject; or
  - c. other relevant persons.
- 7. Nurse investigator will recommend one of the following actions on a complaint:
  - a. Close with no action pending quality assurance review (see Section VII);
  - b. Open a quality review, at which time the nurse investigator will notify subject of the complaint with a written notice and the opportunity to provide the OMA with any information the subject believes is relevant and should be considered by the OMA in the investigation of the complaint (see Section V); or
  - c. Refer to the Medical Advisor for a possible referral to:
    - i. appropriate medical licensing board (see Section VII); or
    - ii. TDI Enforcement (see Section VII).
- 8. The OMA provides a disposition letter at the conclusion of the OMA's complaint investigation to the:
  - a. complainant; and
  - b. subject if the complaint is being closed with no further action.

At any time during the complaint investigation process, a nurse investigator may consult with an Associate Medical Advisor, or any TDI-DWC staff member to assist in the determination of whether a violation of the Act, rule(s), or other applicable statutes has occurred. If the complaint involves an active dispute, the nurse investigator may consult with TDI-DWC Medical Dispute Resolution staff to determine the appropriate action for the complaint.

Subjects of a complaint are encouraged to communicate with the OMA regarding the investigation of the complaint at any time during the course of the investigation. Subjects may provide the OMA with any information the subject believes is relevant to the investigation. All documentation or information provided by the subject will be considered by the OMA.

## Section IV: Plan-Based Audit Process

1. The Medical Advisor will recommend categories of health care and other services for inclusion in an annual audit plan. The OMA will obtain stakeholder input for categories that should be included in the annual audit plan. Categories for consideration of inclusion into the annual audit plan include, but are not limited to:
  - evidence-based medical services (or, if such evidence is not available then quality, cost-effective treatment under generally accepted standards of care) provided by doctors or other health care providers;
  - unusually high or unusually low utilization of medical services inconsistent with adopted treatment guidelines;
  - high cost medical services exceeding Texas workers' compensation system average cost for same or similar services;
  - quality and timeliness of decisions made by designated doctors, independent review organizations, insurance carriers, and utilization review agents;
  - accurate diagnosis and testing; and
  - appropriate return-to-work outcomes.
2. The Medical Advisor submits the recommended annual audit plan to the Commissioner for review and approval.
3. Upon approval by the Commissioner, the annual audit plan is posted on the TDI's website.
4. For each category within the annual audit plan, the Medical Advisor and the TDI-DWC staff define the scope, selection criteria, and individual program area responsibilities for a plan-based audit. Each individual plan-based audit proposal shall specify the program area(s) responsibilities for all relevant steps and include specific procedures for each step, including but is not limited to the following:
  - inclusion and exclusion criteria;
  - service time frame to be audited;
  - sample size;
  - subject and case file selection;
  - audit questions for Experts; and
  - Experts to be assigned to perform the medical quality review.
5. The Medical Advisor submits an individual plan-based audit proposal to the Commissioner for approval.
6. Upon approval by the Commissioner, the individual plan-based audit proposal is posted on the TDI's website.
7. The OMA maintains a file with the documentation supporting the approved individual plan-based audit to include:
  - scope, selection criteria, and program areas' responsibilities;
  - inclusion and exclusion criteria;
  - service time frame to be audited;
  - sample size;
  - subject and case file selection;
  - audit questions for the Experts; and
  - Experts to be assigned to perform the medical quality review.
8. The OMA coordinates with the program area(s) staff designated in the approved individual plan-based audit to select the review subjects and individual case files to be reviewed (see Section V).

## **Section V: Process for Initiating a Medical Quality Review**

### **A. Notification to Subject**

1. When a subject is selected for a medical quality review, the OMA sends a notification letter to the health care provider or other system participant chosen for a medical quality review (hereinafter referred to as “subject”). The notification letter informs the subject of the review and the basis upon which the review was initiated (i.e. complaint, monitoring, or audit).
2. The notification letter contains a list of injured employees who received health care services from the subject and requires the subject to provide the OMA with all relevant records pertaining to the treatment(s) or service(s) provided to the injured employees for the compensable injury.
  - a. For complaint based reviews:
    - i. The OMA will provide a summary of the complaint and request the subject to provide records and an explanation of each complaint.
    - ii. The notification letter requests the subject to complete an enclosed business record affidavit and provide the completed affidavit along with the records and explanation of each case.
    - iii. The notification letter includes a specified amount of time to provide the requested information not to exceed 30 calendar days.
  - b. For audit-based and monitoring-based reviews:
    - i. The notification letter requests the subject to complete an enclosed business record affidavit and provide the completed affidavit along with the requested records.
    - ii. The notification letter includes a specified amount of time to provide the requested information not to exceed 30 calendar days.
    - iii. The subject of the audit will be provided an opportunity to respond to the Expert’s findings if there is a recommendation to refer the subject to TDI Enforcement (see Section VI).

Subjects of a medical quality review are encouraged to communicate with the OMA regarding the review and/or the selected cases at any time during the course of the review. Subjects may provide the OMA with any information the subject believes is relevant to the review. All documentation or information provided by the subject will be considered by the OMA.

### **B. Request for Records from Other Parties**

- The OMA may request relevant records and other information from non-subject parties such as insurance carriers or other health care providers.
- Information obtained from non-subject parties will be reviewed and considered during the course of the medical quality review.
- The request for records letter will require the non-subject(s) to complete an enclosed business record affidavit and provide the completed affidavit along with the requested medical records.
- The letter will include a specified amount of time to provide the requested information not to exceed 30 calendar days.

### **C. Case Preparation and Tracking**

1. For audit-based reviews, the nurse investigator verifies in writing that subjects and case files were selected in accordance with the approved plan-based audit.
2. Upon the OMA's receipt of the requested medical records and other information from the subject and non-subject parties, the OMA sorts, organizes, and indexes all documents and information for each individual case before presenting the cases to a nurse investigator.
3. The nurse investigator verifies and approves the index of records and information for each case.
4. The nurse investigator prepares a brief clinical summary.
5. The nurse investigator prepares and organizes the case file for Expert selection and assignment. Case files are comprised of medical documents requested and received for each injured employee, the complaint if applicable, and any information provided by the subject.

If requested records or information are not provided or are not provided timely, the OMA will issue a Commissioner's Order that requires the subject or non-subject to produce the requested information. If the subject or non-subject fails to comply with the order, the OMA will refer the violation to TDI Enforcement.

Tracking information regarding the initiation of the review, receipt of requested records and documentation, and all other key steps in the review process will be recorded by HCQR staff in the HCQR database.

### **D. Assignment of Experts**

1. The nurse investigator selects an Expert to perform a review in accordance with Texas Labor Code §§408.0043, 408.0044, or 408.0045.
2. In cases where no Expert meets the requirements described above for a specific review, the Medical Advisor may:
  - a. contact appropriate medical licensing boards or other entities in an effort to contract with a qualified individual; or
  - b. contract with a health care provider who possesses the professional requirements for conducting the review. The qualified individual's contract is subject to the same approval process for Experts.
3. The nurse investigator verifies that no known conflicts of interest exist between the Expert and the subject or individual case files before making an assignment.
4. The selected Expert should accept the assignment only after verifying that no known conflicts of interest with the subject or individual case files exist. For each case, Experts must attest in writing that no known conflicts of interest exist and that they are not aware that their review will raise any appearance of impropriety.
5. The OMA forwards case files along with specific questions to be addressed.
6. The Expert may request the nurse investigator to obtain or provide any other information that the Expert believes is relevant and necessary in order to conduct the medical quality review.
7. Upon completion of the review, the Expert provides the nurse investigator with an Expert Report that includes responses to the review questions.
8. The Expert provides recommendations responsive to review questions posed by the Medical Advisor.

## Section VI: Expert Recommendation Process

A review is assigned to an initial Expert to determine if a possible violation of the Act, rule, or other applicable statutes has occurred. The initial Expert's opinion may recommend closure of a review, subject to the approval of the Medical Advisor. However, if the initial Expert determines that a possible violation of the Act, rule, or other applicable statutes has occurred, then at least one other concurring opinion is needed to move the review forward in the medical quality review process. A third Expert may be assigned for a deciding opinion.

1. If the 1<sup>st</sup> Expert recommends closing the review with no action, the 1<sup>st</sup> Expert completes an Expert Report with the findings and recommended action. The 1<sup>st</sup> Expert forwards the Expert Report to the nurse investigator.
2. If the 1<sup>st</sup> Expert determines that a violation to the Act or rules has occurred, then the nurse investigator selects a 2<sup>nd</sup> Expert to conduct an additional review.
  - a. The Nurse Investigator provides the 2<sup>nd</sup> Expert with all information regarding the review that was provided to the 1<sup>st</sup> Expert, plus the Expert Report and recommendations from the 1<sup>st</sup> Expert.
  - b. The 2<sup>nd</sup> Expert may discuss the review with 1<sup>st</sup> Expert.
3. The 2<sup>nd</sup> Expert completes the Expert Report with the findings and recommended action.
  - a. If the 2<sup>nd</sup> Expert agrees with 1<sup>st</sup> Expert, the 1<sup>st</sup> Expert summarizes the review including any agreed-upon changes in the first document after such discussion.
  - b. If the 2<sup>nd</sup> Expert does not agree with 1<sup>st</sup> Expert and differences cannot be resolved, review is referred to a 3<sup>rd</sup> Expert.
4. The 3<sup>rd</sup> Expert gets all information the two previous Experts received, plus both Experts' reports and formulates a decision, agreeing with one or the other. The two Experts in agreement negotiate the wording of the Expert report. The Expert report is completed by the Expert with whom the 3<sup>rd</sup> Expert agrees and submits it to the nurse investigator. The Experts' final recommendation may include:
  - a. close with no action; or
  - b. proceed with possible enforcement action.
5. For complaint-based reviews the completed Expert report is forwarded to the Medical Advisor for his recommended action which may include:
  - a. close with no action; or
  - b. proceed with possible enforcement action.
6. For audit-based and monitoring-based reviews that result in a recommendation to proceed with possible enforcement action, the completed Expert report is sent to the subject stipulating an opportunity to respond.
  - a. A cover letter to the Expert report will provide the subject with information on how to submit a written response to the Expert report.
  - b. The subject will be allowed 15 calendar days to provide a written response which will be considered in formulating a recommended action.
  - c. The subject's written response is forwarded to the Experts who recommended enforcement action for re-consideration of their initial recommendation.
  - d. The written response may result in a change of the Experts' initial recommendation to refer subject to the TDI Enforcement.
  - e. The Experts may recommend closing the review with no further action.

- f. If the written response does not change the initial recommendation, the Expert report is forwarded to the Medical Advisor for his or her recommended action which may include:
  - i. close with no action; or
  - ii. proceed with possible enforcement action.

An Expert may recommend to expand the scope of a review independent of a decision to close a review with no further action or refer the subject to TDI Enforcement (see section VII). A recommendation to expand the scope of a review must be in writing and this initiates a separate complaint that starts the process from the beginning as defined in Section III.

## **Section VII: Medical Advisor's Recommendation**

### **A. Quality Assurance Committee**

1. The director of HCQR provides a list to the chair of the QAC of complaints that have been recommended for closure by the nurse investigator.
2. The chair of the QAC creates an agenda and schedules a meeting for the QAC to convene.
3. The nurse investigator presents a brief summary of the complaint to the QAC.
4. If a majority of the QAC recommends to proceed with an investigation of a complaint, then the nurse investigator will be directed to open a quality review (see section III).
5. If a majority of the QAC agrees with the nurse investigator's recommendation to close a complaint, then the recommendation is forwarded to the Medical Advisor.
6. The final QAC recommendation shall be in writing.

### **B. MQRP Expert Opinions**

1. The Medical Advisor considers the Expert's recommendation(s) in formulating a final recommendation for TDI-DWC disposition action of a complaint or review.
2. In formulating the final recommendation, the Medical Advisor may consult with a TDI-DWC attorney, nurse investigator, and any other TDI-DWC staff member, as the Medical Advisor deems necessary. Recommendations may include:
  - a. close the review with no further action (this may include an education letter);
  - b. proceed with possible enforcement action;
  - c. refer subject to the appropriate medical licensing board; or
  - d. expand the scope of investigation.
3. The final recommendation shall be in writing on the disposition form.
4. The OMA issues a Final Report that includes the Medical Advisor's recommendation.
5. The OMA will send a copy of the Final Report with a cover letter to the subject that provides the disposition of the complaint or review.
6. The issuance of the Final Report to the subject closes the complaint or review.

### **C. Referrals to TDI Enforcement**

1. When the Medical Advisor recommends the referral of a complaint or review to TDI Enforcement, the OMA prepares a referral memorandum that includes:

- a. The Medical Advisor's recommendation for action on the findings of a complaint or a review.
  - b. An electronic file containing all medical records under affidavit, Expert report, the subject's response, and any information pertinent to the review.
2. The Medical Advisor's approved referral memorandum is sent to SMO for entry into the SMO Enforcement referral database and updated in the CIS database for tracking purposes.
3. SMO will forward the referral memorandum and electronic file to TDI Enforcement.
4. TDI Enforcement will assign a Case Tracking System (CTS) number and an attorney to the case.
5. If the Medical Advisor or TDI Enforcement determines or suspects that fraud has occurred, then TDI Enforcement submits a referral to TDI Fraud unit for further investigation. A copy of the referral is maintained by TDI Enforcement.

#### **D. Informal Settlement Conference (ISC)**

1. The purpose for an ISC is to offer the subject of a complaint or review the opportunity to participate in discussing the review.
2. The TDI Enforcement offers an ISC to a subject if a settlement agreement cannot be reached through a consent order or if the Medical Advisor recommends an ISC.
  - a. An ISC packet that includes the allegations and medical records reviewed by the Experts is sent to the subject.
  - b. The ISC packet provides the date and time when the ISC is to be held.
  - c. The ISC packet provides the subject an opportunity to respond to the allegations.
    - i. The subject will be allowed up to 15 calendar days to provide a written response.
    - ii. If no response, the non-responsiveness is noted in file.
3. Two Arbiters represent the Medical Advisor.
  - a. At least one Arbiter is selected in accordance with Texas Labor Code §§408.0043, 408.0044, or 408.0045.
  - b. The Arbiters must not have any known conflicts of interest with the subject or individual case files or appearance of impropriety. For each case, Arbiters must attest in writing that no known conflicts of interest exist and that they are not aware of any appearance of impropriety.
4. An attorney from the TDI-DWC Office of General Counsel will preside over the ISC.
  - a. The designated General Counsel representative will give legal advice to the Arbiters.
  - b. The designated General Counsel representative will not engage in ex-parte contact with TDI Enforcement, the subject, or any other party.
5. An attorney from TDI Enforcement will state the findings of the Experts and present sanction recommendations at the ISC.
6. The subject may be represented at the ISC by legal counsel.
7. The subject has the opportunity at the ISC to show compliance with applicable laws and to present any evidence or information that the subject believes is relevant to the complaint or review.
8. At the conclusion of the ISC, the TDI-DWC may offer the subject a proposed consent order regarding the issues discussed:
  - a. TDI Enforcement will send a consent order to the subject for signature within 15 calendar days from the ISC.
  - b. If the subject agrees with the consent order, then the consent order is signed and returned to TDI Enforcement.

- c. The signed consent order is submitted to the Commissioner for approval.
9. If the TDI-DWC and subject cannot agree on a resolution to the enforcement case, the Medical Advisor will make the final recommendation for further enforcement proceedings.
10. The TDI-DWC may close a case with no further action after holding an ISC.

#### **E. Referrals to Appropriate Medical Licensing Boards**

1. Pursuant to Texas Labor Code §413.0515, at any time in the process of a review or investigation of a complaint, the Medical Advisor may, when deemed necessary, refer or report the subject to the state licensing authority with jurisdiction over the subject's license.
2. A referral or report to a licensing agency may be in addition to any other action taken by the TDI-DWC on the subject of a review or complaint.
3. The OMA prepares a referral letter that includes:
  - a. the Medical Advisor's reason for referral; and
  - b. an electronic file containing all medical records under affidavit, Expert report, the subject's response, and any information pertinent to the review.
4. The Medical Advisor signs the referral letter.
5. The OMA will mail the referral letter to the appropriate medical licensing board.

The TDI-DWC has entered into a memorandum of understanding with both the Texas Medical Board (TMB) and the Texas Board of Chiropractic Examiners (TBCE) in order to facilitate the exchange of information required by Texas Labor Code §§413.0514 and 413.0515. Pursuant to these agreements, the TDI-DWC reports information to these agencies on a monthly basis and at other times determined appropriate by the TDI-DWC. The TDI-DWC will identify in its information sharing with these agencies those cases where the TDI-DWC believes further investigation by the other agency is warranted. Pursuant to these agreements, the TDI-DWC will report or refer on an emergency basis those system participants whose continued practice may constitute a continuing or imminent threat to the public welfare.

#### **F. Expanding the Scope of Investigation**

1. During the course of a review, a system participant other than the subject of the review may be suspected to be in violation of the Act or the rules.
2. An Expert, an Arbiter, or Medical Advisor may identify such a system participant in which case a written complaint should be filed in accordance with Section III.
3. The complaint is sent to TDI-DWC to enter into CIS as a complaint.
4. The process begins as a separate formal complaint as defined in Section III.
5. The complainant is recused from the review of such system participant if the complaint is recommended for review.

### **Section VIII: Post-Enforcement Monitoring Process**

When a consent order requires further monitoring of a subject, OMA will conduct a medical quality review in accordance with the terms of the order. The review will be conducted in the same manner as medical quality review process except where inconsistent with the terms of the order. The OMA will coordinate with TDI Enforcement on the results of the monitoring review and provide TDI Enforcement with recommendations on any appropriate action.

1. The Medical Advisor and TDI Enforcement agree on a monitoring plan for a subject of a quality review.
2. The subject agrees to a monitoring plan through a consent order.
3. The Commissioner approves the consent order.
4. TDI Enforcement shall provide the OMA with Commissioner's orders that require a system participant to be subject to further monitoring.
5. The OMA coordinates with TDI Enforcement to select the individual case files to be reviewed (see Section V).

## **Section IX: Conflict of Interest**

Members from MQRP, QAP, or QAC with a conflict of interest and/or reasonable appearance of a conflict of interest with the selected subject or case files under review may not participate in the review process. A conflict of interest, or circumstances that may create an appearance of a conflict of interest, may include, but are not limited to:

- A direct financial interest/relationship or close familial relationship with:
  - any subject of a complaint or review;
  - the matter being reviewed; or
  - a party involved with the review.
- Or, if the member from MQRP, QAP, or QAC:
  - practices in the same geographical medical market as the subject under review;
  - is in direct competition with the subject under review; or
  - personally knows the subject under review.

## **Section X: Other Administrative Functions**

### **A. Confidentiality**

Pursuant to Texas Labor Code §§402.092 and 413.0513, any information collected, assembled, or maintained by or on behalf of the TDI-DWC regarding a medical quality review constitutes a confidential investigation file. Confidential information includes, but is not limited to, complaints filed with the TDI-DWC, medical records and any information that identifies review subjects or injured employees. Information and documents collected, assembled, or maintained during the course of a review or investigation of a complaint shall not be disclosed within the TDI-DWC except on a need-to-know basis and shall not be disclosed outside of the TDI-DWC except as provided by law. All reports and related documents are considered confidential under Texas Labor Code §§402.092 and 413.0513.

### **B. Reports from Other Agencies**

TMB provides a list of health care providers that TMB has sanctioned. The list is typically compiled at the conclusion of a Board meeting. The list is also available through the TMB's website.

TBCE provides list of disciplinary actions via its website.

On a quarterly basis, the TDI-DWC Information Management Services (IMS) program area compiles a list of health care providers based on their NPI or state license numbers that rendered services in the last 12 months. This information is obtained from the Medical State Reporting data submitted to the TDI-DWC by insurance carriers.

The OMA compares the list of health care providers from TMB and TBCE to the list compiled by IMS. The OMA refers a health care provider to the Medical Advisor for possible enforcement action if either of the following occurs:

- a health care provider who was sanctioned by the TMB or TBCE had its license revoked and that health care provider is on the IMS list with services rendered after the license was revoked; or
- a health care provider was sanctioned by the TMB or TBCE for a standard of care violation and that health care provider is on the IMS list.

### C. Reporting

The OMA staff will be responsible for updating actions, events, and status for each review on the HCQR database. Standard reports will be made available in this system and can be reproduced as needed to respond to requests on individual reviews.

The OMA will coordinate with TDI Enforcement to monitor the status of each enforcement case that resulted from a medical quality review. The Medical Advisor will provide the Experts and Arbiters with status on the number and types of final dispositions of enforcement cases originating from medical quality reviews.

### D. Program Monitoring and Compliance

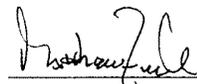
A quarterly independent review process in consultation with TDI-DWC Internal Audit program area will be implemented to ensure adherence to the medical quality review process. Any deviations will be documented and reported to the Commissioner. This process will also be used to recommend improvements to the process and increase accountability and transparency.

## Section XI: Approvals

**This Medical Quality Review Procedure is respectfully submitted by:**

 12/30/10

Mary Landrum  
Director  
Health Care Business Management

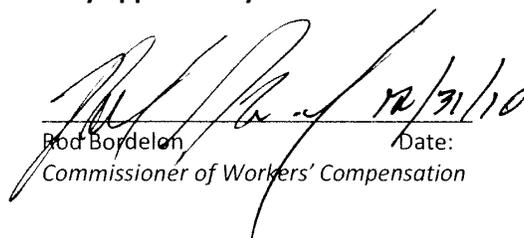
 30 Dec 2010

Matthew Zurek  
Executive Deputy Commissioner  
Health Care Management

**This Medical Quality Review Procedure is respectfully approved by:**

 12/30/10

Donald Patrick, M.D., J.D.  
Medical Advisor

 12/31/10

Rod Boydelon  
Commissioner of Workers' Compensation