

No. _____

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

Date:

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 FY 2007 Annual 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 new Labor Code §405.0026, which requires the Commissioner to adopt an annual research agenda for the REG. It also requires the REG to publish the proposed research agenda in the *Texas Register* for the Commissioner's review and approval and requires the Commissioner to accept public comments and to hold a public hearing on the proposed research agenda if requested by interested persons.

In September 2006, the REG posted a request for research agenda suggestions on the TDI website and sent a letter to legislative offices soliciting input for the FY 2007 Research Agenda. After reviewing suggestions from both workers' compensation system stakeholders and legislative offices, the REG developed a proposed FY 2007 Research Agenda using the following criteria:

- Is the proposed research project required by statute or likely to be part of an upcoming legislative review?
- Will the results of the proposed research project address the information needs of multiple stakeholder groups and/or legislative committees?
- Are there available data to complete the project or can data be obtained easily and economically to complete the project?
- Does the REG have sufficient resources to complete the project within FY 2007?

The proposed FY 2007 Research Agenda was published for comment on the Department's website and in the December 8, 2006 issue of the *Texas Register*. There were no requests for a public hearing.

The Commissioner delegated the acceptance and review of the public comments to the Department staff. The Department received comments regarding the

proposed research agenda from Richard Evans on behalf of Medtronic and the Zenith Insurance Company. The comments and the Department's responses are as follows:

Comment: A commenter questioned whether the REG will be including a study on its FY 2007 Research Agenda to examine whether injured workers have reasonable access to surgically implanted, inserted, or otherwise applied devices or tissues and investigate whether reimbursement rates or any other barriers exist that reduce the ability of an injured employee to access those medical needs as required by §413.011(i), Labor Code.

Agency Response: The Department appreciates the comment. The Department's Division of Workers' Compensation is required by §413.011(i), Labor Code to conduct this study, including the identification of any statutory changes necessary to ensure adequate access to those services. The Division has tentatively set a December deadline for the completion of this study and the REG will assist the Division as needed in its completion of this study as part of the FY 2008 Research Agenda.

Comment: A commenter requests that the REG add a new project to the FY 2007 Research Agenda to analyze the "usual and customary" billing practices of health care providers in the Texas workers' compensation system, with particular

attention paid towards common billing codes for inpatient and outpatient services, ambulatory surgical services, physical therapy services, office visits, surgical services, prescriptions, and durable medical equipment. Specifically, the commenter recommends that this analysis attempt to include the following information:

- 1) Identify the range in “usual and customary” charges made by workers’ compensation health care providers for the same medical service and products;
- 2) Track the inflation in the “usual and customary” billing by health care providers for Texas workers’ compensation medical services for an appropriate period of time and compare that rate of inflation to the rate of inflation for medical services outside of the workers’ compensation system and compared to inflation for the price of goods and services other than medical services and products; and
- 3) Compare the “usual and customary” charges made by workers’ compensation health care providers to Centers for Medicare and Medicaid Services (CMS) reimbursement rates, TDI Division of Workers’ Compensation (Division) fee schedule reimbursement rates, and workers’ compensation reimbursement rates.

Agency Response: The Department appreciates the comment and agrees that the REG will assist the Division with data analysis support for the development of the Division's fee guidelines authorized under §413.011 (a-d), Labor Code and the development of the closed pharmaceutical formulary and pharmacy fee guideline authorized under §408.028(b) and (f), Labor Code. Because of the magnitude of the various data analyses required for the development of fee guidelines and the pharmaceutical formulary, the REG recommends deleting the following proposed research projects from the FY 2007 Research Agenda (an update of the FY 2005 REG analysis on medical costs and utilization of care and an update of the FY 2006 REG analysis of medical bill and compensability claim denial trends in the Texas workers' compensation system) and replacing them with a new research project to assist the Division with data analysis support for the development of a closed pharmaceutical formulary and the development of Division fee guidelines.

Regarding the commenter's recommendation to analyze health care providers' "usual and customary" charges for workers' compensation medical services, the REG will take into consideration the project scope recommendation from the commenter as well as the input from the Division and other system stakeholders when completing this project.

After considering the proposed research agenda, the comments received and the Department's responses to those comments, the Commissioner has determined that the following research agenda is within the authority conferred by Labor Code §405.0026 and will effectively facilitate the comprehensive accomplishment of the statutory mandate set forth in Labor Code §405.0025, that the REG conduct professional studies and research relevant to the cost, quality, and operational effectiveness of the workers' compensation system and report its findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature.

FY 2007 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance

1. Development of the Workers' Compensation Health Care Network Report Card required under Insurance Code §1305.502 and Labor Code §405.0025;
2. An update of the FY 2006 REG analysis of access to medical care provided under the Approved Doctors List (ADL), including an initial analysis of access to medical care under Department-certified workers' compensation health care networks;
3. A survey of health care providers regarding their knowledge of the 2005 legislative reforms and their perceptions of the Texas workers' compensation system and workers' compensation health care networks;
4. An update of the FY 2006 REG analysis of return-to-work outcomes for injured workers using data from the Texas Workforce Commission;

5. Continuation of the development of a Designated Doctor and peer review doctor monitoring plan in conjunction with the Department's Division of Workers' Compensation;
6. An analysis of the frequency, type, and outcome of peer reviews performed on behalf of insurance carriers using the results of the Department's Division of Workers' Compensation's peer review data call;
7. Provide assistance to the Department's Division of Workers' Compensation with data analysis support for the development of a closed pharmaceutical formulary and fee guideline required under §408.028 (b) and (f), Labor Code and the development of other fee guidelines authorized under §413.011 (a-d), Labor Code;
8. An initial examination of the frequency of both employers and workers' compensation claims participating in networks; and
9. An analysis of the adequacy of income benefits paid to injured workers as a result of their work-related injuries.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the FY 2007 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:

Amy Lee
Director
Workers' Compensation Research and Evaluation Group

Attest:

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

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