

No. 07 - 0 0 8 7

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

Date: FEB 0 1 2007

Subject Considered:

Fiscal Year 2007 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) 2007 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (Department). Labor Code §405.0026 requires the Commissioner to adopt an annual research agenda for the REG. Labor Code §405.0026 also requires the Department to publish the proposed research agenda in the *Texas Register* for public review and comment and the Commissioner to hold a public hearing on the proposed research agenda if requested by a member of the public.

In September 2006, the REG posted a request on the Department's website to workers' compensation system stakeholders and the general public for research agenda suggestions. The REG also solicited the state legislative offices for input in developing the FY 2007 Research Agenda. After reviewing responses from the general public, stakeholders, and legislative offices, the REG developed the proposed FY 2007 Research Agenda using the following criteria:

Comment: A commenter requested the addition of a 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. The commenter suggested an analysis of the most common billing codes for inpatient and outpatient services rendered by hospitals, ambulatory surgical centers, physical therapy services, office visits, surgical services, prescriptions, and durable medical equipment. Specifically, the commenter recommended that the analysis:

1. Identify the range in *usual and customary* charges made by Texas 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 Texas workers' compensation health care providers to Centers for Medicare and Medicaid Services reimbursement rates, the DWC's fee schedule reimbursement rates, and workers' compensation reimbursement rates.

Agency Response: The REG will assist the DWC with data analysis support for the development of the DWC's fee guidelines authorized under Labor Code §413.011 (a) – (d) and the development of the closed pharmaceutical formulary and pharmacy fee guideline authorized under Labor Code §408.028 (b) and (f).

Due to the magnitude of the various data analyses required for the development of fee guidelines and the pharmaceutical formulary, the REG is recommending replacing the following proposed research projects on the FY 2007 Research Agenda:

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

The proposed FY 2007 Research Agenda was published for public review and comment on the Department's website and in the December 8, 2006 issue of the *Texas Register* (31 TexReg 9893). There were no requests for a public hearing.

The Department received comments regarding the proposed research agenda from the Zenith Insurance Company and Texas Lobby Solutions on behalf of Medtronic. The comments and the Department's responses are as follows:

Comment: A commenter questioned whether a study could be included on the FY 2007 Research Agenda that would examine whether injured employees 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 Labor Code §413.011(i).

Agency Response: The Department's Division of Workers' Compensation (DWC) is required by Labor Code §413.011(i) to conduct such a study and recommend any statutory changes necessary to ensure adequate access to those medical needs. The DWC has tentatively set a December 2007 deadline for the completion of this study, and the REG will assist the DWC, as necessary, with the completion of the study as part of the REG's FY 2008 Research Agenda.

1. An update of the FY 2005 REG analysis on medical costs and utilization of care;
and
2. An update of the FY 2006 REG analysis of medical bill and compensability claim denial trends in the Texas workers' compensation system, including an initial comparison of medical billing denial rates both in- and out- of networks

with a new research project to assist the DWC with data analysis support for the development of the DWC's fee guidelines and a closed pharmaceutical formulary and pharmacy fee guideline.

With regard to 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 DWC 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.

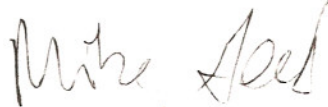
1. Development of the Workers' Compensation Health Care Network Report Card required under Insurance Code §1305.502 and Labor Code §405.0025;
2. An update of the FY 2006 REG analysis of access to medical care provided under the Approved Doctors List, including an initial analysis of access to medical 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. Provision of 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 Labor Code §408.028 (b) and (f) and the development of other fee guidelines authorized under Labor Code §413.011 (a) – (d);
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 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



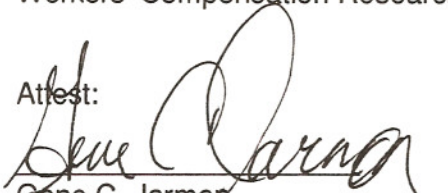
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MIKE GEESLIN
COMMISSIONER OF INSURANCE

RECOMMENDED BY:



Amy Lee
Director
Workers' Compensation Research and Evaluation Group

Attest:



Gene C. Jarmor
General Counsel and Chief Clerk

Commissioner's Order No. **07 - 0087**

FEB 01 2007