

Texas Pain Society



Texas Legislative Update - Did the 82nd Legislature Cause Us Any Pain?

By

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Session Overview

- DWC Sunset Review
- Pharmacy Closed Formulary
- 2011 Workers' Compensation Network Report Card

DWC Sunset Review

- Sunset Advisory Commission performs periodic reviews of state agencies
- Determine whether agency is meeting its mission
- Can continue, merge, abolish agency
- Historically reviews can result in major policy changes
- In 2005 Texas Workers' Compensation Commission was abolished and made a Division of the Texas Department of Insurance

2011 DWC Sunset Review Changes

- Legislature continued the agency for another six years
- Designated doctor training and certification
- Medical Quality Review Panel reforms
- Transfer of certain duties to insurance carriers
- Medical Necessity Disputes
- Medical Fee Disputes
- Emergency Cease and Desist Orders

DWC Sunset Review Changes

Medical Quality Review Panel Reforms

- MQRP reviews physician, carrier, URA, IRO, practices
- MQRP process was under scrutiny due to staff failure to follow procedures established by Commissioner
- TPS provided comments to Sunset Commission to institute reforms based on Texas Medical Board process
- New process addressed a number of key issues
 - Selection of providers subject to audit
 - Procedure for adopting audit plan
 - Timelines for process, responses, document submission

DWC Sunset Review Changes

Designated Doctor Training/Certification New Responsibilities

- Assigning an accurate impairment rating (IR) for a compensable injury in
- Determining attainment of clinical maximum medical improvement; Determining the extent of the injured employee's compensable injury
- Determining whether the injured employee's disability is a direct result of the work-related injury
- Determining the ability of the injured employee to return to work

DWC Sunset Review Changes Designated Doctor Training/Certification

- **New DDs**
 - Must attend an on-site course conducted by an approved trainer. Retraining is required every two (2) years
 - Must pass an approved impairment rating test before applying for the Designated Doctor List
- **Current DDs**
 - Must attend an on-site course conducted by an approved trainer every two (2) years
 - Retesting is not required before renewing an online application to the Designated Doctor List.

DWC Sunset Review Changes

Transfer of certain duties to insurance carriers

- Transferred certain duties to the insurance carrier from the DWC commissioner
- Approving a request for a new treating doctor
- Establishing criteria for the selection of a new treating doctor
- Authorizing a grant of an advance in benefits to an injured employee in hardship cases; authorizing a grant of an extension of the 104-week maximum compensable treatment for spinal injuries
- Authorizing approval of accelerated benefits
- Injured employee could dispute through a benefit review conference or independent review organization a decision by an insurance carrier to deny a request to select a new doctor
- DWC commissioner would adopt the procedures by which an injured employee could dispute the denial of supplemental benefits by the insurance carrier through a benefit review conference

2011 DWC Sunset Review Changes

Medical Disputes

- **Medical Necessity Disputes**

- Spinal injuries would be treated like other medical necessity disputes within the network medical necessity dispute resolution process
- A party would be entitled to a contested case hearing through DWC prior to appeal of an independent review organization's decision before the case moved to the district court
- During the contested case hearing, the hearing officer would be required to consider network approved, evidence-based treatment guidelines

- **Medical Fee Disputes**

- Allows a party in a medical fee dispute to appeal a benefit review conference decision through arbitration or a contested case hearing conducted by SOAH
- The cost of the contested case hearing would be paid by the non-prevailing party
- The commissioner or DWC could participate in the contested case hearing if it involved interpretation of fee guidelines

DWC Sunset Review Changes Emergency Cease and Desist Orders

- DWC commissioner could issue an emergency cease and desist order if the commissioner believed a person regulated by DWC had violated a law, rule, or order and that the alleged conduct would result in harm to the health, safety, or welfare of another person
- An affected person could contest the order within 30 days of receiving it
- Pending a hearing, the order would remain in effect unless stayed by the commissioner
- Upon receipt, the commissioner would schedule a hearing with SOAH within 10 days
- After SOAH's decision, the commissioner would affirm, modify, or set aside the order.

Pharmacy Closed Formulary

- **Why Is There A Closed Formulary?**

- **The 79th Texas Legislature passed House Bill 7, which amended Texas Labor Code § 408.028 concerning *Pharmaceutical Services*. The pertinent provisions stated: “The commissioner by rule shall adopt a closed formulary under Section 413.011. Rules adopted by the commissioner shall allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee’s compensable injury.”**

- **What is a Closed Formulary and How Do I Know What Drugs Are Approved?**

- A closed formulary is a formulary that includes all FDA approved drugs, but some of the drugs will require preauthorization
- The Official Disability Guidelines (ODG) maintains an Appendix A which is a chart of drugs which are currently listed as “N” drugs. An “N” drug is a drug that is not recommended– that doesn’t mean you can prescribe it, but it does mean you will need to get preauthorization for it

- **When Will This All Change?**

- For injuries that occur prior to 09/01/2011 (these injuries are referred to as legacy claims) the current open formulary will apply. This means that you do not need to refer to ODG appendix A for your prescriptions. BUT for these same injured patients, the closed formulary WILL apply to them starting 09/01/2013. This means you need to take your patients treatment plan into consideration and map out a treatment plan for them that will comply with the closed formulary starting 09/01/2013.
- For injuries that occur 09/01/2011 and after, the closed formulary goes into effect 09/01/2011 and you will need to consult the ODG Appendix A for the list of current drugs with an N status and apply for preauthorization if necessary. The reason for the two dates of implementation is to allow physicians to safely and effectively transition patients to a new plan that complies with the closed formulary.

Pharmacy Closed Formulary Pump Patients

- **What does this mean for my intrathecal pump patients?
Do I have to get preauthorization before every refill?**
 - An intrathecal drug delivery system requires preauthorization in accordance with § 134.600 of this title and the preauthorization request must include the prescribing doctor's drug regime plan of care, and the anticipated dosage or range of dosages for the administration of pain medication
 - Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis.
 - Preauthorization for these refills is also required whenever:
 - the medications, dosage or range of dosages, or the drug regime proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug regime previously preauthorized by that prescribing doctor
 - there is a change in prescribing doctor.

2011 Network Report Card

Key Findings

- Overall, networks tended to have lower utilization of hospital services than Non-network, but higher utilization of professional and pharmacy services
- 504-Alliance's average utilization rates were lower than Non-network in 11 of 18 categories
- 504-Alliance's average utilization rates were lower than Non-network in 14 of 16 service categories.
- IMO's average utilization rates were lower than Non-network in 10 of 16 categories
- 504-Others' average utilization rates were lower than Non-network in 8 of 16 categories.
- Coventry, Travelers and Zurich's average utilization of services was lower than Non-network in 7 of the 16 categories. •
- First Health and Other Networks' average utilization of services was lower than Non-network in 5, Texas Star in 3, Corvel and Liberty in 1 of the 16 categories.

2011 Network Report Card

Health Care Costs

- Texas Star and IMO's average medical costs were lower than Non-network in 13 of 19 categories, including all pharmacy groups
- Zurich and Traveler's average medical costs were lower than Non-network in 10 of 19 categories
- 504-Others' average medical costs were lower than Non-network in 9 of 19 categories
- Liberty, First Health and Other Network's average medical costs were lower than Non-network in 6 of the 19 categories
- Coventry's average medical costs were lower than Non-network in 5 and Corvel in 3 of the 19 categories
- Eight network entities (504-Alliance, 504-Others, First Health, IMO, Liberty, Other Networks, Texas Star, and Zurich) had lower average Spinal Surgery costs than Non-network

2011 Network Report Card

Access to Care and Satisfaction with Care

- Overall, network injured employees reported lower levels of access to, and satisfaction with care. However medical data show that all networks provided faster non-emergency services to their injured employees than Non-network
- Injured employees from First Health and Alliance reported higher or equal levels of receiving quickly care as compared to Non-network injured employees
- Zurich's injured employees reported higher overall satisfaction with care and with treating doctor in comparison with Non-network injured employees

2011 Network Report Card

Health Outcomes

- The SF-12 survey was used to calculate the physical and mental health status of injured employees at the time of the survey
- The average scores in the U.S population for both outcomes are 50 and scores that are more than 10 points higher or lower than this reference point are considered statistically significant
- Five networks (504-Alliance, Corvel, IMO, Travelers and Texas Star) had higher physical functioning scores among their injured employees than Non-network injured employees.
- Three networks (504-Alliance, 504-Others and IMO) had higher mental functioning scores among their injured employees than Non-network injured employees and the U.S. population.
- Travelers and Non-network injured employees had equal level of mental functioning scores which were higher than the score of U.S. population.

MQRP Audit Plan-Review Categories

- Designated Doctors
- Independent Review Organizations
- Treating Doctors/Lumbar Spinal Fusions
- Utilization Review Agents

Questions?

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