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An Audit Report on

**Medical Quality Reviews at the
Division of Workers'
Compensation within the
Texas Department of Insurance**

November 2010
Report No. 11-011



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Overall Conclusion

Significant process and information issues at the Division of Workers' Compensation (DWC) within the Texas Department of Insurance (TDI) significantly inhibit DWC's ability to monitor the quality of health care in the workers' compensation system. The issues are in four primary areas:

- Unreliable information.
- Weaknesses in complaint processing.
- Weaknesses in the medical quality review process.
- Weaknesses in the enforcement and sanction process.

These issues increase the risk of (1) injured workers receiving unnecessary medical procedures and (2) overutilization within the workers' compensation system.

Unreliable Information

DWC does not maintain reliable information on (1) complaints related to workers' compensation providers that its Office of the Medical Advisor investigates, (2) Office of the Medical Advisor medical quality reviews of workers' compensation providers, and (3) Office of the Medical Advisor medical quality reviews that are referred to TDI's Enforcement Division for sanctions.

The extent and significance of the weaknesses in that information impaired the State Auditor's Office's ability to form a conclusion on the audit objective to determine whether TDI issues appropriate and consistent disciplinary orders for workers' compensation providers that have committed violations or are identified as noncompliant. DWC will need to implement significant corrective action to restore the integrity of the complaint and review information necessary to carry out its responsibilities. Despite the information issues identified, the State Auditor's

Complaint Processing

DWC's Office of the Medical Advisor reviews complaints regarding health care providers from the general public, workers' compensation system participants, and other programs within DWC. To dispose of a complaint, the Office of the Medical Advisor can:

- Close the complaint with no action.
- Conduct a review of the provider's practice patterns.
- Open a medical quality review of the provider (discussed in more detail below).
- Refer the complaint directly to TDI's Enforcement Division for immediate action if there is imminent danger to the workers' compensation system participant.

Medical Quality Reviews

DWC's Office of the Medical Advisor monitors the quality of health care in the workers' compensation system by conducting medical quality reviews of health care providers and other system participants.

The outcome of a medical quality review can be a recommendation for sanction, which could include:

- A requirement for the provider to obtain continuing education.
- Ongoing monitoring of a provider.
- Imposing monetary penalties on a provider.
- Restrictions on a provider's participation in the workers' compensation system.
- Removal of a provider from the workers' compensation system.

Source: *Texas Department of Insurance Division of Workers' Compensation Self-Evaluation Report*, Submitted to the Sunset Advisory Commission, September 2009.

This audit was conducted in accordance with Texas Government Code, Section 321.0132.

For more information regarding this report, please contact Ralph McClendon, Audit Manager, or John Keel, State Auditor, at (512) 936-9500.

Office proceeded with this audit and attempted to assess DWC's complaint and medical quality review processes to the extent possible.

Weaknesses in Complaint Processing

The complaint review process within DWC's Office of the Medical Advisor is inconsistent, lacks certain controls, and does not fully comply with the Texas Labor Code. For example, for 52 (70 percent) of 74 complaint files reviewed, there were no documented summaries of the results of the investigations of the complaints. The Texas Labor Code requires the preparation of that summary. In addition, for 54 complaints against workers' compensation providers that were closed with no further action, DWC's Office of the Medical Advisor had no documented explanation for closing 44 (81 percent) of those complaints. The Texas Labor Code requires an explanation of the reason a complaint was closed without action.

Weaknesses in the Medical Quality Review Process

The process DWC uses to select providers for medical quality reviews lacks sufficient policies and procedures and controls intended to ensure consistency and prevent overutilization of health care within the workers' compensation system. For example:

- DWC asserts that a process outlined in a September 2008 presentation constitutes its policy for provider selection. However, that presentation lacked specific details and served only as a general guide for how DWC should consider selecting providers.
- DWC asserts that its provider selection process is random. However, aspects of that process—such as selecting high-, medium-, and low-utilizer providers and focusing on certain medical areas and billing codes—are not random.

DWC also lacks certain controls to ensure that the medical quality review process itself is consistent, effective, and operates as intended. For example:

- Due to a lack of documentation, it was unclear whether any of DWC's Office of the Medical Advisor policies and procedures related to medical quality reviews were formally approved by DWC management and communicated to all appropriate staff.
- DWC's procedures for medical quality reviews do not include detailed steps to accomplish specific tasks within the medical quality review process.

Auditors examined 33 medical quality reviews and noted both strengths and weaknesses. For example, for all 25 reviews that involved charges filed against providers, the providers were given the opportunity to respond to the charges against them. However, for 4 (31 percent) of the 13 reviews that were closed with no further action, there was no documented explanation for that disposition in the case files.

Weaknesses in the Enforcement and Sanctioning Process

DWC's Office of the Medical Advisor can refer the results of its medical quality reviews to TDI's Enforcement Division for potential sanctions against providers. At that point, the reviews become "enforcement cases." As of July 2010, 27 enforcement cases originating from medical quality reviews had been pending for an average of 344 calendar days; one of those enforcement cases had been pending since March 2007.

Auditors also determined that, between September 2006 and July 2010, TDI's Enforcement Division closed 86 (75 percent) of the 114 enforcement cases originating from DWC's Office of the Medical Advisor with a warning letter and no sanctions against the providers or other system participants. Three enforcement cases originating from medical quality reviews were closed with an order from DWC's Commissioner (a Commissioner order is more serious than a warning letter, but it may not necessarily impose administrative penalties on a provider). In addition, for 21 enforcement cases originating from medical quality reviews that auditors reviewed, the final case disposition determined by TDI's Enforcement Division differed from the original case disposition recommended by DWC's Office of the Medical Advisor. However, there was no documented explanation for why the final case disposition differed from the original case disposition recommended by DWC's Office of the Medical Advisor.

In March 2010, DWC's Commissioner dismissed eight enforcement cases originating from medical quality reviews, and there was no documented explanation for the dismissal of those cases in the case files. DWC's Office of the Medical Advisor had selected the providers associated with those eight enforcement cases using the selection process described above. However, for two of those eight enforcement cases, DWC's Office of the Medical Advisor also had received complaints about the providers. At the Commissioner's request, those eight enforcement cases were closed without any sanctions against the providers. DWC's Commissioner status reports indicated that, prior to the dismissal of those eight enforcement cases, an agreed order (settlement) draft had been sent to one of those providers, and agreed orders had been drafted for three other providers. After the eight cases were closed, DWC referred those cases to the licensing boards. However, statute requires DWC to refer disciplinary actions to the licensing boards, but DWC had not imposed disciplinary actions for those cases.

Scope of the Workers' Compensation System in Texas

Table 1 shows the scope of the workers' compensation system in Texas, as well as TDI appropriations and full-time equivalent employees, for fiscal year 2009. It is critical that TDI and DWC implement corrective action to address the issues identified during this audit.

Table 1

Texas Workers' Compensation and TDI Statistics - Fiscal Year 2009	
Number of workers' compensation claims ^a	222,826
Amount of workers' compensation claims paid ^b	\$406,734,461
Number of workers' compensation providers ^c	44,988
Number of injured workers ^d	210,451
TDI appropriations	\$97,943,388
TDI full-time equivalent employees	1,698.5
^a This number is based on the number of unique injuries. ^b This amount includes only medical claims and not other types of claims for services, such as dentistry. ^c This number includes only medical providers and not other types of providers, such as dentists. ^d Worker injuries are counted on a per incident basis.	

Source: Unaudited information from TDI and General Appropriations Act (80th Legislature).

Auditors communicated less significant issues to TDI's management separately in writing.

Selected Recommendations

TDI and DWC should:

- Develop and implement an accurate and reliable method of tracking all medical quality reviews of and complaints regarding workers' compensation providers from inception to final disposition.
- Develop, formally approve, and implement controls to help ensure that the Office of the Medical Advisor complies with all sections of the Texas Labor Code when it processes complaints.
- Document explanations for the dispositions of all medical quality reviews.

- Develop comprehensive medical quality review policies and procedures that address all aspects of the medical quality review process, and ensure that management formally approves those policies and procedures and communicates them to staff.
- Develop and implement a formal process for referring disciplinary actions it takes against providers to the appropriate licensing agencies as required by statute.

Summary of Management's Response

DWC and TDI agreed with the recommendations addressed to them in this report.

Summary of Information Technology Review

As discussed above, DWC does not maintain reliable information on (1) complaints that the Office of the Medical Advisor investigates related to workers' compensation providers, (2) Office of the Medical Advisor medical quality reviews of workers' compensation providers, and (3) Office of the Medical Advisor medical quality reviews that are referred to TDI's Enforcement Division for sanctions. DWC maintains that information in multiple systems, and Chapter 1 of this report contains details regarding specific weaknesses in those systems. Appendix 1 of this report presents detailed information on the methodology auditors used to assess the reliability of information in those systems.

Summary of Objective, Scope, and Methodology

The objective of this audit was to determine whether TDI issues appropriate and consistent disciplinary orders for workers' compensation providers and carriers that have committed violations or are identified as noncompliant.

The State Auditor's Office conducted this audit in two phases. See *An Audit Report on the Division of Workers' Compensation at the Department of Insurance* (State Auditor's Office Report No. 10-035, July 2010) for the report from Phase I. The following sub-objectives were developed for Phase II of the audit, which focused on the medical quality review process:

- Determine whether DWC's Office of the Medical Advisor records and reviews complaints in accordance with state law, regulations, and TDI policies and procedures.
- Determine whether DWC's Office of the Medical Advisor selects workers' compensation providers for medical quality reviews in accordance with state law, rules and regulations, grant stipulations, and TDI policies and procedures.

- Determine whether DWC's Office of the Medical Advisor conducts medical quality reviews in accordance with state law, rules and regulations, grant stipulations, and TDI policies and procedures.
- Determine whether TDI's Enforcement Division promptly resolves and appropriately addresses potential cases of provider noncompliance that the Office of the Medical Advisor refers to TDI's Enforcement Division.

The scope of this audit covered the DWC's Office of the Medical Advisor's complaint and medical quality review process. Auditors also reviewed medical quality reviews that were forwarded to TDI's Enforcement Division and became enforcement cases. The period of review for complaints, medical quality reviews, and enforcement cases was September 2006 to July 2010.

The audit methodology included reviewing and collecting documentation, conducting interviews with TDI and DWC staff and former staff, reviewing and assessing policies and procedures, and analyzing and evaluating the results of testing. Auditors evaluated the controls over information that the DWC's Office of the Medical Advisor collected and maintained related to complaints, medical quality reviews, and medical quality reviews forwarded to TDI's Enforcement Division.

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Detailed Results

Chapter 1

DWC Does Not Maintain Complete Information on Complaints and Medical Quality Reviews Related to Workers' Compensation Providers

The Division of Workers' Compensation (DWC) within the Texas Department of Insurance (TDI) does not maintain complete information regarding:

- Complaints that the Office of the Medical Advisor investigates related to workers' compensation providers.
- The status of Office of the Medical Advisor medical quality reviews of workers' compensation providers.
- Referrals of Office of the Medical Advisor medical quality reviews for potential sanctions against workers' compensation providers.

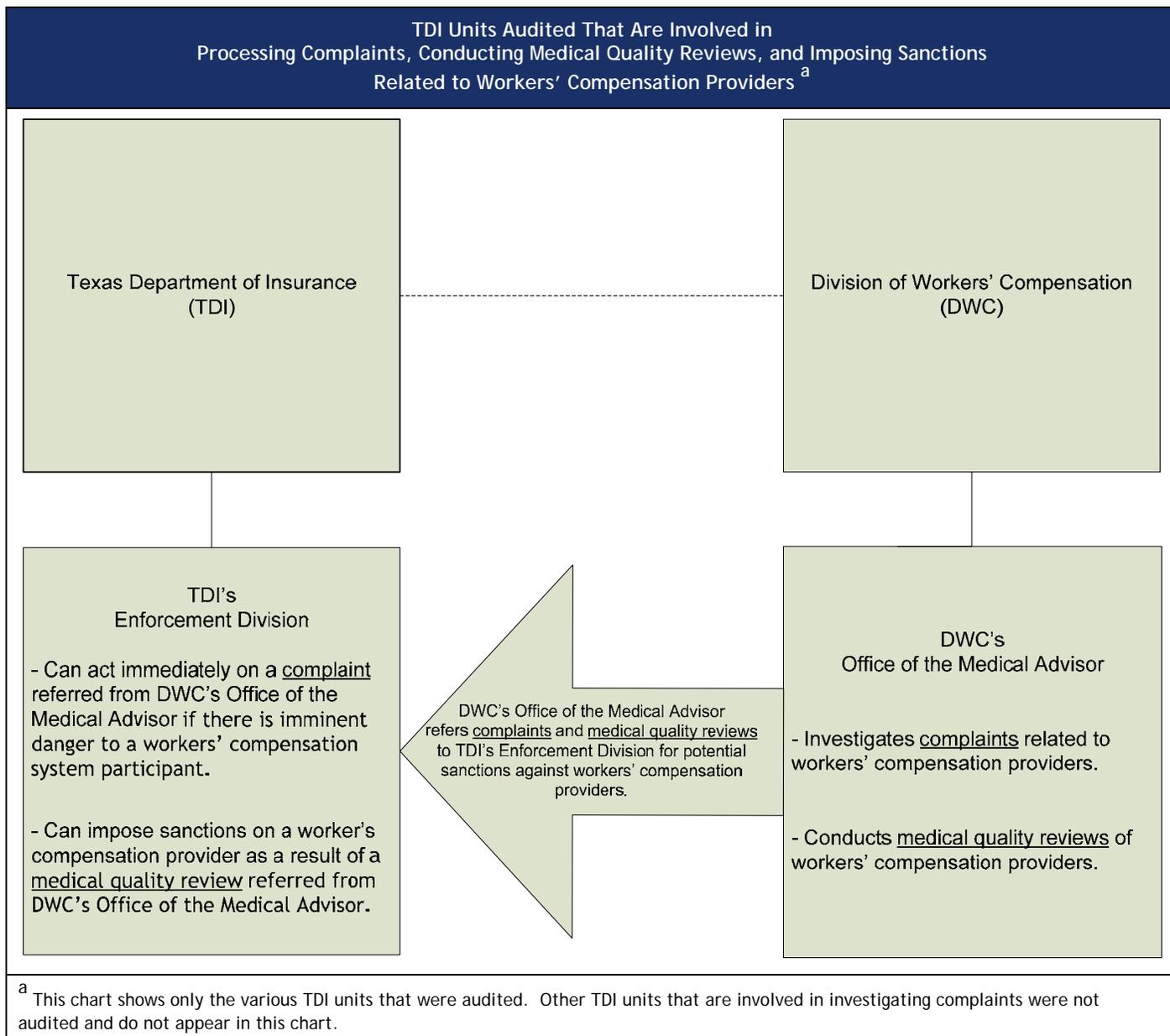
That information is incomplete because:

- Until January 2010, DWC recorded complaints that the Office of the Medical Advisor investigated related to workers' compensation providers in two different systems, neither of which contained complete or accurate information.
- DWC does not track its Office of the Medical Advisor medical quality reviews of workers' compensation providers in a reliable manner. DWC does not consistently update the system in which it tracks those reviews; therefore, it cannot ensure that it has recorded all of those reviews.
- Two systems are used to track the Office of the Medical Advisor medical quality reviews that have been referred to TDI's Enforcement Division for possible sanctions, and neither system contains complete or accurate information.

The extent and significance of the incomplete information impaired the State Auditor's Office's ability to form a conclusion on the audit objective to determine whether TDI issues appropriate and consistent disciplinary orders for workers' compensation providers that have committed violations or are identified as noncompliant. TDI and DWC will need to implement significant corrective action to establish and maintain complete and reliable complaint and medical quality review information necessary to carry out their responsibilities.

Figure 1 shows the various units audited within TDI that are involved in (1) processing complaints against workers' compensation providers, (2) conducting medical quality reviews of workers' compensation providers, and (3) imposing sanctions on workers' compensation providers.

Figure 1



Source: Prepared by auditors based on interviews with TDI and DWC staff and information in the organizational chart on page 54 of *Texas Department of Insurance Division of Workers' Compensation Self-Evaluation Report*, submitted to the Sunset Advisory Commission in September 2009.

Until January 2010, DWC used two different systems to track complaints regarding workers' compensation providers, and neither system contained complete or accurate information.

DWC does not maintain a central list of complaints regarding workers' compensation providers that its Office of the Medical Advisor receives. Until January 2010, DWC's Office of the Medical Advisor tracked complaints using two different systems—the Complaint Inquiry System (CIS) and a spreadsheet known internally as the “700”—and neither system contained complete or accurate information. For example:

- The 700 spreadsheet contained erroneous information on complaints because users had (1) sorted data in the spreadsheet improperly and (2) made data entry errors. In addition, DWC does not review the accuracy of the information entered on this spreadsheet.
- A total of 345 complaints were recorded on the 700 spreadsheet but were not recorded in CIS.
- A total of 363 complaints were recorded in CIS but were not recorded on the 700 spreadsheet.
- The 700 spreadsheet did not contain information on the final disposition of at least 11 complaints.

Not having a system that contains complete and accurate complaint information increases the risk that DWC may not properly and consistently record, track, and process complaints against workers' compensation providers that the Office of the Medical Advisor investigates. In January 2010, DWC discontinued using the 700 spreadsheet and began using only CIS to record complaint information.

DWC does not adequately track medical quality reviews of workers' compensation providers.

Information in the system that the DWC's Office of the Medical Advisor uses to track its medical quality reviews of workers' compensation providers is not reliable. A 2009 report that DWC staff prepared concluded that the system had been corrupted to the point that it is unable to produce reports. According to DWC staff, the DWC does not consistently update that system, and it does not consistently enter information into that system for all medical quality reviews. In addition, DWC staff have not been trained to use the system effectively, and five employees who do not work in DWC's Office of the Medical Advisor or TDI's Enforcement Division have access to that system. Having access enables individuals to create, edit, and delete records without any controls preventing them from doing so. These issues increase the risk that (1) medical quality reviews may not be recorded, tracked, and processed

properly and (2) unauthorized or accidental changes made to information in the system could go undetected.

TDI's Enforcement Division does not maintain comprehensive and accurate information on medical quality reviews that DWC's Office of the Medical Advisor refers for potential sanctions.

TDI's Enforcement Division uses the Case Tracking System (CTS) to track medical quality reviews that DWC's Office of the Medical Advisor refers for potential sanctions. However, CTS does not adequately identify all medical quality reviews that have been referred to TDI's Enforcement Division. This has occurred because users have not consistently used the CTS fields that could identify those reviews.

The State Auditor's Office identified 73 enforcement cases in CTS that were not clearly identified as having originated from medical quality reviews referred from DWC's Office of the Medical Advisor. TDI Enforcement Division procedures for entering data in CTS do not include a supervisory review to ensure accuracy of data entered. TDI's Enforcement Division also does not regularly review data in CTS, and it has no process to ensure that all medical quality reviews referred to it can be identified.

DWC's Office of the Medical Advisor also uses another spreadsheet to track the medical quality reviews it refers to TDI's Enforcement Division for potential sanctions. However, the information on that spreadsheet is not accurate. For example, the State Auditor's Office identified 12 medical quality review referrals that were not on that spreadsheet but were recorded in CTS.

Not properly tracking all medical quality reviews that DWC's Office of the Medical Advisor refers to TDI's Enforcement Division increases the risk that potential sanction cases could sit idle for an extended period of time or not be pursued at all.

Recommendations

DWC and TDI should:

- Receive, track, and monitor in one system all complaints related to workers' compensation providers that the Office of the Medical Advisor investigates.
- Develop and implement an accurate and reliable method of tracking all Office of the Medical Advisor medical quality reviews of workers' compensation providers from their initial inception to their final disposition.

- Ensure that the database that tracks medical quality reviews of workers' compensation providers can identify all medical quality reviews that DWC's Office of the Medical Advisor refers to TDI's Enforcement Division for potential sanctions.
- Ensure that adequate access controls exist for all systems and that only staff who require access to systems can access those systems.

Management's Response

Recommendation 1: *DWC and TDI should receive, track, and monitor in one system all complaints related to workers' compensation providers that the Office of the Medical Advisor investigates.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor has implemented a single system to receive, track, and monitor quality of care complaints received from any system participant. The Complaint Inquiry System (CIS) was implemented on January 1, 2010.

Recommendation 2: *DWC and TDI should develop and implement an accurate and reliable method of tracking all Office of the Medical Advisor medical quality reviews of workers' compensation providers from their initial inception to their final disposition.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor has developed and implemented a method for tracking all quality of care reviews. The Health Care Quality Review database was developed and implemented on September 1, 2010.

Recommendation 3: *DWC and TDI should ensure that the database that tracks medical quality reviews of workers' compensation providers can identify all medical quality reviews that DWC's Office of the Medical Advisor refers to TDI's Enforcement Division for potential sanctions.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor has developed and implemented a method for tracking all quality of care reviews. The Health Care Quality Review database was developed and implemented on September 1, 2010. This database identifies all medical quality reviews that DWC Office of the Medical Advisor has referred to TDI's Enforcement Division for potential sanctions.

Recommendation 4: *DWC and TDI should ensure that adequate access controls exist for all systems and that only staff who require access to systems can access those systems.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor has worked with TDI to ensure that the proper access controls exist to allow only those staff members who require access to systems can access those systems.

DWC's Processing of Complaints Related to Workers' Compensation Providers Is Inconsistent, Lacks Certain Controls, and Does Not Fully Comply with the Texas Labor Code

DWC's Office of the Medical Advisor should significantly strengthen the process it uses to track, record, process, and document the disposition of complaints it receives regarding workers' compensation providers.

As discussed in Chapter 1, until January 2010, DWC recorded complaints related to workers' compensation providers that the Office of the Medical Advisor investigated in two different systems, neither of which contained complete or accurate information. In addition, multiple staff can accept complaints from multiple sources, which increases the risk that DWC's Office of the Medical Advisor may not address all complaints received regarding workers' compensation providers.

To assess complaint processing from receipt to disposition, auditors reviewed 74 complaint files. The results of that review indicated that the complaint process is used inconsistently, lacks certain controls, and does not fully comply with the Texas Labor Code.

Multiple issues increase the risk that DWC's Office of the Medical Advisor cannot ensure that it consistently processes all complaints related to workers' compensation providers.

According to DWC staff, the administrative staff, nursing staff, and doctors within DWC's Office of the Medical Advisor can all receive complaints related to workers' compensation providers from multiple sources. In addition, TDI's System Monitoring and Oversight program areas can receive complaints. The various individuals who receive complaints have also not consistently tracked complaints appropriately in either of the two systems used to record complaints.

As discussed in more detail below, auditors noted that the information recorded for certain complaints frequently lacked details regarding how the complaint was investigated. Other complaints were not formally recorded as prescribed by the complaint form located on TDI's Web site.

These issues increase the risk that DWC's Office of the Medical Advisor cannot ensure that it processes all complaints related to workers' compensation providers.

DWC's Office of the Medical Advisor did not fully comply with the Texas Labor Code when processing complaints.

DWC's Office of the Medical Advisor did not consistently document information about complaints related to workers' compensation providers as required by the Texas Labor Code (see text box for the specific statutory requirements). Auditors reviewed 74 complaint files for compliance with the Texas Labor Code and determined the following:

**Texas Labor Code,
Section 402.023(d),
Complaint Information**

[DWC] shall keep an information file about each written complaint filed with the division under this subtitle that is unrelated to a specific workers' compensation claim, including a complaint regarding the administration of the workers' compensation system. The information must include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) For complaints for which [DWC] took no action, an explanation of the reason the complaint was closed without action.

- 52 (70 percent) of the 74 files did not contain a documented summary of the results of the investigation of the complaint. A summary of the results would, for example, document why DWC's Office of the Medical Advisor chose a particular disposition for a complaint. Texas Labor Code, Section 402.023(d)(5), requires DWC to document that summary.
 - DWC's Office of the Medical Advisor closed 54 of the 74 files with no further action. For 44 (81 percent) of those 54 complaints, the files did not contain a documented explanation for closing the complaint with no further action. Texas Labor Code, Section 402.023(d)(6), requires DWC to document that explanation.
- 5 (7 percent) of the 74 files did not contain the date on which the complaint was received. Texas Labor Code, Section 402.023(d)(1), requires DWC to document that date.
 - 4 (5 percent) of the 74 files did not contain the name of the individual who filed the complaint (the complainant). Texas Labor Code, Section 402.023(d) (2), requires DWC to document the name of the complainant.
 - 5 (7 percent) of the 74 files did not identify the subject matter of the complaint. Texas Labor Code, Section 402.023(d) (3), requires DWC to document the subject matter.
 - For 27 (36 percent) of 74 files, either (1) the files did not contain a copy of an acknowledgement letter that DWC sent to the complainant to acknowledge receipt of the complaint or (2) DWC's Office of the Medical Advisor could not locate the acknowledgment letter. Texas Labor Code, Section 402.023(d)(4), requires DWC to maintain a record of all persons it contacts in relation to a complaint. To help comply with that requirement, DWC developed a standard letter to send to complainants to acknowledge the receipt of their complaints; however, results of audit testing indicate that DWC did not consistently retain evidence that it sent those letters.

In reviewing the 74 complaint files, auditors noted other issues that DWC's Office of the Medical Advisor should address. These include:

- For 32 (43 percent) of the 74 files, it was unclear whether an employee of DWC's Office of the Medical Advisor reviewed the complaint because there was no signature or initials on the review documentation. Recording who reviewed and processed a complaint is important in helping to ensure accountability in complaint processing.
- DWC's Office of the Medical Advisor took an average of 119 calendar days to resolve 62 complaints. (For the remaining 12 complaints, auditors could not determine the number of days for complaint resolution because either the received date or the closed date could not be identified from the complaint file.) It took more than one year to resolve 8 (13 percent) of the 62 complaints, and the longest resolution time for one complaint was 770 calendar days or 2.1 years.
- TDI had received four complaint files more than a month before the files were transferred to DWC's Office of the Medical Advisor.
- The "closed" date recorded in one complaint file was prior to the "receipt" date recorded in that file.

DWC's Office of the Medical Advisor implemented a new complaint review process in January 2010; however, auditors identified deficiencies in complaints processed after the new process was implemented. Auditors reviewed the files for five complaints processed after January 2010 and identified the following:

- 3 (60 percent) of the 5 files did not contain evidence that DWC's Office of the Medical Advisor sent the complainant an acknowledgement of the receipt of the complaint.
- 3 (60 percent) of the 5 files did not contain a summary of results for each complaint. DWC's Office of the Medical Advisor closed those three complaints without any documented explanation.
- For 2 (40 percent) of the 5 files for which the DWC's Office of the Medical Advisor took no further action, there was no documented explanation for that disposition in the files.

Auditors also noted that the complaint process implemented in January 2010 had not been formally approved by management and was still in draft form during this audit.

Recommendations

DWC should:

- Develop, formally approve, and implement complaint processing procedures for the Office of the Medical Advisor to follow to help ensure consistency in processing complaints from receipt through to their final disposition.
- Develop, formally approve, and implement controls to help ensure that the Office of the Medical Advisor complies with all sections of the Texas Labor Code when it processes complaints.

Management's Response

Recommendation 1: *DWC should develop, formally approve, and implement complaint processing procedures for the Office of the Medical Advisor to follow to help ensure consistency in processing complaints from receipt through to their final disposition.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor is completing the quality of care complaint processing procedure. The procedure will be approved by the Medical Advisor and Commissioner of Workers' Compensation (Commissioner) after seeking stakeholder input. A stakeholder meeting to discuss the new draft procedure has been tentatively scheduled for December 14, 2010 and DWC plans to post the new draft procedure on its website prior to the meeting for stakeholder review and input. The DWC Office of the Medical Advisor will have this process implemented no later than December 31, 2010.

Recommendation 2: *DWC should develop, formally approve, and implement controls to help ensure that the Office of the Medical Advisor complies with all sections of the Texas Labor Code when it processes complaints.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor is completing the quality of care complaint processing procedure which includes controls that will ensure the Office of the Medical Advisor complies with all sections of the Texas Labor Code. The procedure will be approved by the Medical Advisor and Commissioner after seeking stakeholder input. A stakeholder meeting to discuss the new draft procedure has been tentatively scheduled for December 14, 2010 and DWC plans to post the new draft procedure on its website prior to the meeting for stakeholder review and input. The DWC Office of the

Medical Advisor will have this process implemented no later than December 31, 2010.

DWC's Provider Selection Process for Medical Quality Reviews Lacks Sufficient Procedures and Controls to Ensure Consistency and Prevent Overutilization of Health Care within the Workers' Compensation System

DWC's general guide for selecting providers on whom it will perform medical quality reviews lacks sufficient details for how DWC should select providers. Although DWC states that its provider selection process is random, aspects of that process are not random. For example, the process (1) selects specific medical areas for review, (2) selects specific billing codes for review, and (3) groups providers into categories of high-, medium-, and low-utilizers based on the number of billings associated with that provider.

In addition, DWC did not follow its own general guide when selecting providers in November 2008, and DWC could not explain why it deviated from that guide. Auditors surveyed four state agencies that regulate medical providers and determined that none of them has a provider selection process that groups providers into categories.

DWC's general guide for the selection of providers does not contain sufficient procedures.

DWC's general guide for provider selection is documented in a September 2008 presentation. However, that presentation lacked sufficient details for how DWC should consider selecting providers for medical quality reviews. The guide is not sufficiently detailed to carry out a step-by-step selection process. Several statements in the guide indicated the guide does not contain sufficient details to complete the provider selection. For example:

- The notes section of the presentation that outlined the guide has a question that indicates the individual who was to give this presentation requested input on one part of the selection process.
- The guide does not define the population of providers from which providers should be selected. For example, the guide does not specify whether providers will be selected from (1) the entire population of billing lines in the three medical areas to be reviewed (pain management, physical medicine, and spinal fusions) or (2) three separate populations for each of the medical areas to be reviewed.
- The guide does not explain whether specified sample sizes apply to (1) the entire population of providers or (2) three separate populations for each of the three medical areas to be reviewed.

According to current and former staff, certain DWC Office of the Medical Advisor staff involved with the medical quality review process were not informed of the guide until provider selection began in November 2008; other DWC Office of the Medical Advisor staff were informed of the guide at a later time. Auditors determined that DWC management has not formally approved that guide and has no formal process to approve the guide.

DWC's provider selection process is not completely random.

DWC states that its provider selection process for medical quality reviews is random; however, aspects of that process are not random. Specifically:

- As discussed above, the provider selection process focuses on three medical areas: pain management, physical medicine, and spinal fusions. Therefore, the process excludes providers who work in other medical areas in the workers' compensation system.
- The provider selection process focuses on selected groups of billing codes within pain management, physical medicine, and spinal fusions. Therefore, the process excludes providers who use other billing codes in the workers' compensation system.
- After DWC has narrowed the scope of selection to certain medical areas and certain billing codes, it sorts each medical area's population by the highest number of billing lines associated with an encrypted provider number. It then groups providers into high-, medium-, and low-utilizer categories.

DWC did not follow its own general guide when it selected providers for medical quality reviews in November 2008.

When DWC selected providers for medical quality reviews in November 2008, it did not follow the process set forth in its general guide. For example:

- The general guide states that four providers from each category of high-, medium-, and low-utilizers will be selected. However, DWC initially selected six providers from the high-utilizer category, three providers from the medium-utilizer category, and three providers from the low-utilizer category for each of the three medical areas reviewed.
- The general guide allows DWC to select additional high-utilizers for medical quality reviews depending on available resources. However, DWC selected additional providers prior to completing the medical quality reviews of the first set of providers it selected. It also included medium- and low-utilizers in its selection of additional providers.

- To select providers in the medium-utilizer category, the general guide requires DWC to calculate the average number of times that each provider that had at least two billing lines was randomly selected. However, DWC included all providers (high-, medium-, and low-utilizers) to calculate that average, which lowered the average it calculated.
- The general guide specifies that the appropriate sample size is 640 billing lines. However, DWC selected a total of 8,570 billing lines in its sample population (3,130 billing lines for physical medicine; 3,043 billing lines for pain management; and 2,397 billing lines for spinal fusions). DWC did this in an attempt to have a 99 percent confidence level for each medical area; however, it actually performed medical quality reviews for only 491 (6 percent) of the billing lines it selected.

DWC could not explain why it deviated from its general guide when it selected providers for medical quality reviews in November 2008 (see Appendix 2 for more details). The November 2008 provider selection was the only provider selection that DWC completed between September 2008 (when the general guide was created) and the initiation of this audit in February 2010.

Overutilization

The term “overutilization” is defined as inappropriate or excessive use of medical services that add to health care costs.

Source: National Association of Health Underwriters.

Texas Mutual Insurance Company

The Texas Mutual Insurance Company is a provider of workers' compensation insurance. It is a licensed, for-profit domestic mutual insurance company.

The Legislature first chartered the Texas Workers' Compensation Insurance Fund with the task of stabilizing the workers' compensation system. In 2001, the Legislature redesigned the charter and changed the name of the Texas Workers' Compensation Insurance Fund to the Texas Mutual Insurance Company.

The Texas Mutual Insurance Company is governed by a nine-member board of directors. Five board members are appointed by the Governor and confirmed by the Senate. The board is responsible for setting rates and directing the company's business.

Source: Texas Mutual Insurance Company.

DWC's November 2008 provider selection process was not consistent with the intent of the grant that funded medical quality reviews.

As discussed above, the provider selection process outlined in DWC's general guide selects providers in high-, medium-, and low-utilizer categories. DWC selected 22 (42 percent) of the 53 providers for its November 2008 provider selection from the medium- and low-utilizer categories. However, that selection process was not consistent with the intent of the grant that DWC received to enable it to conduct additional medical quality reviews. That grant from the Texas Mutual Insurance Company was intended to focus review efforts on overutilization and high-utilizers in the workers' compensation system (see text box for more information). An excerpt from the grants states “...The specific intent of this grant is to implement proven strategies to reduce medical overutilization in the Texas Workers' Compensation System, thereby directly reducing medical costs. ...The increase in review activity is to provide both additional front-end scrutiny of providers falling into high statistical utilization patterns and to sanction doctors...”

No agencies surveyed have a selection process like DWC's provider selection process.

None of the four agencies auditors surveyed selected providers for review by using high-, medium-, and low-utilizer categories. The Texas Medical Board, the Executive Council of Physical Therapy and Occupational Therapy Examiners, and the Texas Board of Chiropractic Examiners selected providers for reviews based on complaints. The Texas Optometry Board performs a risk-based selection of optometry offices based on office area and previous reviews.

Recommendations

DWC should:

- Re-evaluate its provider selection process for medical quality reviews to ensure that the process is:
 - ♦ Sufficiently detailed and documented.
 - ♦ Formally approved by management and communicated to all staff responsible for selecting providers.
 - ♦ Based on consistent criteria.
- Conduct medical quality reviews of providers on a periodic basis to help ensure that it monitors providers effectively.

Management's Response

Recommendation 1: *DWC should re-evaluate its provider selection process for medical quality reviews to ensure that the process is:*

- *Sufficiently detailed and documented.*
- *Formally approved by management and communicated to all staff responsible for selecting providers.*
- *Based on consistent criteria.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor is completing the medical quality review procedure, which will contain the revised health care provider (or other system participants) selection process for medical quality reviews. The procedure will contain detailed step-by-step instructions as well as consistent criteria for the provider selection process. The procedure will be formally

approved by the Medical Advisor and Commissioner after seeking stakeholder input. A stakeholder meeting to discuss the new draft procedure has been tentatively scheduled for December 14, 2010 and DWC plans to post the new draft procedure on its website prior to the meeting for stakeholder review and input. The Office of the Medical Advisor and Health Care Quality Review staff will be trained on all aspects of the procedure. The DWC Office of the Medical Advisor will have this process implemented no later than December 31, 2010.

Recommendation 2: *DWC should conduct medical quality reviews of providers on a periodic basis to help ensure that it monitors providers effectively.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor will develop an audit plan of health care providers (or other system participants) as part of its medical quality review procedure. The audit plan will ensure that health care providers or other system participants regulated by DWC will receive periodic audits regarding quality of care issues based upon data analysis trends and risk analysis. The audit plan will be formally approved by the Medical Advisor and Commissioner after seeking stakeholder input. The audit plan will be implemented no later than December 31, 2010.

DWC Lacks Certain Controls to Help Ensure That Its Medical Quality Review Process Is Consistent and Effective

DWC performs medical quality reviews of workers' compensation providers, lacks certain controls that affect the effectiveness and consistency of its medical quality review process. DWC has more than 100 policy and procedure documents related to its Office of the Medical Advisor. However, it was unclear whether any of DWC's Office of the Medical Advisor policies and procedures related to medical quality reviews were formally approved by management and communicated to all appropriate staff.

Although the process for performing and documenting medical quality reviews has certain strengths, DWC will need to implement additional controls to address the weaknesses in that process.

DWC's policies and procedures related to the Office of the Medical Advisor do not include sufficient details to accomplish tasks.

DWC provided auditors with more than 100 documents that related to policies and procedures for the Office of the Medical Advisor. However, due to a lack of documentation, it was unclear whether any DWC Office of the Medical Advisor's policies and procedures related to medical quality reviews were formally approved by DWC management and communicated to all appropriate staff. In addition:

- The procedures for medical quality reviews do not include detailed steps to accomplish specific tasks within the process. The absence of detailed steps increases the risk that Office of the Medical Advisor staff will not appropriately address issues arising from medical quality reviews or make appropriate disposition recommendations. Specifying detailed steps within procedures is especially important because of the relatively high staff turnover rate within the Office of the Medical Advisor, which is discussed in more detail below.
- DWC does not have any policies and procedures for preparing documentation for medical quality reviews that the Office of the Medical Advisor refers to TDI's Enforcement Division for sanctions against the provider. TDI's Enforcement Division is charged with investigating and working cases for potential sanctions against providers. Standardizing the documentation for referring medical quality reviews would assist attorneys in TDI's Enforcement Division in preparing cases and documenting evidence.

DWC's medical quality review process has both strengths and weaknesses.

The following individuals within DWC's Office of the Medical Advisor perform medical quality reviews: the Medical Advisor, the Assistant Medical Advisor, Associate Medical Advisors, the Medical Quality Review Panel (MQRP), and the Quality Assurance Panel (QAP) (see text box for additional information).

Medical Quality Review Panel (MQRP) and Quality Assurance Panel (QAP)

The MQRP is a panel of independent medical experts selected by the Medical Advisor based on education, training, and experience. These experts are under contract with DWC to conduct clinical reviews of medical case files. The MQRP may recommend referral of cases to TDI's Enforcement Division for sanctions against providers, carriers, and other system participants under review.

The QAP is an independent group of MQRP members that provides an additional level of quality assurance for all reviews conducted by MQRP members. QAP members are selected by the Medical Advisor based on levels of expertise pertaining to quality of medical care. The QAP meets regularly to provide medical expertise to the Medical Advisor, discuss pending reviews and medical policy issues, and to counsel the Medical Advisor regarding appropriate actions related to reviews.

Source: TDI.

Auditors examined 33 medical quality reviews and noted the following strengths:

- 25 (76 percent) of the 33 medical quality reviews involved charges filed against providers, and all 25 providers were given the opportunity to respond to the charges against them. (The remaining eight medical quality reviews did not involve charges filed against providers.)
 - 23 (70 percent) of the 33 medical quality reviews involved situations requiring the MQRP members to sign forms affirming that they were free from conflicts of interest, and the MQRP members signed those forms for 22 of (96 percent) of those 23 reviews. (The remaining 10 medical quality reviews were closed with no further action and did not require involvement from the MQRP.)
- For 9 (27 percent) of the 33 medical quality reviews, the provider requested an informal review conference, and the Office of the Medical Advisor had documentation showing that the conference was requested in these 9 cases. (For the remaining 24 medical quality reviews, either providers did not request informal review conferences or the medical quality reviews were closed with no further action.) In addition, the Office of the Medical Advisor had evidence that it held eight of those conferences and canceled one.

However, auditors identified the following weaknesses in the medical quality reviews:

- For 15 (45 percent) of the 33 medical quality reviews, the status of the review within the system that DWC's Office of the Medical Advisor uses to track its medical quality reviews was not accurate when compared to the documentation in the review files. (Issues regarding the system that DWC's Office of the Medical Advisor uses to track its medical quality reviews are discussed in more detail in Chapter 1).
- 13 (39 percent) of the 33 medical quality reviews were closed with no further action, and for 4 (31 percent) of those 13 medical quality reviews, the Office of the Medical Advisor had no documented explanation for that

disposition in its files. Two of those four medical quality reviews were closed with no further action and dismissed by DWC's Commissioner before the review was complete. For one of those two medical quality reviews, notations in the file indicated that complaints had been registered against the provider before the Office of the Medical Advisor had initiated the medical quality review. As a result, it was unclear whether this medical quality review was initiated based on (1) complaints or (2) through the provider selection process (discussed in Chapter 3).

- 21 (64 percent) of the 33 medical quality reviews were referred to TDI's Enforcement Division; however, auditors could not locate 2 (10 percent) of those 21 medical quality reviews in CTS, which is the system that TDI's Enforcement Division uses to track medical quality reviews that DWC's Office of the Medical Advisor refers to it. (Issues regarding CTS are discussed in more detail in Chapter 1).
- 28 (85 percent) of the 33 medical quality reviews involved situations in which the provider was required to send the Office of the Medical Advisor patient records. For 11 (39 percent) those 28 medical quality reviews, the provider sent in the patient records but did not meet the required due dates for sending in those records. In those cases, DWC's Office of the Medical Advisor did not seek any disciplinary action against the providers for not responding in a timely manner.
- 2 (6 percent) of the 33 medical quality reviews involved situations in which DWC's Office of the Medical Advisor was required to conduct continuous monitoring of 2 providers. However, there was no evidence of that continuous monitoring in those two review files.
- For 8 medical quality reviews, auditors could not determine the QAP recommendation because there was no documentation of the QAP recommendation prior to the case being presented to the Medical Advisor for the final recommendation.

Auditors also noted that DWC's Office of the Medical Advisor has no process for tracking providers with previous violations. Texas Labor Code, Section 415.021(c)(1)(B), requires that the history and extent of previous administrative violations should be considered when assessing administrative penalties. Tracking this information should be the responsibility of both DWC's Office of the Medical Advisor and TDI's Enforcement Division.

The staff turnover rate in DWC's Office of the Medical Advisor has been relatively high.

In fiscal year 2009, the staff turnover rate in DWC's Office of the Medical Advisor was 27 percent. In comparison, in fiscal year 2009 TDI's overall staff turnover rate was 8 percent and the staff turnover rate for all state agencies

was 14.4 percent.¹ In fiscal year 2010, the staff turnover rate in DWC's Office of the Medical Advisor was 80 percent.

Recommendations

DWC should:

- Develop comprehensive medical quality review policies and procedures that address all aspects of the medical quality review process, and ensure that management formally approves those policies and procedures and communicates them to staff.
- Document explanations for the dispositions of all medical quality reviews.
- Monitor to ensure that providers comply with all DWC requests for information, and seek disciplinary action when providers do not comply with those requests.
- Develop and implement a process for the continuous monitoring of providers for which DWC's Office of the Medical Advisor has recommended this monitoring.
- Coordinate with TDI's Enforcement Division to develop and implement a process to track providers with previous violations.

Management's Response

Recommendation 1: *DWC should develop comprehensive medical quality review policies and procedures that address all aspects of the medical quality review process, and ensure that management formally approves those policies and procedures and communicates them to staff.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor is completing the medical quality review procedure that addresses all aspects of the medical quality review process. The medical quality review procedure will be approved by the Medical Advisor and Commissioner after seeking stakeholder input. A stakeholder meeting to discuss the new draft procedure has been tentatively scheduled for December 14, 2010 and DWC plans to post the new draft procedure on its website prior to the meeting for stakeholder review and input. Upon formal approval, the Medical Advisor and the Director of Health Care Quality Review will communicate the approved procedures to the Office

¹ See *An Annual Report on Classified Employee Turnover for Fiscal Year 2009* (State Auditor's Office Report No. 10-702, December 2009) for detailed information on turnover at all state agencies.

of the Medical Advisor and Health Care Quality Review staff. The DWC Office of the Medical Advisor will have this process implemented no later than December 31, 2010.

Recommendation 2: *DWC should document explanations for the dispositions of all medical quality reviews.*

Response: *The DWC agrees with this recommendation.*

The proposed Medical Quality Review Procedure will include a process to document explanations for the dispositions of all medical quality reviews. The new procedure will include the processes for communication and sign off of review dispositions between the Medical Advisor and TDI Enforcement. The medical quality review procedure will be approved by the Medical Advisor and Commissioner after seeking stakeholder input. A stakeholder meeting to discuss the new draft procedure has been tentatively scheduled for December 14, 2010 and DWC plans to post the new draft procedure on its website prior to the meeting for stakeholder review and input. The DWC Office of the Medical Advisor will have this process implemented no later than December 31, 2010.

Recommendation 3: *DWC should monitor to ensure that providers comply with all DWC Office of the Medical Advisor requests for information, and seek disciplinary action when providers do not comply with those requests.*

Response: *The DWC agrees with this recommendation.*

The proposed Medical Quality Review Procedure will include a monitoring plan for all requests for information, including tracking reports, with time frames for responses and staff responsible for following up on the DWC's requests. When health care providers or other system participants do not comply with requests from the DWC Office of the Medical Advisor, the Office of the Medical Advisor will forward these instances to DWC's System Monitoring and Oversight for investigation and referral to the TDI Enforcement for disciplinary action.

Recommendation 4: *DWC should develop and implement a process for the continuous monitoring of providers for which DWC's Office of the Medical Advisor has recommended this monitoring.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor is completing the medical quality review procedure. The procedure will contain processes for monitoring providers as a result of an enforcement action. The medical quality review procedure will be approved by the Medical Advisor and Commissioner after seeking stakeholder input. A stakeholder meeting to discuss the new draft

procedure has been tentatively scheduled for December 14, 2010 and DWC plans to post the new draft procedure on its website prior to the meeting for stakeholder review and input. The DWC Office of the Medical Advisor will have this process implemented no later than December 31, 2010.

Recommendation 5: *DWC should coordinate with TDI's Enforcement Division to develop and implement a process to track providers with previous violations.*

Response: *The DWC agrees with this recommendation.*

The DWC Office of the Medical Advisor has developed and implemented a method for tracking all quality of care reviews. The Health Care Quality Review database was developed and implemented on September 1, 2010.

Medical Quality Reviews Referred to TDI's Enforcement Division Were Left Pending for Lengthy Time Periods or Closed with a Warning, and Eight Were Dismissed by DWC's Commissioner with No Documented Explanation

DWC's Office of the Medical Advisor can refer the results of its medical quality reviews to TDI's Enforcement Division for potential sanctions against providers. At that point, the reviews become "enforcement cases." Auditors identified certain weaknesses in the processing of these enforcement cases, including lengthy time periods during which enforcement cases were left pending, the frequent closing of enforcement cases with a warning letter and no sanctions, and the dismissal of enforcement cases with no documented explanation.

Enforcement cases originating from medical quality reviews were left pending for lengthy time periods.

As of July 2010, 27 medical quality reviews that DWC's Office of the Medical Advisor had referred to TDI's Enforcement Division for sanctions against providers had been pending for an average of 344 calendar days. Table 2 shows the fiscal year in which TDI's Enforcement Division opened the enforcement cases originating from these 27 medical quality reviews.

Table 2

Pending Enforcement Cases Originating from Medical Quality Reviews of Providers	
Fiscal Year in Which TDI's Enforcement Division Opened Enforcement Cases Originating from Medical Quality Reviews	Number of Enforcement Cases Originating from Medical Quality Reviews That Were Still Pending as of July 2010
2007	1
2008	4
2009	3
2010	19
Total	27

Source: Auditors compiled this table based on TDI information.

It is important to note that TDI's Enforcement Division sometimes delays the assignment of enforcement cases to attorneys in that division. Auditors identified three enforcement cases originating from medical quality reviews for which the "open" date in the records of TDI's Enforcement Division was up to five months prior to the date the enforcement case was assigned to an attorney.

Weaknesses in how TDI's Enforcement Division processes and disposes of enforcement cases originating from medical quality reviews hinder the effectiveness of that division's efforts.

Between September 2006 and July 2010, TDI's Enforcement Division closed 86 (75 percent) of 114 enforcement cases originating from DWC's Office of the Medical Advisor with a warning letter to the provider or other system participants and no sanctions. It closed 3 (3 percent) of those 114 enforcement cases with an order from DWC's Commissioner (a Commissioner order is more serious than a warning letter, but it may not necessarily impose administrative penalties on a provider). TDI's Enforcement Division posts disciplinary orders on its Web site.

TDI's Enforcement Division took an average of 162 calendar days to close the 114 enforcement cases discussed above.² It took an average of 148 calendar days to close the 86 enforcement cases it closed with a warning letter and no sanctions. Taking almost five months to close cases with a warning letter and no sanctions hinders the effectiveness of TDI's Enforcement Division and indicates that the efficiency of the process should be improved.

In reviewing 37 enforcement cases originating from medical quality reviews, auditors identified both strengths and weaknesses. For example, each of the 37 enforcement case files contained a request for disposition (specifying the reason for a particular disposition recommendation) that was signed by the appropriate party. However, auditors also identified the following:

- For 19 enforcement cases, TDI's Enforcement Division did not complete an "action form." TDI's Enforcement Division uses that form to record the case identification number, the TDI Enforcement Division attorney assigned to the enforcement case, and the complexity level of the enforcement case. To ensure accountability in the process, it is important to consistently document that information.
- For 21 enforcement cases, the final case disposition determined by TDI's Enforcement Division differed from the disposition originally recommended by DWC's Office of the Medical Advisor. However, there was no documented explanation for why the final case disposition differed from the original case disposition recommended by DWC's Office of the Medical Advisor. This included enforcement cases for which DWC's Office of the Medical Advisor had recommended removing providers from the workers' compensation system or removing providers from the designated doctor list, but for which the final case disposition determined by TDI's Enforcement Division was sending a warning letter. For eight of

² Auditors calculated the average number of calendar days from the date TDI's Enforcement Division opened an enforcement case to the date it closed an enforcement case.

these enforcement cases, DWC's Office of the Medical Advisor did not provide a recommendation.

- For 4 enforcement cases, although the cases originated from DWC's Office of the Medical Advisor, employees who worked outside of DWC's Office of the Medical Advisor were determined to be part of the approval of that disposition. Program clients are involved in approving the disposition of the case, and the involvement of individuals outside of DWC's Office of the Medical Advisor increases the risk that decisions could be made without appropriate input from the program client.
- For 13 enforcement cases, TDI's Enforcement Division's records indicated that the program client approved the final case disposition. However, these 13 case files did not contain documentation specifying the name of the program client. (This includes eight dismissed enforcement cases that are discussed in more detail below.) Staff in TDI's Enforcement Division asserted that the program client for these enforcement cases was DWC's Office of the Medical Advisor but had no documentation to support that assertion.
- For 2 enforcement cases, the final disposition required the provider to be monitored by DWC's Office of the Medical Advisor. The final disposition for one case required quarterly reviews; however, DWC's Office of the Medical Advisor did not perform the initial quarterly review. In the other case, the provider voluntarily left the worker's compensation system. However, DWC's Office of the Medical Advisor was not aware of this disposition and, therefore, had not monitored to ensure that the provider was not still billing for workers' compensation services.

DWC's Commissioner dismissed eight enforcement cases originating from medical quality reviews, but there was no documented explanation for these dismissals.

In March 2010, DWC's Commissioner dismissed eight enforcement cases originating from medical quality reviews. DWC's Office of the Medical Advisor had originally referred those medical quality reviews to the Enforcement Division for sanctions against the providers. Those cases were dismissed without any sanctions against the providers, and there was no documented explanation of the dismissal of these cases in the case files. According to DWC's Commissioner status reports, prior to the dismissal of those eight cases:

- TDI's Enforcement Division had drafted an agreed order (settlement) for one of the eight cases and sent it to the provider.
- TDI's Enforcement Division had drafted agreed orders for another three of the eight cases.

In addition, documentation for the eight dismissed enforcement cases states that the program client was in agreement with the case disposition. However, DWC's Office of the Medical Advisor, which was the program client, stated in a formal memorandum sent to DWC's Commissioner on February 8, 2010, that it did not agree with dismissing those enforcement cases (see Appendix 3 for that memo).

The providers associated with the eight dismissed enforcement cases were all selected for medical quality reviews using some aspects of the selection process discussed in Chapter 3. However, two of the eight providers also had complaints (filed with DWC's Office of the Medical Advisor) against them included in their review. Through the provider selection process, seven of the eight providers had been classified as high-utilizers and one had been classified as a low-utilizer.

DWC did not begin referring providers to licensing agencies until April 2010, and its referrals were not consistent with statutory requirements.

Texas Labor Code, Section 413.0514, requires the following:

(f) DWC and the [Texas Medical Board] shall provide information to each other on all disciplinary actions taken and

(g) DWC and the Texas Board of Chiropractic Examiners shall provide information to each other on all disciplinary actions taken.

However, DWC did not begin providing information to licensing agencies until April 2010. Prior to April 2010, TDI did not have a process to send disciplinary actions to licensing agencies. Between April 2008 and April 2010, TDI's Enforcement Division imposed disciplinary actions as a result of 10 enforcement cases that originated from medical quality reviews; no disciplinary actions were referred to licensing agencies during that time period.

In April 2010, for the eight dismissed enforcement cases discussed above, DWC communicated information regarding the providers involved to the respective licensing agencies (the Texas Medical Board and the Texas Board of Chiropractic Examiners). However, TDI Enforcement Division had not imposed disciplinary actions against the providers associated with the eight dismissed cases. After receiving the referrals, the licensing agencies had to request additional information from DWC to open complaint investigations against the providers. During this audit, TDI established memorandums of understanding regarding health care provider referrals with both the Texas Medical Board and the Texas Board of Chiropractic Examiners.

Recommendations

DWC and TDI should:

- Resolve enforcement cases originating from medical quality reviews in a timely manner.
- Re-evaluate the number of warning letters issued for enforcement cases originating from medical quality reviews.
- Develop and implement a process that facilitates communication between DWC's Office of the Medical Advisor and TDI's Enforcement Division to ensure that each unit agrees on final enforcement case dispositions.
- On a quarterly basis, report the following information to the Legislative Budget Board, the Office of the Governor, the House Committee on Business and Industry, and the Senate Committee on State Affairs:
 - ♦ The number and types of final recommendations that DWC's Office of the Medical Advisor makes to TDI's Enforcement Division regarding its medical quality reviews.
 - ♦ The number and types of final dispositions that TDI's Enforcement Division makes for enforcement cases originating from medical quality reviews.
- Conduct ongoing monitoring of providers when that monitoring is required in the final case disposition.
- Ensure consistency in using and completing standard forms for each case in the enforcement process.
- Ensure that decisions regarding enforcement cases originating from medical quality reviews are communicated and negotiated between DWC's Office of the Medical Advisor and TDI's Enforcement Division.
- Develop and implement a formal process for referring disciplinary actions it takes against providers to the appropriate licensing agencies as required by statute.

Management's Response

Recommendation 1: *DWC and TDI should resolve enforcement cases originating from medical quality reviews in a timely manner.*

Response: *The agency agrees with this recommendation.*

The TDI Enforcement staff has set a goal to resolve with action or set a hearing with the State Office of Administrative Hearings (SOAH) for each workers' compensation case within 180 days of Enforcement's receipt of a referral from a DWC program area. Monthly or bimonthly case reviews between the Enforcement team leader and Enforcement staff will verify that cases are progressing expeditiously and ensure that staff resources are appropriately allocated to agency priorities. The Enforcement Senior Associate Commissioner has implemented a procedure to verify that Enforcement team leaders are timely conducting case reviews.

Recommendation 2: *DWC and TDI should re-evaluate the number of warning letters issued for enforcement cases originating from medical quality reviews.*

Response: *The agency agrees with this recommendation.*

More than half of the 114 cases reviewed in this audit were not referrals based on alleged violations of medical quality of care standards. More than 60 cases reviewed in this audit were opened against insurance carriers for improperly compensating a single doctor who was no longer eligible to practice or receive remuneration in the workers' compensation system due to a previous Commissioner consent order. These 60+ cases were resolved by issuing warning letters to the insurance carriers based on their payments to that doctor.

The Enforcement Senior Associate Commissioner and the Enforcement team leader assigned to DWC will continue to carefully consider and monitor the use of warning letters as an appropriate resolution in workers' compensation enforcement cases to ensure consistency across all cases involving quality reviews conducted by the Office of the Medical Advisor.

Recommendation 3: *DWC and TDI should develop and implement a process that facilitates communication between DWC's Office of the Medical Advisor and TDI's Enforcement Division to ensure that each unit agrees on final enforcement case dispositions.*

Response: *The agency agrees with this recommendation.*

Since August 2010, Enforcement staff and the Office of the Medical Advisor have worked closely together to facilitate case resolution for referrals that originated from the Office of the Medical Advisor. Enforcement staff and the Office of the Medical Advisor staff regularly meet and correspond regarding open cases. These expectations are described in Enforcement's policies and procedures manual and should be followed by all Enforcement staff in dealing with all program clients throughout the agency.

Enforcement staff has been reminded to seek approval from the Office of the Medical Advisor on all final case dispositions that originate from a referral from the Office of the Medical Advisor, as is required in referrals from all agency programs. These approvals are documented in the case file and on the Request for Disposition.

Recommendation 4: *DWC and TDI should on a quarterly basis, report the following information to the Legislative Budget Board, the Office of the Governor, the House Committee on Business and Industry, and the Senate State Affairs Committee:*

- *The number and types of final recommendations that DWC's Office of the Medical Advisor makes to TDI's Enforcement Division regarding its medical quality reviews.*
- *The number and types of final dispositions that TDI's Enforcement Division makes for enforcement cases originating from medical quality reviews.*

Response: *The agency agrees with this recommendation.*

On a quarterly basis, TDI will provide this information to these key leadership and legislative offices to improve transparency and accountability. TDI will continue to post final enforcement actions on its website.

Recommendation 5: *DWC and TDI should conduct ongoing monitoring of providers when that monitoring is required in the final case disposition.*

Response: *The agency agrees with this recommendation.*

Enforcement regularly tracks compliance with final case dispositions. Enforcement staff will notify the Office of the Medical Advisor when a review should be initiated as a result of an approved Commissioner's order to facilitate the tracking of Commissioner's orders that impose on-going quality reviews or other monitoring. The medical quality review procedure will include processes for handling monitoring reviews. The DWC Office of the Medical Advisor will have this process implemented no later than December 31, 2010.

Recommendation 6: *DWC and TDI should ensure consistency in using and completing standard forms for each case in the enforcement process.*

Response: *The agency agrees with this recommendation.*

Enforcement staff has been given additional instructions on completing standard forms and including them in each case file. These forms are reviewed by the Enforcement Team Leader and the Senior Associate Commissioner, to ensure consistency and completeness.

Recommendation 7: *DWC and TDI should ensure that decisions regarding enforcement cases originating from medical quality reviews are communicated and negotiated between DWC's Office of the Medical Advisor and TDI's Enforcement Division.*

Response: *The agency agrees with this recommendation.*

The Medical Advisor, by statute, must make the final recommendation for a case disposition. Enforcement staff consults with the Medical Advisor and agency staff appropriate to the case at hand. The Enforcement team leader and the Senior Associate Commissioner will ensure that all enforcement case files include documentation of negotiations and client counseling with the Medical Advisor during key points of control such as case reviews, Requests for Commissioner's Approval and Requests for Final Disposition.

Recommendation 8: *DWC and TDI should develop and implement a formal process for referring disciplinary actions it takes against providers to the appropriate licensing agencies as required by statute.*

Response: *The agency agrees with this recommendation.*

The DWC has been reporting and referring cases on a monthly basis to appropriate licensing authorities since April 2010. The DWC finalized a Memorandum of Understanding with the Texas Medical Board and the Board of Chiropractic Examiners, respectively, on June 29, 2010. These MOUs address what type of information is included in reports and referrals to these agencies. Written internal procedures regarding the reporting and referring process will be finalized by December 31, 2010.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Texas Department of Insurance (TDI) issues appropriate and consistent disciplinary orders for workers' compensation providers and carriers that have committed violations or are identified as noncompliant.

The State Auditor's Office conducted this audit in two phases. See *An Audit Report on the Division of Workers' Compensation at the Department of Insurance* (State Auditor's Office Report No. 10-035, July 2010) for the report from Phase I. The following sub-objectives were developed for Phase II of the audit, which focused on the medical quality review process:

- Determine whether the Division of Workers' Compensation's (DWC) Office of the Medical Advisor records and reviews complaints in accordance with state law, regulations, and TDI policies and procedures.
- Determine whether DWC's Office of the Medical Advisor selects workers' compensation providers for medical quality reviews in accordance with state law, rules and regulations, grant stipulations, and TDI policies and procedures.
- Determine whether DWC's Office of the Medical Advisor conducts medical quality reviews in accordance with state law, rules and regulations, grant stipulations, and TDI policies and procedures.
- Determine whether TDI's Enforcement Division promptly resolves and appropriately addresses potential cases of provider noncompliance that the DWC's Office of the Medical Advisor refers to TDI's Enforcement Division.

Scope

The scope of this audit covered the Office of the Medical Advisor's complaint and medical quality review process. Auditors also reviewed medical quality reviews that were forwarded to TDI's Enforcement Division and became enforcement cases. The period of review for complaints, medical quality reviews, and enforcement cases was September 2006 to July 2010.

Methodology

The audit methodology included reviewing and collecting documentation, conducting interviews with TDI and DWC staff and former staff, reviewing and assessing policies and procedures, and analyzing and evaluating the results of testing. Auditors evaluated the controls over information that the DWC's Office of the Medical Advisor collected and maintained related to complaints, medical quality reviews, and medical quality reviews forwarded to TDI's Enforcement Division.

The State Auditor's Office determined that the information DWC maintains on complaints related to workers' compensation providers in its Complaint Inquiry System (CIS) and on a spreadsheet known as the "700" was not reliable for the purposes of making a conclusion on the audit objective to determine whether TDI issues appropriate and consistent disciplinary orders for workers' compensation providers and carriers that have committed violations or are identified as noncompliant. To assess the reliability of the complaint information in CIS, auditors conducted interviews with DWC staff and performed a comparison of CIS with the 700 spreadsheet. The results of those interviews and tests indicated that neither system contained complete or accurate information.

The State Auditor's Office determined that the information DWC maintains on its reviews of workers' compensation cases in its Tracker system was not reliable for the purposes of making a conclusion on the audit objective to determine whether TDI issues appropriate and consistent disciplinary orders for workers' compensation providers and carriers that have committed violations or are identified as noncompliant. To assess the reliability of the case review information in the Tracker system, auditors conducted interviews with DWC staff and performed analysis on and observed fields within the Tracker system. The results of those tests indicated that information in the Tracker system was not reliable. DWC does not update that system consistently, and it does not enter information into that system for all medical quality reviews.

The State Auditor's Office determined that the information the DWC maintains on reviews referred to TDI's Enforcement Division was not reliable for the purposes of making a conclusion on the audit objective to determine whether TDI issues appropriate and consistent disciplinary orders for workers' compensation providers and carriers that have committed violations or are identified as noncompliant. TDI uses the Case Tracking System (CTS) to track enforcement cases referred from other program areas. DWC's Office of the Medical Advisor uses a spreadsheet to track its cases referred to TDI's Enforcement Division. To assess the reliability of the case information in CTS and the spreadsheet, auditors conducted interviews with DWC staff and performed a comparison of CTS with the spreadsheet. The results of those

interviews and tests indicated that neither system contained complete information.

Information collected and reviewed included the following:

- DWC's Office of the Medical Advisor policies, procedures, and other documents related to:
 - ♦ Complaint review.
 - ♦ Medical quality review provider selection.
 - ♦ Medical quality reviews of providers.
- TDI's Enforcement Division policies and procedures related to case review.
- DWC Commissioner status reports.
- DWC's Office of the Medical Advisor complaint files and medical quality review files.
- TDI's Enforcement Division case files.

Procedures and tests conducted included the following:

- Interviewed key personnel.
- Analyzed DWC's Office of the Medical Advisor complaint and medical quality review data.
- Analyzed TDI's Enforcement Division case data.
- Tested DWC's Office of the Medical Advisor complaint files and medical quality review files.
- Tested TDI's Enforcement Division cases files referred by the DWC's Office of the Medical Advisor.

Criteria used included the following:

- Texas Labor Code.
- DWC policies and procedures.
- Title 28, Texas Administrative Code.

Audit fieldwork was conducted from June 2010 through September 2010. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and

perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Michael Simon, MBA, GGAP (Project Manager)
- Melissa Dozier (Assistant Project Manager)
- Ben Carter
- Cain Kohutek
- Michael Sanford
- Dana Musgrave, MBA (Quality Control Reviewer)
- Ralph McClendon, CISSP, CCP, CISA (Audit Manager)

State Auditor's Office Analysis of DWC's November 2008 Selection of Providers for Medical Quality Reviews

Table 3 presents auditors' analysis of the Division of Workers' Compensation's (DWC) November 2008 selection of providers for medical quality reviews. In summary:

- Auditors identified issues in six of the eight DWC selection procedures.
- DWC did not consistently follow its selection procedures. Specifically:
 - ♦ DWC followed one of its eight selection procedures.
 - ♦ DWC did not follow four of its eight selection procedures.
 - ♦ Auditors were unable to determine whether DWC followed three of its eight selection procedures because the procedures were not detailed enough to make that determination.

Table 3

Auditors' Analysis of DWC's November 2008 Selection of Providers for Medical Quality Reviews				
DWC Procedure Number	DWC Procedure Description as Stated in DWC's September 2008 Presentation	Issue Auditors Identified in DWC's Procedure	Description of Steps DWC Actually Performed	Did DWC Follow Its Procedure?
1	"Identify universe of billings for services performed during a selected time period."	Procedure did not identify what billing lines or time periods should be reviewed.	The universe of billing lines DWC identified was: <ul style="list-style-type: none"> ▪ Spinal fusions: 10,023 billings. ▪ Interventional pain/pain management: 88,842 billings. ▪ Physical medicine: 459,215 billings. 	Auditors were unable to determine whether DWC followed its procedure because the procedure was not detailed enough to determine whether any deviations occurred.
2	"Using SAO Statistical Toolbox: Determine appropriate sample size using the following statistical criteria: <ul style="list-style-type: none"> ▪ Margin of error (ME): 1.00% ▪ Estimated Attribute Error [p(n)]: 5.00% ▪ The population size: 217,658 ▪ Confidence level 98% The adequate sample size is: 640" ^a	Procedure did not explain whether samples should be selected for each of the three categories of billing lines separately or for all three categories of billing lines combined.	The samples and sample sizes DWC selected were: <ul style="list-style-type: none"> ▪ Spinal fusions: Sample size was 2,397 billing lines with a 99% confidence interval. ▪ Interventional pain/pain management: Sample size was 3,043 billing lines with a 99% confidence interval. ▪ Physical medicine: Sample size was 3,130 billing lines with a 99% confidence interval. 	No.

Auditors' Analysis of DWC's November 2008 Selection of Providers for Medical Quality Reviews

DWC Procedure Number	DWC Procedure Description as Stated in DWC's September 2008 Presentation	Issue Auditors Identified in DWC's Procedure	Description of Steps DWC Actually Performed	Did DWC Follow Its Procedure?
3	"OMA obtains a SAS Random Sample of 640 billing lines from the Policy and Research Section, with only encrypted provider IDs, and dates of service." ^{b c}	Procedure did not explain whether the 640 billing line sample should be pulled for each of the three categories of billing lines separately or for all three categories of billing lines combined.	DWC selected more than 640 billing lines for each of the medical areas (spinal fusions, interventional pain/pain management, and physical medicine).	Auditors were unable to determine whether DWC followed its procedure because the procedure was not detailed enough to determine whether any deviations occurred.
4	"Once we sort this list of 640 provider IDs, we will find that some of these providers have been randomly selected more than once."	Procedure did not specify how the sort should be performed. For example, the sort could be done on provider ID numbers, or it could be done on the number of billing lines associated with a provider.	DWC performed the sort based on the number of billing lines associated with a provider.	Auditors were unable to determine whether DWC followed its procedure because the procedure was not detailed enough to determine whether any deviations occurred.
5	"We calculate the average number of time each provider with 2 or more hits were randomly selected." Hits refer to billing lines.	None.	DWC calculated the average using all providers in the sample populations.	No.
6	"High 4, Ave 4, Low 4". This refers to selecting 4 providers in the category of high, medium, and low.	By categorizing providers based on their utilization levels, the selection process is no longer random. Performing this procedure does not achieve the confidence level desired because the sample sizes selected are significantly smaller than the sample sizes determined in procedure # 2 above.	DWC made the following selections: <ul style="list-style-type: none"> ▪ Spinal fusions: 6 high-utilizers, 3 medium-utilizers, and 3 low-utilizers. ▪ Interventional pain/pain management: 6 high-utilizers, 3 medium-utilizers, and 3 low-utilizers. ▪ Physical medicine: 6 high-utilizers, 3 medium-utilizers, and 3 low-utilizers. 	No.
7	"After selecting 12 providers in the above step, select any number of high utilizers as resources allow."	Procedure did not specify that DWC should not select medium- or low-utilizers.	DWC made the following selections: <ul style="list-style-type: none"> ▪ Spinal fusions: 5 high-utilizers, 2 medium-utilizers, and 1 low-utilizer. ▪ Interventional pain/pain management: 5 high-utilizers and 1 low-utilizer. ▪ Physical medicine: 3 high-utilizers. 	No.
8	"Request names and billing data on selected providers."	None	DWC requested names for the 53 providers it selected above.	Yes.

Auditors' Analysis of DWC's November 2008 Selection of Providers for Medical Quality Reviews				
DWC Procedure Number	DWC Procedure Description as Stated in DWC's September 2008 Presentation	Issue Auditors Identified in DWC's Procedure	Description of Steps DWC Actually Performed	Did DWC Follow Its Procedure?
<p>^a "SAO" is State's Auditor's Office</p> <p>^b "OMA" is DWC's Office of the Medical Advisor.</p> <p>^c "SAS" is SAS business and analytics software.</p>				

Source: Auditors' analysis of DWC documentation.

Memorandum Regarding Medical Quality Review Recommendations

A February 8, 2010, memo from the Office of the Medical Advisor to the Commissioner of the Division of Workers' Compensation is presented below.

MEMORANDUM

February 8, 2010

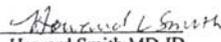
TO: Commissioner, Texas Workers' Compensation Commission

FROM: Office of the Medical Advisor

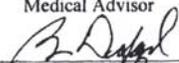
Resistance to recent recommendations from the Office of the Medical Advisor concerning some doctors practicing within the Texas Workers' Compensation System has caused concern within the Office. The recommendations have been based upon findings that patients of these doctors have not received the quality of medical care the Office and the MQRP believe they require, and to which they are entitled. These recommendations have been ignored or rejected by some within the System because of allegations of irregularities in the process whereby the doctors have been brought under scrutiny. These activities raise two distinct issues which must be addressed, simultaneously if necessary, but as mutually exclusive challenges.

First, and foremost, a finding of the MQRP/QAP that patients are not receiving proper care means patients are being harmed by the care received. No legal argument about process can negate that fact, nor justify failure to act in the best interest of the injured workers, regardless of the means whereby notice of that harm was brought to the Office. The System, as its first priority, has a *legal* obligation to provide quality medical care to the injured worker. Additionally, the professionals within the Office have *ethical* obligations to see that that care is delivered and if it isn't, to so advise the Commissioner. If "rights" of the subject doctors are compromised by irregularities in the oversight process, then those irregularities should be addressed. However, poor patient care must not be tolerated by the Commissioner, *for any reason*; and all within the Commission must support this position of the Commissioner. Those doctors have no "rights" to continue to provide poor care to the injured worker while process is being addressed.

The Workers' Compensation System was designed and established for the benefit of the worker, not as an exercise in process management [see and compare Labor Code 402.021(b)(4) and 402.021(b)(7) for expressions of intent of the legislature]. It is a responsibility of the Office of the Medical Advisor to ensure all within the System understand that premise. This communication, the Medical Advisor believes, is in furtherance of that responsibility.


Howard Smith MD JD
Medical Advisor


Ken Ford MD


Bill Defoy DC


Clark Watts MD JD

Related State Auditor's Office Work

Related SAO Work		
Number	Product Name	Release Date
10-035	An Audit Report on the Division of Workers' Compensation at the Department of Insurance	July 2010
10-016	An Audit Report on the Financial Responsibility Verification Program (TexasSure)	November 2009
10-009	An Audit Report on the Department of Insurance's Enforcement of Solvency Standards for Insurance Companies	October 2009
09-052	An Audit Report on the Texas Department of Insurance's Annuities Regulation	August 2009
07-033	An Audit Report on Performance Measures at the Department of Insurance	May 2007
06-045	An Audit Report on Contracts Related to the Texas Workers' Compensation System	June 2006

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Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Joe Straus III, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Jim Pitts, House Appropriations Committee
The Honorable Rene Oliveira, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Department of Insurance

Mr. Mike Geeslin, Commissioner of Insurance
Mr. Rod Bordelon, Commissioner of Workers’ Compensation



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