



# Texas Department of Insurance

## Division of Workers' Compensation

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## Memorandum

To: Texas Workers' Compensation System Participants  
From: Rod Bordelon, Commissioner of Workers' Compensation  
Date: January 8, 2013

### **Subject: Pharmacy Closed Formulary Status and Legacy Claim Implementation Reminders**

In January of 2011 the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) adopted its pharmacy closed formulary rules. The adopted closed formulary rules included a bifurcated application timeframe for initial and existing claims. The initial phase of the applicability of the closed formulary, which applies to claims with dates of injury occurring on or after September 1, 2011, is fully implemented.

As of September 1, 2013, all outpatient certified workers' compensation health care network (network) and non-network injured employee claims are subject to the closed formulary. The TDI-DWC reminds workers' compensation system participants that the Outpatient Open Formulary remains in effect for certified network and non-network legacy claims until then.

In order to prepare for this legacy claim transition to the closed formulary, the TDI-DWC is actively encouraging insurance carriers and prescribing doctors to coordinate the pharmacological management of these legacy claims as early as possible. Beginning no later than March 1, 2013, as required by 28 Texas Administrative Code (TAC) §134.510, insurance carriers have several responsibilities related to legacy claims.

- Identifying all legacy claims (i.e., claims with injuries that occurred prior to September 1, 2011) that have been prescribed a drug excluded from the closed formulary after September 1, 2012.
- Providing written notifications to the prescribing doctor, injured employee, and the pharmacy (if known). Templates of such insurance carrier notification letters, pharmaceutical rules, the ODG "N" Drug List, and other pertinent pharmaceutical benefits information are available on the TDI website at <http://www.tdi.texas.gov/wc/pharmacy/index.html>.
- Providing contact information (name, telephone number, and date and time) to the prescribing doctor to discuss and develop appropriate pharmacological management for those claims.

Prescribing doctors are responsible for:

- preparing for the discussion by reviewing their injured employee legacy claims that are currently receiving a drug excluded from the closed formulary;
- providing contact information to the insurance carrier (name, telephone number, and date and time) to facilitate a discussion regarding the ongoing pharmacological management of these legacy claims; and
- recognizing that contact from the insurance carrier is not a prerequisite for a prescribing doctor to initiate a discussion with the insurance carrier to facilitate the transition of legacy claims to the closed formulary.

To ensure continuity of care, insurance carriers and prescribing doctors may enter into an agreement regarding the application of the closed formulary for individual claims on a claim-by-claim basis. The insurance carrier must document any agreement and the terms of the agreement, and share a copy of the agreement with the prescribing doctor and injured employee. A prescribed drug excluded from the pharmacy closed formulary provided to the injured employee as a result of the agreement is not subject to retrospective utilization review of medical necessity.

When discussing the pharmacological management of legacy claims and considering agreements for those claims, insurance carriers and prescribing doctors should be cognizant of several requirements.

- No proprietary or second tier formulary may be used by the insurance carrier or its agents. Only the closed formulary as defined by TDI-DWC rules is to be applied for claims in the Texas workers' compensation system.
- No preauthorization is required for prescriptions for legacy claims until September 1, 2013. Prescriptions that do not require preauthorization are, however, subject to retrospective review of medical necessity.
- All closed formulary legacy claim discussions and agreements should be conducted between the prescribing doctor and a medical peer from the insurance carrier, or the insurance carrier's utilization review agent.
- Insurance adjusters are not licensed to make medical necessity decisions or conduct utilization review functions.

For additional information on implementing the closed formulary to legacy claims, contact the TDI-DWC by calling *Comp Connection for Health Care Providers* at 1-800-372-7713 and selecting option 3 or e-mailing to [medben@tdi.texas.gov](mailto:medben@tdi.texas.gov).