



Texas Department of Insurance

Division of Workers' Compensation

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4001 fax • www.tdi.state.tx.us

Memorandum

To: Health Care Providers

From: Matthew Zurek, Executive Deputy Commissioner for Health Care Management and System Monitoring

Date: August 1, 2011

Subject: Texas Workers' Compensation System Adopts Pharmacy Closed Formulary

As a result of the 79th Texas Legislature's requirement that the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) adopt a closed formulary pursuant to Texas Labor Code §408.028(b), the TDI-DWC adopted rules establishing a pharmacy closed formulary (closed formulary) for the Texas workers' compensation system. The rules were adopted by the Commissioner of Workers' Compensation Rod Bordelon on December 3, 2010, and may be viewed on the TDI website at www.tdi.state.tx.us/wc/rules/adopted/index.html. During the rulemaking process the TDI-DWC obtained input from workers' compensation system participants, including the Texas Medical Association, Texas Osteopathic Medical Association and the Texas Pharmacy Association. With this collaborative input, the closed formulary is anticipated to bring more drug prescribing consistency in both certified workers' compensation health care network (certified network) and non-network claims.

The purpose of this article is to inform physicians and pharmacies of the key dates and messages contained within the rules comprising the closed formulary, which are applicable to both certified network and non-network claims.

28 Texas Administrative Code (TAC) §134.506 - Key Dates and Messages for Injured Employee Claims with Dates of Injury Before September 1, 2011 ("Legacy Claims")

The Outpatient Open Formulary remains in effect for certified network and non-network legacy claims until September 1, 2013. The Outpatient Open Formulary contains all FDA-approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but does not include drugs that lack FDA approval, or non-drug items.

Drugs prescribed for non-network legacy claims shall be in accordance with TDI-DWC's adopted treatment guidelines, the ODG Treatment in Workers' Comp (ODG). Drugs included in the open formulary prescribed and dispensed for non-network legacy claims do not require preauthorization, except for investigational and experimental drugs, but are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier.

Drugs prescribed for legacy claims subject to a certified network shall be in accordance with the certified network's treatment guidelines. Drugs included in the open formulary prescribed and

dispensed for legacy claims subject to a certified network shall be preauthorized in accordance with network preauthorization processes. Drugs not subject to preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier.

28 TAC §134.510 – Key Dates and Messages for the Transition to the Closed Formulary for Claims with Dates of Injury Prior to September 1, 2011

Insurance carriers and certified network and non-network prescribing doctors should initiate discussion to transition claims with dates of injury prior to September 1, 2011, because all claims will be subject to the closed formulary starting September 1, 2013. Prescribing doctors and insurance carriers that contact one another regarding the transition of claims are required to provide each other with a name, telephone number, and date and time to discuss and develop appropriate pharmacological management for those claims. Additionally, beginning no later than March 1, 2013, insurance carriers are required to identify all legacy claims that have been prescribed a drug excluded from the closed formulary after September 1, 2012 and send a notification to the injured employee, prescribing doctor and pharmacy (if known) of the application of the closed formulary to all legacy claims starting September 1, 2013.

28 TAC §134.530 and §134.540 – Key Dates and Messages for Injured Employee Claims with Dates of Injury After September 1, 2011 (Certified Network and Non-Network)

The closed formulary provisions apply to certified network and non-network outpatient claims on or after September 1, 2011 for dates of injury which occur on or after September 1, 2011.

For certified network and non-network claims, preauthorization is only required for:

1. drugs identified with a status of “N” in the current edition of ODG Treatment in Workers’ Comp / Appendix A, ODG Workers’ Compensation Drug Formulary, and any updates;
2. a compound that contains an “N” drug; and
3. any investigational or experimental drugs.

Health care providers can obtain the most recent edition of ODG’s Appendix A by ordering ODG’s treatment guidelines from the Work Loss Data Institute website at <http://odg-disability.com>.

The TDI-DWC has also posted the entire list of “N” drugs as published by ODG in Appendix A free of charge on the TDI website at <http://www.tdi.state.tx.us/wc/dm/documents/ndruglist.xls> and will update the listing monthly upon receipt from ODG; however, the official online edition of ODG’s Appendix A is updated by ODG as new evidence becomes available and is the official source for TDI-DWC actions.

Non-network injured employee claims (28 TAC §134.530)

- Prescribing of drugs shall be in accordance with the ODG, the TDI-DWC’s adopted treatment guidelines. Prescription and nonprescription drugs included in the TDI-DWC’s closed formulary and recommended by the ODG may be prescribed and dispensed without preauthorization. Prescription and nonprescription drugs included in the TDI-DWC’s closed formulary that exceed or are not addressed by the ODG may be prescribed and dispensed without preauthorization.
- Drugs included in the closed formulary, which are prescribed in an amount sufficient for the first seven days after the employee’s injury (i.e., initial fill), may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.
- Drugs excluded from the closed formulary, which are prescribed in an amount sufficient for the first seven days after the employee’s injury (i.e., initial fill), except for

investigational and experimental drugs, may be dispensed without preauthorization and are subject to retrospective review of medical necessity.

- An intrathecal drug delivery system requires preauthorization and the preauthorization request must include the prescribing doctor's drug regimen plan of care, and the anticipated dosage or range of dosages for the administration of pain medication. Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary require preauthorization on an annual basis. Preauthorization for these refills is also required whenever the medications, dosage or range of dosages, or the drug regimen proposed by the prescribing doctor, differs from the medications, dosage or range of dosages, or drug regimen previously preauthorized by that prescribing doctor, or there is a change in prescribing doctor.

Certified network injured employee claims (28 TAC §134.540)

- Prescribing of drugs shall be in accordance with the certified network's treatment guidelines and in accordance with network preauthorization processes.
- Drugs included in the closed formulary which are prescribed in an amount sufficient for the first seven days after the employee's injury (i.e., initial fill) may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.
- Drugs excluded from the closed formulary which are prescribed in an amount sufficient for the first seven days after the employee's injury (i.e., initial fill) may be dispensed without preauthorization and are subject to retrospective review of medical necessity.
- An intrathecal drug delivery system requires preauthorization in accordance with the certified network's treatment guidelines and preauthorization requirements. Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary require preauthorization on an annual basis. Preauthorization for these refills is also required whenever the medications, dosage or range of dosages, or the drug regimen proposed by the prescribing doctor, differs from the medications dosage or range of dosages, or drug regime previously preauthorized by that prescribing doctor, or when there is a change in prescribing doctor.

28 TAC §134.550 – Key Messages for Requesting Medical Interlocutory Orders

28 TAC §134.550 allows a prescribing doctor or pharmacy the ability to obtain a medical interlocutory order (MIO) in instances where preauthorization denials of a previously prescribed and dispensed drug(s) excluded from the closed formulary poses an unreasonable risk of a medical emergency.

A request for an MIO may be submitted to the TDI-DWC on the new DWC Form-064, *Medical Interlocutory Order Request: Continued Use of a Drug Previously Prescribed and Dispensed and Excluded from the TDI-DWC's Closed Formulary*. The MIOs will be issued by the TDI-DWC in these instances when a complete request is made by the prescribing doctor or the pharmacy. The DWC Form-064 is available for download from the TDI website at www.tdi.state.tx.us/forms/form20.html.

When the TDI-DWC issues the MIO, it will require the insurance carrier to reimburse a pharmacy for prescriptions dispensed in accordance with the MIO. In addition, the disputed medical necessity of the prescription at issue will continue through the utilization review and medical dispute resolution processes until the issue is resolved.

Key Message for After September 1, 2013

On or after September 1, 2013, all outpatient certified network and non-network injured employee claims are subject to the closed formulary.

For additional information on the closed formulary, contact the TDI-DWC by calling *Comp Connection for Health Care Providers* at 1-800-372-7713 and select option 3 or send an e-mail to medben@tdi.state.tx.us.