Texas Workers’ Compensation Program
Opportunities for Orthopaedic Surgeons

The Texas Legislature enacted a dramatic overhaul of the state’s Workers’ Compensation program in 2005 that was designed to ensure that injured workers have access to high-quality physicians. Lawmakers recognized that increased reimbursement rates would serve as an incentive to attract high-quality physicians to the program. Today, Texas’ Workers’ Compensation program serves as a model program that other states often cite in their own reforms.

Participation by specialists, such as orthopaedic surgeons, is critical to the overall success of the Texas Workers’ Compensation program. Many injured workers face complicated injuries that can only be addressed by specialists.

However, injured workers are not the only individuals who benefit from orthopaedic surgeon participation. Texas’ Workers’ Compensation may serve as one of the highest payers for some orthopaedic surgeons, and that serve as a helpful supplement to some practices. In addition, the pool of patients continues to increase due to an increasing number of employers moving to Texas and a shortage of physicians in the program. Ultimately, the potential compensation may outweigh the administrative requirements for many practices.

**Why Participate?**

**Healthy Reimbursement**
In an attempt to increase health care provider participation in the Texas workers’ compensation system, the Texas Department of Insurance, Division of Workers’ Compensation (TDI-DWC) adopted a professional services medical fee guideline. The medical fee guideline raised reimbursement levels for physicians and added an annual inflation adjustment based on the annual Medicare Economic Index, the weighted average of price changes for goods and services used to deliver physician services. For some physicians, Texas Workers’ Compensation represents one of their highest payers.

**Revenue Diversification**
Some private practice orthopaedic surgeons rely on a diversified portfolio of payers in case one payer suddenly drops its rates. For these orthopaedic surgeons, Workers’ Compensation represents a solid part of their portfolio.

**More Employers Are Utilizing Workers’ Compensation**
Texas is the only state that does not require employers to carry Workers’ Compensation insurance (with limited exceptions). However, the majority of employers choose to carry Workers’ Compensation coverage. According to a 2016 study by the Texas Department of Insurance, the number of employers that participate rose from 67 percent to 78 percent.

More information about Texas employer participation in the Workers’ Compensation program can be found here: [https://www.tdi.texas.gov/reports/wcreg/documents/nonsub2016.pdf](https://www.tdi.texas.gov/reports/wcreg/documents/nonsub2016.pdf)
Recent DWC Rules Changes to Increase Appointments for Designated Doctors

Several aspects of the Workers’ Compensation program have experienced a decrease in orthopaedic surgeon participation. The designated doctor arena has witnessed a sharp drop-off in physician participation due to the selection process, which has been referred to as a “functioning lottery,” and several other factors, including extensive training, testing, and re-application processes. As such, many have decided that the opportunity cost is not financially worth it to continue being a designated doctor.

In response, TDI-DWC implemented a new rule in December 2018 that will make it easier for specialists such as orthopaedic surgeon to be assigned injured workers in the Designated Doctor program. TDI-DWC will also continue to consider other measures as tools to enhance physician participation.

This is an example of how TDI-DWC continuously seeks opportunities to enhance physician participation in the program.

Click here to learn more about the new designated doctor rule:

Room for More Orthopedic Surgeon Participation

The number of orthopedic surgeons (and physicians in general) in the designated doctor program are declining as a percentage of overall participation and by exam type.

Learn more through the chart on page 4:

The low participation can be found in chart 6.4 on p. 70:

Opportunities for Participation

Texas’ Workers’ Compensation program presents a number of participation opportunities for orthopaedic surgeons.

Treating Doctors

The “treating doctor” in a Texas Workers’ Compensation claim has a very large role. The treating doctor is responsible for making sure that the injured worker receives appropriate treatment and is referred to any necessary specialists. Everything goes through the treating doctor. And if the claim (or any portion of the claim) is denied, the treating doctor helps to establish what the injuries are, prove how they were caused by the work accident, and establish the claimant’s work abilities. Any and all benefits that an injured worker might possibly collect are established through the treating doctor.

About half of the injured employees who are currently covered by Texas Workers’ Compensation insurance are also in a network. If the injured employee is in a network, he or she will need to go to a network doctor for coverage or risk out-of-pocket expenses, which a risk that many employees will not take. Therefore, it is beneficial for orthopedic surgeons to become familiar with the list of Texas Workers’ Compensation networks and determine whether or not it would be beneficial to join the network.
If an injured employee is outside of a network, the employee can see any treating doctor who he or she wishes as long as that treating doctor takes Workers' Compensation patients. Currently, about half of all Workers’ Compensation claims are treated outside of the networks in Texas.

It is important to note that treating doctors in Texas do not have to receive any training or approvals from TDI-DWC. In order to treat, for the most part, all that is needed is an active license.

**Designated Doctors**  
A designated doctor is selected by TDI-DWC to resolve questions about an injured employee's medical condition or resolve a dispute about a work-related injury or illness. The injured employee, the employee’s representative or insurance carrier, or TDI-DWC can request an exam by a designated doctor. TDI-DWC will determine if a designated doctor should be appointed to conduct the exam.

Designated doctors are selected by TDI-DWC to answer questions about a work-related injury or occupational illness. Texas Labor Code §408.0041 authorizes designated doctors to examine injured employees in order to help resolve the following issues:

- The percentage of physical impairment caused by the injury.
- Whether the employee has reached maximum medical improvement.
- The extent of the employee’s injury.
- Whether an injured employee’s disability is a direct result of a work-related injury.
- The ability of the employee to return to work.
- Other similar issues.

Designated doctors may not provide medical treatment or determine the appropriateness of medical care for an injured employee. All designated doctor appointments for a particular claim, as well as any related medical testing, are paid by the insurance carrier and the fees for these appointments are established by rule (28 TAC §134.204). There are training and testing requirements imposed by DWC in order to receive appointments as a designated doctor.

**Maximum Medical Improvement**  
Another option is to perform Maximum Medical Improvement/Impairment Rating reviews (MMI/IR). This role is similar to the designated doctor, but has fewer training and testing requirements because they are only asked to make determinations based on MMI and IR. MMI is a specific date set either by the injured worker’s medical condition or the time since income benefit eligibility. When MMI is reached, an impairment rating is calculated, and the type of income benefits changes. Carriers use the MMI date to determine the type and amount of benefits a patient receives.

The Maximum Allowable Reimbursement (MAR) for an MMI/IR examination is equal to the reimbursement for the MMI evaluation plus the reimbursement for the body area(s) evaluated for assignment of an IR. The medical examination, consultation with injured employees, review of medical records and films and reports are included in the examination of the MMI/IR reimbursement.
Required Medical Exams
Required Medical Exams (RME) present another option for orthopaedic surgeon participation in the Workers’ Comp program through reviews. TDI-DWC authorizes insurance carriers to request an RME for injured employees to resolve any questions regarding the appropriateness of the health care received by the injured employee and to resolve any issues pertaining to a designated doctor determination regarding their injury. The services of an RME doctor are billed and reimbursed the same as a designated doctor without several of the payment modifiers.

Independent Review
Texas allows Independent Review Organizations (IROs) to operate in the Workers’ Compensation program, similarly to how they operate in HMOs. Depending on the issue, these reviews can be either pre-authorized or retrospective in nature.

Medical Quality Review Panel
TDI-DWC includes several opportunities under its umbrella for orthopaedic surgeons to get involved, and the Medical Quality Review Panel (MQRP) serves as one of those options. Underneath the agency’s umbrella there are more options to get involved. Physicians are typically paid $150 per hour (with some limitations).

The MQRP process consists of medical case review initiated from either a written complaint, which may include an internal referral, a plan-based audit, or monitoring resulting from a DWC consent order (28 TAC §180.68). For the purposes of this process, all medical case reviews conducted as part of the medical quality review process are known as medical quality reviews.

The MQRP is comprised of experts and arbiters, and the TDI-DWC’s medical adviser oversees the medical quality review process conducted by the MQRP.

Experts prepare reports to aid the TDI-DWC to monitor compliance with the Texas Workers’ Compensation Act and DWC rules and to help ensure that injured employees in the Workers’ Compensation system receive medically necessary and appropriate health care that is timely and cost-effective and facilitates functional recovery and appropriate return-to-work outcomes.

Arbiters
Another option for working with DWC is to serve as an arbiter. The arbiters represent the medical adviser in Informal Settlement Conferences (ISCs). At the conclusion of an ISC, the Arbiters recommend appropriate action to the Medical Advisor.

The following is a link to the application: [https://www.tdi.texas.gov/forms/dwc/dwc072mqrapp.pdf](https://www.tdi.texas.gov/forms/dwc/dwc072mqrapp.pdf)