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Insurers and Doctors Calling for Treatment Guides in 2013 Reforms: Top [2013-02-01]

By [Michael Whiteley](#), Eastern Bureau Chief

Draft legislation being circulated by Tennessee Gov. Bill Haslam would mandate the adoption of the state's first set of medical treatment guidelines by 2016 and would culminate five years of debate over whether to adopt national standards for the treatment of injured workers and groups representing insurers and doctors.

The reforms under negotiation by business groups, doctors, attorneys and insurers for the past 18 months call for creation of the state's first workers' compensation claims court, conversion of the state Division of Workers' Compensation to an independent agency and the creation of two medical committees to review medical fees and to develop guides for the "diagnosis and treatment of commonly occurring workers' compensation injuries."

The new DWC administrator, to be appointed by the governor, would have to appoint a medical practice advisory council and adopt the guides as regulations by Jan. 1, 2016.

The Tennessee Department of Labor and Workforce Development called for adopting medical treatment guides in 2007. But talks have stalled over how the state should proceed.

Gary Zelizer, director of government affairs for the Tennessee Medical Society, said doctors and insurers have agreed that guidelines are needed to head off disputes over utilization review, which are now resolved in the state's chancery and circuit courts.

But the groups differ over whether Tennessee should adopt national guidelines, such as the Official Disability Guidelines, published by the Work Loss Data Institute; the guides published by the American College of Occupational and Environmental Medicine, or come up with a set of guides adapted from a variety of guides and written specifically for Tennessee.

The Medical Society is calling for the proposed advisory panel to examine treatment guides adopted in Colorado and then borrow portions of the ACOEM guides and ODG to apply to Tennessee workers.

"Currently, the biggest issue in workers' compensation for the Medical Society is that all of the payers are using whatever guidelines they want for performing utilization reviews," Zelizer said. "What we're dealing with is multiple guidelines, and this is a way to shine a little light on it and come up with something specific for Tennessee."

Ron Jackson, Southeast vice president for the American Insurance Association, said insurers haven't

specified which set of guides Tennessee should adopt, but are pushing to include some form of national guidelines in the Haslam reforms.

"We're saying the guidelines are definitely needed, and we prefer a national standard," Jackson said on Thursday.

On Wednesday, Tennessee state Sen. Mark Norris, R-Collierville, filed Senate Bill 200 on behalf of Haslam. Jackson said the bill, which does not include details of the reforms, was filed as a "placeholder" while insurers, attorneys and doctors hold a final series of meeting with Haslam's office next week to work out the specifics.

The actual legislation is expected to be filed as an amendment to Senate Bill 200 and heard in the Senate Commerce Committee within the next two weeks.

Under the draft proposal, treatment provided under the guidelines would provide a presumption of medical necessity rebuttable only by "clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker."

Disputes over treatment variances would be resolved by a new court of workers' compensation claims, which would be staffed by judges appointed by the new DWC administrator.

Michael Gavin, chief strategy officer of Georgia-based managed care provider Prium, said his group has been working with Haslam's office to come up with a process for developing the guides.

"What we've told the state of Tennessee is that it's imperative that the state adopt a set of nationally-recognized guides in order to establish a standard of care and to ensure that no special interests are involved in crafting guides that may benefit them," Gavin said.

"If Tennessee starts trying to draft its own guidelines, it will take another two or three years to resolve all the issues," Gavin said.

Haslam's draft doesn't specify which guides should form the model for the Tennessee reforms. The draft only requires that the new administrator of the proposed DWC appoint a panel comprised of experienced doctors, representatives of the insurance industry, employers and workers' representatives.

Gavin said one of the council's primary assignments will be to come up with guidelines for the treatment of pain.

The Tennessee General Assembly in 2012 voted to allow employers and insurers to conduct utilization reviews when injured workers have been receiving opioids for longer than 90 days. The legislation, signed into law by Haslam on May 21, 2012, allows utilization reviews when workers are receiving drugs on Schedules II, III or IV of the U.S. Drug Enforcement Administration's controlled substances list.

But both Zelizer and Gavin said Tennessee payers still are debating ways to treat pain.

"Obviously, there have been quite a few disagreements on what constitutes necessary treatment. We need to look at other states to see how those have been resolved," Zelizer said.

Haslam's draft is [here](#).

SB 200 is [here](#).