

Texas Brain Injury Advisory Council 2018 Legislative Recommendations

Disclaimer: These recommendations were prepared by members of the Texas Brain Injury Advisory Council. The opinions and suggestions expressed in these recommendations are the members' own and do not reflect the views of the Texas Health and Human Services Commission Executive Council or the Texas Health and Human Services Commission.

1. Require stop-loss regulation of self-funded employee health benefit plans by the Texas Department of Insurance.

Problem Legislation Addresses

Employers with self-funded employee health benefit plans are excluded by federal law from all state mandates including Texas Insurance Code 1352 which applies to benefit coverage for brain injury rehabilitation. A self-insured employer may assume full or partial responsibility for all medical claims. The employer may reduce its risk for large claims by purchasing stop-loss insurance coverage. If the aggregate losses get above a certain "attachment" point, the stop-loss insurance kicks in and starts to pay benefits for the employer.

It is not widely recognized that stop loss insurance policies that cover self-funded health plans are subject to state insurance laws, as pointed out in an article by Rhonda D. Orin, managing partner for a Washington, D.C. law firm. She stated, that "employers, - not Employee Retirement Income Security Act (ERISA) beneficiaries - are insured by stop-loss policies and therefore fall outside of ERISA" (andersonkill.com).

The Employee Benefit Research Institute (EBRI) noted that stop-loss insurance is a direct insurance they states are permitted to regulate (ebri.org). Many states, such as Louisiana and Minnesota, have passed legislation that all stop-loss policies are regulated by the state department of insurance as a direct insurance (andersonkill.com). Similarly, in a Texas Court Case, the Texas Supreme Court ruled in favor of stop-loss reinsurance as a direct insurance (caselaw.findlaw.com).

Very low attachment points by some self-funded plans enables employers to take advantage of ERISA and exclusion from state mandates providing patient and provider protection. Some states are addressing the issue of a low attachment point even though the carrier

takes virtually all the risks for loss and the plan acts like a regular health insurance.

In Texas, stop-loss insurance is unregulated and, due to such innovations as low attachment products, the self-funded market has grown to be much larger than the regulated insurance market. As a result, federal law is largely preempting application of important patient and provider protections enacted by the Legislature. The insurance department should be directed to regulate stop-loss insurance, protect employers purchasing the coverage, and protect the group health insurance market by ensuring that self-funded plans truly are self-funded, not insured.

2. Add Cognitive Rehabilitation Therapy to the State Medicaid Plan.

Problem Legislation Addresses

Currently the Texas Medicaid state plan does not cover Cognitive Rehabilitation Therapy (CRT).

It is common for individuals with brain injury to have cognitive deficits which impact their ability to make choices, understand, remember and use information. Cognition includes attention and concentration, processing and understanding information, memory, communication, planning and organizing, reasoning, problem solving, decision making, judgment, and impulse control.

Cognitive rehabilitation has been proven to be an effective treatment to address cognitive deficits resulting from an acquired brain injury (ABI). The Cognitive Rehabilitation Task Force of the American Congress of Rehabilitation Medicine reviewed 370 studies and concluded there is sufficient evidence that support cognitive rehabilitation clinical protocols as effective for cognitive deficits as a result of an ABI. Early intervention yields improved vocational/productivity outcomes, social integration, and independence.

Legislative History

Texas added CRT to the STAR+PLUS, Home and Community-based Services (HCS), and Community Living Assistance and Support Services (CLASS) Medicaid waiver programs in 2014 through Rider 66. This is an improvement for waiver participants with brain injuries; however, a significant number of individuals with acquired brain injuries do not have timely access to these waivers. Additionally, many individuals with an

ABI cannot access services because they do not meet the disability-onset age requirements or medical condition requirements.

Texas passed legislation requiring insurance companies to cover cognitive rehabilitation under Texas Insurance Code Chapter 1352 which was established in 2001 when the 77th Legislature passed House Bill (HB) 1676, effective September 1, 2002. Rules to implement the statute were adopted August 26, 2002 (28 Texas Administrative Code §§ 21.3101-21.3107).

- 3. Require Texas Workforce Commission, in collaboration with the Office of Acquired Brain Injury and Texas Brain Injury Advisory Council, to develop a Vocational Rehabilitation plan for individuals with Acquired Brain Injury across all levels of functioning.**

Problem Legislation Addresses

Currently, individuals with an Acquired Brain Injury (ABI) are inadequately served through Texas Workforce Commission, Vocational Rehabilitation Program. While it is often difficult to predict Vocational outcomes for some individuals with an Acquired Brain Injury, many individuals have the capability of returning to gainful employment. In some instances, ongoing supports may be required to assure vocational success. However, there are individuals who may be able to work without supports. Other states across in the US are successful in providing Vocational Rehabilitation services to individuals with ABI. By addressing this issue, individuals with an ABI will have the opportunity to become gainfully employed and contribute to our state economy. They will also have the opportunity to become more engaged and active, increasing their opportunity to live a healthier life style and potentially reducing health care costs to the state.

- 4. Adequately fund the Office of Acquired Brain Injury including travel reimbursement costs for Texas Brain Injury Advisory Council survivor and caregiver members.**

The Office of Acquired Brain Injury provides guidance, referrals and service coordination for survivors of brain injuries and their families, including returning combat veterans, by arranging a comprehensive system of care through federal, state and local resources. Full funding will enable the OABI to carry out its mission including support of the Texas Brain Injury Advisory Council (TBIAC).

Funding will support:

- 3 full time employees (FTEs)
- Travel reimbursement funds for TBIAC consumer members for council meetings, outreach and education activities, and other activities to prevent brain injuries and improve lives. (HHSC Legislative Appropriations Request, Rider Revisions and Additions Request, 3C Page 15)

5. Provide permanent adequate funding for the Comprehensive Rehabilitation Program.

The Comprehensive Rehabilitation Services (CRS) Program provides services needed to help Texans with a traumatic brain injury or traumatic spinal cord injury live independently in their home and community. The program focuses on three primary areas that affect both function and quality of life: mobility, self-care, and communication skills. Services are provided in the person's home, a hospital, a residential facility, or an outpatient clinic or in a combination of settings to encourage the maximum flexibility in service and gain toward independence.

CRS services include inpatient comprehensive medical rehabilitation services, post-acute brain injury rehabilitation services, and outpatient therapies. The services are time-limited and designed to assist the consumer with daily living skills and to prevent secondary medical conditions, thereby increasing the consumer's ability to function independently and reduce the need for ongoing state services (HHSC LAR 3.A. Page 229 of 491).

The CRS program was first funded in 1991 with the establishment of dedicated funding to aid the recovery process of Texans who have experienced TBIs and/or traumatic SCIs. Part of the funding for the CRS program came from surcharges on convictions of felonies and misdemeanors. Other money has come from General Revenue Funds appropriated by the Texas Legislature.

- 6. Require The Texas Health and Human Services Commission, in collaboration with TBIAC and the HHSC Office of Acquired Brain Injury, to submit to the legislature by November 2020 a comprehensive plan to improve long term outcomes, reduce disability, and decrease long term healthcare costs for Texans with acquired brain injuries.**

People with acquired brain injury may experience a host of disabling conditions, from physical to cognitive to mental illness. Coordination of services, appropriate long term community living supports, mental health counseling, and behavioral modification services are all available to some populations with disabilities in Texas, but, for the most part, not for individuals with acquired brain injury.

Recommendation: Under the leadership of the Texas Health and Human Services Commission, in collaboration with TBIAC and the HHSC Office of Acquired Brain Injury, will submit a comprehensive plan to the legislature by November 30, 2020 that will:

1. Address long-term residential services and community services including day habilitation, supported living and supported work
 - Assess current services with regard to what is available.
 - Identify gaps and barriers to access services
2. Ensure that providers have the knowledge and skills to meet the needs of this population
3. Develop the tools, protocols, and reporting procedures for use by hospitals, emergency systems, school districts, state agencies and others for identifying individuals with an acquired brain injury
4. Develop a uniform screening and assessment tool to identify the services and supports needed by individuals who have an acquired brain injury

- 7. Identify and authorize a credible identification card for Texans with Acquired Brain Injury that is recognized by the Department of Public Safety.**

Texans with acquired brain injury can experience symptoms similar to mental illness and substance abuse. However, brain injury survivors must be treated differently. The Department of Public Safety needs a credible identification source for brain injury survivors.

8. Add non-traumatic brain injuries to the Brain Injury Registry maintained by the Department of State Health Services.

The Department of State Health Services has maintained a traumatic brain injury registry since 1998. Texas needs a registry of all acquired brain injuries to better inform policy making.

9. Evaluate other states' brain injury programs for best practices, including public education for Texans with Acquired Brain Injury.

Texas must evaluate and review other state's brain injury programs, taking into consideration the programs and best practices for Texas. Additionally, concussion treatment especially within the public education system needs to be evaluated for consistency and efficacy.

10. Require Health and Human Services to evaluate and develop a system to ensure Acquired Brain Injury data is collected even when ABI is not listed as a primary diagnosis.

Currently data is collected solely on the primary diagnosis. Brain injury survivors have many diagnoses such as heart attack, collapsed lung, seizures, cerebral palsy, and mental disorders. Therefore, the Acquired Brain Injury diagnosis is not considered in data collection. Health and Human Services must create a system to collect all diagnoses.