SUBJECT: Limiting medical examinations for Supplemental Income Benefits

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Dukes, George, Giddings, Ritter, Siebert, Solomons, Woolley

0 nays

1 absent — Corte

WITNESSES: *(On original bill:)*
For — Jeri Barnett; Dr. Vaughn Brozek; Ramon Class

Against — Richard Geiger, AFACT; Joseph Glover, Group for Injured Workers

On — Scott McAnally, Research and Oversight Council on Workers' Compensation

BACKGROUND: In the workers' compensation system, an injured worker can receive a progression of benefits: Temporary Income Benefits, Impairment Income Benefits, and Supplemental Income Benefits. Only a worker who has stopped making progress in recovery from injuries can obtain Supplemental Income Benefits (SIBs).

To qualify for SIBs, a worker must not have been able to return to work or must have returned to work at a salary of less than 80 percent of the employee's former average weekly wage. The employee must have an impairment rating of at least 15 percent as determined by a doctor and must have made good-faith attempts to obtain employment compatible with the employee's ability to work. An injured worker determined eligible for SIBs must reapply for the benefits every quarter and continue to show good-faith efforts to obtain compatible work.

The insurance carrier can require an injured worker to submit to a medical exam once every 180 days, unless the insurance carrier is challenging the

employee's right to receive benefits. An insurance carrier's unreasonable request for a medical examinations constitutes an administrative violation.

However, an employee may be required to submit to as many as three medical exams in a 180-day period at the expense of the insurance carrier in situations where the insurance carrier is attempting to determine whether there has been a change in the employee's condition, whether it is necessary to change the original diagnosis, or whether treatment should be extended to help improve the condition.

The requested exam is performed by the employee's treating doctor. If the doctor's findings are in dispute, the Texas Workers' Compensation Commission (TWCC) can send the employee to a doctor on TWCC's designated doctor list. The TWCC doctor's report determines the employee's eligibility to continue receiving benefits.

DIGEST:

CSHB 1826 would change the number of times per year that an insurance carrier could require an injured employee on Supplemental Income Benefits whose condition had stabilized to submit to a medical exam. An insurance carrier could not require the employee to submit to a medical examination more than once a year after the second anniversary of the date the employee's approval for Supplemental Income Benefits had passed, as long as the employee's condition had shown no improvement in the preceding year.

If the insurance carrier disputed whether the employee's medical condition had truly failed to improve, the employee would be examined by a doctor chosen by Texas Workers' Compensation Commission. TWCC would base its decision on this designated doctor's report when determining whether the employee was still impaired, unless the weight of other medical evidence contradicted it. Under this provision, TWCC itself only could require an employee on SIB to submit to a medical exam to determine whether the employee's medical condition actually had resulted directly from a compensable injury.

The bill would take effect on September 1, 1999.

SUPPORTERS SAY:

The current system for providing Supplemental Income Benefits (SIBs) is burdensome, penalizing and inconveniencing honest workers who have been injured on the job. CSHB 1826 would prevent insurers from requiring injured

workers whose conditions have been stable to undergo pointless, intrusive medical examinations as many as four times a year.

Workers whose conditions have been chronic and stable for two years rarely will show any improvement within a given three-month period. The practice of some insurers automatically and arbitrarily to demand quarterly evaluations of the injured employee's condition wastes the time of employees and doctors both. It takes time away from the lower-paying jobs their injuries have required them to accept, or interrupts their job search if they have not yet found work.

Under CSHB 1826, employees whose conditions had stabilized and who had shown no improvement for the preceding year would not be subjected to arbitrary medical examinations at the will of the insurance company. These examinations are paid for by insurers. Reducing the number of arbitrary examinations could reduce insurance premiums, since these costs ultimately are passed along to customers.

OPPONENTS SAY:

Allowing an insurance company to request a medical examination to determine the progress an injured worker is making toward recovery only once a year would penalize companies and could harm the injured employee. It is important for an insurance company to verify the true level of impairment of an injured worker in order to protect other customers from higher rates caused by the cost of workers' compensation payments. It is quite possible that impairment may improve during the course of an entire year. Furthermore, a worker's condition could worsen, prompting the company to provide further treatment to the injured worker, who otherwise might be deprived of needed medical help.

OTHER OPPONENTS SAY:

HB 1826 should be broadened. Injured employees who have shown no improvement in the two years since they were approved for Supplemental Income Benefits should be allowed to reapply for benefits on a yearly basis, rather than having to go through this process on a quarterly basis as provided in current law.

NOTES:

The committee substitute would eliminate a provision in the original bill that would have allowed injured workers whose conditions had not improved during the year preceding the second anniversary of their injury to apply for benefits annually.