

SUBJECT: Allowing SORM to investigate fraud in workers' compensation cases

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Brimer, Dukes, George, Ritter, Siebert, Solomons, Woolley

0 nays

2 absent — Corte, Giddings

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 15 — 30-0

WITNESSES: No public hearing

BACKGROUND: The State Office of Risk Management provides workers' compensation insurance for state employees.

DIGEST: SB 1590 would add provisions regarding fraud investigation of workers' compensation claims to Chapter 412 of the Labor Code. It would require the State Office of Risk Management (SORM) to conduct periodic reviews of claims for medical benefits as necessary to determine whether the provided services were medically necessary and appropriate. SORM would also conduct a review on every appropriate claim that involved psychiatric services, or in which the use of prescription drugs appeared inappropriate.

The director of SORM would be required to conduct an annual audit of claims for medical benefits, and could contract with a private entity to do so. In determining validity of claims, the auditor would interview claimants to ensure that health care services were received. The audit would also include a review of claimant medical history and records.

The board would require by rule that SORM implement a prepayment audit procedure, comparing and verifying appropriateness of billing diagnosis codes to the specific codes for the injured parts of the body.

Notwithstanding other laws, the director would be entitled to access to patient records for the purpose of fraud investigation and would be considered a governmental agency exempt from the patient confidentiality privilege under

sec. 5.08 of the Medical Practice Act (art. 4495b, VTCS). The bill would specify that medical records submitted to the director were confidential, and not subject to public disclosure under the Open Records Act (Chapter 552, Government Code).

SORM would be required to investigate each fraud allegation made by a claimant, a health care provider, or state agency. If further action was warranted, the director would refer the complaint to TWCC for appropriate sanctions or administrative action. TWCC would promptly initiate administrative proceedings or criminal prosecution or would require that restitution be paid to SORM for overpayments or fraud, in addition to any other penalties.

The bill also would require the Board of Risk Management to conduct a study regarding the use of fraud detection software. The study could include an analysis of the Medicaid fraud detection program used by the Health and Human Services Commission. The board would be required to report the results of the study to the 77th Legislature by February 2, 2001.

The Risk Management Board would be required to establish criteria triggering medical care coordination, based on injury date, amount paid in medical benefits, and evidence of inappropriate treatment patterns. SORM would implement these measures to ensure appropriate treatment for injured workers.

The director of SORM would provide annual anti-fraud training classes for state agencies, and contractors or administering firms processing worker's comp claims, beginning January 1, 2000.

If SORM determined that a health care provider had obtained payments fraudulently, it would be required to take action and report the action to the Texas Workers' Compensation Commission (TWCC). Each state agency and health care provider in the workers' comp system would be required to cooperate fully in any SORM fraud investigation. SORM could withhold payments to a health care provider who did not provide requested documentation necessary to verify a medical service.

SB 1590 would require TWCC to report to the Legislature at the beginning of every regular session on:

- ! the number of referrals received from SORM during the biennium;
- ! the number of prosecutions completed; and
- ! the total restitution ordered to SORM.

SORM would report to the Legislature at the beginning of every session:

- ! the number of referrals made to TWCC during the biennium;
- ! the total amount of fraud or overpayment alleged; and
- ! the total amount collected from restitution orders.

The bill would take effect on September 1, 1999.

**SUPPORTERS
SAY:**

A Comptroller's Office study of 200 randomly selected workers' compensation claims found that 21 percent of the \$5.8 million paid for medical benefits in 1997 may have been overpayments.

Currently, SORM has no procedure for routinely reviewing worker's compensation claims to check for inaccuracies or fraud. Curbing fraud is an important way to minimize the cost of workers' compensation claims. SORM also needs an auditing system to avoid questionable payments. SORM does not have a routine system of validating information submitted on claims.

In addition, a new class of software has been available since 1995 that has the ability to detect and deter fraud and abuse. The Health and Human Services Commission is using the software to detect Medicaid fraud. The software has detected widespread potential for Medicaid fraud, and SORM could utilize this system to detect the same types of fraud in worker's compensation claims.

**OPPONENTS
SAY:**

No apparent opposition.