

- SUBJECT:** Injured employee's medical records for use by OIEC ombudsman
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Zedler  
0 nays  
2 absent — Bailey, Solomons
- WITNESSES:** (*On original version:*)  
For — Andrew Kant, Texas Orthopedic Association; Bernard T. Swift, Texas Medical Association; (*Registered, but did not testify:* Michael Cunningham, Texas Building and Construction Trades Council AFL-CIO; Rick Levy, Texas AFL-CIO; John Pike, Texas Orthopedic Association)  
Against — Rhonda Burhorst, Center for Pain Recovery  
On — Norman Darwin, Office of Injured Employee Counsel; Amy Lee, Texas Department of Insurance
- BACKGROUND:** In 2005, the 79th Legislature enacted major workers' compensation reforms (HB 7 by Solomons), which created the Office of Injured Employee Counsel (OIEC) including an ombudsman program. Prior to HB 7, the Texas Workers' Compensation Commission had an ombudsman for injured employees. HB 7 enhanced the ombudsman's advocacy role for injured employees and moved the position to the OIEC. Labor Code, sec. 404.151 establishes that the OIEC shall maintain an ombudsman program to assist injured employees and persons claiming death benefits in obtaining benefits. An ombudsman must:
- meet with or otherwise provide information to injured employees;
  - investigate complaints;
  - communicate with employers, insurance carriers, and health care providers on behalf of injured employees;
  - assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and
  - meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

DIGEST:

CSHB 888 would amend Labor Code, sec. 404.155 to require a health care provider upon written request of an OIEC ombudsman to provide at no cost the medical records of a specific injured employee. The bill would make the workers' compensation carrier liable for the cost, which should be reasonable as prescribed by rules adopted by the Texas Medical Board and provided by statute. The carrier could not deduct that cost from any benefit to which the employee was entitled. A health care provider could not require payment for the cost of medical record copies before actually supplying the copies to the ombudsman.

The public counsel could adopt rules regarding a timeframe for providing copies of the medical records and any other matter relating to obtaining those copies. A health care provider or insurance carrier that failed to comply with the requirements or the adopted rules would commit an administrative violation. The commissioner of workers' compensation would enforce a violation, which would be subject to administrative penalties specified in secs. 415.022 and 415.025.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS  
SAY:

Prior to HB 7, the ombudsman at TWCC had authority to obtain free medical records of an injured employee. Under current law, the division of workers' compensation at the Texas Department of Insurance has the authority to secure medical records of an injured employee, but it is cumbersome, at best, for OIEC or the ombudsman to request that TDI secure these records every time the ombudsman needs them in order to assist a client.

CSHB 888 would grant the ombudsman authority to obtain the medical records directly at no cost. The committee substitute would eliminate concerns raised in testimony by health care providers about having to absorb the expense of copying records and about the amount of employee time involved. Instead, CSHB 888 would direct workers' comp carriers to pay for them without offsetting the cost from any benefits to which the injured worker was entitled and would provide for administrative penalties for any insurance carriers that did not comply.

OPPONENTS  
SAY: No apparent opposition

NOTES: The companion bill, SB 1768 by Watson, has been referred to the Senate State Affairs Committee.