

BILL ANALYSIS

Senate Research Center
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H.B. 833
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Engrossed

DIGEST AND PURPOSE

Currently, the Texas Pharmacy Act requires a pharmacist to either inform patients of their right to refuse generic equivalent substitution or display a sign that informs patients of their right to refuse a generic substitution. Although in many non-workers' compensation insurance plans the patient is required or permitted to pay a co-payment and may refuse a generic substitution, the Texas Workers Compensation Commission's position is that a claimant may not do so in the workers' compensation system. The Pharmacy Board has taken the position that the workers' compensation patient does have the right to refuse a generic substitution. H.B. 833 amends the Labor Code to clarify that a workers compensation claimant has the right to refuse a generic drug substitution, but may not seek reimbursement for any additional cost over the cost of the generic drug.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workers' Compensation Commission in SECTION 1 (Section 408.028, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 408.028, Labor Code, by adding Subsection (e), as follows:

(e) Requires the Texas Workers' Compensation Commission (TWCC), notwithstanding Subsection (b), by rule to allow an employee to purchase a brand name drug rather than a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. Requires the employee to be responsible for paying the difference between the cost of the brand name drug and the cost of the generic pharmaceutical medication or of an over-the-counter alternative to a prescription medication. Prohibits the employee from seeking reimbursement for the difference in cost from an insurance carrier and provides that the employee is not entitled to use the medical dispute resolution provisions of Chapter 413 with regard to the prescription. Provides that a payment described by this subsection by an employee to a health care provider does not violate Section 413.042 (Private Claims; Administrative Violation). Provides that this subsection does not affect the duty of a health care provider to comply with the requirements of Subsection (b) when prescribing medications or ordering over-the-counter alternatives to prescription medications.

SECTION 2. (a) Effective date: September 1, 2003.

(b) Requires TWCC to adopt rules under Section 408.028(e), Labor Code, as added by this Act, not later than March 1, 2004.