

## **BILL ANALYSIS**

Senate Research Center

H.B. 473  
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State Affairs  
5/15/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Prior to 2005, insurance carriers and employers were prohibited by statute from directing employees to specific health care providers for treatment of a workers' compensation injury. However, carriers and employers had utilized discount fee contracts with certain providers, referred to as "voluntary networks." Although the employers and carriers were prohibited from directing an employee to see a particular provider in that network, if the employee chose to receive care from one of those providers, the provider would be paid the contractual fee discount rather than the fee dictated by the professional fee guideline adopted by the Texas Workers' Compensation Commission.

Until 2001, voluntary networks were not mentioned in statute. In the 77<sup>th</sup> Legislature, Regular Session, 2001, H.B. 2600 was passed in an attempt to create regional healthcare networks for workers' compensation injuries. Although they were never implemented, a specific exemption was included in the language that the term regional healthcare networks did not include "voluntary networks" as long as those networks did not direct care of the employee to specific providers. This was the first time that voluntary networks were mentioned in the Labor Code and the provision stayed in statute until last session.

During the 79<sup>th</sup> Legislature, Regular Session, 2005, the legislature enacted H.B. 7 which, among other things, provided for certified healthcare networks for workers' compensation by adding Chapter 1305, Insurance Code. It specifically states in Section 1305.051 that "[a] person may not operate a workers' compensation healthcare network in this state unless the person holds a certificate issued under this chapter and rules adopted by the commissioner." Furthermore, the language which had been adopted in H.B. 2600 in 2001 on regional healthcare networks, including the language regarding voluntary networks, was deleted. In addition to the creation of healthcare networks, H.B. 7 provided that an insurance carrier is authorized to pay an amount different from the professional fee guideline if the carrier has a contract with the provider. After the effective date of H.B. 7 carriers requested guidance from the Texas Department of Insurance (TDI) on the legality of voluntary networks arguing that although the references to a voluntary network had been eliminated, there was no prohibition either. TDI issued Bulletin B-0071-05 which stated that under the provisions of H.B. 7, all networks must be certified by TDI.

Immediately, the carriers requested further clarification of whether voluntary networks were authorized, in light of a provision added by H.B. 7 in Section 413.011(d), Labor Code, that stated that deviations from the medical fee guideline were allowed as long as a contract existed between the carrier and the provider with a specific fee schedule. TDI then issued Bulletin B-0005-06, which states a voluntary network could continue to exist as long as it contracted for a fee discount only — if any management of the claims existed then certification was required. The original intent of the language of that provision, however, was to allow a deviation from the fee guideline to treat an individual injured worker in a non-network situation if the carrier was having difficulty securing necessary medical treatment within the fee guidelines.

H.B. 473 clarifies the Labor Code to fit the law authorizing deviations from the medical fee guidelines to its original intent and to close the loophole under which voluntary networks have been operating.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 413.011, Labor Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 1 (Section 413.011, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 413.011, Labor Code, by amending Subsection (d) and adding Subsections (d-1) through (d-6), as follows:

(d) Redesignates some text from this section to create Subsection (d-1).

(d-1) Authorizes an insurance carrier to pay fees to a health care provider that are inconsistent with the fee guidelines adopted by the division of workers' compensation of the Texas Department of Insurance (division) if the insurance carrier, or a network under Chapter 1305 (Workers' Compensation Health Care Networks), Insurance Code, arranging out-of-network services under Section 1305.006 (Insurance Carrier Liability for Out-of-Network Health Care) of that code has a contract with the health care provider and that contract includes a specific fee schedule, notwithstanding certain other law. Authorizes an insurance carrier or the carrier's authorized agent to use an informal or voluntary network, as those terms are defined by Section 413.0115, to obtain a contractual agreement that provides for fees different from the fees authorized under the division's fee guidelines. Requires a contractual arrangement between certain entities if a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement. Makes a nonsubstantive change.

(d-2) Requires an informal or voluntary network or the carrier or the carrier's authorized agent, as appropriate, to notify each health care provider of any person that is given access to the network's fee arrangements with that health care provider within the time and according to the manner provided by commissioner of workers' compensation (commissioner) rule.

(d-3) Requires an insurance carrier to provide copies of each contract described by Subsection (d-1) to the division on its request. Provides that information included in a contract under Subsection (d-1) is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code. Authorizes the division, for medical fee disputes that arise regarding non-network and out-of-network care, to request that copies of each contract under which fees are being paid be submitted to the division for review. Provides that the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if the contract meets certain criteria set forth in this subsection, notwithstanding Subsection (d-1) or Section 1305.153 (Provider Reimbursement), Insurance Code.

(d-4) Authorizes an insurance carrier, an insurance carrier's authorized agent, or a network certified under Chapter 1305, Insurance Code, arranging for non-network services or out-of-network services under Section 1305.006, Insurance Code, to continue to contract with a health care provider to secure health care for an injured employee for fees that exceed the fees adopted by the division under this section, notwithstanding this section or any other provision of this title (Workers' Compensation).

(d-5) Authorizes the commissioner and the commissioner of insurance to adopt rules as necessary to implement this section.

(d-6) Provides that Subsections (d-1) through (d-3) and this subsection expire January 1, 2011.

SECTION 2. Amends Subchapter B, Chapter 413, Labor Code, by adding Section 413.0115, as follows:

Sec. 413.0115. REQUIREMENTS FOR CERTAIN VOLUNTARY OR INFORMAL NETWORKS. (a) Defines "informal network" and "voluntary network."

(b) Requires each informal or voluntary network to be certified as a workers' compensation health care network under Chapter 1305, Insurance Code, not later than January 1, 2011.

(c) Requires each informal and voluntary network to provide certain information set forth in this subsection to the division effective September 1, 2007.

(d) Requires each informal and voluntary network to report any changes to the information provided under Subsection (c) to the division not later than the 30<sup>th</sup> day after the effective date of the change.

SECTION 3. (a) Effective date of Section 413.011(d-4), Labor Code, as added by this Act: January 1, 2011.

(b) Effective date: September 1, 2007, except as provided by Subsection (a) of this section.