

BILL ANALYSIS

Senate Research Center

S.B. 1696
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State Affairs
4/18/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Health care providers may treat injured employees and later have their medical bills denied because the workers' compensation insurance carrier disputes whether all or part of the injury was work-related (a compensability or extent-of-injury dispute). Sometimes the denial may occur even after the health care provider has obtained preauthorization from the carrier. In fact, in 2007, about 11 percent of medical services denied by insurance carriers were denied, in part, on carriers' compensability or extent-of-injury disputes.

If a health care provider is not a certified workers' compensation health care network under Chapter 1305 (Workers' Compensation Health Care Networks), Insurance Code, the provider never receives any notice that a carrier is disputing the compensability of an injury. As such, some health care providers are reluctant to treat injured employees for fear of nonpayment.

As proposed, S.B. 1696 requires the division of worker's compensation of the Texas Department of Insurance to require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier or the injured employee. This bill also requires the insurance carrier to notify a health care provider regarding the compensability of an employee's injury, and requires the insurance carrier to follow certain guidelines in providing compensation to the injured employee, or in contesting the employee's injury.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 2 (Section 408.027, Labor Code) and SECTION 3 (Section 409.021, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 408.0042, Labor Code, by amending Subsection (a), to require the division of worker's compensation of the Texas Department of Insurance (division) to require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier or the injured employee.

SECTION 2. Amends Section 408.027, Labor Code, by adding Subsection (c-1), to require an insurance carrier to notify a health care provider in writing if the carrier contests the compensability of the injury for which the provider provides health care services. Prohibits a carrier from denying payment for health care services provided by the health care provider or preauthorized by the carrier before the written notification on the grounds that the injury was not compensable. Provides that an explanation of benefits or a notice of determination under Chapter 4202 (Independent Review Organizations), Insurance Code, does not constitute written notice under this subsection. Provides that payment for medically necessary health care services provided or preauthorized prior to the written notification of a compensability denial is not subject to denial, recoupment, or refund from a health care provider based on compensability. Provides that if the insurance carrier successfully contests compensability, the insurance carrier is liable for all health care provided prior to the issuance of the notification required by this subsection, up to a maximum of \$7,000. Authorizes the commissioner of workers' compensation (commissioner) to adopt rules as necessary to implement the provisions of this subsection.

SECTION 3. Amends Section 409.021, Labor Code, by amending Subsections (a), (a-1), and (e) and adding Subsection (c-1), as follows:

(a) Requires an insurance carrier to initiate compensation under this subtitle promptly. Requires the insurance carrier, not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, to begin the payment of income or death benefits as required by this subtitle.

(a-1) Provides that an insurance carrier that fails to comply with Subsection (a) or Section 408.027(c-1) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) or (c-1) but commits an administrative violation subject to Subsection (e).

(a-2)-(c) Makes no changes to these subsections.

(c-1) Provides that the insurance carrier, notwithstanding Subsection (c) (regarding an insurance carrier waiving its right to contest compensability if the carrier does not contest the compensability of an injury on or before the 60th day after the date of injury), if the insurance carrier receives written notice from the injured employee's treating doctor, which clearly describes the injury or clearly describes how a new manifestation of the original injury, additional injury, or additional diagnosis is related to the compensable injury and the insurance carrier does not contest the compensability of the injury or diagnosis on or before the 60th day after the date on which it receives the notice described by this subsection, waives its right to contest the compensability of the injury or diagnosis described in the written notice under this subsection. Authorizes the commissioner to adopt rules as necessary to implement the provisions of this subsection. Provides that this subsection cannot be construed as limiting an injured employee's entitlement to medical benefits in accordance with Section 408.021 (Entitlement to Medical Benefits); an insurance carrier's or an injured employee's ability to request a medical examination by the treating doctor to define the compensable injury under Section 408.0042; or an insurance carrier's or an injured employee's ability to request a designated doctor examination under Section 408.0041 (Designated Doctor Examination).

(d) Makes no changes to this subsection.

(e) Provides that an insurance carrier commits a violation if the insurance carrier does not initiate income or death benefit payments or file a notice of refusal as required by this section or Section 408.027(c-1). Requires that a violation under this subsection be assessed in accordance with Chapter 415 (Administrative Violations) of this subtitle. Deletes existing text requiring a violation under this subsection be assessed at \$500 if the carrier initiates compensation or files a notice of refusal within five working days of the date required by Subsection (a), \$1,500 if the carrier initiates compensation or files a notice of refusal more than five and less than 16 working days of the date required by Subsection (a), \$2,500 if the carrier initiates compensation or files a notice of refusal more than 15 and less than 31 working days of the date required by Subsection (a), or \$5,000 if the carrier initiates compensation or files a notice of refusal more than 30 days after the date required by Subsection (a). Deletes existing text providing that the administrative penalties are not cumulative.

SECTION 4. Amends Section 409.022(a), Labor Code, to make a conforming change.

SECTION 5. Amends Section 410.209, Labor Code, as follows:

Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. Provides that, notwithstanding this section, payment of medical benefits in accordance with Section 408.027(c-1) of this subtitle and Section 1305.153(e) (regarding the actions an insurance carrier is required to undertake when contesting the compensability of an injury), Insurance Code, is not reimbursable from the subsequent injury fund.

SECTION 6. Effective date: September 1, 2009.