

BILL ANALYSIS

Senate Research Center

H.B. 528
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently, the Texas Legislature enacted legislation that included provisions for the creation of Texas Department of Insurance-certified workers' compensation networks, which allows a carrier to direct an enrolled injured employee to seek workers' compensation health care benefits, except for pharmaceutical benefits, within the network of providers. Subsequent legislation required voluntary or informal workers' compensation networks, which are networks of health care providers with which a carrier has a contractual fee discount but to whom the carrier may not direct an injured employee to seek care, to register with the Texas Department of Insurance, Division of Workers' Compensation, and to become certified workers' compensation networks. That measure also eliminated contractual fee discounts.

H.B. 528 allows workers' compensation carriers to continue to have contractual fee discounts for pharmaceutical services and to use a voluntary or informal network to provide pharmaceutical services under certain conditions.

H.B. 528 amends current law relating to the provision of pharmaceutical services through informal and voluntary networks in the workers' compensation system, and provides an administrative violation.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of workers' compensation is modified in SECTION 2 (Section 408.028, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 408.027(f), Labor Code, as follows:

(f) Requires that any payment made by an insurance carrier under this section, except as provided by Section 408.0281, be in accordance with the fee guidelines authorized under this subtitle if the health care service is not provided through a workers' compensation health care network under Chapter 1305 (Workers' Compensation Health Care Networks), Insurance Code, or at a contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Chapter 1305, Insurance Code.

SECTION 2. Amends Sections 408.028(f) and (g), Labor Code, as follows:

(f) Requires the commissioner of workers' compensation (commissioner) by rule, notwithstanding any other provision of this title, to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable; assure adequate access to medications and services for injured workers; minimize costs to employees and insurance carriers; and take into consideration the increased security of payment afforded by this subtitle.

(g) Provides that Section 413.011(d) (relating to requiring fee guidelines to be fair and reasonable) and the rules adopted to implement that subsection do not apply to the fee

schedule adopted by the commissioner under Subsection (f). Deletes existing text requiring insurance carriers to reimburse for pharmacy benefits and services using the fee schedule as developed by this section, or at rates negotiated by contract.

SECTION 3. Amends Subchapter B, Chapter 408, Labor Code, by adding Sections 408.0281 and 408.0282, as follows:

Sec. 408.0281. REIMBURSEMENT FOR PHARMACEUTICAL SERVICES; ADMINISTRATIVE VIOLATION. (a) Defines in this section, "informal network" and "voluntary network."

(b) Provides that notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 of this code, prescription medication or services, as defined by Section 401.011(19)(E) (defining "health care"):

(1) may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a contract rate in accordance with this section; and

(2) may not be delivered through a workers' compensation health care network under Chapter 1305, Insurance Code, or a contract described by Section 504.053(b)(2).

(c) Authorizes an insurance carrier, notwithstanding any other provision of this title, including Section 408.028(f), or any provision of Chapter 1305, Insurance Code, to pay a health care provider fees for pharmaceutical services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier has a contract with the health care provider and that contract includes a specific fee schedule. Authorizes an insurance carrier or the carrier's authorized agent to use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for pharmaceutical services. Provides that if a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there is required to be a contractual arrangement between:

(1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers for pharmaceutical services on the carrier's behalf; and

(2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.

(d) Requires an informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, to, at least quarterly, notify each health care provider of any person, other than an injured employee, to which the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed. Requires that notice to each health care provider include the contact information for the network, including the name, physical address, and toll-free telephone number at which a health care provider with which the network has a contract may contact the network; and in the body of the notice the name, physical address, and telephone number of any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and the start date and any end date of the period during which any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed. Provides that the notice may be provided in an electronic format, if a paper version is available on request by the division; and through an Internet website link, but only if the website contains the

information described by Subdivision (1) and is updated at least monthly with current and correct information.

(e) Requires an informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, to document the delivery of the notice required under Subsection (d), including the method of delivery, to whom the notice was delivered, and the date of delivery. Provides that for purposes of Subsection (d), a notice is considered to be delivered on, as applicable:

(1) the fifth day after the date the notice is mailed via United States Postal Service; or

(2) the date the notice is faxed or electronically delivered.

(f) Requires an insurance carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, to provide copies of each contract described by Subsection (c) to the division on the request of the division. Provides that information included in a contract under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. Authorizes the insurance carrier, notwithstanding Subsection (c), to be required to pay fees in accordance with the division's fee guidelines if the contract is not provided to the division on the division's request, does not include a specific fee schedule consistent with Subsection (c) or does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the carrier's authorized agent; or the carrier or the carrier's authorized agent does not comply with the notice requirements under Subsection (d).

(g) Provides that failure to provide documentation described by Subsection (e) to the division on the request of the division, or failure to provide notice as required under Subsection (d), creates a rebuttable presumption in an enforcement action under this subtitle and in a medical fee dispute under Chapter 413 (Medical Review) that a health care provider did not receive the notice.

(h) Provides that an insurance carrier or the carrier's authorized agent commits an administrative violation if the carrier or agent violates any provision of this section. Requires that any administrative penalty assessed under this subsection be assessed against the carrier, regardless of whether the carrier or agent committed the violation.

(i) Provides that notwithstanding Section 1305.003(b), Insurance Code, in the event of a conflict between this section and Section 413.016 or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

Sec. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR VOLUNTARY NETWORKS. (a) Requires each informal or voluntary network described by Section 408.0281 to, not later than the 30th day after the date the network is established, report the following information to the division:

(1) the name of the informal or voluntary network and federal employer identification number;

(2) an executive contact for official correspondence for the informal or voluntary network;

(3) a toll-free telephone number by which a health care provider may contact the informal or voluntary network;

(4) a list of each insurance carrier with whom the informal or voluntary network contracts, including the carrier's federal employer identification number; and

(5) a list of, and contact information for, each entity with which the informal or voluntary network has a contract or other business relationship that benefits or is entered into on behalf of an insurance carrier, including an insurance carrier's authorized agent or a subsidiary or other affiliate of the network.

(b) Requires each informal or voluntary network to report any changes to the information provided under Subsection (a) to the division not later than the 30th day after the effective date of the change.

(c) Requires an informal or voluntary network to submit a report required under this section, including a report of changes required under Subsection (b), to the division through the division's online reporting system available through the division's Internet website.

(d) Provides that an informal or voluntary network commits an administrative violation if the informal or voluntary network violates any provision of this section.

SECTION 4. Amends Section 1305.101(c), Insurance Code, as follows:

(c) Prohibits prescription medication or services, as defined by Section 401.011(19)(E), Labor Code, notwithstanding any other provision of this chapter, directly or through a contract, from being delivered through a workers' compensation health care network. Requires that prescription medication and services be reimbursed as provided by Section 408.0281, Labor Code, other provisions of the Texas Workers' Compensation Act, and applicable rules of the commissioner of workers' compensation.

SECTION 5. (a) Requires that the notice required under Section 408.0281(d), Labor Code, as added by this Act, with respect to a contractual agreement that provides for fees for pharmaceutical services that are different from the fees authorized under the fee guidelines adopted by the commissioner of workers' compensation under Title 5 (Workers Compensation), Labor Code, and that is in effect on the effective date of this Act, be sent not later than the 30th day after the effective date of this Act, and subsequent notices required under that section be sent on a quarterly basis.

(b) Requires the notice required under Section 408.0281(d), Labor Code, as added by this Act, with respect to a contractual agreement that provides for fees for pharmaceutical services that are different from the fees authorized under the fee guidelines adopted by the commissioner of workers' compensation under Title 5, Labor Code, and that is entered into after the effective date of this Act, be sent not later than the 30th day after the effective date of the contract, and subsequent notices required under that section be sent on a quarterly basis.

SECTION 6. Requires each informal or voluntary network described by Section 408.0281, Labor Code, as added by this Act, that has a contract between an insurance carrier or an insurance carrier's authorized agent and a health care provider for the provision of pharmaceutical services that is in effect on the effective date of this Act to file the report described by Section 408.0282(a), Labor Code, as added by this Act, not later than the 30th day after the effective date of this Act.

SECTION 7. Provides that a contractual agreement between an insurance carrier and a health care provider that provides for fees for pharmaceutical services that are different from the fees authorized under the fee guidelines adopted by the commissioner of workers' compensation under Title 5, Labor Code, that was in effect on any date between and including January 1, 2011, and the effective date of this Act, and that is arranged under a contract with an informal or

voluntary network registered with the division of workers' compensation of the Texas Department of Insurance under Section 413.0115, Labor Code, is validated and is prohibited from being the sole basis of an enforcement action under Title 5, Labor Code.

SECTION 8. Severability clause.

SECTION 9. Effective date: upon passage or September 1, 2011.