

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1322  
By: Van de Putte  
State Affairs  
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Committee Report (Substituted)

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

The major workers' compensation reforms included in H.B. 7, 79th Legislature, Regular Session, 2005, created a certified health care network option for employers to utilize to help manage the health care costs and treatment for injured workers. Workers' compensation health care networks had to meet certain statutory requirements and be certified by the Texas Department of Insurance (TDI) in order to operate in Texas. If an employer chose to contract with a certified health care network, all care, excluding pharmacy, had to be delivered through that network.

H.B. 473, 80th Legislature, Regular Session, 2007, required all voluntary and informal networks operating in the workers' compensation system to begin registering with TDI's division of workers' compensation. Effective January 1, 2011, in addition to registration of these informal and voluntary networks, the law prohibited any discount contracts for health care outside of a certified network.

H.B. 528, 82nd Legislature, Regular Session, 2011, allows discount contracts for pharmaceutical services when agreed upon by an insurance carrier and a registered voluntary or informal network. Thus, with the exception of pharmacy, no discounted health care services can be offered to injured employees unless they are delivered through a certified network.

Many employers have not contracted with a certified network and thus their insurance carrier is required to purchase durable medical equipment and home health services at fee schedule rates. Some employers who have established networks are finding that durable medical equipment and home health care service options can be limited.

For most durable medical equipment and home health services, there are few retail options for injured employees to access, thereby limiting an injured worker's choice in providers.

C.S.S.B. 1322 allows the establishment of voluntary and informal networks for durable medical equipment and home health services. This legislation will help reduce costs for employers, provide greater efficiency in delivering care to injured workers, and provide greater access to quality durable medical and home health services for injured workers.

C.S.S.B. 1322 amends current law relating to the provision of durable medical equipment and home health care services through informal and voluntary networks in the workers' compensation system, and provides penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 408.027(f), Labor Code, to require that any payment made by an insurance carrier under this section, except as provided by Section 408.0281 (Reimbursement for Pharmaceutical Services; Administrative Violation) or 408.0284, 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 Section 408.0282(a), Labor Code, to require each informal or voluntary network described by Section 408.0281 or 408.0284, not later than the 30th day after the date the network is established, to report certain information to the division of workers' compensation of the Texas Department of Insurance (division).

SECTION 3. Amends Subchapter B, Chapter 408, Labor Code, by adding Section 408.0284, as follows:

Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. (a) Defines "durable medical equipment," "informal network," and "voluntary network" for this section.

(b) Authorizes durable medical equipment and home health care services, notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 (Election), of this code, to be reimbursed in accordance with the fee guidelines adopted by the commissioner of workers' compensation (commissioner) or at a voluntarily negotiated contract rate in accordance with this section.

(c) Authorizes an insurance carrier, notwithstanding any other provision of this title or any provision of Chapter 1305, Insurance Code, to pay a health care provider fees for durable medical equipment or home health care services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier or the carrier's authorized agent 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 durable medical equipment or home health care 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 durable medical equipment or home health care 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 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. Provides that notice to each health care provider:

(1) is required to include:

(A) 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

(B) 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 end date of the period during which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(2) is authorized to be provided:

(A) in an electronic format, if a paper version is available on request by the division; and

(B) 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, the fifth day after the date the notice is mailed via United States Postal Service or 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 (Public Information), Government Code. Authorizes the insurance carrier, notwithstanding Subsection (c), to be required to pay fees in accordance with the division's fees guidelines if:

(1) 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

(2) 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) (relating to a conflict between Title 5 (Open Government; Ethics), Labor Code, and this chapter regarding the provision of medical benefits), Insurance Code, in the event of a conflict between this section and Section 413.016 (Payments in Violation of

Medical Policies and Fee Guidelines) or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

SECTION 4. Requires that each informal or voluntary network described by Section 408.0284, 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 that is in effect on the effective date of this Act file the report described by Section 408.0282(a), Labor Code, as amended by this Act, not later than the 30th day after the effective date of this Act.

SECTION 5. Requires that the notice required under Section 408.0284(d), Labor Code, as added by this Act, with respect to a contractual agreement that provides for fees for durable medical equipment or home health care services that are different from the fees authorized under the fee guidelines adopted by the commissioner 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 are required to be sent on a quarterly basis.

SECTION 6. Provides that if any provision of this Act or its application to any person or circumstance is invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Effective date: September 1, 2013.