

AN ACT

relating to certain pharmaceutical services for an injured employee receiving workers' compensation medical benefits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 408.028, Labor Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Subsection (b), the commission by rule shall 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. The employee shall 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. The employee may not seek reimbursement for the difference in cost from an insurance carrier and is not entitled to use the medical dispute resolution provisions of Chapter 413 with regard to the prescription. A payment described by this subsection by an employee to a health care provider does not violate Section 413.042. 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.

1           SECTION 2. (a) The Texas Workers' Compensation Commission  
2 shall consider a rulemaking petition based on a study funded by  
3 collaborative efforts of workers' compensation insurance carriers  
4 and pharmacy providers. The study must be designed to determine  
5 pharmacy fees paid by other payors and administrative costs and  
6 expenses incurred by pharmacy providers to process claims and  
7 payments for prescription drugs provided to individuals under the  
8 Texas workers' compensation system relative to the costs and  
9 expenses incurred in providing the drugs to self-paying individuals  
10 or individuals for whom payment is made under insurance coverage  
11 other than workers' compensation insurance.

12           (b) The Texas Workers' Compensation Commission shall adopt,  
13 not later than six months after the date a rulemaking petition is  
14 submitted to the commission, rules that clearly define the  
15 methodology for determining payment amounts for prescription drugs  
16 under Subtitle A, Title 5, Labor Code. The rules described by this  
17 section must take into account pharmacy fees paid by other payors  
18 and the costs and expenses that workers' compensation insurance  
19 carriers and pharmacies incur in providing prescription drugs to  
20 individuals under that subtitle and must ensure the presence of a  
21 reliable network of pharmacy providers for injured workers in this  
22 state.

23           (c) The Texas Workers' Compensation Commission shall pursue  
24 efforts to streamline the procedures for presenting, processing,  
25 and paying claims for prescription drugs under Subtitle A, Title 5,  
26 Labor Code, through the development of a system that is more  
27 efficient than the system in place on the effective date of this

1 Act.

2 (d) The Texas Workers' Compensation Commission shall  
3 implement the requirements of this section in a budget-neutral  
4 manner and consider the findings of studies or other research  
5 funded by collaborative efforts of workers' compensation insurance  
6 carriers and pharmacy providers. If the studies are not funded by  
7 workers' compensation insurance carriers and pharmacy providers  
8 and this section cannot be implemented in a budget-neutral manner,  
9 this section may not be implemented.

10 (e) This section expires December 31, 2004.

11 SECTION 3. (a) This Act takes effect September 1, 2003.

12 (b) The Texas Workers' Compensation Commission shall adopt  
13 rules under Section 408.028(e), Labor Code, as added by this Act,  
14 not later than March 1, 2004.

15 (c) In adopting rules under Section 408.028(e), Labor Code,  
16 as added by this Act, the Texas Workers' Compensation Commission  
17 shall make any changes to the commission's rules under 28 T.A.C.  
18 Section 134.800 that are necessary to assist pharmacies in  
19 complying with the change in law made by this Act.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 833 was passed by the House on May 10, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 833 on May 29, 2003, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 833 was passed by the Senate, with amendments, on May 27, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor