

By: Giddings

H.B. No. 3168

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to determination of workers' compensation benefits and to  
3 dispute resolution regarding those benefits.

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

5 SECTION 1. Section 413.031, Labor Code, is amended by  
6 amending Subsections (e) and (g)-(l) and adding Subsection (m) to  
7 read as follows:

8 (e) Except as provided by Subsection (d), (f), or (g), a  
9 review of the medical necessity of a health care service provided  
10 under this chapter or Chapter 408 shall be conducted by an  
11 independent review organization under Article 21.58C, Insurance  
12 Code, in the same manner as reviews of utilization review decisions  
13 by health maintenance organizations. It is a defense for the  
14 insurance carrier if the carrier timely complies with the decision  
15 of the independent review organization.

16 (g) The commission by rule may specify an alternate dispute  
17 resolution process for medical services costing less than the cost  
18 of a review of medical necessity by an independent review  
19 organization. The cost of a review under this process shall be paid  
20 by the nonprevailing party.

21 (h) In performing a review of medical necessity under  
22 Subsection (d) or (e), an independent review organization may  
23 request that the commission order an examination by a designated  
24 doctor under Chapter 408.

1           (i) [~~(h)~~] The insurance carrier shall pay the cost of the  
2 review if the dispute arises in connection with a request for health  
3 care services that require preauthorization under Section 413.014  
4 or commission rules under that section.

5           (j) [~~(i)~~] Except as provided by Subsection (i) [~~(h)~~], the  
6 cost of the review shall be paid by the nonprevailing party.

7           (k) [~~(j)~~] Notwithstanding Subsections [~~(h)~~ and] (i) and  
8 (j), an employee may not be required to pay any portion of the cost  
9 of a review.

10           (l) [~~(k)~~] Except as provided by Subsection (m) [~~(l)~~], a  
11 party to a medical dispute that remains unresolved after a review of  
12 the medical service under this section is entitled to a hearing.  
13 The hearing shall be conducted by the State Office of  
14 Administrative Hearings within 90 days of receipt of a request for a  
15 hearing in the manner provided for a contested case under Chapter  
16 2001, Government Code (the administrative procedure law). A party  
17 who has exhausted the party's administrative remedies under this  
18 subtitle and who is aggrieved by a final decision of the State  
19 Office of Administrative Hearings may seek judicial review of the  
20 decision. Judicial review under this subsection shall be conducted  
21 in the manner provided for judicial review of contested cases under  
22 Subchapter G, Chapter 2001, Government Code.

23           (m) [~~(l)~~] A party to a medical dispute regarding spinal  
24 surgery that remains unresolved after a review by an independent  
25 review organization as provided by Subsections (d) and (e) is  
26 entitled to dispute resolution as provided by Chapter 410.

27           SECTION 2. Section 408.123, Labor Code, is amended by

1 adding Subsections (d), (e), (f), and (g) to read as follows:

2 (d) Except as provided in Subsections (e), (f), and (g), the  
3 first valid certification of maximum medical improvement and the  
4 first valid assignment of impairment rating to an employee are  
5 final if the certification of maximum medical improvement and/or  
6 the assigned impairment rating is not disputed within 90 days after  
7 written notification of the maximum medical improvement and/or  
8 assignment of impairment rating is provided to the claimant and the  
9 carrier by verifiable means.

10 (e) The first certification of maximum medical improvement  
11 and/or impairment rating may be disputed after the 90-day period  
12 if:

13 (1) there is compelling medical evidence establishing  
14 the following:

15 (A) a significant error on the part of the  
16 certifying doctor in applying the appropriate American Medical  
17 Association Guides and/or calculating the impairment rating;

18 (B) a clear misdiagnosis or a previously  
19 undiagnosed medical condition; or

20 (C) prior improper or inadequate treatment of the  
21 injury which would render the certification of maximum medical  
22 improvement or impairment rating invalid; or

23 (2) there are other compelling circumstances as  
24 established by commission rule.

25 (f) If an employee has not been certified as having reached  
26 maximum medical improvement before the expiration of 104 weeks from  
27 the date on which income benefits begin to accrue or the expiration

1 of the date of any extension under Section 408.104, the impairment  
2 rating assigned after the end of the 104 weeks or after the end of  
3 the extended period under Section 408.104 is final if the  
4 impairment rating is not disputed within 90 days after written  
5 notification of the maximum medical improvement and/or assignment  
6 of impairment rating is provided to the claimant and the carrier by  
7 verifiable means.

8 (g) If a disputed certification of maximum medical  
9 improvement or assignment of impairment rating is finally modified,  
10 overturned, or withdrawn, the first subsequent certification and  
11 assignment becomes final if it is not disputed within 90 days after  
12 written notification of maximum medical improvement and/or  
13 assignment of impairment rating is provided to the claimant and the  
14 carrier by verifiable means.

15 SECTION 3. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2003.

20 SECTION 4. The change in law made by this Act applies to a  
21 request for medical dispute resolution filed with the Texas  
22 Workers' Compensation Commission on or after the effective date of  
23 this Act.