By: Carona S.B. No. 1767

A BILL TO BE ENTITLED

AN ACT

relating to the payment, reimbursement, and dispute resolution of workers' compensation medical claims; providing administrative violations.

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

SECTION 1. The heading to Section 413.015, Labor Code, is amended to read as follows:

Sec. 413.015. MEDICAL BILLS PAYMENT BY INSURANCE CARRIERS; COMMISSION AUDIT AND REVIEW; ADMINISTRATIVE VIOLATION.

SECTION 2. Section 413.015, Labor Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) The rules must require the insurance carrier to pay the expenses of the commission's review and audit. The commission shall order that a refund of payments be made to a health care provider that does not comply with the commission's reimbursement policies and guidelines. The health care provider and insurance carrier are entitled to a review under Section 413.031.

(d) An insurance carrier shall audit medical charges submitted by health care providers. The payment of claims shall be made as required by the payment policies of the commission's fee guidelines and rules.

(e) A health care provider that attempts to impede an insurance carrier's audit of charges for medical treatment or

services provided to an injured employee commits a violation. A violation under this subsection is a Class A administrative violation.

SECTION 3. Section 413.031, Labor Code, is amended by amending Subsections (a)-(e), (j), and (k) and adding Subsections (m)-(s) to read as follows:

(a) A [~~party, including a~~] health care provider[~~,~~] is entitled to a review of a medical service provided [~~or~~] for which the [~~authorization of payment is sought if a~~] health care provider has been [~~is~~]:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required or allowed by this subtitle or commission rules;

(3) ordered by the commission to refund a payment received; or

(4) ordered to make a payment that was refused or reduced for a medical service rendered.

(b) [~~A health care provider who submits a charge in excess of the fee guidelines or treatment policies is entitled to a review of the medical service to determine if reasonable medical justification exists for the deviation.~~] A claimant is entitled to a review of a medical service for which preauthorization or concurrent review is sought by the health care provider and denied by the insurance carrier. The review of the health care shall be conducted by the commission's medical advisor or by a member of the

medical quality review panel designated by the medical advisor. The medical advisor or medical quality review panel shall consider and apply the commission's rules and the requirements of Section 413.011 in conducting the review. The commission may not assess a fee against either party for the review of the disputed health care. It is a defense for the insurance carrier that the carrier has timely complied with the review decision of the commission. [~~The commission shall adopt rules to notify claimants of their rights under this subsection.~~]

(c) In resolving disputes between a health care provider and an insurance carrier over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the commission is to adjudicate the payment given the relevant statutory provisions and commission rules. The commission shall publish on its Internet website its medical dispute decisions, including decisions of independent review organizations, the Texas Medicare service intermediary and carrier, health care provider professional review organizations, and any subsequent decisions by the State Office of Administrative Hearings. Before publication, the commission shall redact only the claimant's name, address, social security number, and date of birth [~~that information necessary to prevent identification of the injured worker~~].

(d) Except as provided by Subsection (b), a [~~A~~] review of the medical necessity of a health care service requiring preauthorization or concurrent review under Section 413.014 or commission rules under that section shall be conducted by an

independent review organization under Article 21.58C, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e) Except as provided by Subsection (d), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Article 21.58C, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. The independent review organization shall consider and apply Section 413.011, other relevant provisions of this subtitle, and the commission's rules and fee guidelines in performing a review under this subsection. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

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

(k) Except as provided by Subsection (l), a party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings not later than the 90th day after the date [~~within 90 days~~] of receipt of a request for a hearing in the manner provided for a contested case under Chapter 2001, Government Code [~~(the administrative procedure law)~~]. A party that [~~who~~] has exhausted

the party's administrative remedies under this subtitle and that [~~who~~] is aggrieved by a final decision of the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of contested cases under Subchapter G, Chapter 2001, Government Code.

(m) An insurance carrier is entitled to a review of medical services and associated medical bills when the health care provider is asked to refund payment for medical services and refuses to refund the payment received from the insurance carrier. The review:

(1) must be requested before the first anniversary of the date of the request for the refund;

(2) shall be conducted by an independent review organization under Article 21.58C, Insurance Code, in the same manner as the review of utilization review decisions by health maintenance organizations, if the dispute includes medical necessity issues; and

(3) may be conducted by the Texas Medicare services intermediary and carrier, if the dispute is with regard to medical payments or the fair and reasonable reimbursement of health care services.

(n) A claimant is entitled to review of health care services that are related to the claimant's compensable injury if the claimant has paid for the services and the insurance carrier refuses to reimburse the claimant. In a review described by this subsection:

(1) the claimant must seek reimbursement from the carrier not later than the 90th day after the date of paying for medical services related to the compensable injury;

(2) the claimant is entitled to the reimbursement not to exceed the maximum reimbursement amount allowed by the commission's fee guidelines and Section 413.011;

(3) the health care provider shall refund to the claimant the amount paid by the claimant if a determination is made that the health care provided was medically unnecessary, was not preauthorized and preauthorization was required, was not approved during the course of a concurrent review and concurrent review was required, or was not payable under the commission's fee guidelines and Section 413.011;

(4) the health care provider shall refund to the claimant the amount of a payment made by the claimant for health care related to the compensable injury that was medically necessary and exceeds the amount allowed under the commission's fee guidelines and Section 413.011;

(5) the commission's medical advisor or a member of the medical quality review panel designated by the medical advisor shall perform the review of health care by considering and applying the commission's rules and the requirements of Section 413.011;

(6) the commission may not assess a fee against either party for the review of disputed health care; and

(7) it is a defense for the insurance carrier that the carrier has timely complied with the decision of the commission.

(o) An injured employee may not pursue dispute resolution

for a health care provider whose medical charges have been disputed. An injured employee may only pursue medical dispute resolution in a case in which preauthorization, concurrent review, or reimbursement of medical expenses paid by the employee have been denied by the insurance carrier.

(p) In resolving disputes under Subsection (c):

(1) the commission may designate the Texas Medicare services intermediary and carrier or a health care provider professional review organization to serve as the adjudicator of medical payment disputes;

(2) the decision of the adjudicator under Subdivision (1) shall be considered the decision of the commission;

(3) the adjudicator shall adjudicate the payment disputes as required by Section 413.011 and other relevant statutes and the commission's rules and fee guidelines;

(4) the nonprevailing party, as determined by Subsection (q) shall pay the adjudicator the review fee established by the commission;

(5) a party that fails to pay the review fee required under Subdivision (4) may not engage in further use of the medical dispute resolution process until the party pays the fee;

(6) if a decision of the commission is reversed after a hearing by the State Office of Administrative Hearings, the administrative law judge shall order the nonprevailing party to refund the review fee to the prevailing party;

(7) a party that fails or refuses to pay the review fee or any refund or reimbursement ordered by the State Office of

Administrative Hearings in a final order or decision is considered to be in violation of a final commission order; and

(8) a party that fails to comply with a final order of the State Office of Administrative Hearings under this subsection commits a Class A administrative violation.

(q) For purposes of determining the nonprevailing party under Subsection (p)(4), the commission shall determine the total amount of allowable fees for the health care in dispute and the party that prevailed with regard to less than half of that amount is the nonprevailing party.

(r) The commission shall order a party that does not prevail in a dispute reviewed by an independent review organization to pay the review fee established by the commission.

(s) The commission has exclusive original jurisdiction over all medical benefits and medical payment disputes described by Subsections (a), (b), (m), and (n).

SECTION 4. Subchapter C, Chapter 413, Labor Code, is amended by adding Section 413.0311 to read as follows:

Sec. 413.0311. RECORDS OF REVIEW. (a) The division is the records custodian for all medical disputes. The division shall maintain an official record of review that:

(1) includes a copy of the commission's or the independent review organization's decision and all documents submitted by the parties to the commission, and if applicable, to the independent review organization or the Texas Medicare services intermediary and carrier or the health care provider professional review organization; and

(2) is maintained at the commission's central office for at least 90 days after the date the decision was issued to the parties.

(b) The commission shall provide a certified copy of the official record of review to the disputing parties and the State Office of Administrative Hearings not later than the 30th day before the date of the hearing on the merits of the dispute. The commission:

(1) shall file a certified paper copy of the record with the State Office of Administrative Hearings;

(2) may provide the certified record to the parties in an electronic form;

(3) shall ensure that the certified record is page numbered in the manner prescribed by the State Office of Administrative Hearings;

(4) shall provide a certified copy of the record to the injured employee at no charge if the injured employee has proper standing in the dispute; and

(5) may not charge a fee to the State Office of Administrative Hearings or a disputing party for producing or forwarding the certified records.

SECTION 5. Sections 413.031(f), (h), and (i), Labor Code, are repealed.

SECTION 6. Section 413.031, Labor Code, as amended by this Act, and Section 413.0311, Labor Code, as added by this Act, apply only to a request for a review of a medical service that is filed with the Texas Workers' Compensation Commission on or after January

1, 2004. A request for a review filed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2003.