

BILL ANALYSIS

C.S.H.B. 7
By: Solomons
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Workers' Compensation Commission (TWCC) was created in 1990 as part of a broad effort to reform the workers' compensation system in Texas. Workers' compensation provides for no-fault income-replacement benefits and medical care for workers who are injured on the job. TWCC administers key parts of the system including overseeing delivery of medical and income benefits to injured workers, resolving disputes, and providing workplace safety services to employers.

TWCC is subject to the Sunset Act and will be abolished September 1, 2005 unless continued by the Legislature. The Sunset Commission found that the basic regulatory structure for workers' compensation in Texas has not proven effective for injured workers, or efficient for employers and insurance carriers providing services to Texas businesses. The workers' compensation system has produced rapidly rising medical costs that are higher than the national average, slow and expensive health-care services, and a lack of success in returning injured workers to gainful employment. As a result of its review, the Sunset Advisory Commission recommended abolishment of the agency, transfer of its functions to other agencies, streamlining the workers' compensation system and other statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Commissioner of Insurance, the Department of Insurance, and the Injured Employee Public Counsel of the Office of Injured Employee Assistance in Articles 1 through 4 of this bill. In addition, under the general rulemaking authority already granted to these officials and policymaking bodies, rules may be developed to implement other new provisions found in this bill.

Rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 1.002, SECTION 1.003, SECTION 1.004, SECTION 1.006, SECTION 1.016, SECTION 1.023, SECTION 1.024, SECTION 1.029, SECTION 1.030, SECTION 1.031, SECTION 1.032, SECTION 1.033, SECTION 1.035, SECTION 1.038, SECTION 1.049, SECTION 1.056, SECTION 1.061, SECTION 1.073, SECTION 1.081, SECTION 1.082, SECTION 1.086, SECTION 1.087, SECTION 1.093, SECTION 1.094, SECTION 1.095, SECTION 1.096, SECTION 1.108, SECTION 1.110, SECTION 1.124, SECTION 1.127, SECTION 1.155, SECTION 1.157, SECTION 1.160, SECTION 1.165, SECTION 1.167, SECTION 1.201, SECTION 1.202, SECTION 1.204, SECTION 1.251, SECTION 1.252, SECTION 1.304, SECTION 1.305, SECTION 1.310, SECTION 1.312, SECTION 1.314, SECTION 1.354, SECTION 1.356, SECTION 1.357, SECTION 1.360, SECTION 1.366, SECTION 1.371, SECTION 1.375, SECTION 1.377, SECTION 1.378, SECTION 1.380, SECTION 1.451, SECTION 1.503, SECTION 1.505, SECTION 1.506, SECTION 1.508, SECTION 1.509, SECTION 1.510, SECTION 1.511, SECTION 1.512, SECTION 1.514, SECTION 1.515, SECTION 1.516, SECTION 1.517, SECTION 1.519, SECTION 1.522, SECTION 1.527, SECTION 1.528, SECTION 1.530, SECTION 1.552, SECTION 1.553, SECTION 1.555, SECTION 1.601, SECTION 1.602, SECTION 1.603, SECTION 1.604, SECTION 1.607, SECTION 1.608, SECTION 1.751, SECTION 2.154, SECTION 2.205, SECTION 3.056, SECTION 3.062, SECTION 3.064, SECTION 3.066, SECTION 3.073, SECTION 3.074, SECTION 3.075, and SECTION 4.005.

Rulemaking authority is expressly granted to the Department of Insurance in SECTION 1.029, SECTION 1.031, SECTION 1.049, SECTION 1.402, and SECTION 3.010.

Rulemaking authority is expressly granted to the Injured Employee Public Counsel in SECTION 1.061, SECTION 1.062, SECTION 4.002, and SECTION 4.005.

ANALYSIS

C.S.H.B. 7 contains provisions to change the way workers' compensation is structured, managed, and regulated in Texas. The substitute streamlines the resolution of disputes related to the proper provision of medical care, as well as disputes over the compensability and amount of income benefits. The substitute also increases certain benefits for injured workers and provides an agency dedicated to assisting injured workers deal with the workers' compensation system.

The purpose of this legislation is to improve the provision of benefits to injured workers in Texas, reducing costs for Texas businesses, and streamlining the workers' compensation system for all parties.

Workers' Compensation Functions at the Department of Insurance

C.S.H.B. 7 abolishes the Texas Workers' Compensation Commission (TWCC) on March 1, 2006 and transfers workers' compensation regulatory, dispute resolution, customer assistance and records and information management functions and associated rulemaking authority to the Texas Department of Insurance (Department) no later than February 28, 2006.

Transferred regulatory oversight responsibilities and associated functions include workers' compensation insurance coverage; self-insurance regulation; income and medical benefits, including medical services regulation, cost containment and quality control functions including the Medical Quality Review Panel; claims procedures; compliance and enforcement of the Workers' Compensation Act and Rules; fraud investigation; and regulation of carrier-provided accident prevention services. Authorizes the Commissioner of Insurance to appoint a Medical Advisor. The Department is to provide customer assistance for workers' compensation policyholders, and conduct workers' compensation records and information management functions.

C.S.H.B. 7 also transfers the federal Occupational Safety and Health Consultation Program, workplace accident data collection, and the education function that disseminate best practices information to employers on return to work programs and workplace safety to the Department no later than February 28, 2006. All programs and functions transferred to the Department will continue to receive their funding through the assessment of a maintenance tax collected annually from all workers' compensation insurance carriers.

C.S.H.B. 7 establishes the Workers' Compensation Research and Evaluation Group within the Department to serve as a resource for the Commissioner on workers' compensation issues. The substitute requires the Group to conduct studies and research related to workers' compensation. The group shall prepare a research agenda adopted by the Commissioner after input at a public hearing.

C.S.H.B. 7 transfers oversight responsibility for workers' compensation medical disputes to the Department, and simplifies the dispute resolution process. Specifically, the substitute requires medical disputes to go through an initial informal dispute resolution process and provides for an Independent Review Organization (IRO) to decide any unresolved disputes. The substitute removes the State Office of Administrative Hearings from the appeal process, but either party may appeal an IRO decision to district court.

The substitute requires every IRO decision to include specific information elements for use in an appeal and for quality evaluation of IRO decisions by the Department. The substitute authorizes the Department to monitor IROs to ensure compliance with Commissioner rules, and requires the Department to evaluate IRO compliance with medical policies, fee guidelines, and impairment ratings, as well as the quality and timeliness of decisions.

C.S.H.B. 7 makes the Department responsible for overseeing and managing a streamlined dispute process for income benefits. The substitute authorizes the Commissioner to determine staffing levels and location of regional offices necessary to continue having hearing sites available across the state.

The substitute requires injured workers, employers, and carriers involved in an income benefit dispute to demonstrate a good faith effort to resolve the dispute themselves before filing a

C.S.H.B. 7 79(R)

dispute at the Department. The Commissioner of Insurance is authorized to adopt rules to ensure documentation of the initial attempt to resolve the dispute.

If the parties cannot resolve the dispute themselves, the substitute authorizes the claimant to file with the Department a request for arbitration or a formal contested case hearing. The substitute allows the Commissioner to issue an interlocutory order for the payment of benefits during the pendency of the dispute. If a formal contested case hearing is requested, the Department must hold a pre-hearing conference, replacing the current Benefit Review Conference, to identify contested issues for the formal contested case hearing. Allows pre-hearing conferences to occur by teleconference on agreement of all parties.

C.S.H.B. 7 abolishes the current Benefit Review Conferences February 28, 2006. Any Benefit Review Conferences in progress after that date must file agreements with TWCC no later than April 1, 2006. A claimant whose claim is not heard in a Benefit Review Conference before February 27, 2006 is entitled to a contested case hearing or arbitration.

The substitute requires the Department to provide participants with a list of information that participants may need at the formal contested case hearing to ensure they have the most useful information to help resolve the dispute.

The substitute allows parties to appeal the formal contested case hearing decision directly to district court, eliminating the need for the Appeals Panel which is abolished by April 1, 2006. The substitute provides that the records of a prehearing conference or contested case hearing are admissible in court. The substitute provides that the department will not accept any new appeals on or after February 28, 2006. Appeals filed before the effective date of this substitute are governed by the law in effect on the date the appeal was filed. The Department is also required to create a precedent manual for income benefit disputes.

C.S.H.B. 7 specifies that the goals of the Workers' Compensation Act are to ensure that every injured worker:

- is treated with dignity and respect when injured on the job;
- has access to a fair and accessible dispute resolution process;
- has access to prompt, quality medical care within the framework established by the State; and
- receives services to facilitate return to work as soon as it is deemed safe and appropriate by his or her medical provider.

The substitute also adds explicit language to the workers' compensation statute detailing nine systemwide goals and clarifies that the Department may adopt any rules necessary and appropriate to implement its powers and duties under the Workers' Compensation Act. The Department must assess its effectiveness in meeting the statutory goals and identify and report all internal policy and statutory changes needed to address deficiencies. Requires the Department to report results of this assessment, along with recommended statutory changes, to the Legislature by December 1, 2006.

C.S.H.B. 7 requires the Department to regularly assess the performance of carriers and medical providers against key regulatory goals to identify entities needing enhanced regulatory oversight. The Department must create regulatory incentives to promote greater overall compliance and reward performance. The substitute authorizes the Department to conduct audits of carriers' accident prevention services based on the risk assessment, rather than every two years.

The substitute requires the Department to establish rules that govern the filing of a complaint against a regulated entity and make that information available on its Web site. In addition, the Department is required to prioritize its investigations of complaints using risk-based criteria.

New Office of Injured Employee Counsel

C.S.H.B. 7 creates a new Office of Injured Employee Counsel to provide constituent service for injured workers, including through the Ombudsman program currently operated by TWCC. OIEC is led by the injured employee public counsel, appointed by the Governor and confirmed by the Senate. OIEC shall receive its administrative services, such as human and information resources, from the Department of Insurance.

C.S.H.B. 7 79(R)

C.S.H.B. 7 authorizes OIEC to provide representation for certain injured workers, with cases for representation accepted or rejected according to standards set by Department policy. OIEC may represent injured employees either through attorney representation or through an ombudsman supervised by an attorney. The substitute requires OIEC's Ombudsman program to begin providing services by March 1, 2006. Staff from the Ombudsman program shall coordinate OIEC services with the Department of Assistive and Rehabilitative Services (DARS). OIEC also is to provide public advocacy on the Department's workers' compensation rulemaking.

OIEC is to monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees. The substitute mandates a legislative report from OIEC, including a description of the activities of the Office, identification of any problems in the workers' compensation system and recommendations for legislative solutions, and an analysis of the effectiveness and efficiency of the workers' compensation system.

The substitute directs OIEC to coordinate with the Texas Workforce Commission and local workforce development boards to develop a workplace literacy and basic skills curriculum that bridges the skills gap between workers and current and emerging jobs.

Elimination of Programs

C.S.H.B. 7 abolishes the Medical Advisory Committee and provides that the Medical Advisor shall advise the Commissioner on the establishment of a medical quality review panel to assist the Medical Advisor.

C.S.H.B. 7 abolishes the Approved Doctor List, the Field Safety Representative Program, the Hazardous Employer Program, TWCC's role in the Rejected Risk Program, the Approved Professional Source Program, and the Drug Free Workplace Program.

Workers' Compensation Health-Care Networks

C.S.H.B. 7 authorizes workers' compensation health-care networks and aligns their regulations and operations more closely with group health insurance than the current system allows. The substitute allows insurance carriers, under Department supervision, to establish networks similar to those found in group health insurance. Employees are required to use the network if their employer has contracted for one, and must choose a network primary care provider to coordinate all medical care, with an exception for preexisting relationships in the event of an acute condition or terminal illness. Providers and carriers are required to use electronic substituting procedures.

The substitute adds numerous definitions relating to workers' compensation health-care networks, including provider networks and related contracts and entities such as utilization review agents, independent review organizations, and treating doctor.

The substitute establishes a network system based on contractual relationships, rather than State intervention, between system participants. The Department oversees these arrangements by setting standards, collecting and maintaining data, and monitoring compliance. Key elements of the networks include a requirement that all services be ordered by a primary care provider; placing limits on the retrospective review of medical necessity of care; and applying prompt payment procedures based on those used in group health insurance to workers' compensation networks. In addition, the networks are required to establish a broad choice of medical providers within the network structure where feasible, as well as ensuring geographic accessibility of medical providers. The Commissioner shall identify and adopt alternative standards for underserved areas, both in and out of the networks.

C.S.H.B. 7 requires all public sector entities to use networks for their employees' workers' compensation medical care if networks are available in their area.

C.S.H.B. 7 requires the Commissioner of Insurance to adopt new fee guidelines and set conversion factors for most medical practices for out-of-network services. For areas not covered by networks, the Department is also required to set standards and guidelines for treatment, injured employee return to work, and pharmacy benefit protocols. The substitute requires the Commissioner to replace the current set of fee guidelines adopted by TWCC.

C.S.H.B. 7 79(R)

C.S.H.B. 7 requires the Workers' Compensation Research and Evaluation Group to prepare report cards on quality, costs, provider availability, and other factors of workers' compensation networks. The substitute also requires the group to objectively evaluate the impact of workers' compensation health-care networks on the cost and quality of medical care provided to injured employees, and to report the findings.

Incentives and Other Provisions to Contain Costs

C.S.H.B. 7 authorizes group health insurance carriers to offer workers' compensation coverage to employers to expand purchasing options and increase competition.

C.S.H.B. 7 requires system participants to report fraud, with penalties for failure to report. The substitute also allows the Department to use appropriated funds collected from the annual assessment of a maintenance tax on all workers' compensation insurance carriers to fund fraud prosecution efforts.

C.S.H.B. 7 requires carriers to file with the Department the percentage discounts used for return to work and safety programs to provide the Department with information on the type and amount of discounts being offered to Texas employers. The Department must examine whether to mandate any of these discounts.

Income Benefits

C.S.H.B. 7 increases the existing cap on certain income benefits from 100 percent to 130 percent of the State Average Weekly Wage, currently set in statute at \$539, and increases the existing cap on additional income benefits from 70 percent to 100 percent of the SAWW. The substitute removes the statutory SAWW designation, eliminating the need for the Legislature to update it in statute every two years, and ties the SAWW calculation to the standard formula used by the Texas Workforce Commission. The substitute also reduces the amount of time that injured employees must lose from work to receive payment for the first week of temporary income benefits, from 28 to 14 days.

Service Delivery

C.S.H.B. 7 requires carriers to evaluate a compensable injury as early as is practicable after six weeks for lost time disability cases to determine if skilled case management is necessary to help ensure better coordination of health care and other services needed to facilitate an injured worker's return to work in a safe, timely, and appropriate manner. The substitute also encourages use of single points of contact for injured workers at the Department, OIEC, and the carrier.

Return to Work

C.S.H.B. 7 requires the Department of Insurance to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce. The substitute requires TDI to provide employers with information and best practices on methods to enhance return to work communication and services; and provide plain language information to injured workers on the benefits of early return to work, and making informed medical decisions.

C.S.H.B. 7 requires the Department to establish protocols for injured workers receiving supplemental income benefits (SIBs) to obtain workforce and occupational training where appropriate. The substitute improves access to existing state resources at TWC and the Department of Assistive and Rehabilitative Services (DARS) to better assist SIB recipients to return to the workforce. The substitute provides for the Department, where appropriate, to work with TWC, DARS, and private vocational rehabilitation programs to identify and attempt to remove barriers to successful employment of SIB recipients; ensure information and outcome data is tracked between appropriate agencies and carriers; establish a referral mechanism to TWC and local workforce centers; and create a method to promote employment success that includes post-referral contact by the Department with SIB recipients.

C.S.H.B. 7 sets compliance standards for SIB recipients work search requirements to replace the current standard of "good faith effort." The substitute provides for SIB recipients to actively participate with TWC, DARS or private vocational rehabilitation programs, or actively search for work documented by the number of job applications. The Department must establish rules to define the level of activity required to meet these standards, including defining the number of job applications necessary to meet the requirements.

C.S.H.B. 7 requires the Department, by rule, to ensure all workers' compensation forms and explanatory materials are prepared in plain language and in Spanish where appropriate to ensure

C.S.H.B. 7 79(R)

that all system participants have the information they need regarding the workers' compensation system.

Budget Authority

C.S.H.B. 7 provides that the Legislative Budget Board may adopt an order affecting any portion of the total appropriation of the Department if necessary to implement the provisions of the substitute.

The substitute also changes the nature of the Subsequent Injury Fund from a general revenue account in the state treasury to a dedicated account in the general revenue fund, and provides that the SIF is not subject to any provision of law that makes dedicated revenue available for general governmental purposes.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 7 differs from the original by eliminating all references to the Texas Workforce Commission, and transferring all health and safety programs to the Department rather than TWC.

C.S.H.B. 7 eliminates references to functional capacity exams.

The substitute changes the availability of information to employers concerning an employee's previous injuries. The substitute allows a prospective employer, with the applicant's permission, to receive information on any previous injury filed with the Department. Employers may receive information on any injury without the employee's permission, within 30 days of hire.

The substitute changes the name and nature of the Office of Employee Assistance, establishing the Office of Injured Employee Counsel, directed by an attorney appointed by the Governor to serve as the injured employee public counsel, to represent and advocate for injured employees in the workers' compensation system. The role of an ombudsman is expanded to allow the ombudsman to represent, rather than just give advice to, an injured employee in certain workers' compensation-related matters. Ombudsmen are overseen by attorneys who may intervene.

C.S.H.B. 7 changes the status of the Workers' Compensation Research and Evaluation Group from an advisory body to the department, to internal employees of the department. The substitute restores the requirement of the research group to perform research work based on an annual research agenda adopted by the Commissioner at a public hearing. The substitute removes the provision in the original which required carriers to survey injured workers to obtain data on satisfaction of services provided through networks and report results to the research group at the Department for the report card.

The substitute clarifies that the exclusive remedy provisions are affective and an employer is protected by them when an employee is denied compensability for an injury if the injured employee was engaging in activities not within the scope of their job, was engaging in horseplay or was intoxicated.

The substitute removes the provision in the original which required the informal benefit dispute resolution to take place at the carrier, and adds new language to require the Commissioner to adopt standards by which carriers are required to reconsider an issue being disputed by a claimant. The substitute shortens the timeframe for completing the informal dispute resolution from 30 days to 15 days.

C.S.H.B. 7 adds new language that allows the Commissioner, when arbitration or a contested case hearing has been requested, to issue an interlocutory order for the payment of benefits during the pendency of the dispute.

The substitute extends the timeframe of when a pre-hearing conference must be scheduled, and allows pre-hearing conferences to occur by teleconference on agreement of all parties. The C.S.H.B. 7 79(R)

substitute adds a new provision establishing an appeal for an injured employee to submit a dispute after the 90th day for good cause.

C.S.H.B. 7 adds new language to authorize the Department to monitor IROs to ensure compliance with Commissioner rules. Requires the Department to evaluate IRO compliance with medical policies, fee guidelines, and impairment ratings, as well as the quality and timeliness of decisions.

The substitute removes the provision in the original which authorized the commissioner to provide for limited retrospective review by carriers in networks. The substitute differs from the original by allowing either party to appeal an IRO decision, and does not make the IRO decision binding on the insurance carrier. If services were provided by a carrier using a network, the carrier pays for the IRO review.

The substitute expands the maximum allowable income benefits by raising the cap on impairment income benefits and supplemental income benefits from 70 percent to 100 percent of the State Average Weekly Wage.

C.S.H.B. 7 adds new language to prohibit the misuse of the Department's name, seals, or logos.

The substitute allows employees of the Texas A&M University System and the University of Texas System to elect to use accrued sick leave or annual leave before receiving income benefits.

The substitute adds a provision which allows political subdivisions to provide medical benefits in a manner passed by their local governing board or by as risk pool to which they belong, if a certified provider is not accessible or practical for their area.

C.S.H.B. 7 requires the use of electronic billing and directs the Commissioner to adopt rules establishing requirements regarding electronic billing procedures and criteria for granting exceptions to insurance carriers who are unable to accept medical bills electronically.

The substitute adds new language requiring insurance carriers to submit rate information to the Department. Requires the Department to hold a public hearing not later than December 1, 2008 to review the appropriateness of the rates and determine the impact of the enactment of H.B. 7 on workers' compensation rates and premiums. The substitute allows the commissioner to adopt rules to mandate rate reductions or modify the use of individual risk variations if the Commissioner determines the rates are excessive. The Commissioner may also adopt rules to mandate rate or premium reductions by insurers for the use of cost-containment strategies that result in savings to the system.