

BILL ANALYSIS

C.S.S.B. 929
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law entitles a person who pays for medical care or services related to a workers' compensation claim to subclaimant status under the Texas Workers Compensation Act, if the person has sought reimbursement and been denied for payments from the workers' compensation carrier. The subclaim is filed with the Texas Department of Insurance/Division of Workers' Compensation (DWC).

The 79th Texas Legislature, Regular Session, 2005, passed H.B. 251 which enabled insurance carriers to request information from the division to identify subclaims that may exist. Since the passage of House Bill 251, health insurers have been utilizing this process to identify claims that they have paid that should have been paid by a workers' compensation insurance carrier. In accordance with Labor Code Section 409.009, health insurers that request reimbursement for a claim from a workers' compensation insurance carrier and are denied reimbursement are filing subclaims with the division.

Currently, there is no administrative jurisdiction at the division to appropriately address a dispute between a health insurer subclaimant or its agent and a workers' compensation insurance carrier.

C.S.S.B. 929 clarifies that in cases involving compensability, extent of injury, liability, medical necessity, or fee disputes the division has the authority to allow dispute resolution and order reimbursement from a workers' compensation insurance carrier to a health insurance subclaimant. C.S.S.B. 929 provides for dispute resolution through Benefit Review Conference/Contested Case Hearing ("BRC/CCH"), medical fee dispute, or Independent Review Organization ("IRO"). C.S.S.B. 929 also eliminates certain defenses that have been advanced by the workers' compensation insurance carriers as rationale for failure to reimburse the health insurers since these defenses would not have been applicable during the time of receiving treatment because it was unknown that the claim was a workers' compensation claim.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance and the Commissioner of Workers' Compensation in SECTION 2 (Section 409.0091, Labor Code, subsections (l), (o) and (r)) and SECTION 5.

ANALYSIS

SECTION 1. Amends Section 408.027(d), Labor Code, by authorizing the recovery of reimbursement for health care services paid by an accident or health carrier for an injury a workers' compensation insurance carrier or employer has not disputed is compensable.

SECTION 2. Amends Subchapter A, Chapter 409, Labor Code, by adding Section 409.0091 as follows:

Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES. (a)
Defines "health care insurer."

(b) makes this section applicable only to a request for reimbursement by a health care insurer.

- (c) Authorizes health care paid by a health care insurer to be reimbursable as a medical benefit.
- (d) Provides that, except as provided by Subsection (e), this section does not prohibit or limit a substantive defense raised by a workers' compensation insurance carrier that the health care paid for the health care insurer was not a medical benefit or not a correct payment. Prohibits a subclaimant from being reimbursed for payment for any health care that was previously denied by a workers' compensation insurance carrier under certain reviews.
- (e) Sets forth certain defenses that cannot be asserted in failing to reimburse a subclaim.
- (f) Sets forth specific bill data elements that must be provided to the workers' compensation insurance carrier when requesting reimbursement from a workers' compensation insurance carrier in a form prescribed by the division of workers' compensation.
- (g) Requires a workers' compensation insurance carrier to reduce a reimbursement payment for any amounts the workers' compensation insurance carrier previously made to a provider for health care provided on the same dates of service. Requires the workers' compensation insurance carrier to provide evidence of the previous payments made to the provider in making such a reduction.
- (h) Requires the workers' compensation insurance carrier to pay to the health care insurer the lesser of the applicable fee guideline or the amount paid. The bill requires the amount per service paid by the health care insurer to be considered in determining a fair and reasonable payment under rules under this subtitle (Texas Workers' Compensation Act) defining fair and reasonable medical reimbursement in the absence of a fee guideline. Prohibits the health care insurer from recovering interest as a part of the subclaim.
- (i) Requires a workers' compensation insurance carrier to respond to a reimbursement request by a health care insurer in writing not later than the 90th day after the date on which the request for reimbursement was received. Requires the workers' compensation insurance carrier to respond not later than the 120th day if additional information is requested under Subsection (j) unless the time is extended under Subsection (j).
- (j), Requires a workers' compensation insurance carrier that requires additional information from the health care insurer to send notice to the health care insurer requesting additional information. Sets forth the time frame in which the health care insurer is required to provide the information. Authorizes the workers' compensation insurance carrier and the health care insurer to establish additional periods for compliance by written mutual agreement.
- (k) Requires the health care insurer to file a written subclaim under this section within a certain timeframe, except if the parties have agreed to an extension of time under Subsection (j).
- (l) Requires any dispute that arises from a failure to respond to or to a reduction or denial of a request for reimbursement of services to go through the appropriate dispute resolution process under this subtitle and division of workers' compensation rules. Requires the commissioner of insurance and the commissioner of workers' compensation to modify rules under this subtitle as necessary to allow the health care insurer access as a subclaimant to the appropriate dispute resolution process. Sets forth the requirements for rules adopted or amended by the commissioner of insurance and the commissioner of workers' compensation.

(m) Authorizes a hearing officer, in a dispute filed under Chapter 410 that arises from a subclaim under this section, to issue an order regarding compensability or eligibility for benefits and order the workers' compensation insurance carrier to reimburse health care services paid by the health care insurer as appropriate under this subtitle. Requires any dispute over the amount of medical benefits owed under this section, including medical necessity issues, to be determined by medical dispute resolution under Sections 413.031 and 413.032.

(n) Requires a health care insurer, except as provided by Subsection (s), to file a request for reimbursement with the workers' compensation insurance carrier not later than six months after the date on which the health care insurer received information under Section 402.084(c-3) and not later than 18 months after the health care insurer paid for the health care service.

(o) Requires the commissioner of workers' compensation and the commissioner of insurance to amend or adopt rules to specify the process by which an employee who has paid for health care services described by Section 408.027(d) may seek reimbursement.

(p) Exempts a workers' compensation insurance carrier from any Texas Department of Insurance (TDI) and Division of Workers' Compensation (DWC) data reporting requirements affected by a lack of information caused by reimbursement requests or subclaims under this section until September 1, 2011. Provides that if data reporting is required after that date, the requirement is prospective only and prohibits requiring any data to be reported between September 1, 2007, and the date requiring reporting is reinstated. Authorizes TDI and DWC to make legislative recommendations to the 82nd Legislature for the collection of reimbursement request and subclaim data.

(q) Prohibits an action or failure to act by a workers' compensation insurance carrier under this section to serve as the basis for an examination or administrative action by TDI or DWC, or for any cause of action by any person, except for judicial review under this subtitle.

(r) Authorizes the commissioner of insurance and the commissioner of workers' compensation to adopt additional rules or clarify the processes required by, fulfill the purpose of, or assist the parties in the proper adjudication of subclaims under this section.

(s) Authorizes the health care insurer to file certain subclaims or requests for reimbursement with DWC, on or after September 1, 2007, from information provided to a health care insurer before January 1, 2007.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Requires the commissioner of workers' compensation to prescribe any forms required under Section 409.091, Labor Code, as added by this Act, not later than September 1, 2007.

SECTION 5. Requires the commissioner of workers' compensation and the commissioner of insurance to adopt rules as required by this Act not later than December 1, 2007.

SECTION 6. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Authorizes reimbursement for health care services which the workers' compensation insurance carrier or employer has not disputed compensability, rather than accepts compensability.

Provides that health care paid by a health care insurer may be, rather than is, reimbursable as a medical benefit. Deletes the definition of "medical benefit." Deletes the provision that a request for reimbursement or subclaim of the health care insurer is subject to the defense that the health care paid for was not a medical benefit. Provides that Section 409.0091, Labor Code, as added by this Act, with certain exceptions, does not prohibit or limit a substantive defense by a workers' compensation insurance carrier that the health care paid for the health care insurer was not a medical benefit or not a correct payment. Sets forth circumstance in which a subclaimant is prohibited to be reimbursed for payment for any health care that was previously denied by a workers' compensation insurance carrier under certain reviews.

Deletes the provision that it is not a defense to a subclaim by a health care insurer that the health care provider did not comply with this subtitle (Texas Workers' Compensation Act) or rules adopted under this subtitle. Modifies the information that must be provided by the health care insurer with any reimbursement request.

Provides that in the absence of a fee guideline, the amount actually paid by the health care insurer shall be considered in determining a fair and reasonable payment under relevant rules under this subtitle, rather than be construed as a fair and reasonable payment under Section 413.011(d), Labor Code.

Creates provisions for the workers' compensation insurance carrier to request additional information on receipt of a request for reimbursement, and allows additional time for the workers' compensation insurance carrier to respond to a request for reimbursement in those circumstances. Authorizes the parties to agree to an extension of time for compliance with a request for additional information by written mutual agreement. Sets forth the time frame in which a health care insurer must file a written subclaim.

Deletes language relating to timeframes for filing with the division of workers' compensation a written claim if the insurance carrier refuses, fails to pay, or reduces a request for reimbursement. Modifies the options for dispute resolution and the rulemaking authority of the commissioner of insurance and the commissioner of workers' compensation in relation to dispute resolution. Adds provisions relating to the dispute resolution process for certain types of claims. Modifies the time frame in which the health care insurer must file a request for reimbursement, and provides an exception. Sets forth provisions relating to data collection and the lack of information cause by reimbursement requests or subclaims.

Prohibits an action or failure to act by a workers' compensation insurance carrier under this section to serve as the basis for an examination or administrative action by TDI or DWC, or for any cause of action by any person, except for judicial review under this subtitle.

Deletes amendments to Section 413.031, Labor Code. Deletes Section 413.0311, Labor Code, as added by the engrossed version.

Amends the prospective clause to conform to the changes in the substitute. Deletes the provisions relating to the applicability of the amendments to Section 413.031, Labor Code.

Requires the commissioner of workers' compensation to prescribe the necessary forms as required by Section 409.0091, Labor Code, as added by this Act, not later than September 1, 2007, rather than not later than 60 days after the effective date of this Act.

Requires the commissioner of workers' compensation and the commissioner of insurance to adopt rules as required by this Act not later than December 1, 2007.

Throughout the substitute, the term "insurance carrier" is replaced with "workers' compensation insurance carrier" for clarity. Makes conforming and nonsubstantive changes.