

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 7, enacted by the 79th Legislature, Regular Session, 2005, provided that appeals of workers' compensation medical fee disputes would go directly from the Texas Department of Insurance, Division of Workers' Compensation, to the Travis County district court rather than to the State Office of Administrative Hearings (SOAH). This change has resulted in decisions of medical fee disputes being based solely on the papers submitted by the carriers and providers in the medical dispute resolution process. No testimony is taken, no exhibits are introduced, and no opportunity to cross-examine or rebut the other side's information is given. These appeals are based on a substantial evidence review, where the reviewing court examines the record before the agency, as provided by the papers filed by the involved parties, and determines whether there is substantial evidence to support a decision. By contrast, prior law handled such appeals, made to SOAH, as contested case hearings based on actual evidence, including exhibits and witnesses subject to cross-examination. Since such appeals are not currently handled as contested case hearings, the court's decision is not based on actual evidence, and a Travis County district court has ruled that the statutory failure to provide for evidentiary hearings in such fee disputes is unconstitutional.

Current law also authorizes an insurance carrier to arbitrarily deny and avoid paying a claim for a substantial amount of time while an appeal of the denial is pursued. Although but for the inordinate delay the providers have fared well in the administrative process, the carriers' failure to pay these claims subjects the carriers to no penalty other than the spread between the interest the carriers earn on money not paid versus the interest they will have to pay ultimately if the disputes are resolved in the providers' favor.

As proposed, S.B. 929 restores SOAH as the proper venue for the appeal of workers' compensation fee disputes and requires such disputes to be handled in an evidence-based hearing, thereby remedying the constitutional defect in current law. It also imposes a penalty of the litigation costs on carriers who deny reimbursement when those costs are unnecessarily incurred in responding to a frivolous denial, thereby providing a financial incentive for carriers to process hospital fee claims fairly.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 413.031, Labor Code, by amending Subsection (k) and adding Subsections (k-1), (k-2), and (k-3), as follows:

(k) Entitles a party to a medical dispute that remains unresolved after a medical review under this section, other than a dispute regarding spinal surgery subject to Subsection (l) , to a hearing, rather than a judicial review of the decision. Requires such a hearing to be conducted by the State Office of Administrative Hearings (SOAH) no later than the 60th day after the date on which the party notifies the division of workers' compensation (division) of the Texas Department of Insurance (TDI) of the hearing request. Requires the hearing to be conducted as provided in Chapter 2001 (Administrative Procedure), Government Code. Makes a nonsubstantive deletion.

(k-1) Authorizes a party who has exhausted all administrative remedies under Subsection (k) and who is aggrieved by a final decision of SOAH to seek judicial review of the decision. Requires such judicial review to be conducted as provided in Subchapter G (Contested Cases: Judicial Review), Chapter 2001, Government Code.

(k-2) Creates this subsection from existing text. Provides that the division and TDI are not considered to be parties to the dispute for purposes of Subsection (k) and (k-1). Makes a conforming deletion.

(k-3) Provides that an insurance carrier, found during judicial review under Subsection (k-1) to have wrongfully or negligently contested a payment to a health care provider for a health care service provided under this subtitle, is liable for the costs of litigation, including attorney's fees. Provides that this subsection does not apply to attorney's fees for which an insurance carrier may be liable for under Subchapter L (Attorney's Fees in Workers' Compensation Benefit Matters), Chapter 408, or Chapter 410 (Adjudication of Disputes).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.