

BILL ANALYSIS

Senate Research Center

S.B. 1169
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 7, enacted by the 79th Legislature, Regular Session, 2005, made significant changes to the designated doctor process outlined under Section 408.0041, Labor Code. The scope of issues for which designated doctors are appointed and now perform examinations were broadened to include impairment ratings, maximum medical improvement, extent of injury, disability, the ability of an employee to return to work and similar issues. Furthermore, Section 408.0041(f) requires insurance carriers to pay both income and medical benefits in accordance with the designated doctor's report. Accordingly, the designated doctor's opinion has a substantial impact on benefits paid by carriers. There is a risk that carriers may pay benefits pursuant to a designated doctor's opinion that is eventually determined to be incorrect.

The Texas Workers' Compensation Act contains numerous provisions protecting carriers for overpayments based on an interlocutory decision. For example, Section 410.209, Labor Code, provides that the subsequent injury fund is required to reimburse carriers for overpayments of benefits made under an interlocutory order or decision that is overturned or modified by final arbitration, or decision of the commissioner or court. Similarly, Sections 413.0141, Labor Code, requires the commissioner of workers' compensation to adopt rules requiring carriers to pay for pharmaceutical services within the first seven days of a claim, and states that the carrier will be eligible for reimbursement of such payments from the subsequent injury fund if it is determined that the claim is not compensable. The same protection should hold true regarding designated doctors.

S.B. 1169 authorizes insurance carriers to recoup funds paid as a result of a designated doctor's opinion that is subsequently overturned.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 1 (Section 408.0041, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 408.0041, Labor Code, by adding Subsection (f-1), to require the subsequent injury fund to reimburse an insurance carrier for any overpayment of benefits made by the insurance carrier under Subsection (f) based on an opinion rendered by a designated doctor if that opinion is reversed or modified by a final arbitration award or order, or decision of the commissioner of workers' compensation (commissioner) or a court. Requires the commissioner to adopt rules to provide for a periodic reimbursement schedule, providing reimbursement at least annually.

SECTION 2. Amends Section 408.042(g), Labor Code, to provide that an insurance carrier is entitled to apply for and receive reimbursement at least annually from the subsequent injury fund for the amount of income and death benefits paid to a worker under this section that are based on employment other than the employment during which the compensable injury occurred.

SECTION 3. Amends Section 403.006(b), Labor Code, to provide that the subsequent injury fund is liable for certain payments and reimbursements, including the reimbursement of an insurance carrier as provided by Section 408.0041(f-1).

SECTION 4. Amends Section 410.032, Labor Code, as follows:

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. (a) Requires the benefit review officer who presides at the benefit review conference to consider a written or verbal request for an interlocutory order for the payment of benefits and, if the benefit review officer determines that issuance of an interlocutory order is appropriate, to issue the interlocutory order not later than the third day after the date of receipt of the request under Subdivision (1). Deletes existing text requiring, as designated by the commissioner, staff of the division of workers' compensation of the Texas Department of Insurance, other than the benefit review officer who presided or will preside at the benefit review conference to consider a request for an interlocutory order and issue an interlocutory order if determined to be appropriate.

(b) Creates this subsection from existing text. Makes a nonsubstantive change.

SECTION 5. Makes application of Section 408.0041(f-1), Labor Code, as added by this Act, prospective.

SECTION 6. Makes application of Section 410.032, Labor Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2007.