

AN ACT

relating to workers' compensation claims for certain medical benefits, death benefits, and burial benefits.

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

SECTION 1. Section 413.031, Labor Code, is amended by amending Subsection (k) and adding Subsections (k-1) and (k-2) to read as follows:

(k) A [Except as provided by Subsection (l), a] party to a medical dispute, other than a medical dispute regarding spinal surgery subject to Subsection (l) and a dispute subject to Section 413.0311, that remains unresolved after a review of the medical service under this section is entitled to a hearing. A hearing under this subsection shall be conducted by the State Office of Administrative Hearings not later than the 60th day after the date on which the party notifies the division of the request for a hearing. The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code.

(k-1) A party who has exhausted all administrative remedies under Subsection (k) and 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 a contested case under Subchapter G, Chapter 2001, Government Code.

(k-2) The division and the department are not considered to

1 be parties to the medical dispute for purposes of Subsections (k)  
2 and (k-1) [~~this subsection. Judicial review under this subsection~~  
3 ~~shall be conducted in the manner provided for judicial review of~~  
4 ~~contested cases under Subchapter G, Chapter 2001, Government Code~~].

5 SECTION 2. Subchapter C, Chapter 413, Labor Code, is  
6 amended by adding Section 413.0311 to read as follows:

7 Sec. 413.0311. REVIEW OF CERTAIN MEDICAL DISPUTES;  
8 CONTESTED CASE HEARING. (a) This section applies only to the  
9 following medical disputes that remain unresolved after any  
10 applicable review under Sections 413.031(b) through (i):

11 (1) a medical fee dispute in which the amount of  
12 reimbursement sought by the requestor in its request for medical  
13 dispute resolution does not exceed \$2,000;

14 (2) an appeal of an independent review organization  
15 decision regarding determination of the retrospective medical  
16 necessity for a health care service for which the amount billed does  
17 not exceed \$3,000; and

18 (3) an appeal of an independent review organization  
19 decision regarding determination of the concurrent or prospective  
20 medical necessity for a health care service.

21 (b) A party to a medical dispute described by Subsection (a)  
22 is entitled to a contested case hearing. A contested case hearing  
23 under this section shall be conducted by a hearings officer in the  
24 manner provided for contested case hearings under Subchapter D,  
25 Chapter 410. Notwithstanding Section 410.024, a benefit review  
26 conference is not a prerequisite to a contested case hearing under  
27 this section.

1       (c) The decision of a hearings officer under this section is  
2 final in the absence of a timely appeal by a party for judicial  
3 review under Subsection (d).

4       (d) A party who has exhausted all administrative remedies  
5 under Section 413.031 and this section and who is aggrieved by a  
6 final decision of the hearings officer under Subsection (c) may  
7 seek judicial review of the decision. Judicial review under this  
8 subsection shall be conducted in the manner provided for judicial  
9 review of a contested case under Subchapter G, Chapter 2001,  
10 Government Code.

11       (e) The division and the department are not considered to be  
12 parties to the medical dispute for purposes of this section.

13       SECTION 3. Section 402.073(b), Labor Code, is amended to  
14 read as follows:

15       (b) In a case in which a hearing is conducted by the State  
16 Office of Administrative Hearings under Section 413.031, 413.055,  
17 or 415.034, the administrative law judge who conducts the hearing  
18 for the State Office of Administrative Hearings shall enter the  
19 final decision in the case after completion of the hearing.

20       SECTION 4. Section 408.027(d), Labor Code, is amended to  
21 read as follows:

22       (d) If an insurance carrier contests the compensability of  
23 an injury and the injury is determined not to be compensable, the  
24 carrier may recover the amounts paid for health care services from  
25 the employee's accident or health benefit plan, or any other person  
26 who may be obligated for the cost of the health care services. If an  
27 accident or health insurance carrier or other person obligated for

1 the cost of health care services has paid for health care services  
2 for an employee for an injury for which a workers' compensation  
3 insurance carrier denies compensability, and the injury is later  
4 determined to be compensable, the accident or health insurance  
5 carrier or other person may recover the amounts paid for such  
6 services from the workers' compensation insurance carrier. If an  
7 accident or health insurance carrier or other person obligated for  
8 the cost of health care services has paid for health care services  
9 for an employee for an injury for which the workers' compensation  
10 insurance carrier or the employer has not disputed compensability,  
11 the accident or health insurance carrier or other person may  
12 recover reimbursement from the insurance carrier in the manner  
13 described by Section 409.009 or 409.0091, as applicable.

14 SECTION 5. Section 408.182, Labor Code, is amended by  
15 adding Subsections (d-1) and (d-2) and amending Subsection (e) to  
16 read as follows:

17 (d-1) If there is no eligible spouse, no eligible child, and  
18 no eligible grandchild, and there are no surviving dependents of  
19 the deceased employee who are parents, siblings, or grandparents of  
20 the deceased, the death benefits shall be paid in equal shares to  
21 surviving eligible parents of the deceased. A payment of death  
22 benefits made under this subsection may not exceed one payment per  
23 household and may not exceed 104 weeks.

24 (d-2) Except as otherwise provided by this subsection, to  
25 be eligible to receive death benefits under Subsection (d-1), an  
26 eligible parent must file with the division a claim for those  
27 benefits not later than the first anniversary of the date of the

1 injured employee's death from the compensable injury. The claim  
2 must designate all eligible parents and necessary information for  
3 payment to the eligible parents. The insurance carrier is not  
4 liable for payment to any eligible parent not designated on the  
5 claim. The commissioner may extend the time for filing a claim  
6 under this subsection only if the eligible parent submits proof  
7 satisfactory to the commissioner of a compelling reason for the  
8 delay.

9 (e) If an employee is not survived by legal beneficiaries or  
10 eligible parents, the death benefits shall be paid to the  
11 subsequent injury fund under Section 403.007.

12 SECTION 6. Section 408.182(f), Labor Code, is amended by  
13 adding Subdivision (4) to read as follows:

14 (4) "Eligible parent" means the mother or the father  
15 of a deceased employee, including an adoptive parent or a  
16 stepparent, who receives burial benefits under Section 408.186.  
17 The term does not include a parent whose parental rights have been  
18 terminated.

19 SECTION 7. Section 408.183, Labor Code, is amended by  
20 adding Subsection (f-1) to read as follows:

21 (f-1) An eligible parent who is not a surviving dependent of  
22 the deceased employee is entitled to receive death benefits until  
23 the earlier of:

24 (1) the date the eligible parent dies; or

25 (2) the date of the expiration of 104 weeks of death  
26 benefit payments.

27 SECTION 8. Subchapter A, Chapter 409, Labor Code, is

1 amended by adding Section 409.0091 to read as follows:

2 Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN  
3 ENTITIES. (a) In this section, "health care insurer" means an  
4 insurance carrier and an authorized representative of an insurance  
5 carrier, as described by Section 402.084(c-1).

6 (b) This section applies only to a request for reimbursement  
7 by a health care insurer.

8 (c) Health care paid by a health care insurer may be  
9 reimbursable as a medical benefit.

10 (d) Except as provided by Subsection (e), this section does  
11 not prohibit or limit a substantive defense by a workers'  
12 compensation insurance carrier that the health care paid for by the  
13 health care insurer was not a medical benefit or not a correct  
14 payment. A subclaimant may not be reimbursed for payment for any  
15 health care that was previously denied by a workers' compensation  
16 insurance carrier under:

17 (1) a preauthorization review of the specific service  
18 or medical procedure; or

19 (2) a medical necessity review that determined the  
20 service was not medically necessary for the treatment of a  
21 compensable injury.

22 (e) It is not a defense to a subclaim by a health care  
23 insurer that:

24 (1) the subclaimant has not sought reimbursement from  
25 a health care provider or the subclaimant's insured;

26 (2) the subclaimant or the health care provider did  
27 not request preauthorization under Section 413.014 or rules adopted

1 under that section; or

2 (3) the health care provider did not bill the workers'  
3 compensation insurance carrier, as provided by Section 408.027,  
4 before the 95th day after the date the health care for which the  
5 subclaimant paid was provided.

6 (f) Subject to the time limits under Subsection (n), the  
7 health care insurer shall provide, with any reimbursement request,  
8 the tax identification number of the health care insurer and the  
9 following to the workers' compensation insurance carrier, in a form  
10 prescribed by the division:

11 (1) information identifying the workers' compensation  
12 case, including:

13 (A) the division claim number;

14 (B) the name of the patient or claimant;

15 (C) the social security number of the patient or  
16 claimant; and

17 (D) the date of the injury; and

18 (2) information describing the health care paid by the  
19 health care insurer, including:

20 (A) the name of the health care provider;

21 (B) the tax identification number of the health  
22 care provider;

23 (C) the date of service;

24 (D) the place of service;

25 (E) the ICD-9 code;

26 (F) the CPT, HCPCS, NDC, or revenue code;

27 (G) the amount charged by the health care

1 provider; and

2 (H) the amount paid by the health care insurer.

3 (g) The workers' compensation insurance carrier shall  
4 reduce the amount of the reimbursable subclaim by any payments the  
5 workers' compensation insurance carrier previously made to the  
6 same health care provider for the provision of the same health care  
7 on the same dates of service. In making such a reduction in  
8 reimbursement to the subclaimant, the workers' compensation  
9 insurance carrier shall provide evidence of the previous payments  
10 made to the provider.

11 (h) For each medical benefit paid, the workers'  
12 compensation insurance carrier shall pay to the health care insurer  
13 the lesser of the amount payable under the applicable fee guideline  
14 as of the date of service or the actual amount paid by the health  
15 care insurer. In the absence of a fee guideline for a specific  
16 service paid, the amount per service paid by the health care insurer  
17 shall be considered in determining a fair and reasonable payment  
18 under rules under this subtitle defining fair and reasonable  
19 medical reimbursement. The health care insurer may not recover  
20 interest as a part of the subclaim.

21 (i) On receipt of a request for reimbursement under this  
22 section, the workers' compensation insurance carrier shall respond  
23 to the request in writing not later than the 90th day after the date  
24 on which the request is received. If additional information is  
25 requested under Subsection (j), the workers' compensation  
26 insurance carrier shall respond not later than the 120th day unless  
27 the time is extended under Subsection (j).



1       (j) If the workers' compensation insurance carrier requires  
2 additional information from the health care insurer, the workers'  
3 compensation insurance carrier shall send notice to the health care  
4 insurer requesting the additional information. The health care  
5 insurer shall have 30 days to provide the requested information.  
6 The workers' compensation insurance carrier and the health care  
7 insurer may establish additional periods for compliance with this  
8 subsection by written mutual agreement.

9       (k) Unless the parties have agreed to an extension of time  
10 under Subsection (j), the health care insurer must file a written  
11 subclaim under this section not later than the 120th day after:

12             (1) the workers' compensation insurance carrier fails  
13 to respond to a request for reimbursement; or

14             (2) receipt of the workers' compensation insurance  
15 carrier's notice of denial to pay or reduction in reimbursement.

16       (1) Any dispute that arises from a failure to respond to or a  
17 reduction or denial of a request for reimbursement of services that  
18 form the basis of the subclaim must go through the appropriate  
19 dispute resolution process under this subtitle and division rules.  
20 The commissioner of insurance and the commissioner of workers'  
21 compensation shall modify rules under this subtitle as necessary to  
22 allow the health care insurer access as a subclaimant to the  
23 appropriate dispute resolution process. Rules adopted or amended  
24 by the commissioner of insurance and the commissioner of workers'  
25 compensation must recognize the status of a subclaimant as a party  
26 to the dispute. Rules modified or adopted under this section should  
27 ensure that the workers' compensation insurance carrier is not

1 penalized, including not being held responsible for costs of  
2 obtaining the additional information, if the workers' compensation  
3 insurance carrier denies payment in order to move to dispute  
4 resolution to obtain additional information to process the request.

5 (m) In a dispute filed under Chapter 410 that arises from a  
6 subclaim under this section, a hearing officer may issue an order  
7 regarding compensability or eligibility for benefits and order the  
8 workers' compensation insurance carrier to reimburse health care  
9 services paid by the health care insurer as appropriate under this  
10 subtitle. Any dispute over the amount of medical benefits owed  
11 under this section, including medical necessity issues, shall be  
12 determined by medical dispute resolution under Sections 413.031 and  
13 413.032.

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

20 (o) The commissioner and the commissioner of insurance  
21 shall amend or adopt rules to specify the process by which an  
22 employee who has paid for health care services described by Section  
23 408.027(d) may seek reimbursement.

24 (p) Until September 1, 2011, a workers' compensation  
25 insurance carrier is exempt from any department and division data  
26 reporting requirements affected by a lack of information caused by  
27 reimbursement requests or subclaims under this section. If data

1 reporting is required after that date, the requirement is  
2 prospective only and may not require any data to be reported between  
3 September 1, 2007, and the date required reporting is reinstated.  
4 The department and the division may make legislative  
5 recommendations to the 82nd Legislature for the collection of  
6 reimbursement request and subclaim data.

7 (q) An action or failure to act by a workers' compensation  
8 insurance carrier under this section may not serve as the basis for  
9 an examination or administrative action by the department or the  
10 division, or for any cause of action by any person, except for  
11 judicial review under this subtitle.

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

16 (s) On or after September 1, 2007, from information provided  
17 to a health care insurer before January 1, 2007, under Section  
18 402.084(c-3), the health care insurer may file not later than March  
19 1, 2008:

20 (1) a subclaim with the division under Subsection (l)  
21 if a request for reimbursement has been presented and denied by a  
22 workers' compensation insurance carrier; or

23 (2) a request for reimbursement under Subsection (f)  
24 if a request for reimbursement has not previously been presented  
25 and denied by the workers' compensation insurance carrier.

26 SECTION 9. The change in law made by this Act applies to  
27 workers' compensation medical disputes described by Section

1 413.031, Labor Code, as amended by this Act and Section 413.0311,  
2 Labor Code, as added by this Act:

3 (1) that are pending for adjudication by the division  
4 of workers' compensation of the Texas Department of Insurance on or  
5 after the effective date of this Act;

6 (2) that may be remanded to the division of workers'  
7 compensation of the Texas Department of Insurance on or after the  
8 effective date of this Act; or

9 (3) that may arise on or after the effective date of  
10 this Act.

11 SECTION 10. Chapter 408, Labor Code, as amended by this Act,  
12 applies only to a claim for workers' compensation benefits based on  
13 a compensable injury that occurs on or after the effective date of  
14 this Act. A claim based on a compensable injury that occurs before  
15 that date is governed by the law in effect on the date that the  
16 compensable injury occurred, and the former law is continued in  
17 effect for that purpose.

18 SECTION 11. The change in law made by this Act applies only  
19 to a subclaim based on a compensable injury that occurred on or  
20 after September 1, 2007, and to reimbursement requests and  
21 subclaims pursuant to Section 409.0091(s), Labor Code, as added by  
22 this Act. The changes made by this Act apply only to subclaims  
23 based on an injury that has not been denied for compensability or  
24 that has been determined by the division to be compensable.

25 SECTION 12. The commissioner of workers' compensation shall  
26 prescribe any forms required under Section 409.0091, Labor Code, as  
27 added by this Act, not later than September 1, 2007.

1           SECTION 13. The commissioner of workers' compensation and  
2 the commissioner of insurance shall adopt rules as required by this  
3 Act not later than December 1, 2007.

4           SECTION 14. This Act takes effect September 1, 2007.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 724 was passed by the House on April 27, 2007, by the following vote: Yeas 135, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 724 on May 23, 2007, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 724 was passed by the Senate, with amendments, on May 18, 2007, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor