

By: Jackson

S.B. No. 929

Substitute the following for S.B. No. 929:

By: Solomons

C.S.S.B. No. 929

A BILL TO BE ENTITLED

AN ACT

relating to workers' compensation subclaims.

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

SECTION 1. Section 408.027(d), Labor Code, is amended to read as follows:

(d) If an insurance carrier contests the compensability of an injury and the injury is determined not to be compensable, the carrier may recover the amounts paid for health care services from the employee's accident or health benefit plan, or any other person who may be obligated for the cost of the health care services. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which a workers' compensation insurance carrier denies compensability, and the injury is later determined to be compensable, the accident or health insurance carrier or other person may recover the amounts paid for such services from the workers' compensation insurance carrier. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which the workers' compensation insurance carrier or the employer has not disputed compensability, the accident or health insurance carrier or other person may recover reimbursement from the insurance carrier in the manner described by Section 409.009 or 409.0091, as applicable.

1 SECTION 2. Subchapter A, Chapter 409, Labor Code, is
2 amended by adding Section 409.0091 to read as follows:

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

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

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

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

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

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

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

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

27 (2) the subclaimant or the health care provider did

1 not request preauthorization under Section 413.014 or rules adopted
2 under that section; or

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

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

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

14 (A) the division claim number;

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

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

18 (D) the date of the injury; and

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

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

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

24 (C) the date of service;

25 (D) the place of service;

26 (E) the ICD-9 code;

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

1 (G) the amount charged by the health care
2 provider; and

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

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

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

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

1 the time is extended under Subsection (j).

2 (j) If the workers' compensation insurance carrier requires
3 additional information from the health care insurer, the workers'
4 compensation insurance carrier shall send notice to the health care
5 insurer requesting the additional information. The health care
6 insurer shall provide the requested information not later than the
7 30th day after the date the workers' compensation insurance carrier
8 requests the information. The workers' compensation insurance
9 carrier and the health care insurer may establish additional
10 periods for compliance with this subsection by written mutual
11 agreement.

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

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

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

19 (l) Any dispute that arises from a failure to respond to or a
20 reduction or denial of a request for reimbursement of services that
21 form the basis of the subclaim must go through the appropriate
22 dispute resolution process under this subtitle and division rules.
23 The commissioner of insurance and the commissioner of workers'
24 compensation shall modify rules under this subtitle as necessary to
25 allow the health care insurer access as a subclaimant to the
26 appropriate dispute resolution process. Rules adopted or amended
27 by the commissioner of insurance and the commissioner of workers'

1 compensation must recognize the status of a subclaimant as a party
2 to the dispute. Rules modified or adopted under this section should
3 ensure that the workers' compensation insurance carrier is not
4 penalized, including not being held responsible for costs of
5 obtaining the additional information, if the workers' compensation
6 insurance carrier denies payment in order to move to dispute
7 resolution to obtain additional information to process the request.

8 (m) In a dispute filed under Chapter 410 that arises from a
9 subclaim under this section, a hearing officer may issue an order
10 regarding compensability or eligibility for benefits and order the
11 workers' compensation insurance carrier to reimburse health care
12 services paid by the health care insurer as appropriate under this
13 subtitle. Any dispute over the amount of medical benefits owed
14 under this section, including medical necessity issues, shall be
15 determined by medical dispute resolution under Sections 413.031 and
16 413.032.

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

23 (o) The commissioner and the commissioner of insurance
24 shall amend or adopt rules to specify the process by which an
25 employee who has paid for health care services described by Section
26 408.027(d) may seek reimbursement.

27 (p) Until September 1, 2011, a workers' compensation

1 insurance carrier is exempt from any department and division data
2 reporting requirements affected by a lack of information caused by
3 reimbursement requests or subclaims under this section. If data
4 reporting is required after that date, the requirement is
5 prospective only and may not require any data to be reported between
6 September 1, 2007, and the date required reporting is reinstated.
7 The department and the division may make legislative
8 recommendations to the 82nd Legislature for the collection of
9 reimbursement request and subclaim data.

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

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

19 (s) On or after September 1, 2007, from information provided
20 to a health care insurer before January 1, 2007, under Section
21 402.084(c-3), the health care insurer may file with the division,
22 but not later than March 1, 2008:

23 (1) a subclaim under Subsection (l) if a request for
24 reimbursement has been presented and denied by a workers'
25 compensation insurance carrier; or

26 (2) a request for reimbursement under Subsection (f)
27 if a request for reimbursement has not previously been presented

1 and denied by the workers' compensation insurance carrier.

2 SECTION 3. The change in law made by this Act applies only
3 to a subclaim based on a compensable injury that occurred on or
4 after September 1, 2007, and to reimbursement requests and
5 subclaims pursuant to Section 409.0091(s), Labor Code, as added by
6 this Act. The changes made by this Act apply only to subclaims
7 based on an injury that has not been denied for compensability or
8 that has been determined by the division to be compensable.

9 SECTION 4. The commissioner of workers' compensation shall
10 prescribe any forms required under Section 409.0091, Labor Code, as
11 added by this Act, not later than September 1, 2007.

12 SECTION 5. The commissioner of workers' compensation and
13 the commissioner of insurance shall adopt rules as required by this
14 Act not later than December 1, 2007.

15 SECTION 6. This Act takes effect September 1, 2007.