

SENATE AMENDMENTS

2nd Printing

By: Solomons

H.B. No. 724

A BILL TO BE ENTITLED

AN ACT

relating to resolution of certain disputes regarding workers' compensation claims for medical 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 C, 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. The change in law made by this Act applies to
21 workers' compensation medical disputes described by Section
22 413.031, Labor Code, as amended by this Act and Section 413.0311,
23 Labor Code, as added by this Act:

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

27 (2) that may be remanded to the division of workers'

1 compensation of the Texas Department of Insurance on or after the
2 effective date of this Act; or

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

5 SECTION 5. This Act takes effect September 1, 2007.

ADOPTED

MAY 18 2007

By: Solomons

Atty. Gen. Spaw
Secretary of the Senate. B. No. 724

Substitute the following for __.B. No. _____:

By: Jackson

C.S. __.B. No. _____

A BILL TO BE ENTITLED

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 C, 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 408.182, Labor Code, is amended by
21 adding Subsections (d-1) and (d-2) to read as follows:

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

1 household.

2 (d-2) Except as otherwise provided by this subsection, to
3 be eligible to receive death benefits under Subsection (d-1), an
4 eligible parent must file with the division a claim for those
5 benefits not later than the first anniversary of the date of the
6 injured employee's death from the compensable injury. The
7 commissioner may extend the time for filing a claim under this
8 subsection only if the eligible parent submits proof satisfactory
9 to the commissioner of a compelling reason for the delay.

10 SECTION 5. Section 408.182(f), Labor Code, is amended by
11 adding Subdivision (4) to read as follows:

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

17 SECTION 6. Section 408.183, Labor Code, is amended by
18 adding Subsection (f-1) to read as follows:

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

- 22 (1) the date the eligible parent dies; or
23 (2) the date of the expiration of 104 weeks of death
24 benefit payments.

25 SECTION 7. The change in law made by this Act applies to
26 workers' compensation medical disputes described by Section
27 413.031, Labor Code, as amended by this Act and Section 413.0311,

1 Labor Code, as added by this Act:

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

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

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

10 SECTION 8. Chapter 408, Labor Code, as amended by this Act,
11 applies only to a claim for workers' compensation benefits based on
12 a compensable injury that occurs on or after the effective date of
13 this Act. A claim based on a compensable injury that occurs before
14 that date is governed by the law in effect on the date that the
15 compensable injury occurred, and the former law is continued in
16 effect for that purpose.

17 SECTION 9. This Act takes effect September 1, 2007.

FLOOR AMENDMENT NO. 1

BY: Jackson

1 Amend H.B. 724 as amended as follows:

2 (1) On page 2, line 24, in SECTION 4, in the new
3 Subsection (d-1) added to Section 408.182, Labor Code, after
4 "household" and the period, insert "and may not exceed 104
5 weeks".

6 (2) On page 2, line 29, in SECTION 4, in the new
7 Subsection (d-2), between "compensable injury." and "The
8 commissioner may", insert "The claim must designate all eligible
9 parents and necessary information for payment to the eligible
10 parents. The insurance carrier is not liable for payment to any
11 eligible parent not designated on the claim."

12 (3) On page ___, line ___, add the following SECTION,
13 appropriately numbered and renumbering the sections of the bill
14 accordingly:

15 SECTION ____ . Amend Section 408.182(e) as follows:

16 (e) If an employee is not survived by legal beneficiaries
17 or eligible parents, the death benefits shall be paid to the
18 subsequent injury fund under Section 403.077.

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ADOPTED

MAY 18 2007

Lotay Spaul
Secretary of the Senate

ADOPTED

FLOOR AMENDMENT NO. 2

MAY 18 2007

BY: *Jack*

Antony Daw
Secretary of the Senate

1 Amend H.B. No. 724, Senate Committee printing, by inserting
2 the following appropriately numbered SECTIONS in the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

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

6 (d) If an insurance carrier contests the compensability of
7 an injury and the injury is determined not to be compensable,
8 the carrier may recover the amounts paid for health care
9 services from the employee's accident or health benefit plan, or
10 any other person who may be obligated for the cost of the health
11 care services. If an accident or health insurance carrier or
12 other person obligated for the cost of health care services has
13 paid for health care services for an employee for an injury for
14 which a workers' compensation insurance carrier denies
15 compensability, and the injury is later determined to be
16 compensable, the accident or health insurance carrier or other
17 person may recover the amounts paid for such services from the
18 workers' compensation insurance carrier. If an accident or
19 health insurance carrier or other person obligated for the cost
20 of health care services has paid for health care services for an
21 employee for an injury for which the workers' compensation
22 insurance carrier or the employer has not disputed
23 compensability, the accident or health insurance carrier or
24 other person may recover reimbursement from the insurance
25 carrier in the manner described by Section 409.009 or 409.0091,
26 as applicable.

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

1 Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN

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

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

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

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

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

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

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

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

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

28 (3) the health care provider did not bill the
29 workers' compensation insurance carrier, as provided by Section
30 408.027, before the 95th day after the date the health care for
31 which the subclaimant paid was provided.

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1 (f) Subject to the time limits under Subsection (n), the
2 health care insurer shall provide, with any reimbursement
3 request, the tax identification number of the health care
4 insurer and the following to the workers' compensation insurance
5 carrier, in a form prescribed by the division:

6 (1) information identifying the workers' compensation
7 case, including:

8 (A) the division claim number;

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

10 (C) the social security number of the patient or
11 claimant; and

12 (D) the date of the injury; and

13 (2) information describing the health care paid by
14 the health care insurer, including:

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

16 (B) the tax identification number of the health
17 care provider;

18 (C) the date of service;

19 (D) the place of service;

20 (E) the ICD-9 code;

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

22 (G) the amount charged by the health care
23 provider; and

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

25 (g) The workers' compensation insurance carrier shall
26 reduce the amount of the reimbursable subclaim by any payments
27 the workers' compensation insurance carrier previously made to
28 the same health care provider for the provision of the same
29 health care on the same dates of service. In making such a
30 reduction in reimbursement to the subclaimant, the workers'

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1 compensation insurance carrier shall provide evidence of the
2 previous payments made to the provider.

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

14 (i) On receipt of a request for reimbursement under this
15 section, the workers' compensation insurance carrier shall
16 respond to the request in writing not later than the 90th day
17 after the date on which the request is received. If additional
18 information is requested under Subsection (j), the workers'
19 compensation insurance carrier shall respond not later than the
20 120th day unless the time is extended under Subsection (j).

21 (j) If the workers' compensation insurance carrier
22 requires additional information from the health care insurer,
23 the workers' compensation insurance carrier shall send notice to
24 the health care insurer requesting the additional information.
25 The health care insurer shall have 30 days to provide the
26 requested information. The workers' compensation insurance
27 carrier and the health care insurer may establish additional
28 periods for compliance with this subsection by written mutual
29 agreement.

30 (k) Unless the parties have agreed to an extension of time
31 under Subsection (j), the health care insurer must file a

1 written subclaim under this section not later than the 120th day
2 after:

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

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

7 (1) Any dispute that arises from a failure to respond to
8 or a reduction or denial of a request for reimbursement of
9 services that form the basis of the subclaim must go through the
10 appropriate dispute resolution process under this subtitle and
11 division rules. The commissioner of insurance and the
12 commissioner of workers' compensation shall modify rules under
13 this subtitle as necessary to allow the health care insurer
14 access as a subclaimant to the appropriate dispute resolution
15 process. Rules adopted or amended by the commissioner of
16 insurance and the commissioner of workers' compensation must
17 recognize the status of a subclaimant as a party to the dispute.
18 Rules modified or adopted under this section should ensure that
19 the workers' compensation insurance carrier is not penalized,
20 including not being held responsible for costs of obtaining the
21 additional information, if the workers' compensation insurance
22 carrier denies payment in order to move to dispute resolution to
23 obtain additional information to process the request.

24 (m) In a dispute filed under Chapter 410 that arises from
25 a subclaim under this section, a hearing officer may issue an
26 order regarding compensability or eligibility for benefits and
27 order the workers' compensation insurance carrier to reimburse
28 health care services paid by the health care insurer as
29 appropriate under this subtitle. Any dispute over the amount of
30 medical benefits owed under this section, including medical

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1 necessity issues, shall be determined by medical dispute
2 resolution under Sections 413.031 and 413.032.

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

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

13 (p) Until September 1, 2011, a workers' compensation
14 insurance carrier is exempt from any department and division
15 data reporting requirements affected by a lack of information
16 caused by reimbursement requests or subclaims under this
17 section. If data reporting is required after that date, the
18 requirement is prospective only and may not require any data to
19 be reported between September 1, 2007, and the date required
20 reporting is reinstated. The department and the division may
21 make legislative recommendations to the 82nd Legislature for the
22 collection of reimbursement request and subclaim data.

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

28 (r) The commissioner of insurance and the commissioner of
29 workers' compensation may adopt additional rules to clarify the
30 processes required by, fulfill the purpose of, or assist the

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1 parties in the proper adjudication of subclaims under this
2 section.

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

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

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

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

21 SECTION __. The commissioner of workers' compensation
22 shall prescribe any forms required under Section 409.0091, Labor
23 Code, as added by this Act, not later than September 1, 2007.

24 SECTION __. The commissioner of workers' compensation and
25 the commissioner of insurance shall adopt rules as required by
26 this Act not later than December 1, 2007.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 16, 2007

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB724 by Solomons (Relating to resolution of certain disputes regarding workers' compensation claims for medical benefits.), Committee Report 2nd House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for HB724, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from DEPT INS OPERATING ACCT 36	Probable Revenue Gain from DEPT INS OPERATING ACCT 36	Probable Revenue (Loss) from SUBSEQUENT INJURY FUND 5101	Change in Number of State Employees from FY 2007
2008	(\$3,585,662)	\$3,585,662	(\$1,983,600)	31.7
2009	(\$2,084,560)	\$2,084,560	(\$2,035,800)	31.7
2010	(\$2,084,560)	\$2,084,560	(\$2,105,400)	31.7
2011	(\$2,084,560)	\$2,084,560	(\$2,157,600)	31.7
2012	(\$2,084,560)	\$2,084,560	(\$2,209,800)	31.7

Fiscal Analysis

The bill would amend the Insurance Code to provide a new appeal process for certain workers' compensation medical disputes. The bill would allow a party in a medical dispute to request an administrative hearing as the first stage of an appeal. Under the bill, if an unpaid, disputed portion of a fee is greater than \$2,000 or if a service that an Independent Review Organization determined was necessary is greater than \$3,000 the hearing would be conducted by the State Office of Administrative Hearings (SOAH). Other disputes, including all prospective medical disputes, including spinal surgery, would be appealable to a Contested Case Hearing (CCH) conducted by the Division of Workers' Compensation (DWC) at the Texas Department of Insurance (TDI). A benefit review conference would not be a prerequisite for a CCH in these cases. The bill provides that if a party is

unsatisfied with the SOAH or CCH decision they could proceed directly to judicial review. The bill would apply to disputes that are pending adjudication by DWC on or after September 1, 2007, disputes that may be remanded from a court to DWC on or after September 1, 2007, and to disputes that arise on or after September 1, 2007.

The bill would amend the Labor Code to add surviving parents to the list of beneficiaries eligible for death benefits in workers' compensation cases. The bill would reduce the amount of death benefits paid into the Subsequent Injury Fund from 364 weeks to 260 weeks in no-beneficiary fatal injury cases where a surviving parent receives death benefits.

The bill would take effect September 1, 2007.

Methodology

Based on the analysis of TDI, it is assumed the bill would result in an additional 2,061 CCHs and 645 SOAH cases each fiscal year. Additionally, the bill would allow the courts to remand pending medical disputes cases for an administrative hearing that must be conducted in fiscal year 2008. It is assumed this would result in an additional 115 CCHs and 2,182 SOAH cases in fiscal year 2008.

It is assumed costs for TDI's Indemnity Dispute Resolution section would include salaries for an additional 13.0 FTEs, 11 Administrative Law Judges II (10 hearing officers and one hearing officer manager) and three Legal Secretaries II, in the amount of \$696,800 each fiscal year with associated benefit costs of \$197,125. It is assumed there would be a one-time equipment cost associated with these FTEs of \$94,996 in fiscal year 2008. It is assumed specialized training for fee dispute resolution would be required for these additional hearing officers and that costs, including travel, for the training would be \$67,400 in fiscal year 2008, costs for legal secretary training would be \$500 in fiscal year 2008, and costs for standard training would be \$3,250 for fiscal years 2009 through 2012. It is assumed costs for standard and regional travel for these hearing officers would be \$84,000 each fiscal year. It is assumed telephone and consumable costs would be \$14,560 each fiscal year.

It is assumed costs for TDI's Medical Dispute Resolution section would include salaries for 2.0 FTEs, one Auditor II and one Legal Assistant I, in the amount of \$69,592 each fiscal year with associated benefit costs of \$19,688. It is assumed there would be a one-time equipment cost associated with these FTEs of \$9,216 in fiscal year 2008. It is assumed other operating costs, including telephone, travel, and consumable costs, would be \$2,740 each fiscal year.

It is assumed that additional support staff will be needed in those DWC field offices with large hearing dockets. It is assumed costs for this staff would include salaries for 5.0 FTEs, five Administrative Assistant II, in the amount of \$124,900 each fiscal year with associated benefit costs of \$35,334. It is assumed there would be a one-time equipment cost associated with these FTEs of \$23,040 in fiscal year 2008. It is assumed other operating costs, including telephone, travel, and consumable costs, would be \$6,850 each fiscal year.

It is assumed SOAH would bill TDI \$100 per hour for the SOAH cases and that each case would average 6 hours in length. This analysis assumes SOAH costs incurred by TDI would be \$1,696,200 in fiscal year 2008 and \$387,000 in subsequent fiscal years and that these costs would be paid out of General Revenue - Dedicated Fund 36 to SOAH through an interagency contract from TDI. It is assumed SOAH would need an additional 2.7 FTEs each fiscal year to hire Administrative Law Judges to preside over the cases. It is assumed SOAH would contract with temporary Administrative Law Judges to try the 2,182 cases remanded from court in fiscal year 2008.

Based on the analysis of the Office of Injured Employee Counsel (OIEC), it is assumed OIEC would participate as an advocate for injured workers in an additional 1,675 medical fee dispute cases as a result of the provisions of the bill. It is assumed OIEC's costs would include salaries for an additional 9.0 FTEs, eight Ombudsman I and one Administrative Assistant II, in the amount of \$307,676 with associated benefit costs of \$87,042. It is assumed costs would include the reclassification of an existing Ombudsman I position to a Program Specialist II position which would include additional salary of \$4,653 and associated benefit costs of \$1,316. Other costs and operating expenses, including travel, printing, and Adjuster's License fees are assumed to be \$42,034 each fiscal year.

Since TDI is required to generate revenues equivalent to its and OIEC's costs of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Dedicated Fund 36 from either existing fund balances or insurance maintenance tax revenues.

Based on the analysis of TDI, it is assumed the portion of the bill amending the Labor Code would reduce the revenue to the Subsequent Injury Fund by approximately 29 percent each year. It is assumed a majority of claimants would have surviving parents.

Technology

There would be a one-time technology impact of \$28,880 in fiscal year 2008 for computer hardware and software at TDI.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 448 Office of Injured Employee Counsel, 454 Department of Insurance

LBB Staff: JOB, KJG, JRO, MW, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 9, 2007

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB724 by Solomons (Relating to resolution of certain disputes regarding workers' compensation claims for medical benefits.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB724, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>DEPT INS OPERATING</i> <i>ACCT</i> 36	Probable Revenue Gain from <i>DEPT INS OPERATING</i> <i>ACCT</i> 36	Change in Number of State Employees from FY 2007
2008	(\$3,585,662)	\$3,585,662	31.7
2009	(\$2,084,560)	\$2,084,560	31.7
2010	(\$2,084,560)	\$2,084,560	31.7
2011	(\$2,084,560)	\$2,084,560	31.7
2012	(\$2,084,560)	\$2,084,560	31.7

Fiscal Analysis

The bill would amend the Insurance Code to provide a new appeal process for certain workers' compensation medical disputes. The bill would allow a party in a medical dispute to request an administrative hearing as the first stage of an appeal. Under the bill, if an unpaid, disputed portion of a fee is greater than \$2,000 or if a service that an Independent Review Organization determined was necessary is greater than \$3,000 the hearing would be conducted by the State Office of Administrative Hearings (SOAH). Other disputes, including all prospective medical disputes, including spinal surgery, would be appealable to a Contested Case Hearing (CCH) conducted by the Division of Workers' Compensation (DWC) at the Texas Department of Insurance (TDI). A benefit review conference would not be a prerequisite for a CCH in these cases. The bill provides that if a party is

unsatisfied with the SOAH or CCH decision they could proceed directly to judicial review. The bill would apply to disputes that are pending adjudication by DWC on or after September 1, 2007, disputes that may be remanded from a court to DWC on or after September 1, 2007, and to disputes that arise on or after September 1, 2007.

The bill would take effect September 1, 2007.

Methodology

Based on the analysis of TDI, it is assumed the bill would result in an additional 2,061 CCHs and 645 SOAH cases each fiscal year. Additionally, the bill would allow the courts to remand pending medical disputes cases for an administrative hearing that must be conducted in fiscal year 2008. It is assumed this would result in an additional 115 CCHs and 2,182 SOAH cases in fiscal year 2008.

It is assumed costs for TDI's Indemnity Dispute Resolution section would include salaries for an additional 13.0 FTEs, 11 Administrative Law Judges II (10 hearing officers and one hearing officer manager) and three Legal Secretaries II, in the amount of \$696,800 each fiscal year with associated benefit costs of \$197,125. It is assumed there would be a one-time equipment cost associated with these FTEs of \$94,996 in fiscal year 2008. It is assumed specialized training for fee dispute resolution would be required for these additional hearing officers and that costs, including travel, for the training would be \$67,400 in fiscal year 2008, costs for legal secretary training would be \$500 in fiscal year 2008, and costs for standard training would be \$3,250 for fiscal years 2009 through 2012. It is assumed costs for standard and regional travel for these hearing officers would be \$84,000 each fiscal year. It is assumed telephone and consumable costs would be \$14,560 each fiscal year.

It is assumed costs for TDI's Medical Dispute Resolution section would include salaries for 2.0 FTEs, one Auditor II and one Legal Assistant I, in the amount of \$69,592 each fiscal year with associated benefit costs of \$19,688. It is assumed there would be a one-time equipment cost associated with these FTEs of \$9,216 in fiscal year 2008. It is assumed other operating costs, including telephone, travel, and consumable costs, would be \$2,740 each fiscal year.

It is assumed that additional support staff will be needed in those DWC field offices with large hearing dockets. It is assumed costs for this staff would include salaries for 5.0 FTEs, five Administrative Assistant II, in the amount of \$124,900 each fiscal year with associated benefit costs of \$35,334. It is assumed there would be a one-time equipment cost associated with these FTEs of \$23,040 in fiscal year 2008. It is assumed other operating costs, including telephone, travel, and consumable costs, would be \$6,850 each fiscal year.

It is assumed SOAH would bill TDI \$100 per hour for the SOAH cases and that each case would average 6 hours in length. This analysis assumes SOAH costs incurred by TDI would be \$1,696,200 in fiscal year 2008 and \$387,000 in subsequent fiscal years and that these costs would be paid out of General Revenue - Dedicated Fund 36 to SOAH through an interagency contract from TDI. It is assumed SOAH would need an additional 2.7 FTEs each fiscal year to hire Administrative Law Judges to preside over the cases. It is assumed SOAH would contract with temporary Administrative Law Judges to try the 2,182 cases remanded from court in fiscal year 2008.

Based on the analysis of the Office of Injured Employee Counsel (OIEC), it is assumed OIEC would participate as an advocate for injured workers in an additional 1,675 medical fee dispute cases as a result of the provisions of the bill. It is assumed OIEC's costs would include salaries for an additional 9.0 FTEs, eight Ombudsman I and one Administrative Assistant II, in the amount of \$307,676 with associated benefit costs of \$87,042. It is assumed costs would include the reclassification of an existing Ombudsman I position to a Program Specialist II position which would include additional salary of \$4,653 and associated benefit costs of \$1,316. Other costs and operating expenses, including travel, printing, and Adjuster's License fees are assumed to be \$42,034 each fiscal year.

Since TDI is required to generate revenues equivalent to its and OIEC's costs of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Dedicated Fund 36 from either existing fund balances or insurance maintenance tax revenues.

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Technology

There would be a one-time technology impact of \$28,880 in fiscal year 2008 for computer hardware and software at TDI.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 448 Office of Injured Employee Counsel, 454 Department of Insurance

LBB Staff: JOB, KJG, JRO, MW, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 18, 2007

TO: Honorable Helen Giddings, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB724 by Solomons (Relating to resolution of certain disputes regarding workers' compensation claims for medical benefits.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB724, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>DEPT INS OPERATING</i> <i>ACCT</i> 36	Probable Revenue Gain from <i>DEPT INS OPERATING</i> <i>ACCT</i> 36	Change in Number of State Employees from FY 2007
2008	(\$2,276,462)	\$2,276,462	31.7
2009	(\$2,084,560)	\$2,084,560	31.7
2010	(\$2,084,560)	\$2,084,560	31.7
2011	(\$2,084,560)	\$2,084,560	31.7
2012	(\$2,084,560)	\$2,084,560	31.7

Fiscal Analysis

The bill would amend the Insurance Code to provide a new appeal process for certain workers' compensation medical disputes. The bill would allow a party in a medical dispute to request an administrative hearing as the first stage of an appeal. Under the bill, if an unpaid, disputed portion of a fee is greater than \$2,000 or if a service that an Independent Review Organization determined was necessary is greater than \$3,000 the hearing would be conducted by the State Office of Administrative Hearings (SOAH). For other disputes the hearing would be a Contested Case Hearing (CCH) conducted by the Division of Workers' Compensation (DWC) at the Texas Department of Insurance (TDI). A benefit review conference would not be a prerequisite for a CCH in these cases. The bill provides that if a party is unsatisfied with the SOAH or CCH decision they would proceed directly to

judicial review. The bill would apply to disputes that are pending adjudication by DWC on or after September 1, 2007 and for disputes that arise on or after September 1, 2007.

The bill would take effect September 1, 2007.

Methodology

Based on the analysis of TDI, it is assumed the bill would result in an additional 2,061 CCHs and 645 SOAH cases each fiscal year.

It is assumed costs for TDI's Indemnity Dispute Resolution section would include salaries for an additional 13.0 FTEs, 11 Administrative Law Judges II (10 hearing officers and one hearing officer manager) and three Legal Secretaries II, in the amount of \$696,800 each fiscal year with associated benefit costs of \$197,125. It is assumed there would be a one-time equipment cost associated with these FTEs of \$94,996 in fiscal year 2008. It is assumed specialized training for fee dispute resolution would be required for these additional hearing officers and that costs, including travel, for the training would be \$67,400 in fiscal year 2008, costs for legal secretary training would be \$500 in fiscal year 2008, and costs for standard training would be \$3,250 for fiscal years 2009 through 2012. It is assumed costs for standard and regional travel for these hearing officers would be \$84,000 each fiscal year. It is assumed telephone and consumable costs would be \$14,560 each fiscal year.

It is assumed costs for TDI's Medical Dispute Resolution section would include salaries for 2.0 FTEs, one Auditor II and one Legal Assistant I, in the amount of \$69,592 each fiscal year with associated benefit costs of \$19,688. It is assumed there would be a one-time equipment cost associated with these FTEs of \$9,216 in fiscal year 2008. It is assumed other operating costs, including telephone, travel, and consumable costs, would be \$2,740 each fiscal year.

It is assumed that additional support staff will be needed in those DWC field offices with large hearing dockets. It is assumed costs for this staff would include salaries for 5.0 FTEs, five Administrative Assistant II, in the amount of \$124,900 each fiscal year with associated benefit costs of \$35,334. It is assumed there would be a one-time equipment cost associated with these FTEs of \$23,040 in fiscal year 2008. It is assumed other operating costs, including telephone, travel, and consumable costs, would be \$6,850 each fiscal year.

It is assumed SOAH would bill TDI \$100 per hour for the SOAH cases and that each case would average 6 hours in length. This analysis assumes SOAH costs incurred by TDI would be \$387,000 each fiscal year and that these costs would be paid out of General Revenue - Dedicated Fund 36 to SOAH through an interagency contract from TDI. It is assumed SOAH would need an additional 2.7 FTEs to hire Administrative Law Judges to preside over the cases.

Based on the analysis of the Office of Injured Employee Counsel (OIEC), it is assumed OIEC would participate as an advocate for injured workers in an additional 1,675 medical fee dispute cases as a result of the provisions of the bill. It is assumed OIEC's costs would include salaries for an additional 9.0 FTEs, eight Ombudsman I and one Administrative Assistant II, in the amount of \$307,676 with associated benefit costs of \$87,042. It is assumed costs would include the reclassification of an existing Ombudsman I position to a Program Specialist II position which would include additional salary of \$4,653 and associated benefit costs of \$1,316. Other costs and operating expenses, including travel, printing, and Adjuster's License fees are assumed to be \$42,034 each fiscal year.

Since TDI is required to generate revenues equivalent to its and OIEC's costs of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Dedicated Fund 36 from either existing fund balances or insurance maintenance tax revenues.

Technology

There would be a one-time technology impact of \$28,880 in fiscal year 2008 for computer hardware and software at TDI.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 448 Office of Injured Employee Counsel, 454 Department of Insurance

LBB Staff: JOB, JRO, MW, SK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 19, 2007

TO: Honorable Helen Giddings, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB724 by Solomons (Relating to resolution of certain disputes regarding workers' compensation claims for medical benefits.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB724, As Introduced: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>DEPT INS OPERATING ACCT</i> 36	Probable Revenue Gain from <i>DEPT INS OPERATING ACCT</i> 36
2008	(\$2,405,026)	\$2,405,026
2009	(\$2,078,818)	\$2,078,818
2010	(\$2,078,818)	\$2,078,818
2011	(\$2,078,818)	\$2,078,818
2012	(\$2,078,818)	\$2,078,818

Fiscal Analysis

The bill would amend the Insurance Code to provide a new appeal process for certain workers' compensation medical disputes. The bill would allow a party in a medical dispute to request a contested case hearing (CCH) from the Division of Workers' Compensation (DWC) at the Texas Department of Insurance (TDI) which would be conducted by a DWC hearing officer who would review evidence, take testimony, and issue a written decision. The bill would allow the party to request the hearing be conducted at any of the 24 DWC field offices. The bill provides that if a party is unsatisfied with the contested case hearing officer's decision they would proceed directly to judicial review.

The bill would take effect September 1, 2007.

Methodology

Based on the analysis of TDI, it is assumed the bill would result in an additional 2,600 CCHs each fiscal year. Currently each DWC hearing officer has an average caseload of 200 CCHs per fiscal year. It is assumed costs for TDI's Indemnity Dispute Resolution section would include salaries for an additional 22.0 FTEs, 14 Administrative Law Judges II (13 hearing officers and one staff attorney for quality review) and three Legal Secretaries II, in the amount of \$993,838 each fiscal year with associated benefit costs of \$281,157. It is assumed there would be a one-time equipment cost associated with these FTEs of \$124,844 in fiscal year 2008. It is assumed specialized training for fee dispute resolution would be required for these additional hearing officers and that costs, including travel, for the training would be \$164,500 in fiscal year 2008 and costs for standard training would be \$4,250 each fiscal year. It is assumed costs for standard and regional travel for these hearing officers would be \$178,812 each fiscal year. It is assumed telephone costs would be \$12,206 each fiscal year.

It is assumed that as a result of these additional 2,600 CCHs, additional support staff will be needed in the DWC field offices with large hearing dockets. It is assumed costs for this staff would include salaries for 5.0 FTEs, five Administrative Assistant II, in the amount of \$124,900 each fiscal year with associated benefit costs of \$35,334. It is assumed other associated operating expenses, including telephone costs, supplies, and equipment, would total \$42,464 in fiscal year 2008 and \$5,600 in subsequent fiscal years.

Based on the analysis of the Office of Injured Employee Counsel (OIEC), it is assumed OIEC would participate as an advocate for injured workers in an additional 1,675 medical fee dispute CCHs as a result of the provisions of the bill. Currently each OIEC Ombudsman has an average caseload of 208 CCHs (this includes one preparation appointment for each CCH) per fiscal year. It is assumed OIEC's costs would include salaries for an additional 9.0 FTEs, eight Ombudsman I and one Administrative Assistant II, in the amount of \$307,676 with associated benefit costs of \$87,042. It is assumed costs would include the reclassification of an existing Ombudsman I position to a Program Specialist II position which would include additional salary of \$4,653 and associated benefit costs of \$1,316. Other costs and operating expenses, including travel, printing, and Adjuster's License fees are assumed to be \$42,034 each fiscal year.

Since TDI is required to generate revenues equivalent to its and OIEC's costs of operation under current law, this analysis assumes that all costs incurred in excess of revenues generated would be paid for from General Revenue - Dedicated Fund 36 from either existing fund balances or insurance maintenance tax revenues.

Technology

There would be a one-time technology impact of \$31,768 in fiscal year 2008 for computer hardware and software at TDI.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 448 Office of Injured Employee Counsel, 454 Department of Insurance

LBB Staff: JOB, JRO, MW, SK