

By: Ogden

S.B. No. 1696

A BILL TO BE ENTITLED

AN ACT

1
2 relating to workers' compensation compensability disputes,
3 examinations to define the compensable injury and notifications to
4 health care providers regarding compensability disputes.

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

6 SECTION 1. Section 408.0042, Labor Code is amended by
7 amending Subsection (a) to read as follows:

8 (a) The division shall require an injured employee to submit
9 to a single medical examination to define the compensable injury on
10 request by the insurance carrier or injured employee.

11 SECTION 2. Section 408.027, Labor Code is amended by adding
12 Subsection (c-1) to read as follows:

13 (c-1) An insurance carrier shall notify a health care
14 provider in writing if the carrier contests the compensability of
15 the injury for which the provider provides health care services. A
16 carrier may not deny payment for health care services provided by
17 the health care provider or preauthorized by the carrier before the
18 written notification on the grounds that the injury was not
19 compensable. An explanation of benefits or a notice of
20 determination under Chapter 4202, Insurance Code, does not
21 constitute written notice under this subsection. Payment for
22 medically necessary health care services provided or preauthorized
23 prior to the written notification of a compensability denial is not
24 subject to denial, recoupment, or refund from a health care

1 provider based on compensability. If the insurance carrier
2 successfully contests compensability, the insurance carrier is
3 liable for all health care provided prior to the issuance of the
4 notification required by this subsection, up to a maximum of
5 \$7,000. The commissioner may adopt rules as necessary to implement
6 the provisions of this subsection.

7 SECTION 3. Section 409.021, Labor Code, is amended by
8 amending Subsections (a), (a-1) and (e) and adding Subsection (c-1)
9 to read as follows to read as follows:

10 Section 409.021. INITIATION OF BENEFITS; INSURANCE
11 CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance
12 carrier shall initiate compensation under this subtitle promptly.
13 Not later than the 15th day after the date on which an insurance
14 carrier receives written notice of an injury, the insurance carrier
15 shall:

16 (1) begin the payment of income or death benefits as
17 required by this subtitle; or

18 (2) notify the division and the employee in writing of
19 its refusal to pay and advise the employee of:

20 (A) the right to request a benefit review
21 conference; and

22 (B) the means to obtain additional information
23 from the division.

24 (a-1) An insurance carrier that fails to comply with
25 Subsection (a) or Section 408.027, Subsection (c-1) does not waive
26 the carrier's right to contest the compensability of the injury as
27 provided by Subsection (c) or (c-1) but commits an administrative

1 violation subject to Subsection (e).

2 (a-2) An insurance carrier is not required to comply with
3 Subsections (a) if the insurance carrier has accepted the claim as a
4 compensable injury and income or death benefits have not yet
5 accrued but will be paid by the insurance carrier when the benefits
6 accrue and are due.

7 (b) An insurance carrier shall notify the division in
8 writing of the initiation of income or death benefit payments in the
9 manner prescribed by commissioner rules.

10 (c) If an insurance carrier does not contest the
11 compensability of an injury on or before the 60th day after the date
12 on which the insurance carrier is notified of the injury, the
13 insurance carrier waives its right to contest compensability. The
14 initiation of payments by an insurance carrier does not affect the
15 right of the insurance carrier to continue to investigate or deny
16 the compensability of an injury during the 60-day period.

17 (c-1) Notwithstanding Subsection (c), if the insurance
18 carrier receives written notice from the injured employee's
19 treating doctor, which clearly describes the injury or clearly
20 describes how a new manifestation of the original injury,
21 additional injury, or additional diagnosis is related to the
22 compensable injury and the insurance carrier does not contest the
23 compensability of the injury or diagnosis on or before the 60th day
24 after the date on which it receives the notice described by this
25 subsection, the insurance carrier waives its right to contest
26 compensability of the injury or diagnosis described in the written
27 notice under this subsection. Submission of a medical bill,

1 medical documentation, or a request for preauthorization does not
2 constitute written notice under this subsection. The commissioner
3 may adopt rules as necessary to implement the provisions of this
4 subsection. This subsection cannot be construed as limiting:

5 (1) an injured employee's entitlement to medical
6 benefits in accordance with Section 408.021;

7 (2) an insurance carrier's or an injured employee's
8 ability to request a medical examination by the treating doctor to
9 define the compensable injury under Section 408.0042; or

10 (3) an insurance carrier's or an injured employee's
11 ability to request a designated doctor examination under Section
12 408.0041.

13 (d) An insurance carrier may reopen the issue of the
14 compensability of an injury if there is a finding of evidence that
15 could not reasonably have been discovered earlier.

16 (e) An insurance carrier commits a violation if the
17 insurance carrier does not initiate income or death benefit
18 payments or file a notice of refusal as required by this section or
19 Section 408.027 (c-1). A violation under this subsection shall be
20 assessed in accordance with Chapter 415 of this subtitle~~[at \$500 if~~
21 ~~the carrier initiates compensation or files a notice of refusal~~
22 ~~within five working days of the date required by Subsection (a),~~
23 ~~\$1,500 if the carrier initiates compensation or files a notice of~~
24 ~~refusal more than five and less than 16 working days of the date~~
25 ~~required by Subsection (a), \$2,500 if the carrier initiates~~
26 ~~compensation or files a notice of refusal more than 15 and less than~~
27 ~~31 working days of the date required by Subsection (a), or \$5,000 if~~

1 ~~the carrier initiates compensation or files a notice of refusal~~
2 ~~more than 30 days after the date required by Subsection (a). The~~
3 ~~administrative penalties are not cumulative].~~

4 SECTION 4. Section 409.022, Labor Code, is amended by
5 amending Subsections (a) to read as follows to read as follows:

6 Section 409.022. REFUSAL TO PAY BENEFITS; NOTICE;
7 ADMINISTRATIVE VIOLATION. (a) An insurance carrier's notice of
8 refusal to pay benefits under Section 409.021 or Section 408.027
9 (c-1) must specify the grounds for the refusal.

10 (b) The grounds for the refusal specified in the notice
11 constitute the only basis for the insurance carrier's defense on
12 the issue of compensability in a subsequent proceeding, unless the
13 defense is based on newly discovered evidence that could not
14 reasonably have been discovered at an earlier date.

15 (c) An insurance carrier commits an administrative
16 violation if the insurance carrier does not have reasonable grounds
17 for a refusal to pay benefits, as determined by the commissioner.

18 SECTION 5. Section 410.209, Labor Code is amended to read as
19 follows:

20 Section 410.209. REIMBURSEMENT FOR OVERPAYMENT. The
21 subsequent injury fund shall reimburse an insurance carrier for any
22 overpayments of benefits made under an interlocutory order or
23 decision if that order or decision is reversed or modified by final
24 arbitration, order, or decision of the commissioner or court. The
25 commissioner shall adopt rules to provide for a periodic
26 reimbursement schedule, providing for reimbursement at least
27 annually. Notwithstanding this section, payment of medical

1 benefits in accordance with Section 408.027 (c-1) of this subtitle
2 and Section 1305.153 (e), Insurance Code is not reimburseable from
3 the subsequent injury fund.

4 SECTION 6. EFFECTIVE DATE. This Act takes effect
5 September 1, 2009.