

BILL ANALYSIS

C.S.H.B. 528
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently, the Texas Legislature enacted legislation that included provisions for the creation of Texas Department of Insurance certified workers' compensation networks, which allow a carrier to direct an enrolled injured employee to seek workers' compensation health care benefits, except for pharmaceutical benefits, within the network of providers. Subsequent legislation required voluntary or informal workers' compensation networks, which are networks of health care providers with which a carrier has a contractual fee discount but to whom the carrier may not direct an injured employee to seek care, to register with the Texas Department of Insurance, Division of Workers' Compensation, and to become certified workers' compensation networks. That measure also eliminated contractual fee discounts.

C.S.H.B. 528 allows workers' compensation carriers to continue to have contractual fee discounts for pharmaceutical services and to use a voluntary or informal network to provide pharmaceutical services under certain conditions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 528 amends the Labor Code to authorize the reimbursement of prescription medication or services in accordance with the fee guidelines adopted by the commissioner of workers' compensation or at a contract rate in accordance with the bill's provisions and prohibits prescription medication or services from being delivered through a workers' compensation health care network under provisions of the Insurance Code or through direct contract with a health care provider or by contracting through a benefits pool.

C.S.H.B. 528 authorizes an insurance carrier to pay a health care provider fees for pharmaceutical services that are inconsistent with the fee guidelines adopted by the commissioner of workers' compensation only if the carrier has a contract with the provider and that contract includes a specific fee schedule. The bill authorizes a carrier or the carrier's authorized agent to use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for pharmaceutical services. The bill requires, if a carrier or its agent chooses to use such a network to obtain a contractual fee arrangement, a contractual arrangement between the carrier or agent and the network that authorizes the network to contract with providers for pharmaceutical services on the carrier's behalf and a contractual arrangement between the network and the provider that includes a specific fee schedule and complies with the notice requirements of the bill's provisions.

C.S.H.B. 528 requires a network, or the carrier or the carrier's authorized agent, as appropriate, to notify at least quarterly each provider of any person, other than an injured employee, to which

the network's contractual fee arrangements with the provider are sold, leased, transferred, or conveyed. The bill requires such notice to include contact information for the network and certain information relating to any person, other than an injured employee, to which the network's contractual fee arrangement with the provider is sold, leased, transferred, or conveyed. The bill authorizes the notice to be provided in an electronic format if a paper version is available on request by the division of workers' compensation of the Texas Department of Insurance and through an Internet website link if the website contains the required information and is updated at least monthly with current and correct information. The bill requires a network, or the carrier or the carrier's authorized agent, as appropriate, to document the delivery of the notice, including certain information, and specifies that a notice is considered to be delivered on, as applicable, the fifth day after the date the notice is mailed via United States Postal Service or the date the notice is faxed or electronically delivered, as applicable.

C.S.H.B. 528 requires a carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, to provide copies of each contract described in the bill's provisions to the division on the division's request. The bill establishes that information included in such a contract is confidential and not subject to disclosure under state open records law. The bill establishes that the carrier may be required to pay fees in accordance with the division's fee guidelines under certain conditions. The bill establishes that failure to provide the requested documentation to the division or failure to provide the required notice creates a rebuttable presumption, in an enforcement action under the bill's provisions and in a medical fee dispute under provisions relating to a workers' compensation medical review, that a health care provider did not receive the notice.

C.S.H.B. 528 establishes that a carrier or its authorized agent commits an administrative violation if the carrier or agent violates any of the bill's provisions and requires any administrative penalty assessed under those provisions to be assessed against the carrier, regardless of whether the carrier or agent committed the violation. The bill establishes that the bill's provisions prevail in the event of a conflict between the bill's provisions and provisions of the Labor Code relating to payments in violation of medical policies and fee guidelines or any other provision in the code relating to medical review, or between the bill's provisions and provisions in the Insurance Code relating to workers' compensation health care networks.

C.S.H.B. 528 requires each network described in the bill's provisions, not later than the 30th day after the date the network is established, to report to the division certain identifying and contact information for the network and certain information about each carrier with whom the network contracts and each entity or carrier agent associated with the network working on behalf of the carrier, including a list of each insurance carrier with whom the informal or voluntary network contracts and a list of, and contact information for, each entity with which the informal or voluntary network has a contract or other business relationship that benefits or is entered into on behalf of an insurance carrier, including an insurance carrier's authorized agent or a subsidiary or other affiliate of the network. The bill requires each network to report any changes to that information to the division not later than the 30th day after the effective date of the change and to submit a required report to the division through the division's online reporting system available through the division's Internet website. The bill establishes that a network commits an administrative violation if the network violates any of the bill's provisions relating to the reporting requirement. The bill defines "informal network" and "voluntary network."

C.S.H.B. 528 amends the Insurance Code, in a provision prohibiting the delivery of prescription medication or services through a workers' compensation health care network, to specify that the prohibition applies to a delivery made directly or through a contract.

C.S.H.B. 528 requires the notice required under the bill's provisions relating to a contractual agreement that provides for fees for pharmaceutical services that are different from the fees authorized under the fee guidelines adopted by the commissioner and that is in effect on the bill's effective date to be sent not later than the 30th day after the bill's effective date and requires

subsequent required notices to be sent on a quarterly basis. The bill requires, if such an agreement is entered into after the bill's effective date, that the notice be sent not later than the 30th day after the effective date of the contract and requires subsequent required notices to be sent on a quarterly basis. The bill requires each informal or voluntary network described by the bill's provisions that has a contract between an insurance carrier or the carrier's authorized agent and a health care provider for the provision of pharmaceutical services that is in effect on the bill's effective date to file the report described in the bill's provisions not later than the 30th day after the bill's effective date. The bill provides that a contractual agreement between an insurance carrier and a health care provider that provides for fees for pharmaceutical services that are different from the fees authorized under the fee guidelines adopted by the commissioner that was in effect on any date between and including January 1, 2011, and the bill's effective date, and that is arranged under a contract with an informal or voluntary network registered with the division, is validated and prohibits that agreement from being the sole basis of an enforcement action under provisions of the Labor Code.

C.S.H.B. 528 repeals Section 408.028(g), Labor Code, relating to the requirement that insurance carriers reimburse for pharmacy benefits and services using a fee schedule provided by state law or at rates negotiated by contract.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 528 differs from the original by authorizing reimbursement of prescription medication or services in accordance with the fee guidelines adopted by the commissioner of workers' compensation or at a contract rate in accordance with the bill's provisions, whereas the original authorizes delivery of prescription medication or services, directly or through a contract, only in accordance with the bill's provisions and existing provisions of law. The substitute contains a provision not included in the original prohibiting delivery of prescription medication or services through direct contract with a health care provider or by contracting through a benefits pool.

C.S.H.B. 528 omits language included in the original specifying that a requirement for notification by a network or carrier to a health care provider of any person, other than an injured employee, to which the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed applies to any arrangement sold, leased, transferred, or conveyed by or on behalf of the carrier.

C.S.H.B. 528 differs from the original by requiring an insurance carrier, a carrier's authorized agent, or an informal or voluntary network at the carrier's request to provide copies of a contract between an insurance carrier and a health care provider for pharmaceutical services to the division of workers' compensation, whereas the original requires only an insurance carrier to provide such copies.

C.S.H.B. 528 differs from the original by requiring an informal or voluntary network to report a list of each entity with which the network has a contract or other business relationship that benefits or is entered into on behalf of an insurance carrier, including an insurance carrier's authorized agent or a subsidiary or other affiliate of the network, whereas the original requires a network to report a list of each entity or insurance carrier agent associated with the network working on behalf of the insurance carrier.