

AN ACT

relating to the provision of pharmaceutical services through informal and voluntary networks in the workers' compensation system; providing an administrative violation.

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

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

(f) Except as provided by Section 408.0281, any ~~Any~~ payment made by an insurance carrier under this section shall be in accordance with the fee guidelines authorized under this subtitle if the health care service is not provided through a workers' compensation health care network under Chapter 1305, Insurance Code, or at a contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Chapter 1305, Insurance Code.

SECTION 2. Sections 408.028(f) and (g), Labor Code, are amended to read as follows:

(f) Notwithstanding any other provision of this title, the commissioner by rule shall adopt a fee schedule for pharmacy and pharmaceutical services that will:

(1) provide reimbursement rates that are fair and reasonable;

(2) assure adequate access to medications and services for injured workers; ~~and~~

1 (3) minimize costs to employees and insurance
2 carriers; and

3 (4) take into consideration the increased security of
4 payment afforded by this subtitle.

5 (g) Section 413.011(d) and the rules adopted to implement
6 that subsection do not apply to the fee schedule adopted by the
7 commissioner under Subsection (f). [~~Insurance carriers must~~
8 ~~reimburse for pharmacy benefits and services using the fee schedule~~
9 ~~as developed by this section, or at rates negotiated by contract.~~]

10 SECTION 3. Subchapter B, Chapter 408, Labor Code, is
11 amended by adding Sections 408.0281 and 408.0282 to read as
12 follows:

13 Sec. 408.0281. REIMBURSEMENT FOR PHARMACEUTICAL SERVICES;
14 ADMINISTRATIVE VIOLATION. (a) In this section:

15 (1) "Informal network" means a network that:

16 (A) is established under a contract between an
17 insurance carrier or an insurance carrier's authorized agent and a
18 health care provider for the provision of pharmaceutical services;
19 and

20 (B) includes a specific fee schedule.

21 (2) "Voluntary network" means a voluntary workers'
22 compensation health care delivery network established under former
23 Section 408.0223, as that section existed before repeal by Chapter
24 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005,
25 by an insurance carrier for the provision of pharmaceutical
26 services.

27 (b) Notwithstanding any provision of Chapter 1305,

1 Insurance Code, or Section 504.053 of this code, prescription
2 medication or services, as defined by Section 401.011(19)(E):

3 (1) may be reimbursed in accordance with the fee
4 guidelines adopted by the commissioner or at a contract rate in
5 accordance with this section; and

6 (2) may not be delivered through:

7 (A) a workers' compensation health care network
8 under Chapter 1305, Insurance Code; or

9 (B) a contract described by Section
10 504.053(b)(2).

11 (c) Notwithstanding any other provision of this title,
12 including Section 408.028(f), or any provision of Chapter 1305,
13 Insurance Code, an insurance carrier may pay a health care provider
14 fees for pharmaceutical services that are inconsistent with the fee
15 guidelines adopted by the commissioner only if the carrier has a
16 contract with the health care provider and that contract includes a
17 specific fee schedule. An insurance carrier or the carrier's
18 authorized agent may use an informal or voluntary network to obtain
19 a contractual agreement that provides for fees different from the
20 fees authorized under the fee guidelines adopted by the
21 commissioner for pharmaceutical services. If a carrier or the
22 carrier's authorized agent chooses to use an informal or voluntary
23 network to obtain a contractual fee arrangement, there must be a
24 contractual arrangement between:

25 (1) the carrier or authorized agent and the informal
26 or voluntary network that authorizes the network to contract with
27 health care providers for pharmaceutical services on the carrier's

1 behalf; and

2 (2) the informal or voluntary network and the health
3 care provider that includes a specific fee schedule and complies
4 with the notice requirements of this section.

5 (d) An informal or voluntary network, or the carrier or the
6 carrier's authorized agent, as appropriate, shall, at least
7 quarterly, notify each health care provider of any person, other
8 than an injured employee, to which the network's contractual fee
9 arrangements with the health care provider are sold, leased,
10 transferred, or conveyed. Notice to each health care provider:

11 (1) must include:

12 (A) the contact information for the network,
13 including the name, physical address, and toll-free telephone
14 number at which a health care provider with which the network has a
15 contract may contact the network; and

16 (B) in the body of the notice:

17 (i) the name, physical address, and
18 telephone number of any person, other than an injured employee, to
19 which the network's contractual fee arrangement with the health
20 care provider is sold, leased, transferred, or conveyed; and

21 (ii) the start date and any end date of the
22 period during which any person, other than an injured employee, to
23 which the network's contractual fee arrangement with the health
24 care provider is sold, leased, transferred, or conveyed; and

25 (2) may be provided:

26 (A) in an electronic format, if a paper version
27 is available on request by the division; and

1 (B) through an Internet website link, but only if
2 the website:

3 (i) contains the information described by
4 Subdivision (1); and

5 (ii) is updated at least monthly with
6 current and correct information.

7 (e) An informal or voluntary network, or the carrier or the
8 carrier's authorized agent, as appropriate, shall document the
9 delivery of the notice required under Subsection (d), including the
10 method of delivery, to whom the notice was delivered, and the date
11 of delivery. For purposes of Subsection (d), a notice is considered
12 to be delivered on, as applicable:

13 (1) the fifth day after the date the notice is mailed
14 via United States Postal Service; or

15 (2) the date the notice is faxed or electronically
16 delivered.

17 (f) An insurance carrier, or the carrier's authorized agent
18 or an informal or voluntary network at the carrier's request, shall
19 provide copies of each contract described by Subsection (c) to the
20 division on the request of the division. Information included in a
21 contract under Subsection (c) is confidential and is not subject to
22 disclosure under Chapter 552, Government Code. Notwithstanding
23 Subsection (c), the insurance carrier may be required to pay fees in
24 accordance with the division's fee guidelines if:

25 (1) the contract:

26 (A) is not provided to the division on the
27 division's request;

1 (B) does not include a specific fee schedule
2 consistent with Subsection (c); or

3 (C) does not clearly state that the contractual
4 fee arrangement is between the health care provider and the named
5 insurance carrier or the carrier's authorized agent; or

6 (2) the carrier or the carrier's authorized agent does
7 not comply with the notice requirements under Subsection (d).

8 (g) Failure to provide documentation described by
9 Subsection (e) to the division on the request of the division or
10 failure to provide notice as required under Subsection (d) creates
11 a rebuttable presumption in an enforcement action under this
12 subtitle and in a medical fee dispute under Chapter 413 that a
13 health care provider did not receive the notice.

14 (h) An insurance carrier or the carrier's authorized agent
15 commits an administrative violation if the carrier or agent
16 violates any provision of this section. Any administrative penalty
17 assessed under this subsection shall be assessed against the
18 carrier, regardless of whether the carrier or agent committed the
19 violation.

20 (i) Notwithstanding Section 1305.003(b), Insurance Code, in
21 the event of a conflict between this section and Section 413.016 or
22 any other provision of Chapter 413 of this code or Chapter 1305,
23 Insurance Code, this section prevails.

24 Sec. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR
25 VOLUNTARY NETWORKS. (a) Each informal or voluntary network
26 described by Section 408.0281 shall, not later than the 30th day
27 after the date the network is established, report the following

1 information to the division:

2 (1) the name of the informal or voluntary network and
3 federal employer identification number;

4 (2) an executive contact for official correspondence
5 for the informal or voluntary network;

6 (3) a toll-free telephone number by which a health
7 care provider may contact the informal or voluntary network;

8 (4) a list of each insurance carrier with whom the
9 informal or voluntary network contracts, including the carrier's
10 federal employer identification number; and

11 (5) a list of, and contact information for, each
12 entity with which the informal or voluntary network has a contract
13 or other business relationship that benefits or is entered into on
14 behalf of an insurance carrier, including an insurance carrier's
15 authorized agent or a subsidiary or other affiliate of the network.

16 (b) Each informal or voluntary network shall report any
17 changes to the information provided under Subsection (a) to the
18 division not later than the 30th day after the effective date of the
19 change.

20 (c) An informal or voluntary network shall submit a report
21 required under this section, including a report of changes required
22 under Subsection (b), to the division through the division's online
23 reporting system available through the division's Internet
24 website.

25 (d) An informal or voluntary network commits an
26 administrative violation if the informal or voluntary network
27 violates any provision of this section.

1 SECTION 4. Section 1305.101(c), Insurance Code, is amended
2 to read as follows:

3 (c) Notwithstanding any other provision of this chapter,
4 prescription medication or services, as defined by Section
5 401.011(19)(E), Labor Code, may not, directly or through a
6 contract, be delivered through a workers' compensation health care
7 network. Prescription medication and services shall be reimbursed
8 as provided by Section 408.0281, Labor Code, other provisions of
9 the Texas Workers' Compensation Act, and applicable rules of the
10 commissioner of workers' compensation.

11 SECTION 5. (a) With respect to a contractual agreement that
12 provides for fees for pharmaceutical services that are different
13 from the fees authorized under the fee guidelines adopted by the
14 commissioner of workers' compensation under Title 5, Labor Code,
15 and that is in effect on the effective date of this Act, the notice
16 required under Section 408.0281(d), Labor Code, as added by this
17 Act, shall be sent not later than the 30th day after the effective
18 date of this Act, and subsequent notices required under that
19 section shall be sent on a quarterly basis.

20 (b) With respect to a contractual agreement that provides
21 for fees for pharmaceutical services that are different from the
22 fees authorized under the fee guidelines adopted by the
23 commissioner of workers' compensation under Title 5, Labor Code,
24 and that is entered into after the effective date of this Act, the
25 notice required under Section 408.0281(d), Labor Code, as added by
26 this Act, shall be sent not later than the 30th day after the
27 effective date of the contract, and subsequent notices required

1 under that section shall be sent on a quarterly basis.

2 SECTION 6. Each informal or voluntary network described by
3 Section 408.0281, Labor Code, as added by this Act, that has a
4 contract between an insurance carrier or an insurance carrier's
5 authorized agent and a health care provider for the provision of
6 pharmaceutical services that is in effect on the effective date of
7 this Act shall file the report described by Section 408.0282(a),
8 Labor Code, as added by this Act, not later than the 30th day after
9 the effective date of this Act.

10 SECTION 7. A contractual agreement between an insurance
11 carrier and a health care provider that provides for fees for
12 pharmaceutical services that are different from the fees authorized
13 under the fee guidelines adopted by the commissioner of workers'
14 compensation under Title 5, Labor Code, that was in effect on any
15 date between and including January 1, 2011, and the effective date
16 of this Act, and that is arranged under a contract with an informal
17 or voluntary network registered with the division of workers'
18 compensation of the Texas Department of Insurance under Section
19 413.0115, Labor Code, is validated and may not be the sole basis of
20 an enforcement action under Title 5, Labor Code.

21 SECTION 8. If any provision of this Act or its application
22 to any person or circumstance is held invalid, the invalidity does
23 not affect other provisions or applications of this Act that can be
24 given effect without the invalid provision or application, and to
25 this end the provisions of this Act are severable.

26 SECTION 9. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 528 was passed by the House on May 4, 2011, by the following vote: Yeas 139, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 528 was passed by the Senate on May 24, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor