

By: Solomons

H.B. No. 528

Substitute the following for H.B. No. 528:

By: Cook

C.S.H.B. No. 528

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

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

16 SECTION 2. Subchapter B, Chapter 408, Labor Code, is  
17 amended by adding Sections 408.0281 and 408.0282 to read as  
18 follows:

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

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

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

1 and

2 (B) includes a specific fee schedule.

3 (2) "Voluntary network" means a voluntary workers'  
4 compensation health care delivery network established under former  
5 Section 408.0223, as that section existed before repeal by Chapter  
6 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005,  
7 by an insurance carrier for the provision of pharmaceutical  
8 services.

9 (b) Notwithstanding any provision of Chapter 1305,  
10 Insurance Code, or Section 504.053 of this code, prescription  
11 medication or services, as defined by Section 401.011(19)(E):

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

15 (2) may not be delivered through:

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

18 (B) a contract described by Section  
19 504.053(b)(2).

20 (c) Notwithstanding any other provision of this title,  
21 including Section 408.028(f), or any provision of Chapter 1305,  
22 Insurance Code, an insurance carrier may pay a health care provider  
23 fees for pharmaceutical services that are inconsistent with the fee  
24 guidelines adopted by the commissioner only if the carrier has a  
25 contract with the health care provider and that contract includes a  
26 specific fee schedule. An insurance carrier or the carrier's  
27 authorized agent may use an informal or voluntary network to obtain

1 a contractual agreement that provides for fees different from the  
2 fees authorized under the fee guidelines adopted by the  
3 commissioner for pharmaceutical services. If a carrier or the  
4 carrier's authorized agent chooses to use an informal or voluntary  
5 network to obtain a contractual fee arrangement, there must be a  
6 contractual arrangement between:

7 (1) the carrier or authorized agent and the informal  
8 or voluntary network that authorizes the network to contract with  
9 health care providers for pharmaceutical services on the carrier's  
10 behalf; and

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

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

20 (1) must include:

21 (A) the contact information for the network,  
22 including the name, physical address, and toll-free telephone  
23 number at which a health care provider with which the network has a  
24 contract may contact the network; and

25 (B) in the body of the notice:

26 (i) the name, physical address, and  
27 telephone number of any person, other than an injured employee, to

1 which the network's contractual fee arrangement with the health  
2 care provider is sold, leased, transferred, or conveyed; and

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

7 (2) may be provided:

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

10 (B) through an Internet website link, but only if  
11 the website:

12 (i) contains the information described by  
13 Subdivision (1); and

14 (ii) is updated at least monthly with  
15 current and correct information.

16 (e) An informal or voluntary network, or the carrier or the  
17 carrier's authorized agent, as appropriate, shall document the  
18 delivery of the notice required under Subsection (d), including the  
19 method of delivery, to whom the notice was delivered, and the date  
20 of delivery. For purposes of Subsection (d), a notice is considered  
21 to be delivered on, as applicable:

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

24 (2) the date the notice is faxed or electronically  
25 delivered.

26 (f) An insurance carrier, or the carrier's authorized agent  
27 or an informal or voluntary network at the carrier's request, shall

1 provide copies of each contract described by Subsection (c) to the  
2 division on the request of the division. Information included in a  
3 contract under Subsection (c) is confidential and is not subject to  
4 disclosure under Chapter 552, Government Code. Notwithstanding  
5 Subsection (c), the insurance carrier may be required to pay fees in  
6 accordance with the division's fee guidelines if:

7           (1) the contract:

8                   (A) is not provided to the division on the  
9 division's request;

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

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

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

17           (g) Failure to provide documentation described by  
18 Subsection (e) to the division on the request of the division or  
19 failure to provide notice as required under Subsection (d) creates  
20 a rebuttable presumption in an enforcement action under this  
21 subtitle and in a medical fee dispute under Chapter 413 that a  
22 health care provider did not receive the notice.

23           (h) An insurance carrier or the carrier's authorized agent  
24 commits an administrative violation if the carrier or agent  
25 violates any provision of this section. Any administrative penalty  
26 assessed under this subsection shall be assessed against the  
27 carrier, regardless of whether the carrier or agent committed the

1 violation.

2 (i) Notwithstanding Section 1305.003(b), Insurance Code, in  
3 the event of a conflict between this section and Section 413.016 or  
4 any other provision of Chapter 413 of this code or Chapter 1305,  
5 Insurance Code, this section prevails.

6 Sec. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR  
7 VOLUNTARY NETWORKS. (a) Each informal or voluntary network  
8 described by Section 408.0281 shall, not later than the 30th day  
9 after the date the network is established, report the following  
10 information to the division:

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

13 (2) an executive contact for official correspondence  
14 for the informal or voluntary network;

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

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

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

25 (b) Each informal or voluntary network shall report any  
26 changes to the information provided under Subsection (a) to the  
27 division not later than the 30th day after the effective date of the

1 change.

2 (c) An informal or voluntary network shall submit a report  
3 required under this section, including a report of changes required  
4 under Subsection (b), to the division through the division's online  
5 reporting system available through the division's Internet  
6 website.

7 (d) An informal or voluntary network commits an  
8 administrative violation if the informal or voluntary network  
9 violates any provision of this section.

10 SECTION 3. Section 1305.101(c), Insurance Code, is amended  
11 to read as follows:

12 (c) Notwithstanding any other provision of this chapter,  
13 prescription medication or services, as defined by Section  
14 401.011(19)(E), Labor Code, may not, directly or through a  
15 contract, be delivered through a workers' compensation health care  
16 network. Prescription medication and services shall be reimbursed  
17 as provided by Section 408.0281, Labor Code, other provisions of  
18 the Texas Workers' Compensation Act, and applicable rules of the  
19 commissioner of workers' compensation.

20 SECTION 4. Section 408.028(g), Labor Code, is repealed.

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

1 date of this Act, and subsequent notices required under that  
2 section shall be sent on a quarterly basis.

3 (b) With respect to a contractual agreement that provides  
4 for fees for pharmaceutical services that are different from the  
5 fees authorized under the fee guidelines adopted by the  
6 commissioner of workers' compensation under Title 5, Labor Code,  
7 and that is entered into after the effective date of this Act, the  
8 notice required under Section 408.0281(d), Labor Code, as added by  
9 this Act, shall be sent not later than the 30th day after the  
10 effective date of the contract, and subsequent notices required  
11 under that section shall be sent on a quarterly basis.

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

20 SECTION 7. A contractual agreement between an insurance  
21 carrier and a health care provider that provides for fees for  
22 pharmaceutical services that are different from the fees authorized  
23 under the fee guidelines adopted by the commissioner of workers'  
24 compensation under Title 5, Labor Code, that was in effect on any  
25 date between and including January 1, 2011, and the effective date  
26 of this Act, and that is arranged under a contract with an informal  
27 or voluntary network registered with the division of workers'



1 compensation of the Texas Department of Insurance under Section  
2 413.0115, Labor Code, is validated and may not be the sole basis of  
3 an enforcement action under Title 5, Labor Code.

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

9 SECTION 9. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2011.