

By: Van de Putte

S.B. No. 318

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, Acts of the 79th Legislature, Regular Session, 2005, by an
7 insurance carrier for the provision of pharmaceutical services.

8 (b) Notwithstanding any provision of Chapter 1305,
9 Insurance Code, prescription medication or services, as defined by
10 Section 401.011(19)(E), may be delivered, directly or through a
11 contract, only in accordance with this section and this title and
12 may not be delivered through a workers' compensation health care
13 network under Chapter 1305, Insurance Code.

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

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

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

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

15 (1) must include:

16 (A) the contact information for the network,
17 including the name, physical address, and toll-free telephone
18 number at which a healthcare provider with which the network has a
19 contract may contact the network; and

20 (B) in the body of the notice:

21 (i) the name, physical address, and
22 telephone number of 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 by or on
25 behalf of the carrier; and

26 (ii) the start date and any end date of the
27 period during which 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 by or on
3 behalf of the carrier; and

4 (2) may be provided:

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

7 (B) through an Internet website link, but only if
8 the website:

9 (i) contains the information described by
10 Subdivision (1); and

11 (ii) is updated at least monthly with
12 current and correct information.

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

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

21 (2) the date the notice is faxed or electronically
22 delivered.

23 (f) An insurance carrier shall provide copies of each
24 contract described by Subsection (c) to the division on the request
25 of the division. Information included in a contract under
26 Subsection (c) is confidential and is not subject to disclosure
27 under Chapter 552, Government Code. Notwithstanding Subsection

1 (c), the insurance carrier may be required to pay fees in accordance
2 with the division's fee guidelines if:

3 (1) the contract:

4 (A) is not provided to the division on the
5 division's request;

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

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

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

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

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

25 (i) Notwithstanding Section 1305.003(b), Insurance Code, in
26 the event of a conflict between this section and Section 413.016 or
27 any other provision of Chapter 413 of this code or Chapter 1305,

1 Insurance Code, this section prevails.

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

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

9 (2) an executive contact for official correspondence
10 for the informal or voluntary network;

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

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

16 (5) a list of each entity or insurance carrier agent
17 associated with the informal or voluntary network working on behalf
18 of the insurance carrier, including contact information for each
19 entity.

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

24 (c) An informal or voluntary network shall submit a report
25 required under this section, including a report of changes required
26 under Subsection (b), to the division through the division's online
27 reporting system available through the division's Internet

1 website.

2 (d) An informal or voluntary network commits an
3 administrative violation if the informal or voluntary network
4 violates any provision of this section.

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

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

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

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

25 (b) With respect to a contractual agreement that provides
26 for fees for pharmaceutical services that are different from the
27 fees authorized under the fee guidelines adopted by the

1 commissioner of workers' compensation under Title 5, Labor Code,
2 and that is entered into after the effective date of this Act, the
3 notice required under Section 408.0281(d), Labor Code, as added by
4 this Act, shall be sent not later than the 30th day after the
5 effective date of the contract, and subsequent notices required
6 under that section shall be sent on a quarterly basis.

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

15 SECTION 7. A contractual agreement between an insurance
16 carrier and a health care provider that provides for fees for
17 pharmaceutical services that are different from the fees authorized
18 under the fee guidelines adopted by the commissioner of workers'
19 compensation under Title 5, Labor Code, that was in effect on any
20 date between and including January 1, 2011, and the effective date
21 of this Act, and that is arranged under a contract with an informal
22 or voluntary network registered with the division of workers'
23 compensation of the Texas Department of Insurance under Section
24 413.0115, Labor Code, is validated and may not be the sole basis of
25 an enforcement action under Title 5, Labor Code.

26 SECTION 8. If any provision of this Act or its application
27 to any person or circumstance is held invalid, the invalidity does

1 not affect other provisions or applications of this Act that can be
2 given effect without the invalid provision or application, and to
3 this end the provisions of this Act are severable.

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