

By: Van de Putte
(Oliveira)

S.B. No. 1322

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the provision of durable medical equipment and home
3 health care services through informal and voluntary networks in the
4 workers' compensation system; providing penalties.

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

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

8 (f) Except as provided by Section 408.0281 or 408.0284, 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. Subsection (a), Section 408.0282, Labor Code, is
17 amended to read as follows:

18 (a) Each informal or voluntary network described by Section
19 408.0281 or 408.0284 shall, not later than the 30th day after the
20 date the network is established, report the following information
21 to the division:

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

24 (2) an executive contact for official correspondence

1 for the informal or voluntary network;

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

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

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

12 SECTION 3. Subchapter B, Chapter 408, Labor Code, is
13 amended by adding Section 408.0284 to read as follows:

14 Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT
15 AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. (a) In
16 this section:

17 (1) "Durable medical equipment" includes prosthetics
18 and orthotic devices and related medical equipment and supplies.

19 The term does not include:

20 (A) an object or device that is surgically
21 implanted, embedded, inserted, or otherwise applied;

22 (B) related equipment necessary to operate,
23 program, or recharge the object or device described by Paragraph

24 (A); or

25 (C) an intrathecal pump.

26 (2) "Informal network" means a network that:

27 (A) is established under a contract between an

1 insurance carrier or an insurance carrier's authorized agent and a
2 health care provider for the provision of durable medical equipment
3 or home health care services; and

4 (B) includes a specific fee schedule.

5 (3) "Voluntary network" means a voluntary workers'
6 compensation health care delivery network established under former
7 Section 408.0223, as that section existed before repeal by Chapter
8 265 (House Bill No. 7), Acts of the 79th Legislature, Regular
9 Session, 2005, by an insurance carrier for the provision of durable
10 medical equipment or home health care services.

11 (b) Notwithstanding any provision of Chapter 1305,
12 Insurance Code, or Section 504.053 of this code, durable medical
13 equipment and home health care services may be reimbursed in
14 accordance with the fee guidelines adopted by the commissioner or
15 at a voluntarily negotiated contract rate in accordance with this
16 section.

17 (c) Notwithstanding any other provision of this title or any
18 provision of Chapter 1305, Insurance Code, an insurance carrier may
19 pay a health care provider fees for durable medical equipment or
20 home health care services that are inconsistent with the fee
21 guidelines adopted by the commissioner only if the carrier or the
22 carrier's authorized agent has a contract with the health care
23 provider and that contract includes a specific fee schedule. An
24 insurance carrier or the carrier's authorized agent may use an
25 informal or voluntary network to obtain a contractual agreement
26 that provides for fees different from the fees authorized under the
27 fee guidelines adopted by the commissioner for durable medical

1 equipment or home health care services. If a carrier or the
2 carrier's authorized agent chooses to use an informal or voluntary
3 network to obtain a contractual fee arrangement, there must be a
4 contractual arrangement between:

5 (1) the carrier or authorized agent and the informal
6 or voluntary network that authorizes the network to contract with
7 health care providers for durable medical equipment or home health
8 care services on the carrier's behalf; and

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

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

18 (1) must include:

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

23 (B) in the body of the notice:

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

1 (ii) the start date and any end date of the
2 period during which the network's contractual fee arrangement with
3 the health care provider is sold, leased, transferred, or conveyed;
4 and

5 (2) may be provided:

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

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

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

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

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

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

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

24 (f) An insurance carrier, or the carrier's authorized agent
25 or an informal or voluntary network at the carrier's request, shall
26 provide copies of each contract described by Subsection (c) to the
27 division on the request of the division. Information included in a

1 contract under Subsection (c) is confidential and is not subject to
2 disclosure under Chapter 552, Government Code. Notwithstanding
3 Subsection (c), the insurance carrier may be required to pay fees in
4 accordance with the division's fee guidelines if:

5 (1) the contract:

6 (A) is not provided to the division on the
7 division's request;

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

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

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

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

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

27 (i) Notwithstanding Section 1305.003(b), Insurance Code, in

1 the event of a conflict between this section and Section 413.016 or
2 any other provision of Chapter 413 of this code or Chapter 1305,
3 Insurance Code, this section prevails.

4 SECTION 4. Each informal or voluntary network described by
5 Section 408.0284, Labor Code, as added by this Act, that has a
6 contract between an insurance carrier or an insurance carrier's
7 authorized agent and a health care provider that is in effect on the
8 effective date of this Act shall file the report described by
9 Subsection (a), Section 408.0282, Labor Code, as amended by this
10 Act, not later than the 30th day after the effective date of this
11 Act.

12 SECTION 5. With respect to a contractual agreement that
13 provides for fees for durable medical equipment or home health care
14 services that are different from the fees authorized under the fee
15 guidelines adopted by the commissioner of workers' compensation
16 under Title 5, Labor Code, and that is entered into after the
17 effective date of this Act, the notice required under Subsection
18 (d), Section 408.0284, Labor Code, as added by this Act, shall be
19 sent not later than the 30th day after the effective date of the
20 contract, and subsequent notices required under that section shall
21 be sent on a quarterly basis.

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

27 SECTION 7. This Act takes effect September 1, 2013.