By:  Moody, Guillen, Howard, Canales H.B. No. 396

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of nurses for workers' compensation benefits for coronavirus disease (COVID-19) and payment of those benefits.

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

SECTION 1.  Subchapter A, Chapter 408, Labor Code, is amended by adding Section 408.009 to read as follows:

Sec. 408.009.  REBUTTABLE PRESUMPTION OF COMPENSABILITY OF CORONAVIRUS DISEASE (COVID-19) FOR NURSES. (a) In this section, "nurse" means an individual licensed under Chapter 301, Occupations Code.

(b)  A nurse, including a nurse employed by a state agency or a political subdivision of this state, who suffers from coronavirus disease (COVID-19) on or after February 1, 2020, resulting in disability or death is presumed to have contracted the disease during the course and scope of employment as a nurse if the nurse:

(1)  is assigned:

(A)  to treat a patient diagnosed with the disease; or

(B)  to duties that require the nurse to come in contact with a patient diagnosed with the disease;

(2)  contracts the disease not later than the 14th day following the date the nurse treated or came in contact with the patient; and

(3)  before diagnosis did not decline or refuse to receive a preventative immunization against the disease, unless the nurse declined or refused the immunization because the immunization was medically contraindicated.

(c)  The presumption under Subsection (b) may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's employment as a nurse was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(d)  A rebuttal offered under Subsection (c) must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's employment as a nurse was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(e)  In addressing an argument based on a rebuttal offered under Subsection (c), an administrative law judge shall make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's employment as a nurse was a substantial factor in bringing about the individual's disease or illness without which the disease or illness would not have occurred.

SECTION 2.  Section 408.181(b), Labor Code, is amended to read as follows:

(b)  Subject to Sections [~~Section~~] 408.061 and 408.1811, the amount of a death benefit is equal to 75 percent of the employee's average weekly wage.

SECTION 3.  Subchapter J, Chapter 408, Labor Code, is amended by adding Section 408.1811 to read as follows:

Sec. 408.1811.  DEATH BENEFITS FOR CERTAIN NURSES. Notwithstanding Section 408.181, in lieu of any other benefits to which a beneficiary is entitled under this subchapter, the amount of a death benefit paid to the legal beneficiary of a nurse who suffered from coronavirus disease (COVID-19) on or after February 1, 2020, resulting in death is $500,000 in a lump sum.

SECTION 4.  Section 409.021(a-3), Labor Code, is amended to read as follows:

(a-3)  An insurance carrier is not required to comply with Subsection (a) if the claim results from an employee's disability or death for which a presumption is claimed to be applicable under Section 408.009 of this code or Subchapter B, Chapter 607, Government Code, and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee and the division with a notice that describes all steps taken by the insurance carrier to investigate the injury before the notice was given and the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury.  The commissioner shall adopt rules as necessary to implement this subsection.

SECTION 5.  Section 409.022(d), Labor Code, is amended to read as follows:

(d)  In this subsection, the terms "emergency medical technician," "firefighter," and "peace officer" have the meanings assigned by Section 607.051, Government Code. The term "nurse" has the meaning assigned by Section 408.009. In addition to the other requirements of this section, if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from an emergency medical technician's, a firefighter's, or a peace officer's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, or from a nurse's disability or death for which a presumption is claimed to be applicable under Section 408.009, the notice must include a statement by the carrier that:

(1)  explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and

(2)  describes the evidence that the carrier reviewed in making the determination described by Subdivision (1).

SECTION 6.  Section 415.021(c-2), Labor Code, is amended to read as follows:

(c-2)  In determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under Section 409.021(a-3), the commissioner shall consider whether:

(1)  the employee cooperated with the insurance carrier's investigation of the claim;

(2)  the employee timely authorized access to the applicable medical records before the insurance carrier's deadline to:

(A)  begin payment of benefits; or

(B)  notify the division and the employee of the insurance carrier's refusal to pay benefits; and

(3)  the insurance carrier conducted an investigation of the claim, applied the statutory presumptions under Section 408.009 of this code or Subchapter B, Chapter 607, Government Code, and expedited medical benefits under Section 504.055.

SECTION 7.  (a) Except as otherwise provided by this section, Section 408.009, Labor Code, as added by this Act, applies only to a claim for workers' compensation benefits based on an injury that occurs on or after the effective date of this Act. A claim based on an injury that occurs before that date is governed by the law as it existed on the date the injury occurred, and the former law is continued in effect for that purpose.

(b)  Notwithstanding Section 409.003, 409.007, 410.169, or 410.205, Labor Code, a nurse whose injury occurred on or after February 1, 2020, but before the effective date of this Act, and whose claim was subsequently denied may, on or after the effective date of this Act, request in writing that the insurance carrier reprocess the claim and the changes in law made by this Act shall apply to that claim.

(c)  Not later than the 60th day after the date an insurance carrier receives a written request to reprocess a claim under Subsection (b) of this section, the insurance carrier shall reprocess the claim and notify the person in writing whether the carrier accepted or denied the claim. If the insurance carrier denies the claim, the notice must include information on the process for disputing the denial. The notice provided by the insurance carrier must use the notice provisions prescribed by the division of workers' compensation of the Texas Department of Insurance under Subsection (d) of this section.

(d)  As soon as practicable after the effective date of this Act, the division of workers' compensation of the Texas Department of Insurance shall prescribe notice provisions for an insurance carrier to use when providing notice of the insurance carrier's acceptance or denial of a person's claim. The notice provisions must be clear and easily understandable.

SECTION 8.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.