

BILL ANALYSIS

C.S.H.B. 2702
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A designated doctor is an independent doctor selected, certified, and trained by the division of workers' compensation of the Texas Department of Insurance to answer questions about work-related injuries or occupational illnesses. These doctors do not treat injured employees and they pay their own expenses to travel to examinations. However, the number of designated doctors has been steadily decreasing over the past several years, threatening the viability of the designated doctor program. C.S.H.B. 2702 seeks to address this issue by providing for the adjustment of payments associated with certain medical examinations under the Texas Workers' Compensation Act and by providing for a no-show fee when an employee required to have a medical examination under the act fails or refuses to attend the examination.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2702 amends the Labor Code to require an insurance carrier to pay a minimum \$100 no-show fee to the designated doctor or doctor who has been selected by the insurance carrier to conduct a medical examination of an employee that has been ordered under the Texas Workers' Compensation Act to resolve certain questions about a compensable injury or a dispute if the employee fails or refuses to appear at the time and place scheduled for the examination without good cause as determined by the commissioner of workers' compensation. The bill requires the commissioner to set the initial amount of the no-show fee not later than April 1, 2024, and applies the fee requirement only to an examination that occurs or is scheduled to occur, as applicable, on or after March 1, 2024.

C.S.H.B. 2702 requires the commissioner, not later than January 31 of each year beginning with the year 2025, to adjust for inflation, in accordance with rules adopted under the bill's provisions, the amounts required to be paid by an insurance carrier for the following:

- the no-show fee established by the bill for the failure or refusal of an employee to appear at the time and place scheduled for the applicable medical examination;
- a medical examination required under the act to resolve any question about the appropriateness of health care received by the employee;
- a medical examination ordered by the commissioner under the act to resolve any question about:
 - the impairment caused by the compensable injury;

- the attainment of maximum medical improvement;
- the extent of the employee's compensable injury;
- whether the injured employee's disability is a direct result of the work-related injury;
- the ability of the employee to return to work; or
- issues similar to those described by the foregoing;
- a medical examination by a doctor selected by the insurance carrier when the carrier is not satisfied with the opinion rendered by a designated doctor conducting a required examination under the act;
- a medical examination by the treating doctor or by another doctor to whom the employee is referred by the treating doctor that may be, as provided by the act, requested by an employee who is required to be examined by a designated doctor under the act, for whom the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating, and the employee is not satisfied with the designated doctor's opinion; and
- a medical examination conducted to determine or resolve any question about the impairment caused by the compensable injury or the attainment of maximum medical improvement.

The bill sets out the following provisions with respect to the adjustment:

- a requirement for the commissioner to adopt rules as necessary to implement the bill's adjustment provisions, including rules providing for the computation of the amount of an adjustment, which may provide for determining the amount of the adjustment in the Medicare Economic Index;
- a temporary provision expiring January 1, 2025, requiring the commissioner, not later than January 31, 2024, to adjust for inflation, in accordance with the temporary provision, the amounts required to be paid by an insurance carrier for an applicable medical examination described by the bill and requiring the commissioner to compute the amount based on the percentage increase, if any, in the Medicare Economic Index for the period beginning on the date that the applicable examination fee was last set or adjusted by the commissioner and ending January 1, 2024; and
- a requirement for the commissioner, not later than April 1, 2024, to adopt rules to implement the bill's provisions regarding adjustments to the applicable examination fees and no-show fees.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2702 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute and introduced both add a provision to the Texas Workers' Compensation Act requiring an insurance carrier to pay a no-show fee if an applicable employee fails or refuses to appear at an examination ordered by the commissioner of workers' compensation and to be performed by the applicable designated doctor and both specify that the payment must be made in accordance with the adjusted payment amounts prescribed by the commissioner under the bill's provisions, but the substitute adds a specification to the added provision that is not in the introduced requiring that the fee be paid if the failure or refusal occurs without good cause as determined by the commissioner.

The substitute and introduced both provide for the adjustment of certain medical examination fees and the examination no-show fees and set deadlines for the adjustments, they both provide for the computation of the amount of the adjustments of both types of fees, and they both address

the use of the Medicare Economic Index in making the computation of both types of fees, but the substitute and the introduced differ as follows:

- with respect to the deadline by which the commissioner must adjust all of those fees for inflation, the introduced set that deadline at January 31 of each even-numbered year beginning 2026, but the substitute sets that deadline at January 31 of each year beginning with the year 2025;
- with respect to the deadline by which the procedural provision, in both the substitute and the introduced, requires the commissioner to set the initial amount of the no-show fee, the introduced set that deadline at January 31, 2024, but the substitute sets that deadline at April 1, 2024;
- with respect to the method of computing the adjustment of medical examination and no-show fees, the introduced required the commissioner to compute the amount of an adjustment to both types of fees on the percentage increase, if any, in the index for the preceding 24-month period ending January 1, provided that such an adjustment takes effect beginning March 1 of the year of the adjustment, and provided in a procedural provision that the initial adjustment of the no-show fee be made not later than January 1, 2026, but the substitute does not include the provisions from the introduced specifying its method requiring the commissioner to compute the amount of the adjustment and instead requires the commissioner to adopt rules as necessary to implement the provision regarding the adjustment of the fees, including rules providing for the computation of the amount of the adjustment, which may provide for determining the amount of the adjustment using the index, and includes a procedural provision setting April 1, 2024, as the deadline for the commissioner to adopt the rules implementing the bill provisions, as revised by the substitute; and
- the substitute, but not the introduced, requires the commissioner to adjust for inflation, in accordance with rules adopted under the substitute's provisions for the computation of examination fee adjustments, the amount required to be paid by an insurance carrier for a medical examination conducted to determine or resolve any question about the impairment caused by the compensable injury or the attainment of maximum medical improvement.