By:  Patterson H.B. No. 790

A BILL TO BE ENTITLED

AN ACT

relating to certain claims for benefits, compensation, or assistance by certain public safety employees and survivors of certain public safety employees.

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

SECTION 1.  Title 5, Subtitle A, Section 408.0041, Labor Code, is amended by adding subsection (m) to read as follows:

Sec. 408.0041.  DESIGNATED DOCTOR EXAMINATION. (a) At the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:

(1)  the impairment caused by the compensable injury;

(2)  the attainment of maximum medical improvement;

(3)  the extent of the employee's compensable injury;

(4)  whether the injured employee's disability is a direct result of the work-related injury;

(5)  the ability of the employee to return to work; or

(6)  issues similar to those described by Subdivisions (1)-(5).

(b)  Except as provided by Section 408.1225(f), a medical examination requested under Subsection (a) shall be performed by the next available doctor on the division's list of certified designated doctors whose credentials are appropriate for the area of the body affected by the injury and the injured employee's diagnosis as determined by commissioner rule. The division shall assign a designated doctor not later than the 10th day after the date on which the request under Subsection (a) is approved, and the examination must be conducted not later than the 21st day after the date on which the commissioner issues the order under Subsection (a). An examination under this section may not be conducted more frequently than every 60 days, unless good cause for more frequent examinations exists, as defined by commissioner rules.

(b-1)  A designated doctor, other than a chiropractor, is subject to Section 408.0043. A designated doctor who is a chiropractor is subject to Section 408.0045. To the extent of a conflict between this section and Section 408.0043 or 408.0045, this section controls.

(c)  The treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession. The treating doctor and insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(d)  To avoid undue influence on a person selected as a designated doctor under this section, and except as provided by Subsection (c), only the injured employee or an appropriate member of the division's staff may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff members. The designated doctor may initiate communication with any doctor or health care provider who has previously treated or examined the injured employee for the work-related injury or with peer reviewers identified by the insurance carrier.

(e)  The designated doctor shall report to the division. The report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. An employer may make a bona fide offer of employment subject to Sections 408.103(e) and 408.144(c) based on the designated doctor's report.

(f)  Unless otherwise ordered by the commissioner, the insurance carrier shall pay benefits based on the opinion of the designated doctor during the pendency of any dispute. If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the insurance carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

(f-1)  The subsequent injury fund shall reimburse an insurance carrier for any overpayment of benefits made by the insurance carrier under Subsection (f) based on an opinion rendered by a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing reimbursement at least annually.

(f-2)  An employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the employee's impairment rating from the treating doctor or from another doctor to whom the employee is referred by the treating doctor if:

(1)  the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating; and

(2)  the employee is not satisfied with the designated doctor's opinion.

(f-3)  The commissioner shall provide the insurance carrier and the employee with reasonable time to obtain and present the opinion of a doctor selected under Subsection (f) or (f-2) before the commissioner makes a decision on the merits of the issue.

(f-4)  The commissioner by rule shall adopt guidelines prescribing the circumstances under which an examination by the employee's treating doctor or another doctor to whom the employee is referred by the treating doctor to determine any issue under Subsection (a), other than an examination under Subsection (f-2), may be appropriate.

(g)  Except as otherwise provided by this subsection, an injured employee is entitled to have a doctor of the employee's choice present at an examination requested by an insurance carrier under Subsection (f). The insurance carrier shall pay a fee set by the commissioner to the doctor selected by the employee. If the injured employee is subject to a workers' compensation health care network under Chapter 1305, Insurance Code, the doctor must be the employee's treating doctor.

(h)  The insurance carrier shall pay for:

(1)  an examination required under Subsection (a), (f), or (f-2), unless otherwise prohibited by this subtitle or by an order or rule of the commissioner; and

(2)  the reasonable expenses incident to the employee in submitting to the examination.

(i)  An employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (f) commits an administrative violation. An injured employee may not be fined more than $10,000 for a violation of this subsection.

(j)  An employee is not entitled to temporary income benefits, and an insurance carrier is authorized to suspend the payment of temporary income benefits, during and for a period in which the employee fails to submit to an examination required by Subsection (a) or (f) unless the commissioner determines that the employee had good cause for the failure to submit to the examination. The commissioner may order temporary income benefits to be paid for the period for which the commissioner determined that the employee had good cause. The commissioner by rule shall ensure that:

(1)  an employee receives reasonable notice of an examination and the insurance carrier's basis for suspension; and

(2)  the employee is provided a reasonable opportunity to reschedule an examination for good cause.

(k)  If the report of a designated doctor indicates that an employee has reached maximum medical improvement or is otherwise able to return to work immediately, the insurance carrier may suspend or reduce the payment of temporary income benefits immediately.

(l)  A person who makes a frivolous request for a medical examination under Subsection (a) or (f), as determined by the commissioner, commits an administrative violation.

(m)  The first request of a Designated Doctor's examination by the carrier, injured employee or the Division of Workers' Compensation must include a request to the Designated Doctor to provide an opinion of the extent of the compensable injury.

SECTION 2.  Title 5, Subtitle A, Section 409.021, Labor Code, has been amended by amending subsection (a) (2) (B) and adding subsections (a) (2) (B) and (C) and subsection (a-4) to read as follows:

Sec. 409.021.  INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall:

(1)  begin the payment of benefits as required by this subtitle; or

(2)  notify the division and the employee in writing of its refusal to pay and advise the employee of:

(A)  the right to request a benefit review conference; and

(B)  the means to obtain additional information from the division~~.~~ ; and

(C)  the specific reasons why the carrier is contesting the claim, including any disputes in the cause of the injury, the extent of the injury or the treatment of the injury.

(a-1)  An insurance carrier that fails to comply with Subsection (a) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e).

(a-2)  An insurance carrier is not required to comply with Subsection (a) if the insurance carrier has accepted the claim as a compensable injury and income or death benefits have not yet accrued but will be paid by the insurance carrier when the benefits accrue and are due.

(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 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.

(a-4)  Notwithstanding any other provision of this code, an insurance carrier who fails to comply with subsection (a) within 60 days, when the injured employee is a person described under Section 607.051 of the Texas Government Code, waives its right to contest or deny the extent of the specific injury claimed by the injured worker or reasonably reflected in a review of the injured workers medical records.

(b)  An insurance carrier shall notify the division in writing of the initiation of income or death benefit payments in the manner prescribed by commissioner rules.

(c)  If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.

(d)  If a workers' compensation insurance carrier does not contest or deny the extent of a compensable injury in writing on or before the 60th day on which the workers' compensation insurance carrier had reasonable notice of the specific claimed injury, the workers' compensation insurance carriers waives its right to contest or deny the extend of the specific injury claimed by the injured worker or reasonably reflected in a review of the injured worker's medical records.

~~(d)~~ (e)  An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

~~(e)~~ (f)  An insurance carrier commits an administrative violation if the insurance carrier does not initiate payments or file a notice of refusal as required by this section.

~~(f)~~ (g)  For purposes of this section, "written notice" to a certified self-insurer occurs only on written notice to the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c).

~~(f)~~ (g)  For purposes of this section:

(1)  a certified self-insurer receives notice on the date the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c) receives notice; and

(2)  a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for administering the claim for the political subdivision receives notice.

~~(j)~~ (h)  Each insurance carrier shall establish a single point of contact in the carrier's office for an injured employee for whom the carrier receives a notice of injury.

(i)  The division shall adopt the rules necessary to comply with these changes.

SECTION 3.  Title 5, Subtitle A, Chapter 417, Labor Code, is amended by adding section 417.005 to read as follows:

Sec. 417.005.  WORKERS' COMPENSATION INSURANCE CARRIER LIABILITY TO INJURED PARTY. If a workers' compensation insurance carrier denies a claim of medical benefits on or before the 60th day on which the workers' compensation insurance carrier had reasonable notice of the specific claimed injury and upon final determination of an administrative law judge that the claimed injury is compensable, the workers' compensation insurance carrier is liable to reimburse the injured worker for any and all reasonable and necessary medical expenses incurred by the injured worker for the specific claimed injury.

SECTION 4.  Title 5, Subtitle A, Chapter 410.156, Labor Code, is amended by adding subsection (c), (d) and (e) to read as follows:

Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION. (a) Each party shall attend a contested case hearing.

(b)  A party commits an administrative violation if the party, without good cause as determined by the administrative law judge, does not attend a contested case hearing.

(c)  If good cause exists, a party or witness may attend a contested case hearing telephonically or by videoconference.

(d)  For the purpose of this subsection, the administrative law judge shall determine if good cause exists for a party or witness to attend the contested case hearing telephonically or by videoconference.

(e)  An attorney representing a party in a contested case hearing, shall be permitted to represent a party to the case telephonically or by videoconference.

SECTION 5.  The changes in law made by this Act apply to a claim for benefits, compensation, or assistance brought on or after the effective date of this Act. A claim for benefits, compensation, or assistance brought before that date is covered by the law in effect on the date the claim was made, and that law is continued in effect for that purpose.

SECTION 6.  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, 2023.