

- SUBJECT:** Allowing partial benefits in worker's comp interlocutory orders
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley
- 0 nays
- WITNESSES:** For — Andrew Kant, Texas Medical Association; Randy McNeel, Harris & Harris law firm; Bruce M. Miller
- Against — Richard Geiger, Association of Fire and Casualty Companies in Texas (AFACT)
- On — Scott McAnally, Research and Oversight Council on Workers' Compensation
- BACKGROUND:** The Texas Workers' Compensation Act, chapter 401 et seq. of the Labor Code, allows a benefit review officer to enter a temporary (interlocutory) order requiring an insurance carrier either to pay or not to pay benefits to an injured worker. If that interlocutory order is later reversed or modified, the insurance carrier is entitled to reimbursement from the subsequent injury fund, established under §403.006 of the Labor Code.
- DIGEST:** CSHB 2512 would allow benefit review officers to enter interlocutory orders for all or part of workers compensation medical or income benefits. Such orders could address accrued benefits, future benefits, or both. Hearing officers and the executive director of the Texas Workers' Compensation Commission would be allowed to enter similar interlocutory orders that would remain binding while subsequent appeals were pending.
- Parties disputing an interlocutory order entered by the commission's executive director would be entitled to a hearing conducted by the State Office of Administrative Hearings.
- Insurance carriers that made overpayments based such interlocutory orders would be entitled to reimbursement from the subsequent injury fund under a

periodic reimbursement schedule adopted by the Workers' Compensation Commission.

CSHB 2512 would take effect September 1, 1999, and apply to interlocutory orders or decisions issued after that date.

**SUPPORTERS
SAY:**

CSHB 2512 would authorize benefit review officers, hearing officers, and the Texas Workers Compensation Commission's executive director to enter interlocutory orders for a portion of the benefits claimed by an injured worker so that the worker could receive immediate medical treatment. Without such authority, claims under dispute can prevent injured workers from receiving treatment for months while the dispute is pending.

The current workers' compensation system provides little immediate relief for injured workers who are denied benefits by an insurance carrier. Under current law, the benefit review officer must award all or nothing when entering an interlocutory order involving a workers' compensation claim that is under dispute.

Benefit review officers frequently are reluctant to enter interlocutory orders for the entire amount of the claim because that amount may be more than actually is needed for the worker to receive treatment while a dispute is pending.

Insurance carriers often routinely deny claims and simply will wait for a final decision to be reached before examining the validity of the claim. During the time a claim is under dispute, and the worker receives no medical care, an injury can often worsen. The end result is increased medical costs or lost time away from work.

If the order granting partial payment is later overturned, the insurance carrier would be reimbursed from the subsequent injury fund. The reimbursement procedure is identical to today's procedure for reimbursements of currently allowed interlocutory orders, but would apply to all orders authorized by this legislation.

CSHB 2512 would balance interests of injured workers and insurance carriers. It would allow injured workers to receive necessary treatment in a timely manner, but also ensure that carriers would be reimbursed for any

payments made that are later denied.

The subsequent injury fund would be sufficient to cover any increase in overpayment claims resulting from this legislation. The fund has a current cash balance over \$15 million. The commission has rule-making authority broad enough to guarantee the safety of the fund if more claims were made than are anticipated.

OPPONENTS
SAY:

When insurance carriers deny benefits for workers' compensation claims, such denials are made after thorough review of the claims, and they frequently are upheld. Interlocutory orders, on the other hand, frequently are issued before any decisions have been reached in disputes, and, at times, before evidentiary hearings can be conducted.

Under CSHB 2512, benefit review officers may feel more inclined to enter interlocutory orders since any overpayments to workers could be remedied by reimbursing the insurance company when a final order was reached.

If a significant number of such orders were entered, the stability of the subsequent injury fund could be compromised. While the fund currently has a substantial balance, that fund could be significantly burdened with these overpayment claims.

NOTES:

The committee substitute provides that orders of hearing officers would be binding during the pendency of the appeal rather than until a written decision were issued.

The House Business and Industry Interim Subcommittee on Workers' Compensation Insurance Carrier Practices recommended the implementation of a pilot project to allow interlocutory orders authorizing specific medical treatment while the income benefit dispute was being resolved.