

- SUBJECT:** Texas license for physicians reviewing workers' comp cases
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Giddings, Elkins, Bailey, Bohac, Castro, Darby, Martinez, Solomons, Zedler
- 0 nays
- WITNESSES:** For — S. Michael Dean, Texas Orthopaedic Association; Rick Levy, Texas AFL-CIO; Stephen Norwood, Texas Medical Association; (*Registered, but did not testify:* Michael W. Cunningham, Texas Building and Construction Trades Council, AFL-CIO; John Pike Texas Orthopaedic Association)
- Against — Joe Woods, Property Casualty Insurers Association of America; (*Registered, but did not testify:* Cathy DeWitt, Texas Association of Business)
- On — Albert Betts, Texas Department of Insurance, Division of Workers' Compensation; Amy Lee, Texas Department of Insurance; Brian White, Office of Injured Employee Counsel; (*Registered, but did not testify:* Margaret Lazaretti, Texas Department of Insurance; Robert Simpson, Texas Medical Board)
- BACKGROUND:** Insurance companies use physician peer reviewers to review workers' compensation cases. These doctors make determinations about issues such as medical necessity (both prospectively and retrospectively), impairment ratings, compensability, and extent of injury.
- In 2005, the 79th Legislature enacted HB 7 by Solomons, which revised the state workers' compensation system. Among its provisions, the bill amended Labor Code, sec. 408.0231(g) to mandate that peer review physicians be licensed in Texas.
- Insurance Code, sec. 4201.152 requires a utilization review agent to conduct its review under the direction of a physician licensed in the United States. Labor Code, sec. 408.023(h) further stipulates that utilization review doctors in workers' compensation cases may be licensed in other

states as long as they are under the direction of a physician licensed in Texas. The Texas Department of Insurance (TDI), Division of Workers' Compensation, adopted a rule effective August 16, 2006, that is consistent with the provision that workers' compensation utilization review may be performed by an out-of-state doctor under the direction of a physician licensed in Texas.

Under Government Code, sec. 323.007, the Texas Legislative Council must revise Texas statutes periodically to make them more accessible, understandable, and usable without altering their sense, meaning, or effect. HB 2017 by Swinford, which was enacted in 2005 by the 79th Legislature and takes effect April 1, 2007, enacted the fourth installment of the re-codification of the new Insurance Code.

**DIGEST:**

HB 1006 would amend both the Labor Code and the Insurance Code to require that a utilization review agent or insurance carrier that performed medical reviews of workers' compensation claims — including utilization review, retrospective review, or peer review — could use only physicians licensed to practice in Texas.

The bill also would make non-substantive changes conforming the re-codification of the Insurance Code to the substantive changes of HB 7 by Solomons — specifically the network and utilization review statutes. Provisions of HB 1006 would prevail over another act of the 80th Legislature related to non-substantive additions and corrections.

The bill would take effect September 1, 2007, and would apply only to a review provided under a claim for workers' compensation benefits that was conducted on or after that date.

**SUPPORTERS  
SAY:**

HB 1006 would correct an unintentional oversight in the statutory language of the comprehensive workers' compensation bill enacted last session, which allows utilization review cases to be treated differently from other peer reviews. When the Legislature enacted HB 7 in 2005, it intended for physicians licensed in Texas to conduct all peer reviews on workers' compensation cases. Utilization review cases, which may involve a doctor making crucial decisions about whether certain treatments or procedures are medically necessary, for example, should not be held to a separate standard.

Since in-state doctors determine the extent of injury, they also should decide the course of treatment. Without a license in Texas, the Texas Medical Board (TMB) cannot discipline or sanction physicians who make inappropriate medical decisions affecting the care received by injured workers. Recent TDI data related to workers' compensation peer review show that 25 percent of the doctors involved in preauthorization review were not from Texas. For retrospective reviews, the data reveal that insurance carriers took an adverse action in 78 percent of the cases based on retrospective reviews of medical necessity by non-Texas doctors.

Increasingly, insurance carriers put medical records on computers for out-of-state doctors to examine in the course of making medical determinations. When an out-of-state physician reviewer issues a decision to deny care, doctors providing treatment in Texas often have no way of knowing who the reviewing doctor is, much less whether that physician truly is a "peer" qualified to perform the review. For example, a family practitioner does not have the medical background or experience to review specialty care delivered by an orthopedic surgeon, but cases occur when out-of-state physicians inappropriately perform reviews outside their specialties. Texas physicians who choose to complain under such circumstances must file with the Texas Department of Insurance (TDI) and await a review process of several months. By ensuring that reviewing doctors were certified to practice medicine in Texas, this bill would place their conduct under the local jurisdiction of the TMB.

By requiring all doctors participating in the workers' compensation system to have a Texas medical license, HB 1006 would increase the accountability of physician reviewers. Texas has a sufficient number of doctors to perform reviews associated with workers' compensation benefits claims, and there is no reason to continue involving out-of-state physicians in this important process.

**OPPONENTS  
SAY:**

By limiting utilization review to Texas physicians, this bill could cause future problems with finding a sufficient number of physicians qualified to conduct these reviews because the process of licensing physicians in Texas is slow. Currently, it takes TMB approximately six months to issue an uncomplicated license.

There is no urgent need for this bill because TDI data show that the number of out-of-state doctors participating in the workers' compensation peer review process is relatively small. Non-Texas licensed physicians

conducted only 15 percent of the retrospective reviews, the area that showed the greatest disparity of outcomes.

NOTES:

The committee substitute would require that an insurance carrier, in addition to an agent, use doctors licensed to practice in Texas to perform reviews of health care services provided in workers' compensation networks. The substitute also would specify that such reviews included utilization and retrospective reviews. It would differ from the introduced version by allowing the effective date to apply to a review of a health care service provided under a claim for workers' compensation benefits, rather than a compensable injury, that occurred on or after the effective date. Finally, the substitute would make non-substantive changes to conform the Insurance Code and the Labor Code to reflect the re-codification of the new Insurance Code.

The companion bill, SB 1767 by Watson, which is identical to HB 1006 as introduced, was filed on March 9.

HB 2636 by Smithee, which would be the fifth installment of the re-codification of the new Insurance Code, has been referred to the Insurance Committee.

A related bill, HB 1003 by Giddings, also set on today's General State Calendar, would require an Independent Review Organization that perform reviews for workers' compensation benefit claims to use only physician reviewers licensed in Texas.