

SUBJECT: Workers' compensation fee guidelines for medical services

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler
0 nays
1 absent — Bailey

WITNESSES: For — David Bragg, Vista Medical Center Hospital; Stephen Norwood, Texas Medical Association; (*Registered, but did not testify*: Charles Bailey, Texas Hospital Association; Deborah Ingersoll, Vista Hospital; Charlotte H. Smith, Texas Medical Association)

Against — (*Registered, but did not testify*: Cathy DeWitt, Texas Association of Business; Shannon Meroney, Aetna; Joe Woods, Property Casualty Insurers Association of America)

On — (*Registered, but did not testify*: Amy Lee, Texas Department of Insurance)

BACKGROUND: Labor Code, sec. 413.011 requires the commissioner of workers' compensation to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies. To achieve standardization, the commissioner must adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services without adopting the Medicare fee schedule. Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living or by someone acting on that individual's behalf.

DIGEST: CSHB 1911 would prohibit workers' compensation fee guidelines for medical services from providing for a fee in excess of the fee charged for

similar treatment of an injured *employed* individual of an equivalent standard of living and paid by that individual or someone acting on that individual's behalf. The bill would eliminate the directive for the commissioner to consider the increased security of payment afforded by the workers' compensation system in establishing the fee guidelines.

The bill would take effect September 1, 2007, and would apply only to a fee guideline adopted by the commissioner of workers' compensation on or after that date.

**SUPPORTERS
SAY:**

CSHB 1911 would strike the provision that permits statutory considerations of Medicare rates and would give the Texas Department of Insurance (TDI) flexibility to adopt fee guidelines that are more comparable and equitable.

The bill would adopt a more reasonable standard for fee guidelines for medical services related to a workers' compensation claim. Workers' compensation carriers contend that Medicare reimbursement rates should be used as the benchmark for medical service related to workers' compensation claims because Medicare recipients allegedly have an "equivalent standard of living" as injured Texas workers. However, using Medicare as the reimbursement model artificially depresses medical fees for workers' injuries. The fees charged by health care service providers to injured employees, by statute, should be fair and reasonable. Treatment for injured workers should be compared to other injured workers rather than retirees on Medicare.

Current law directs the commissioner to consider "the increased security of payment" afforded by the workers' compensation system when, in fact, this is a myth. Medicare reimbursement rates usually do not cover the costs of providing health care. In addition, treating workers' comp patients and seeking reimbursement for their claims involves a significant hassle factor. The commissioner should not be instructed to reduce fees based on an "increased security of payment" that does not exist.

**OPPONENTS
SAY:**

TDI's division of workers' compensation has the ability to set fee guidelines lower or higher than Medicare guidelines, depending on various factors including injuries that are specific to the workers' compensation claims. Medicare fee-related information is contained in a carefully reviewed national database. CSHB 1911 instead would require the division to base fees on data that is nonexistent or incomplete at best. In

moving away from a Medicare model and directing TDI to base fees on similar treatment of an injured “employed” individual, the bill would create a gray area regarding the data that should be considered. In addition, the bill would not establish a system from which to collect information. The Medicare guidelines serve as an effective benchmark that TDI can consider along with other factors affecting the workers’ compensation system.

NOTES:

The committee substitute would apply only to a fee guideline adopted by the commissioner of workers’ compensation on or after September 1, 2007, rather than to a claim for workers’ compensation benefits that occurred on or after the effective date.

A similar bill, SB 1910 by Jackson, has been referred to the Senate State Affairs Committee.