

SUBJECT: Requiring specialty certification to review care received by injured worker

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Giddings, Elkins, Darby, Bohac, Castro, Solomons, Zedler

0 nays

2 absent — Bailey, Martinez

WITNESSES: For — Stephen Norwood, Texas Medical Association; (*Registered, but did not testify*: Rick Levy, Texas AFL-CIO; Charlotte H. Smith, Texas Medical Association)

Against — None

On — (*Registered, but did not testify*: Norman Darwin, Office of Injured Employee Counsel; Amy Lee, Texas Department of Insurance)

BACKGROUND: In 2001, the 77th Legislature enacted comprehensive workers' compensation revisions through HB 2600 by Brimer. The bill included a provision stipulating that a designated doctor performing a medical review of an injured employee making a claim must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor. HB 7 by Solomons, the workers' compensation revision bill enacted in 2005 by the 79th Legislature, deleted the language in Labor Code, sec. 408.0041 that required a designated doctor to be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition.

DIGEST: HB 2004 would require that a physician reviewer in a workers' compensation case hold a professional certification in a specialty appropriate to the type of health care that the injured employee received. This requirement would apply to:

- a physician performing peer review, independent review, or utilization review, including retrospective review;

- a doctor performing a required examination;
- a designated doctor; or
- a physician member of the medical quality review panel.

A chiropractor practicing or performing review of chiropractic services in a workers' compensation case in any of the circumstances described above would have to be licensed to practice chiropractic services, and a dentist practicing or performing review in a workers' compensation case of dental services in any of those circumstances would have to be licensed to practice dentistry.

HB 2004 would authorize the commissioner of the division of workers' compensation to adopt rules as necessary to determine which professional health care specialties were appropriate for treatment of certain compensable injuries. The bill would amend the Labor Code to make conforming and nonsubstantive changes to reflect re-codification of the new Insurance Code.

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

**SUPPORTERS
SAY:**

HB 2004 would require that a physician reviewer in a workers' compensation case be certified in a specialty appropriate to the type of care an injured worker was receiving. The bill would require that chiropractors review chiropractic services and dentists review dental services and appropriately would include these practitioners in the medical review process.

Currently, a doctor performing an examination or review in a workers' compensation case does not have to be certified in a specialty appropriate to the care that the injured worker is reviewing. This had led to physicians inappropriately reviewing cases beyond their scope of practice and experience, as occurred in one instance when a retired pediatrician reviewed the treatment and procedures of an orthopedic surgeon. These mismatched reviews and examinations have led to wrongful denials, which can be devastating to patients. An improper denial can delay needed treatment while the issue is sorted out, which can permanently harm the injured employee.

A decision to set a course of treatment should be based on the opinion of a physician with expertise to determine the appropriateness of service. Heart surgery cases should be reviewed by cardiac surgeons, not general practitioners. If certified specialists in appropriate areas conducted all reviews and examinations, the number of improper denials would decrease.

To eliminate any difference of opinion as to whether certain specialties were appropriate to review certain types of injuries, the bill would grant rulemaking authority to the commissioner of the division of workers' compensation, which would clarify such issues and allow interested parties to have input in the process.

OPPONENTS SAY:

By limiting medical reviews and examinations in workers' compensation cases to parallel specialists, this bill could lead to future problems with finding a sufficient number of physicians qualified in certain specialties to conduct these reviews. In addition, implementation of HB 2004 could limit chiropractors unnecessarily to review of spinal adjustments even though they are qualified to treat a broad number of ailments.

NOTES:

Two related bills — HB 1003 and HB 1006, both by Giddings — passed the House on March 22 and have been referred to the Senate State Affairs Committee. HB 1003 would require an independent review organization to use only physicians licensed in Texas to review workers' compensation benefit claims. HB 1006 would require a utilization review agent or insurance carrier to use only physicians licensed in Texas to review workers' compensation benefit claims.