

- SUBJECT:** Medical disputes and reimbursements related to workers' comp subclaims
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 5 ayes — Giddings, Bailey, Castro, Solomons, Zedler
0 nays
4 absent — Elkins, Darby, Bohac, Martinez
- SENATE VOTE:** On final passage, March 28 — 30-0
- WITNESSES:** For — Caldwell Fletcher, 4600 Texas Group, Inc.; (*Registered, but did not testify*: Vaughn Aldredge, AT&T; David T. Weber, Gardere Wynne Sewell, LLP)

Against — Terry Frakes, Texas Mutual Insurance Company; Sam Francis, JI Speciality Services, Inc.; David Reagan, Texas Municipal League Intergovernmental Risk Pool; Joe Woods, Property Casualty Insurers Association of America; (*Registered, but did not testify*: Ronald H. Cobb, American Insurance Association; Pam Beachley, Texas Municipal League Intergovernmental Risk Pool)

On — (*Registered, but did not testify*: Robert E. Lang, Texas Department of Insurance Division of Workers' Compensation)
- BACKGROUND:** The 73rd Legislature in 1993 first enacted Labor Code, sec. 409.009, which states that a person may file a written claim with the Texas Department of Insurance's (TDI) division of workers' compensation as a subclaimant if the person has provided compensation, including health care provided by a health care insurer, directly or indirectly, for an employee or legal beneficiary, and been refused reimbursement from the workers' compensation insurance carrier.

In 2001, the 77th Legislature enacted HB 1562 by Thompson, which amended Labor Code, sec. 402.084 to authorize a carrier to obtain specified information on all workers' compensation claims in order to determine if a subclaim exists. The bill allowed the then-Texas Workers'

Compensation Commission to adopt rules to establish a reasonable fee for all information requested relating to possible subclaims and established that the requested information remains subject to confidentiality requirements while in the possession of a subclaimant or its representative .

The 79th Legislature in 2005 enacted HB 251 by Eissler, which further amended sec. 402.084 to allow the release of workers' compensation claim information to an insurer that had adopted an antifraud plan and that sought to identify valid subclaims. The bill permitted an insurer and its authorized representative each month to request claims data on all cases related to workers' compensation claimants who are insured by the requesting insurer. The insurer is not required to demonstrate that a subclaim exists in order to obtain the information. The division is authorized to charge a fee not to exceed 5 cents for each claimant listed in an information request. The bill applied to claims based on a compensable injury that occurred on or after September 1, 2002.

DIGEST:

CSSB 929 would add Labor Code, sec. 409.0091 to allow health care paid by a insurer to be reimbursable as a medical benefit on a workers' compensation claim. The bill would not prohibit or limit a substantive defense by a carrier that the health care paid for by the insurer was not a medical benefit or correct payment. A subclaimant could not be reimbursed for payment for any health care that previously was denied by a carrier under a preauthorization review that determined the service was not medically necessary for the treatment of a compensable injury. The bill would establish that it would not be a defense to a subclaim by an insurer that:

- the subclaimant had not sought reimbursement from a health care provider or the subclaimant's insured;
- the subclaimant or the health care provider did not request preauthorization; or
- the health care provider did not bill the carrier within 95 days after the health care was provided.

Filing reimbursement requests. The bill would direct an insurer to file a request for reimbursement with the carrier not later than six months after the date on which the insurer received information and not later than 18 months after the insurer paid for the health care service.

Insurer to provide identifying information. Subject to time limits, the insurer would provide, with any reimbursement request, the tax identification number of the insurer and specified information to the carrier in a form prescribed by the division. The bill would specify the necessary information identifying the workers' compensation case and describing health care paid by the insurer.

Reduction in reimbursement. The bill would establish that the carrier would reduce the amount of the reimbursable subclaim by any payments the carrier made previously to the same health care provider for providing the same service on the same dates. In making such a reduction in reimbursement to the subclaimant, the carrier would provide evidence of previous payments to the provider.

Standards for payments to insurer. For each medical benefit paid, the bill would hold that the carrier would pay to the insurer the lesser of the amount payable under the applicable fee guideline as of the date of service, or the actual amount paid by the insurer. In the absence of a fee guideline for a specific paid service, the amount paid by the insurer would be considered in determining payment under rules defining fair and reasonable medical reimbursement. The insurer could not recover interest as part of the subclaim.

Deadline for responding to request. Upon a request for reimbursement, the carrier would respond to the request in writing not later than 90 days after the request was received. If additional information was requested, the carrier would respond within 120 days of the request, unless the time was extended.

Carrier's request for additional information. If the carrier required additional information from the insurer, the carrier would send notice to the insurer requesting the additional information. The insurer would provide the requested information within 30 days after the carrier requested the information. The carrier and the insurer could establish additional periods for compliance by written, mutual agreement.

Deadline for filing a written subclaim. Unless the parties had agreed to an extension of time, the insurer would have to file a written subclaim not later than 120 days after:

- the carrier failed to respond to a request for reimbursement ; or
- receipt of the carrier's notice of denial to pay or reduction in reimbursement.

Dispute resolution process. CSSB 929 would maintain that any dispute that arose from a failure to respond to or a reduction or denial of a request for reimbursement that formed the basis of the subclaim would go through the appropriate dispute resolution process under these provisions and division rules. The commissioner of insurance and the commissioner of workers' compensation would modify rules as necessary to allow the insurer access as a subclaimant to the appropriate dispute resolution process. Rules adopted by the two commissioners would have to recognize the status of the subclaimant as a party to the dispute.

In a dispute that arose from a subclaim, a hearing officer could issue an order regarding compensability or eligibility for benefits and order the carrier to reimburse health care services paid by the insurer as appropriate. Any dispute over the amount of medical benefits owed, including medical necessity issues, would be determined by medical dispute resolution under secs. 413.031 and 413.032.

Data reporting requests. Until September 1, 2011, a carrier would be exempt from any TDI or division data reporting requirements affected by a lack of information caused by reimbursement requests or subclaims. If data reporting was required after that date, the requirement would be prospective only and could not require any data to be reported between September 1, 2007, and the date required reporting was reinstated. TDI and the division could make recommendations to the 82nd Legislature for the collection of reimbursement request and subclaim data.

Failure to act. An action or failure to act by a carrier could not serve as the basis for examination or administrative action by TDI or the division, or for any cause of action by any person, except for judicial review.

On or after September 1, 2007, but not later than March 1, 2008, from information provided to an insurer before January 1, 2007, an insurer could file with the division:

- a subclaim if a request for reimbursement had been presented and denied by a carrier; or

- a request for reimbursement if a request for reimbursement previously had not been presented and denied by the carrier.

The bill would amend Labor Code, sec. 408.027(d) to authorize reimbursement for an accident or health insurer that paid for health care for an injured employee for which the carrier or the employer had not disputed compensability.

Rule-making authority. Under the bill, the two commissioners would amend or adopt rules to specify the process by which an employee who had paid for health care services could seek reimbursement. The two commissioners could adopt additional rules to clarify the processes required by, fulfill the purpose of, or assist the parties in the proper adjudication of subclaims.

The two commissioners would adopt rules as required by the bill not later than December 1, 2007. The commissioner of workers' compensation would prescribe forms required by the bill not later than September 1, 2007.

The bill would take effect September 1, 2007, and would apply only to a subclaim based on a compensable injury that occurred on or after that date.

**SUPPORTERS
SAY:**

CSSB 929 would allow cases regarding subclaims and involving workers' compensation compensability, liability, extent of injury, medical necessity, or fee disputes to follow the dispute resolution process at the division of workers' compensation and provide for reimbursement from a carrier to a health insurance subclaimant. The bill would exclude certain defenses that carriers have advanced previously as rationale for not reimbursing insurers, largely because at the time of treatment it was not known that the claim was for a workers' compensation benefit.

HB 251, enacted in 2005, enabled insurers to request information from the division to identify subclaims that may exist. Since that bill was enacted, insurers have been using this process to identify health insurance claims that should have been paid by workers' compensation carriers. Insurers requesting reimbursement from a carrier for a workers' compensation claim that are denied reimbursement subsequently have filed subclaims with the division. Currently, there is not administrative jurisdiction at the division to address a dispute between an insurer subclaimant or its representative and a carrier. CSSB 929 would permit administrative

review and dispute resolution for these subclaims and would specify types of information that the insurer would have to file with reimbursement requests.

**OPPONENTS
SAY:**

Although CSSB 929 would contain eight fields of information describing health care paid by an insurer, these would not be adequate for carriers to make determinations about reimbursements and could lead to more disputed subclaims and mediation. In addition, the bill could be very costly for the workers' compensation system, causing some employers to pay more claims and ultimately affecting their experience modifiers, a factor for basing rates for workers' comp coverage.

NOTES:

HB 724 by Solomons, which passed the Senate on May 18, was amended to contain the language of SB 929.