

**SUBJECT:** Medical advisor for the Texas Workers' Compensation Commission

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley  
0 nays

**WITNESSES:** For —Emil Cerullo, Injured Workers Assistance Center, Texas Imaging & Diagnostic Center, Oxyment; Harold Clay Henderson, SonPec; Andrew Kant, Texas Medical Association; Robert Morrow; John Schmidt; Richard Amato; Brad Burdin; Glen LaZuanda  
Against —None  
On —Sian Adams, Len Riley, Texas Workers' Compensation Commission (TWCC); Marcy Halterman, Texas Chiropractic Association Medical Advisory Committee; Scott McAnally, Research and Oversight Council; Dennis Shaver; Larry Craighead; Dianne Dobson

**DIGEST:** CSHB 1778 would require the Texas Worker's Compensation Commission (TWCC) to create the new position of medical advisor. The bill would require that the medical advisor be a doctor as defined by section 401.011, which includes a doctor of medicine, osteopathic medicine, optometry, dentistry, chiropractic, or podiatry.  
The medical advisor would be responsible for developing, maintaining, and reviewing medical policies and fee guidelines, including medical policies regarding the determination of impairment ratings. The adviser also would be responsible for reviewing compliance with those guidelines and for recommending the removal of doctors from TWCC's list of approved doctors for sanctions or violations of the Worker's Compensation Act.  
The bill would authorize the medical advisor to form a panel of health care providers for assistance in reviewing policies or guidelines.

Any person or entity performing or assisting in the performance of a function of TWCC would have the same immunity from civil liability possessed by the six members of the commission. This immunity would cover good-faith acts in the execution of official duties.

The person's actions would not constitute a utilization review of the medical necessity and appropriateness of health care services, and would not be subject to regulation of utilization review under Article 21.58A of the Insurance Code.

CSHB 1778 also would add health care providers to the list of entities with whom TWCC is authorized to contract to develop, maintain, or review medical policies or fee guidelines, or to review compliance with the policies or guidelines. It would add health care providers or other entities to the list of entities with whom TWCC could contract for dispute resolutions.

It would add health care provider professional review organizations and other entities to the list of entities with whom TWCC could contract for medical consultant services. The bill would require TWCC to set standards for these new contracts. It would remove the requirement that a professional review organization include health care practitioners who are licensed in and who specialize in the category under review.

CSHB 1778 would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

The Texas Workers' Compensation Commission currently does not ensure timely and affordable access to medical expertise for injured workers. TWCC now contracts with various agencies, organizations, or individuals to obtain billing reviews or dispute resolution services.

Outsourcing these services not only is very expensive, but also subjects injured patients to unnecessary delays in receiving medical care. TWCC pays an average of \$700 per case to the Texas Medical Foundation for billing reviews. TWCC pays about \$650 per case for preauthorization dispute resolutions to various other entities. TWCC should be able to provide these services itself, but needs to employ a person with medical expertise to do so.

Hiring a medical advisor would reduce the cost of workers' compensation claims by providing TWCC with access to medical expertise. The cost of

claims and insurance in Texas is much higher than the national average, and it sometimes drives business away from Texas. Part of the reason is that TWCC's lack of on-staff medical expertise requires the agency to out source many services. Other states, some with only a fraction of the claims that Texas processes, already employ more than one medical advisor to review workers' compensation policies.

Current law permits TWCC to hire a medical advisor, but does not mandate it. CSHB 1778 would make this needed service mandatory. In the past, fiscal limitations have prevented TWCC from creating the position.

TWCC should be able to pick its medical advisor from the largest possible pool of candidates, and the only statutory requirement for the position should be the definition of "doctor" under Chapter 401.011. In its rule-making and hiring processes, TWCC can decide what kind of candidate best suits the position's needs. Statutorily, no group should be excluded.

The medical advisor should have the flexibility to decide whether to create a panel to assist with the medical advisor's duties, and to decide how many panel members are on the panel and specify their qualifications.

Under the Labor Code, immunity from liability already is granted to doctors performing medical services for TWCC. Extending the immunity to a person or entity who provides this service would allow participants in a professional review organization to have the same protection.

Although TWCC has statutory authority to remove sanctioned or corrupt doctors from its approved doctor list, it currently does not. The approved doctor list contains the name of every licensed doctor in the state. That means even doctors who have been sanctioned by the commission are on the list. TWCC has been reluctant to pursue removal of doctors from the approved doctor list because its administrators do not have the medical expertise to do so. Allowing doctors, who may have been sanctioned for bilking the system, to continue to offer medical service to injured workers only raises the average cost of workers' compensation claims.

OPPONENTS  
SAY:

CSHB 1778 should require that the medical advisor be a “medical doctor,” not just a doctor as defined by Section 401.011 of the Workers’ Compensation Act. The definition includes specialists, such as optometrists and podiatrists, who could be unsuitable for providing medical expertise on workers’ compensation issues. A medical advisor whose background is in a particular specialty might be biased toward that specialty or against others when it comes to billing reviews and preauthorization disputes.

People or entities who perform services for TWCC should not be granted immunity from liability. Anyone who makes medical decisions involving an injured worker should be held responsible for the results. This provision would give to private individuals or entities limited immunity that, under the Texas Tort Claims Act (Civil Practice and Remedies Code, Chapter 101), is granted only to public agencies while executing governmental functions.

Because of the wide variety of injuries facing workers, it is impossible for any one medical advisor to have expertise in all areas of workers’ compensation. CSHB 1778 only would permit the medical advisor to select a panel to assist in the review and implementation of policies and guidelines. The creation of that panel should be mandatory, and the statute should provide guidelines for the number of panel members and their disciplines. To further ensure that billing reviews and dispute resolutions are supported by the best possible medical expertise, professional review organizations should be required to include a representative of the specialty under review.

NOTES:

Rep. Giddings plans to offer a floor amendment that would require a professional review organization to include a practitioner licensed in the specialty under review.

The committee substitute added health care providers, health care provider professional review organizations, and others to the list of entities with whom TWCC was allowed to sign contracts to perform various functions. It would require TWCC to establish contract standards. The substitute outlines certain additional duties for the medical advisor related to medical benefits and removal of doctors from TWCC’s list of approved doctors. The substitute would extend immunity from liability to a person or entity that performed services for or assisted TWCC. The substitute also would require the medical advisor to be a doctor.