

**SUBJECT:** Alternative medical dispute resolution for worker's compensation claims

**COMMITTEE:** Business and Industry — favorable, without amendment

**VOTE:** 6 ayes — Giddings, Kolkhorst, Martinez Fischer, J. Moreno, Solomons,  
Zedler

0 nays

3 absent — Elkins, Bohac, Oliveira

**WITNESSES:** For — Dr. Jeff Cunningham, ZRC Services; (*Registered but did not testify:*)  
Lee Ann Alexander, Liberty Mutual Group; Ken Bailey, Doctors Council of  
Texas; Pam Beachley, Texas Association of School Boards Risk Management  
Fund; Terry Boucher, Texas Osteopathic Medical Association and Texas  
Society of Osteopathic Family Physicians; Ron Cobb, American Insurance  
Association; Richard Evans, Texas Association of Business; Terry Frakes,  
Texas Mutual Insurance Co.; David Gonzales, Texas Pharmacy Association;  
Nick Huestis, Burns, Anderson, Jury & Brenner; Dr. Scott Moulton; Dr.  
Kelley Shinn

Against — None

**BACKGROUND:** The 77th Legislature in 2001 enacted HB 2600 by Brimer, et al., revising the medical dispute resolution (MDR) process for worker's compensation claims (Labor Code, sec. 413.031). In general, a review of a treatment's medical necessity must be conducted by an independent review organization (IRO). This review most often is used for disputes in which the insurance company or carrier denies payment for services in whole or in part. The IRO review process costs \$650 or \$460, depending on the reviewer's specialty. The requestor of the IRO review generally pays the fee in advance to the Texas Worker's Compensation Commission (TWCC) and receives a refund if the requestor prevails.

The Research and Oversight Council on Worker's Compensation (ROC), in its biennial report issued December 31, 2002, recommended an alternative model for low-cost services in dispute. According to this report, TWCC data

indicate that before enactment of HB 2600, about 30 percent of medical necessity disputes handled by TWCC in 2001 involved medical treatments that cost less than \$500.

**DIGEST:** HB 3168 would allow TWCC to adopt rules specifying an alternate dispute resolution process for medical services that cost less than the cost of an IRO review. The nonprevailing party would have to pay the cost of such a review.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS SAY:** By allowing health-care providers to dispute costs that are less than the IRO cost, HB 3168 would give providers an economically feasible means of disputing lower-cost services. Because it often is less expensive to pay a claim than to dispute it, some health-care providers pay claims they should not owe. The current system throws a barrier to resolving disputes over smaller claims. Providers need a more affordable method of disputing claims to ensure that the proper party pays for a claim.

CSHB 3168 would help pharmacists to get paid. Pharmacists fill a prescription written by someone else and often have claims denied by carriers that are significantly less than the IRO costs. The inability to dispute those denials due to economic hardship of the current system is especially detrimental to smaller pharmacies. By giving pharmacists an affordable way to dispute these denials, the bill would help to ensure that they get paid for rightful claims.

The bill would discourage unfair practices. Some carriers may be reducing their bills to avoid appeals, paying all but an amount of a bill that is under the cost of an IRO in the belief that it will not be economically feasible for the provider to dispute the reduction. By making it easier for providers to dispute these lower-cost claims, HB 3168 would discourage carriers from abusing the system in this manner.

The bill would increase the number of providers in the worker's compensation system. If the dispute resolution system were more accessible to providers, making it more likely that they would receive payment for their services, more providers would be willing to serve worker's compensation recipients.

HB 3168 would authorize TWCC to make rules about the MDR system. These rules could prevent doctors from splitting bills to avoid the IRO system or from doing anything else that could harm the system.

The bill would provide for more efficient adjudication of cases. At least two of the six IROs used across the state have agreed to handle MDR cases at a reduced cost. They would guarantee a review of the cases at a cost of \$100 to \$200 per case. A party that wanted to appeal a MDR ruling could appeal by going through the IRO review process or could pursue other administrative options. Although the review of medical records would not be as complete, a licensed doctor would review the relevant records, and each party would receive an opportunity for input.

Recognizing problems with the costs of the IRO process relative to the cost of services disputed, ROC recommended giving TWCC authority to designate a MDR process for lower-cost claims, because this process would allow time for more discussion and analysis of the particular method of dispute resolution that would be most appropriate.

**OPPONENTS  
SAY:**

The issue of resolving claims for low-cost services deserves further study before legislation is enacted. HB 3168 would not make it more likely that providers would join the worker's compensation system. The system involves a heavy amount of paperwork and many administrative hoops that providers must jump through to ensure that they receive payment. Providers still would have to pay a fee to dispute nonpayment of rightful claims.

The bill would not preclude doctors from breaking down large disputes into smaller ones to avoid the IRO system. It would be a cost driver for insurance companies because they would have to defend each case, increasing the overall cost of the system.

HB 3168 would give too much authority to TWCC to make rules. A dual track for cases, with some going to the IRO system and others to the MDR system, could increase the backlog of claims. The worker's compensation system depends on "mainstreaming" claims to promote efficient processing. Creating a dual system would go against this premise of the system.

The MDR system would not provide a full and complete review of medical records. Reviewers would ask that the parties send in only the records they believed were relevant, rather than all records, and that parties be available for a telephone session for questions. Currently, reviewers review all records and also conduct a phone hearing.