

SUBJECT: Fee disputes regarding workers' compensation claims for medical benefits

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons,
Zedler

0 nays

1 absent — Bailey

WITNESSES: (*On original version:*)

For — Charles Bailey, Texas Hospital Association; Charlotte H. Smith, Texas Medical Association; (*Registered, but did not testify:* David Marwitz, Texas Health Resources)

Against — David Bragg, Vista Medical Center Hospital

On — Albert Betts, Texas Department of Insurance, Division of Workers' Compensation; Norman Darwin, Office of Injured Employee Council; Robert Lang, Texas Department of Insurance, Division of Workers' Compensation; (*Registered, but did not testify:* Nicholas Canaday III, Office of the Attorney General)

BACKGROUND: The Legislature in 2005 enacted comprehensive workers' compensation legislation, HB 7 by Solomons, which among other provisions, eliminated the ability of parties to appeal medical disputes to the State Office of Administrative Hearings (SOAH), Labor Code, sec. 413.031. In November 2006, the 201st Judicial District Court of Travis County ruled in *HCA Healthcare Corporation, et al. v. Texas Department of Insurance and the Division of Workers' Compensation* that the provision is unconstitutional because it does not provide a hearing, only review and judicial review, for medical fee disputes and medical necessity disputes.

DIGEST: CSHB 724 would re-establish the hearings process for certain medical disputes through the division of workers' compensation at the Texas Department of Insurance (TDI) and through the State Office of Administrative Hearings (SOAH).

The bill would amend Labor Code, sec. 413.031 to direct that a party to a medical necessity dispute, other than one regarding spinal surgery, that remained unresolved after a review of medical service was entitled to a hearing. The hearing would be conducted by SOAH not later than 60 days after the date on which a party requested a hearing. The hearing would be conducted in the manner provided for a contested case under Government Code, ch. 2001, the Administrative Procedure Act.

Under the bill, a party who had exhausted all administrative remedies and was aggrieved by the final decision could seek judicial review of the decision, as provided by Government Code, ch. 2001. The division and TDI would not be considered to be parties to the medical dispute.

Parties would be entitled to a contested case hearing at the division for the following types of medical disputes:

- a dispute in which a health care provider's fees did not exceed \$2,000; or
- the appeal of an independent review organization decision regarding the medical necessity of health care service less than \$3,000

A division hearings officer would conduct a contested case hearing in the same manner provided for benefit reviews under Labor Code, ch. 410. A benefit review conference would not be a prerequisite to a contested case hearing. The hearings officer's decision would be final in the absence of an appeal by a party for judicial review.

The bill would allow for a party who had exhausted all administrative remedies and who was aggrieved by a final decision of the hearings officer to seek judicial review of the decision. Judicial review would be conducted in the manner provided for a contested case under Government Code, ch. 2001. The division and TDI would not be considered to be parties to the medical dispute.

The bill would take effect September 1, 2007, and would apply to a workers' compensation medical dispute that was pending at TDI or that arose on or after that date.

SUPPORTERS
SAY:

CSHB 724 would address a constitutional issue that arose after HB 7 was enacted by the 79th Legislature in 2005 and would re-establish the hearings process for medical fee disputes and medical necessity disputes related to workers' compensation claims. The committee substitute represents a compromise that incorporates portions of HB 1940 by Zedler with HB 724 as introduced.

Under the compromise, medical disputes involving health care provider fees that were less than \$2,000 or an appeal of an independent review organization related to medical necessity of health care services that did not exceed \$3,000 would be entitled to a contested case hearing conducted by a hearings officer at TDI's workers' compensation division. The contested case hearings would be in a manner consistent with hearings for benefit reviews. The bill would permit a party who had exhausted all administrative remedies related to these hearings to seek judicial review in district court.

For medical disputes involving amounts greater than those described above, a party would be entitled to a hearing conducted by SOAH not later than 60 days after the date the party requested one. A party who exhausted all administrative remedies could seek judicial review of a SOAH decision.

Provisions allowing medical disputes with low cost amounts to be heard by the division in contested case hearings would be less formal. These hearings would be held throughout the state in 25 different locations, which would accommodate injured workers. Injured employees involved in these disputes would not be required to have an attorney, but the parties would be entitled to judicial review upon timely filing of an appeal.

Medical disputes with higher cost amounts would be permitted an administrative hearing at SOAH, allowing an evidentiary hearing and judicial review. Estimates are that 70 percent of these disputed claims would go through the contested case hearings process with the division, while 30 percent would require administrative hearings at SOAH.

The medical disputes addressed in CSHB 724 would incorporate those other than spinal surgery, which are found elsewhere in statute. Also, TDI and the division would not be considered parties to the medical disputes. The bill's fiscal note would be offset by maintenance tax assessed to

workers' compensation carriers and would enable the state to comply with the court ruling.

The committee substitute would address concerns about parties being entitled to evidentiary hearings. The bill would offer a practical and responsible approach toward resolution of medical fee disputes and medical necessity disputes for workers' comp claims and would meet constitutional standards regarding due process.

**OPPONENTS
SAY:**

The proposed dual system would not provide the consistency that is an advantage of the division's handling all medical disputes on workers' compensation claims. In addition, the dollar limits prescribed for medical fee disputes and medical necessity disputes in CSHB 724 would be arbitrary as the amounts would be difficult to gauge.

NOTES:

The committee substitute differs from the introduced version by allowing an aggrieved party after a decision under sec. 413.031 to have a SOAH hearing, except for spinal injuries, which are subject to other provisions. The committee substitute would authorize a contested case hearing only for a dispute on health care provider fees in which the disputed amount was \$2,000 or less or an appeal of an independent review organization when the disputed amount did not exceed \$3,000. CSHB 724 also would not repeal sec. 413.031(k) and (l), which would allow for judicial review for medical fee disputes and medical necessity disputes.

According to the fiscal note, CSHB 724 would cost \$4.4 million in general revenue-dedicated funds for fiscal 2008-09.

A related bill, HB 1940 by Zedler, was heard in the Business and Industry Committee on March 20. Its companion, SB 929 by Jackson, passed the Senate by 30-0 on March 28 and was heard and left pending by the House Business and Industry Committee on April 24.