

ADVISORY NO. 353
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**TOPIC: REVIEW OF WORKERS' COMPENSATION-RELATED
 LEGISLATION**

In the below, we have listed all House and Senate Bills known to us that relate to workers' compensation and were passed by both the House and Senate.

As of this Advisory, and to our knowledge, no bill has yet been signed by the Governor. It is expected that the Governor will sign all the workers' compensation-related legislation. Note that three different "Fulton" bills were passed. The Governor may elect to sign only one of the three bills.

HB 4: THIS BILL SIGNIFICANTLY AFFECTS CARRIER SUBROGATION RIGHTS: Amends Section 417.001 to provide that the insurance carrier's subrogation interest is reduced by the "amount" by which the court reduces the judgment in favor of the claimant based on the percentage of responsibility attributable to the employer. For example: carrier has a subrogation interest for benefits previously paid of \$100,000; the claimant receives a judgment of \$1,000,000; the employer is determined to be 10% responsible; court reduces the total judgment by \$100,000; carrier's subrogation interest is eliminated; claimant gets \$900,000. However this bill does not amend Section 417.002, and the carrier would continue to have a \$900,000 credit against future benefits. Effective September 1, 2003 for all lawsuits filed on or after July 1, 2003. Actions filed prior to July 1, 2003 are not affected by this amendment.

HB 145: Amends Section 410.208 to provide for judicial enforcement of an interlocutory order. Amends Section 410.253 to remove the requirement to simultaneously file a petition for judicial review with the Commission; however, parties must still file written notice of the suit to the Commission. Effective as to proceedings initiated after September 1, 2003.

HB 833: Amends Section 408.208 to clarify that a workers compensation claimant has the right to refuse a generic drug substitution, but must pay for the difference in cost and may not seek reimbursement for any additional cost over the cost of the generic drug from the carrier. Effective September 1, 2003, rules to be passed no later than March 1, 2004.

HB 2095: Adds a new Chapter 407A to the Texas Workers' Compensation Act to allow employers in the same type of business who belong to a trade association in Texas to join together to self-insure for workers' compensation. Effective September 1, 2003, groups to be able to offer coverage on January 1, 2004.

HB 2198: Amends Section 408.123 to provide that the first impairment rating and certification

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of MMI are final if not disputed within 90 days, with certain exceptions for impairment ratings assigned prior to statutory MMI. If the first certification of IR and MMI is rendered after statutory MMI, no exceptions are given. Effective on date signed by Governor.

HB 2199: Amends Section 409.021 to provide that the failure to notify the claimant of a dispute of compensability would be an administrative penalty and not a loss of the right to contest compensability. It also sets out a graduated penalty for failure to follow the law, and states that a carrier does not need to comply with the 15-day notice required for certain types of claims. Denials after fifteen days and before sixty days do not waive defenses, but will trigger an administrative violation. This bill reverses *Downs*. Effective for dates of accident on or after September 1, 2003.

HB 2323: Amends Section 410.252 to clarify the provision for transferring venue of a workers' compensation lawsuit. It requires a court that does not have jurisdiction over a suit to transfer certain cases regarding workers' compensation claims to the appropriate court and acknowledges the initial filing if it is within 40 days of the appeal panels decision.

HB 3168: Amends Section 413.031 to provide that the Commission may prescribe an alternate dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization. Also amends Section 408.123 in a manner similar to HB 2198 (90-day rule amendment).

HB 3318: Amends Section 403.006 to convert the Subsequent Injury Fund from a special fund into a general revenue fund. Effective on date signed by Governor.

SB 104: Adds Section 408.030 to require the Commission, if it discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of a state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, to report that act or omission to the Texas State Board of Medical Examiners. Various effective dates.

SB 287: Amends Section 402.002 to reduce the term of the Commissioners from six years to two years, with the terms of three members expiring each year.

SB 478: Amends Section 504.014 to clarify that a person who performs services that may benefit a political subdivision in connection with the operation of certain entertainment events, but who does not receive payment from the political subdivision for the performance of those services, is not eligible for workers' compensation benefits from the political subdivision. Effective for dates of accident on or after September 1, 2003.

SB 820: Amends Section 408.123 in a manner identical to the 90-day rule provision contained in HB 3168. Effective on date signed by Governor.

SB 1282: Amends Sections 409.021 and 504.002 to provide that written notice of injury for the purpose of disputing a claim would occur only upon the written notice to the certified claims servicing contractor or to the entity responsible for administering the claim for certified self-insured employers or political subdivisions. Effective September 1, 2003.

SB 1572: Amends Section 413.011 to allow (but does not require) the Commission to adopt pharmaceutical guidelines even if there are no nationally recognized guidelines. Also the bill expands the Commission's ability to adopt individual treatment protocols. Further, if a nationally recognized treatment protocol or guideline is not available for adoption by the Commission, then the Commission is not prevented from adopting a treatment guideline or protocol as long as it is scientifically valid and outcome-based. Effective on date signed by Governor.

SB 1574: Amends Sections 413.0511(b) to clarify that the Medical Quality Review Panel (MQRP) may share certain information with the Board of Medical Examiners, the Board of Chiropractic Examiners, or other occupational licensing boards regarding a physician, chiropractor, or other type of doctor who applies for registration or is registered with the Commission. Amends Section 413.0512(d) to provide immunity from civil liability and suits for actions undertaken as a member of the MQRP and applies regardless of whether the person is a member of the panel at the time the action is brought. Amends Section 413.0513 providing for confidentiality of information. Adds Sections 413.0514 and 413.0515 to allow information sharing among TWCC, BME and BCE, including reports of physician and chiropractic violations. Amends Section 408.047 of the Labor Code setting the state average weekly wage to \$537 for FY 2003-2004 and to \$539 for FY 2004-2005. Effective on date signed by Governor.

SB 1804: Amends Section 413.014(e) to prohibit the Commission from prohibiting an insurance carrier and a health care provider from voluntarily discussing pharmaceutical services, either prospectively or concurrently. Provides that the insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and prohibits the insurance carrier from disputing those services at a later date. Amends Section 413.031 to require an IRO to consider the Commission's treatment guidelines if raised by the parties and requires the IRO to explain the specific basis for any divergence between the IRO decision and the guidelines. Effective for voluntary certification requests on or after September 1, 2003.