

ADVISORY NO. 406
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TOPIC: LEGISLATION

The 80th session of the Texas Legislature adjourned this week. More than 60 workers' compensation bills were proposed, fewer than 20 workers' compensation bills passed and will be signed by the Governor. Below are highlights of several of the most significant bills.

HB 472 – Rep. Solomons

The bill was very broad in its scope at the time of its inception. It was modified in committee and some of its more onerous provisions -- not of real importance to the TDI regulatory authority -- were tempered. Nevertheless, this imposes some significant new duties on TPAs and Carriers and those are discussed in a separate article in the July issue of FOLI**HB 473 – Rep. Solomons**

This bill addressed a very pressing issue in the workers' compensation system. You may recall that HB 7, the comprehensive legislative reform in 2005, repealed a specific provision permitting voluntary networks. Providers participating in PPO type networks, leased or accessed by workers' compensation carriers, contended that these informal networks were now illegal. HB 473 specifically authorizes an informal or voluntary network, subject to the following requirements: (1) the carrier or its agent must contract with the informal or voluntary network and *authorize the network to contract with healthcare providers on the carrier's behalf*; (2) *the informal or voluntary network must contract with the healthcare providers and provide for a specific fee schedule*; (3) *the informal network must notify each healthcare provider of any insurer that is given access to the network fee arrangements with the healthcare provider*; and (4) *the Department of Insurance will prescribe regulations identifying the timeframes and specific contents of that notice*.

The bill also requires that insurance carriers provide copies of each contract to the Division upon request. The information contained in the contract will be confidential and not subject to Public Information Act disclosure. If a fee dispute arises in connection with the case, it is likely that the Division will request copies of each contract. If the carrier fails to provide a copy of the contract, the fees must be paid at the DWC guideline rate.

HB 473 will expire in 2011. On that date, each informal network must be certified as a formal WCHCN under Chapter 1305 of the Insurance Code. That will be an important year as well for workers' compensation because the Legislature moved the sunset review of TDI, DWC and OIEC from 2009 to 2011.

SB 1169 – Sen. Janek

Carriers will now be entitled to recover benefits from the Subsequent Injury Fund for benefits paid pursuant to a reversed determination by a designated doctor. This is a very significant new right for carriers.

The only downside to the bill is that it may create an increased maintenance tax if this additional liability of the Fund is inadequate to meet the obligations of the Subsequent Injury Fund.

Given the expanded scope of the designated doctor examinations provided in HB 7, this bill is a significant net gain to insurers participating in the designated doctor process.

HB 724 - Rep. Solomons

The legislation reinstates a hearing process for medical review issues by creating a two-tier hearing track. For medical necessity disputes with a cost lower than \$3,000 and fee disputes with a cost less than \$2,000, dispute resolution will occur at Contested Case Hearings in DWC field offices. For disputes in excess of these thresholds, the dispute will be conducted by SOAH. SOAH and CCH decisions will be appealed under the provisions of the substantial evidence rule to Travis County District Court.

The above described hearings bill was changed by amendment to permit non-dependent parents of a deceased child to receive death benefits in the amount of 104 weeks. The balance of the benefits would be paid to the Subsequent Injury Fund.

HB 1005 – Rep. Giddings

This bill excludes from the 95-day rule claims for reimbursement filed erroneously with the wrong insurer, including group health insurers. Other exceptions are provided in the legislation.

SB 1253 – Sen. Averitt

This expands the authority of the Texas Department of Insurance to conduct examinations of all lines of insurance, including workers' compensation. Importantly, it expands the authority of TDI and the Commissioner to determine the frequency of examinations of carriers.

There were other maintenance type bills relating to the cost of retaining copies of records, bill data collection, workplace modification for small employer pilot programs, etc. Rep. Giddings passed three bills relating to doctor's licensing. One of those bills, HB 2004, presents potential administrative problems. This will be reviewed further prior to the September 1, 2007 effective date.

In addition to the bills that were passed, a number of problematic bills died during the last days of the session. Among those bills filed, but not passed were bills to appoint counsel for claims in suits for judicial review, provision permitting an employee to request a post designated doctor RME, a provision for a form of “lifetime supplemental income benefits,” for issues currently required to be appealed in Travis County, a bill was filed to shift the county of venue to the county of the worker’s residence, a bill providing for a gross negligence recovery for parents of a deceased employee (currently the right of a gross negligence cause of action is limited to the spouse and “heirs of the body”), and a statutorily mandated reimbursement rate for hospitals providing for generous multiples of Medicare Guidelines plus carve out and stop loss provisions.