

Division of Workers' Compensation – Texas Department of Insurance

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Summary

The 79th Legislature made sweeping changes to the workers' compensation system including abolishing the standing regulatory agency and creating the Division of Workers' Compensation (DWC) within the Texas Department of Insurance (TDI). Today, as a division of TDI, DWC oversees the workers' compensation system by regulating carriers and health care providers to ensure the prompt payment of income benefits and that injured employees receive high-quality, necessary medical care. To accomplish this goal, DWC monitors the system through a variety of compliance efforts, taking enforcement action when necessary, and administers a dispute resolution process, acting as the neutral adjudicator of claim disputes.

House Bill 2605 continues the Division of Workers' Compensation, which has a separate Sunset date from TDI, for six years. The Legislature adopted the majority of the Sunset Commission's recommendations and added other statutory modifications to help ensure injured employees receive prompt, high-quality medical care and all entitled benefits. A discussion of the bill's major provisions follows.

Sunset Provisions

1. Streamline the dispute resolution process to provide a quicker, more accessible alternative to the courts.

House Bill 2605 requires injured employees, employers, health care practitioners, insurance carriers, and other parties to a dispute to obtain information necessary to facilitate resolution of the dispute as part of the initial request for a Benefit Review Conference (BRC). The bill authorizes DWC staff to deny the request for a BRC if participants have failed to attest to having necessary documentation, such as medical records. The bill also requires parties to a dispute to provide notice to DWC before rescheduling a BRC. Failure to abide by the DWC-approved system for rescheduling would result in forfeiting an opportunity to attend a Benefit Review Conference. Parties to a dispute who reach the statutory two-BRC limit could resolve the dispute themselves or proceed to a formal Contested Case Hearing.

House Bill 2605 requires parties to a non-network medical fee dispute to participate in a BRC administered by DWC as a prerequisite to filing an appeal for a Contested Case Hearing. Non-network medical fee disputes will remain subject to an initial staff review and decision process. However, parties dissatisfied with the staff decision would file an appeal for mediation as a prerequisite to proceeding

to a Contested Case Hearing. As part of the mediation process, parties to the dispute will be able to resolve issues, such as billing discrepancies, but will not be authorized to negotiate fees outside of the Division's adopted fee guidelines.

The bill also augments the current appeal process for network medical necessity disputes by restructuring appeals of Independent Review Organization determinations to include a Contested Case Hearing before the Division, instead of a direct appeal to district court. Contested Case Hearings held on network medical necessity disputes will conform to the same procedures outlined in the Labor Code as those Contested Case Hearings conducted on appeals of non-network medical necessity disputes. The Legislature modified the Sunset provision to clarify that medical necessity disputes arising between injured employees and their political subdivision employer are subject to the same Contested Case Hearing process as other network medical necessity and fee disputes. House Bill 2605 also adjusts the standard of review in district court for these cases to a substantial evidence review, allowing the judge to review the formal record resulting from a Contested Case Hearing before the Division.

House Bill 2605 shifts the dispute resolution process for medical necessity and medical fee cases. All Contested Case Hearings for medical necessity cases will be held before the Division, with appeals of medical necessity Contested Case Hearing decisions, including those decisions related to spinal surgery cases, no longer subject to the Division's Appeals Panel review before appealing to district court. All medical fee Contested Case Hearings will be held before the State Office of Administrative Hearings (SOAH). Also, the bill requires the losing party appealing DWC's staff-level medical fee decision to pay all associated hearing costs at SOAH. Because medical fee cases involve DWC-adopted fee guidelines, the bill authorizes the Commissioner of Workers' Compensation to intervene in cases sent to SOAH that involve issues of fee guideline interpretation.

Finally, the bill allows the Division's Appeals Panel to issue written decisions affirming Contested Case Hearing decisions on only the following types of cases:

- cases of first impression;
- cases that are impacted by a recent change in law; and
- cases involving errors which require correction but which do not affect the outcome of the dispute.

2. Improve the medical quality review process to ensure thorough and fair oversight of workers' compensation medical care.

House Bill 2605 requires the Division to develop criteria, subject to the Commissioner's approval, to further improve the medical quality review process. In developing such guidelines, the bill requires the Division to consult with the Medical Advisor and consider input from key stakeholders. The Division is also required to define, at a minimum, a fair and transparent process for the handling of complaint-based cases, and selection of health care providers and other entities for review. Once developed, the bill requires the Division to make the adopted process for conducting both complaint-based and audit-based reviews available to stakeholders on its website.

The bill also establishes the Quality Assurance Panel in statute, providing a second level of evaluation for all medical case reviews. The Legislature modified the Sunset provision to require members of the panel to evaluate medical care and recommend enforcement actions to the Medical Advisor; and for the panel to meet periodically to discuss issues and offer assistance to the Medical Advisor.

House Bill 2605 requires the Commissioner, subject to input from the Medical Advisor, to adopt rules outlining clear prerequisites to serve as a medical quality review process expert reviewer, including necessary qualifications and training requirements. In developing these policies, the bill requires the Division to include:

- a policy outlining the composition of expert reviewers serving on the Medical Quality Review Panel (MQRP), including the number of reviewers and all health care specialties represented;
- a policy outlining the length of time a member may serve on MQRP;
- procedures defining areas of potential conflicts of interest between MQRP members and subjects under review and the avoidance of such conflicts; and
- procedures governing the process and grounds for removal from the Panel, including instances when members are repeatedly delinquent in completing case reviews or submitting review recommendations to the Division.

The bill also requires the Division to develop rules on training, including educating MQRP members about the status and enforcement outcomes of cases resulting from the medical quality review process, and requires MQRP members to fulfill training requirements to ensure panel members are fully aware of the goals of the Division's medical quality review process and the Texas Workers' Compensation Act.

Finally, H.B. 2605 requires the Division, in consultation with the Medical Advisor, to work with health licensing boards, beyond just the Texas Medical Board and the Texas Board of Chiropractic Examiners, as necessary, to expand the pool of health care providers available as expert reviewers. The bill also requires the Division to work with the Texas Medical Board to increase the pool of specialists available, as necessary, enabling the Division to better match a MQRP member's expertise to the specialty of a physician under review.

3. Strengthen the Division's ability to take timely and efficient enforcement actions to protect workers' compensation system participants.

House Bill 2605 amends the Division's current investigative authority to clarify that it can conduct onsite inspections in investigating potential violations of the law, rule, or order. In addition, the bill authorizes DWC to perform both announced and unannounced inspections. To ensure that all regulated entities are treated fairly and consistently, the bill also requires the Division to develop clear procedures defining the entities and records subject to inspection, and how it will use its unannounced inspection authority.

The bill clarifies the Division's authority to refuse to renew a Designated Doctor's biennial certification. Doctors disagreeing with DWC's decision to refuse to renew are entitled to a hearing at the State Office of Administrative Hearings.

The bill authorizes the Commissioner of Workers' Compensation to issue cease-and-desist orders in emergency situations. The Division can use this authority if a system participant's actions are violations of law, rule, or order, and would result in harm to the health, safety, or welfare of other participants. The bill provides for notice and opportunities for expedited hearings, similar to the Insurance Code's provisions relating to emergency cease-and-desist authority, and authorizes DWC to assess administrative penalties against persons or entities violating cease-and-desist orders.

The bill adds language to the Labor Code specifying that any appeal of a Commissioner enforcement order is subject to the substantial evidence rule.

House Bill 2605 removes final decision authority from SOAH in enforcement cases involving monetary penalties, and requires the Commissioner of Workers' Compensation to enter final orders upon consideration of a proposal for decision from SOAH. The bill requires the Commissioner to adhere to provisions in the Administrative Procedure Act governing how an agency may consider, adopt, or change proposals for decision, and requires the Division to amend its current memorandum of understanding with SOAH to include procedures for handling SOAH proposals for decision for monetary penalties, as it is already generally required to do by statute.

House Bill 2605 removes outdated language referencing specific classes of violations or penalty amounts. The bill also removes language relating to notice requirements for subsequent violations under the Labor Code that suggest conflict with DWC's broader administrative penalty authority. The bill clarifies what DWC's full range of administrative sanctions are for all system participants, and locates all sanctioning authority in the same piece of statute, to ensure that system participants are aware of DWC's complete enforcement authority.

Finally, the bill amends the Labor Code to require that all administrative penalties assessed and collected by the Division be deposited into the General Revenue Fund, aligning the administrative penalty collection process with other state agencies and resulting in a gain to General Revenue.

4. Increase the Division's oversight of Designated Doctors to ensure meaningful use of expert medical opinions in dispute resolution.

House Bill 2605 requires the Commissioner of Workers' Compensation to develop a certification process, in rule, that effectively uses the spectrum of eligibility, training, and testing to assess the general proficiency of Designated Doctors. The bill requires DWC to develop a process that ensures doctors have either the appropriate specialty qualification, through educational experience or previous training, or demonstrated proficiency, through additional training and testing, to serve as a Designated Doctor. If the Division chooses to continue to rely on an outside provider, the bill requires Division staff be involved in the development of course materials and tests, and all final products should be Commissioner approved. Finally, the bill requires the Division to formulate a process for maintaining and regularly updating course materials, regardless of whether training and testing materials are developed in-house or by an outside provider.

The bill also requires the Commissioner of Workers' Compensation to develop, by rule, certain circumstances permissible for a Designated Doctor to discontinue service in a particular area of the state or with a particular case. Such circumstances could include the decision to stop practicing in the workers' compensation system, relocation, or other instances where the doctor is no longer available. Designated Doctors choosing to no longer practice in a county are expected to remain available as a resource and to perform subsequent exams for the same injured employee throughout the life of the claim for any cases previously assigned, unless the Division authorizes otherwise.

Finally, the bill provides the Division with additional criteria to aid in the Designated Doctor assignment process, ensuring the Designated Doctor has the appropriate training and background needed to adequately assess an injured employee's specific injury.

5. Continue the Division of Workers' Compensation for six years.

House Bill 2605 continues DWC for six years, as a division within TDI, instead of the standard 12-year period. This shortened Sunset date will give the Legislature the opportunity to re-evaluate the continued implementation of reforms passed in previous legislative sessions.

In addition, the bill requires DWC to develop standard procedures to formally document and analyze complaints, including both formal and informal complaints. The bill requires DWC to compile statistics, including the number, source, type, length of resolution time, and disposition of complaints, and to analyze complaint information trends.

Provisions Added by the Legislature

6. Expedite medical claims for certain seriously injured first responders.

House Bill 2605 establishes a process for expediting claims and benefits for first responders employed by or volunteering for political subdivisions. The bill requires DWC to expedite a Contested Case Hearing or appeal request submitted by a first responder who has sustained a work-related, serious bodily injury. The bill also requires a political subdivision, insurance carrier, and DWC to accelerate and give priority to a first responder's claim for medical benefits.

7. Authorize injured employees to obtain a second opinion for certain medical determinations.

House Bill 2605 authorizes an employee who is required to be examined by a Designated Doctor for an initial determination of Maximum Medical Improvement or an Impairment Rating to request a re-examination from either their treating doctor or another doctor if they are dissatisfied with the Designated Doctor's opinion. The bill also guarantees payment for these exams. Finally, the bill requires the Division to adopt guidelines prescribing the situations where a treating doctor exam is appropriate after a Designated Doctor exam for all issues that the Designated Doctor can review.

Fiscal Implication Summary

House Bill 2605 contains one provision that will provide a positive fiscal impact to the State. Depositing all administrative penalties assessed and collected by the Division in the General Revenue Fund, instead of the Texas Department of Insurance operating account, will result in a gain to the General Revenue Fund of \$1.2 million annually.

Fiscal Year	Gain to the General Revenue Fund
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

