

Research and Oversight Council on Workers' Compensation
Recommendations presented to the HNAC committee March 7, 2003

Regional health care network statutory changes: The Health Care Network Advisory Committee (HNAC) has approved a feasibility study indicating that, assuming certain rates of participation by state employees, the regional network model from Article 2 of HB 2600 is feasible, and should be implemented on a pilot project basis for state employees in Austin/San Antonio and Houston. In the course of the feasibility study and the HNAC's work, legislative changes have been identified to enhance the feasibility of these networks and allow them to become operational.

At the request of the HNAC, ROC has drafted a bill to make these legislative changes. The HNAC subcommittee reviewed an earlier version of this bill and made several recommendations for changes. Based on those recommendations, ROC staff drafted a second version of the draft bill. This second version of the draft bill would make the following changes to the current statute, including:

- Adding language to establish a 3 year pilot project for state employees. Under this state employee pilot, SORM, UT, A&M, and TXDOT would contract directly with regional networks rather than TWCC; however those networks must abide by the standards and report card requirements established by HNAC;
- Adding language that gives the HNAC the authority to designate one or more regions for the pilot project;
- Adding language that gives the HNAC the authority to expand the pilot project to allow other insurance carriers (including self-insured employers and other governmental entities) to participate in the pilot after the first year of the pilot. If the pilot is expanded, then insurance carriers still have the ability to voluntarily participate or not; however if they choose to participate, TWCC will remain the contracting entity with the networks and the insurance carriers would serve as subcontractors;
- Clarifying that the HNAC has an ongoing role in monitoring and overseeing the network project;
- More clearly defines the process for developing and producing a network report card;
- Requires reporting on the pilot project in time for evaluation by the 79th Legislature;
- Sets up a process for collection and resolution of complaints about the regional networks;
- Allows the regional networks to not be bound by some statutory and TWCC regulations, with the permission of the HNAC and TWCC; and
- Clarifies the state's sovereign immunity in a cause of action by an employee against an employer for coercing them to enter the network.

As of this date (March 6) the HNAC has not officially adopted or approved these legislative changes; however these changes represent the recommendations of the HNAC legislative subcommittee. Our understanding is that these changes will be reviewed by the full HNAC on March 7th.

AN ACT

relating to a health care delivery network pilot project in the workers' compensation system.

SECTION 1. Sections 408.0221, Labor Code, is amended to read as follows:

Sec. 408.0221 Regional Health Care Delivery Networks; Advisory Committee.

(a) In this section and in Section 408.0222:

(1) "Advisory committee" means the Health Care Network Advisory Committee.

(2) "Regional network" means a regional workers' compensation health care delivery network established [~~by the commission~~] under this section. In addition, any reference to "regional network" is also applicable to the "pilot project" defined in subdivision (3) of this subsection.

(3) "Pilot project" means the regional workers' compensation health care pilot project established under subsection (i) of this section.

(b) The regional networks established under this section shall be fee-for-service networks designed to improve the quality and reduce the cost of health care, with active health care management and monitoring and a full range of health care services or select health care services under contract as considered feasible under the feasibility study required under Subsection (d).

(c) The Health Care Network Advisory Committee is established to advise the commission on the implementation of this section and Section 408.0222 and to monitor and oversee the implementation of the regional network pilot project and regional networks participating in the pilot project. Members of the advisory committee are appointed by the governor for staggered two-year terms, with the membership as follows:

(1) three employee representatives recommended by a recognized statewide labor federation;

(2) three employer representatives;

(3) three ex officio insurance carrier representatives, with one member representing state agencies, one member representing the Texas Mutual Insurance Company [~~Workers' Compensation Insurance Fund~~], and one member representing a voluntary market insurance carrier;

(4) three ex officio health care provider representatives;

(5) one ex officio independent actuarial expert; and

(6) the commission's medical advisor, who shall serve as chair of the advisory committee.

(d) [~~The commission, on behalf of the advisory committee established under this section, shall establish and, through competitive procurement, contract with regional networks for the provision of health care under this subtitle.~~] The commission, on behalf of the advisory committee established under this section, shall, through

competitive procurement, contract with one or more entities to determine the feasibility of, develop, and evaluate the regional networks established under this section. Those entities shall also recommend to the advisory committee appropriate network standards and application requirements and assist the advisory committee during the procurement process. [~~The provision of health care under this subtitle shall not apply to prescription medication or services as defined by Section 401.011(19), Subsection (e), Labor Code.~~]

(e) The advisory committee shall make recommendations to the commission regarding:

(1) the development of the standards by which health care services are provided through regional networks;

(2) regional network application requirements and fees;

(3) contract proposals;

(4) the feasibility of establishing one or more regional networks using a phased implementation and evaluation process;

(5) the use of consultants as necessary to assist the commission in the procurement of regional network contracts; and

(6) the selection of administrators to build and manage the regional networks and to report on their progress.

(f) The advisory committee shall gather information from other entities, including the Research and Oversight Council on Workers' Compensation, the Texas Health Care Information Council, the Texas Department of Insurance, the Texas Department of Health, and the Employees Retirement System of Texas.

(g) The standards adopted for preferred provider networks under Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, apply as minimum standards for regional health care delivery networks created under this section and are adopted by reference in this section except to the extent they are inconsistent with this subtitle. The advisory committee may also recommend additional standards, including standards that require:

(1) for each geographic region, access to an adequate number of health care providers and treating doctors in each appropriate health care discipline and the professional specialties within those disciplines and a viable network through:

(A) the use of economic profiling as described by Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997; and

(B) limitations on the number of providers, as provided by that article;

(2) the ability of an employee to receive treatment by a regional network provider within a

reasonable amount of time of the regional network's knowledge of the need or request for treatment and within a reasonable travel distance for the employee;

(3) a reasonable effort by the regional network to attract health care providers who reflect the ethnic and cultural background of the regional employee population;

(4) the availability of board-certified occupational medicine specialists to provide expertise on disability management and prevention and treatment of occupational injuries and illnesses;

(5) accreditation of the regional networks or a commitment to seek accreditation from a nationally recognized organization such as the American Accreditation HealthCare Commission or the National Committee for Quality Assurance;

(6) the use of strict credentialing criteria by regional networks in the selection and deselection of its health care providers, including verification that the provider:

(A) is on the commission's list of approved doctors, if the provider is required to be on that list;

(B) has not, at the time of selection or deselection, been sanctioned or made subject to additional utilization review requirements by the commission;

(C) is not, at the time of selection or deselection, subject to sanctions or substantive practice restrictions imposed by the provider's licensing authority;

(D) has or is able to obtain practice privileges, if required, at a participating hospital; and

(E) is covered by professional liability insurance coverage as required by the regional network contract;

(7) satisfactory evidence of the regional network's ability to comply with any financial requirements and ensure delivery of services;

(8) compliance with ongoing training and educational requirements established by the commission;

(9) the use of nationally recognized, scientifically valid, and outcome-based treatment standards as guidelines for health care;

(10) disclosure of the availability of interpreter services as appropriate for the evaluation and treatment of employees;

(11) timely and accurate reporting of data to appropriately manage and determine the effectiveness of the regional network in reducing medical costs and ensuring quality of care;

(12) a process for reconsideration of medical necessity denials and dispute resolution within the regional network; and

(13) a process for reviewing requests for a change in treating doctors made under Section 408.0222(s).

(h) The advisory committee and the Research and Oversight Council on Workers' Compensation shall develop evaluation standards and specifications as necessary to implement a regional network report card. The commission shall ensure that the report card is published and available for inspection. The commission shall, on behalf of and at the direction of the advisory committee, enter into an interagency contract with another state agency or state university with a proven research capacity to produce all or part of the report card, or to oversee production of the report card. Initial funding to produce or oversee production of the report card shall be provided by the subsequent injury fund as described in subsection (1). The commission or another state agency under interagency contract with the commission may procure services as necessary to produce the report card. Ongoing costs associated with the production of report cards shall be funded either by assessments on networks participating in the pilot project or be included in the fees for health care services paid by insurance carriers participating in the regional network pilot project. The report card ~~[-, at a minimum, must be based on contracted reviews and]~~ must include a risk-adjusted evaluation of:

- (1) employee access to care;
- (2) coordination of care and return to work;
- (3) communication among system participants;
- (4) return-to-work outcomes;

- (5) health-related outcomes;
- (6) employee, health care provider, employer, and insurance carrier satisfaction;
- (7) disability and re-injury prevention;
- (8) appropriate clinical care;
- (9) health care costs;
- (10) utilization of health care; and
- (11) statistical outcomes of medical dispute resolution provided by independent review organizations.

(i) At the conclusion of the feasibility study described in Subsection (b), and contingent on a finding that regional networks may be feasible, a pilot project is established to analyze the ability of networks created under the standards developed by the advisory committee to improve the quality and reduce the costs of health care provided to employees of employers participating in the pilot project. The advisory committee may initiate the pilot project in a designated geographic region or regions. On or before November 1, 2003, the State Office of Risk Management, University of Texas system, Texas A&M University system, and Texas Department of Transportation shall, through competitive procurement, contract with one or more regional networks for the provision of health care under this subtitle as part of the pilot project. For the purposes of this section and Section 408.0222, the pilot project is initiated on the date that employees begin to receive medical care in the network, and unless continued by statute, ends three years from that date. A network that contracts with a public employer covered under Subtitle C

of this title must meet the network standards and report card requirements established by the advisory committee. The regional network administrators shall report quarterly to the commission and the advisory committee on the progress of implementing the regional network pilot project [~~networks~~] and shall submit consolidated annual reports by November 1 of each subsequent year. The Research and Oversight Council on Workers' Compensation shall report to the legislature by February 1, 2005 [~~January 1 of each odd-numbered year~~] on the status of the regional network pilot project [~~implementation of regional networks~~] under this section.

(j) The commission shall ensure that [~~regional network contracts provide that~~] insurance carriers participating in the pilot project have reasonable rights to conduct audits of the regional networks in the pilot project under this subsection. Insurance carriers participating in the regional network pilot project shall be allowed the opportunity for consolidated audits of the regional networks.

(k) The commission shall, on behalf of the advisory committee, collect and attempt to resolve any complaints filed by pilot project participants regarding the regional network pilot project. The commission shall make available any complaints filed, along with a description of their resolution, to the advisory committee, to those entities producing the network report card, and to the Research and Oversight Council on Workers' Compensation on a quarterly basis.

(l) The cost of assessing the feasibility of, developing, and evaluating the regional networks created under this section, including the initial creation and

production of a report card, shall be funded through an assessment on the subsequent injury fund established under Section 403.006. This cost may not exceed a total of \$1.5 million for the regional networks. The cost of ongoing regional network administration and management services and report card administration shall either be included in the fees for health care services paid by insurance carriers participating in the regional network or by assessments on networks participating in the pilot project.

(m) [(1)] Based on the information compiled for the annual reports submitted under Subsection (i), the regional network administrators [~~, in consultation with actuaries with whom the regional networks contract,~~] shall determine on an annual basis any cost savings to the operation of the workers' compensation system derived from the use of the regional networks and the amount of those savings, and shall submit this information as part of the annual report. The regional networks shall contract with independent actuaries or financial advisors to produce this determination if required to do so by the regional network contract or the standards adopted under Section 408.0221. On receipt on the first annual report from the networks in the pilot project, the advisory committee shall decide whether to expand the pilot project to include insurance carriers not listed in Subsection (i). If the advisory committee chooses to expand the pilot to include other insurance carriers, then the commission on behalf of the advisory committee shall, through competitive procurement, contract with regional networks for the provision of health care for those insurance carriers not listed in Subsection (i). An insurance carrier not listed in Subsection (i) may

elect to participate or not participate, by contract, in the pilot project established by this section.

(n) The regional network pilot project may, but is not required to, comply with any or all of the following statutory provisions of the Labor Code and related commission rules:

(1) Section 413.014, related to preauthorization and concurrent review of medical services;

(2) Section 413.011, related to reimbursement policies and guidelines and treatment guidelines; and

(3) Labor Code or commission rule timeframes related to the payment of medical bills.

(o) The applicability of the statutory and rule provisions in Subsection (n) shall be determined through the contract negotiations described in this section.

SECTION 2. Section 408.0222, Labor Code, is amended to read as follows:

Sec. 408.0222. Participation In Regional Network Pilot Project; Selection Of Doctor Within Regional Network; Benefit Incentives.

(a) An insurance carrier or a self-insurer certified to provide workers' compensation coverage in this state may elect to participate or not participate, by contract, in [~~a regional network~~] the pilot project in accordance with Section 408.0221 (m) [established under Section 408.0221]. A public employer covered under Subtitle C of this title, other than an employer covered under Chapter 504, is required to participate in the [~~a~~] regional network pilot

project established under Section 408.0221. An insurance carrier who elects to participate in the pilot project [~~regional networks agrees~~] is required to abide by the terms of the regional network contracts between the commission and the regional networks.

(b) [~~An insurance carrier may limit its election to participate in a regional network established under Section 408.0221 to a particular employer or a particular region of this state. This subsection expires January 1, 2006.~~]

(~~e~~)] A health care provider participating in the [a] regional network pilot project established under Section 408.0221 may perform only those procedures that are within the scope of the practice for which the health care provider is licensed.

(c) [~~d~~] An employee participating in the regional network pilot project established under Section 408.0221 may elect to participate or not participate in the [a] regional network [~~established under Section 408.0221~~]. Only an employee covered by an insurance carrier who is participating [~~has elected to participate~~] in the [a] regional network pilot project established under Section 408.0221 may elect to participate in the [~~that~~] regional network. An eligible employee may elect to participate or not participate in the regional network for each compensable injury sustained by the employee. Except as provided by this section, the employee's election to participate in the network is effective for all medical care related to an [~~that~~] injury occurring on or after the date the insurance carrier begins to participate in the pilot project. The advisory committee shall make recommendations and the commission, by rule, shall establish:

(1) the form and manner by which an employee:

(A) receives notice of the employee's rights; or

(B) documents the employee's election or rescission of a prior election;

(2) the timing and recovery of a payment of enhanced benefits; and

(3) other related issues.

(d) [~~(e)~~] Except as provided by Subsection (e) [~~(f)~~], an employee shall make the election described by this section during an employer-designated enrollment period or at the time of employment. An employee who has elected to participate in the network may rescind that election at any time before the earlier of:

(1) the date on which the employee begins to receive enhanced income benefits under Subsection (1) [~~(m)~~]; or

(2) the 14th day after the date on which the employee receives health care from a network health care provider for that injury.

(e) [~~(f)~~] An employee may elect to participate in the [~~a~~] regional network pilot project established under Section 408.0221 at any time with the insurance carrier's agreement. An employee is not bound by an election to participate in the [~~a~~] regional network pilot project [~~made under Subsection (d) or this subsection~~] if:

(1) the insurance carrier waives the election;

(2) the commission invalidates the election based on a determination of coercion;

(3) the employee relocates to an area outside of the regional network's service area, and the regional network is not able to identify alternate network providers to provide health care services reasonable for the employee's medical condition; or

(4) notwithstanding Subsection (m) [~~(n)~~], the commission sets aside the employee's election based on a finding that:

(A) the worker was bound by an election to participate in the network;

(B) the carrier disputes the compensability of the employee's injury; and

(C) network health care providers are unwilling to provide health care to the employee pending the resolution of the dispute.

(f) [~~(g)~~] An insurance carrier who elects to participate in [~~a regional network~~] the pilot project established under Section 408.0221 shall provide each employer who obtains coverage through the insurance carrier with adequate information about the regional network to share with the employer's employees. Before an employee makes an election under this section to participate in the [~~a~~] regional network pilot project, the employer shall provide the employee with:

(1) a complete, plain-language description of the regional network's services, restrictions, and benefits, including a description of the enhanced income benefits that may be due; and

(2) access to the most recent:

(A) list of doctors available through the regional network; and

(B) regional network report card developed under Section 408.0221.

(g) [~~(h)~~] An employer shall not discharge, subject to disciplinary action, or take an adverse employment action against an employee who elects not to participate in a regional network created under Section 408.0221 if the employer's action would not have occurred in the absence of the employee's election not to participate.

(h) [~~(i)~~] An employee may bring suit against an employer for violation of Subsection (g) [~~(h)~~] if:

(1) the employee gives written notice of intent to bring suit to the employer within 60 days of the alleged violation; and

(2) the employer does not reinstate the employee and pay actual wages lost and reasonable attorney's fees incurred due to the employer's action within 60 days of notification of the employee's intent to bring suit.

(i) [~~(j)~~] Subsection (h) does not authorize a cause of action or damages against the state, a state agency, or an employee of the state beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies

Code. The employee must bring suit for an employer's violation of Subsection (g) ~~+(h)+~~ within one year of the alleged violation. A suit under this section may be brought in the county in which:

- (1) the plaintiff resides;
- (2) the plaintiff was employed; or
- (3) the defendant's primary place of business is located.

(j) ~~+(k)+~~ If the employee prevails in an action under Subsection (h) ~~[(i)]~~, the employee may recover:

- (1) lost wages;
- (2) reinstatement of front pay as equitable relief in lieu of reinstatement;
- (3) reasonable attorney's fees; and
- (4) court costs.

(k) ~~+(l)+~~ A suit under this section is the exclusive remedy for violation of Subsection (g) ~~+(h)+~~, and the provisions of Chapter 451 do not apply to such a violation. Parties may not maintain an action under Rule 42, Texas Rules of Civil Procedure.

(l) ~~+(m)+~~ An employee who elects to participate in a regional network created under Section 408.0221 shall receive:

- (1) notwithstanding Section 408.082(c), income benefits from the date disability begins if the disability lasts two weeks or longer; and
- (2) notwithstanding Section 408.061, an increased maximum weekly benefit of up to 150

percent of the state average weekly wage for temporary income benefits.

(m) [~~(n)~~] Except for emergency care, or as otherwise provided by this section, an employee who elects to participate in the [a] regional network pilot project shall receive medical treatment, including referrals, from health care providers within the regional network. An employee or an employee's treating doctor may use a health care provider outside of the regional network with the approval of the regional network for good cause consistent with the regional network contract. If medically necessary services are not available through regional network health care providers, the regional network must, on the request of a regional network health care provider, within a reasonable time allow a referral to a nonregional network health care provider and shall fully reimburse the nonregional network physician or provider at the rate provided by the commission fee guidelines or an agreed rate. For purposes of this subsection, "emergency care" has the meaning assigned by Section 2(g), Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code).

(n) [~~(o)~~] A health care provider who participates in the [a] regional network pilot project created under Section 408.0221 shall be reimbursed and be subject to utilization review as provided by the regional network contract. The insurance carrier is responsible for payment of regional network providers as provided by the contract with the regional network. A non-network provider who does not obtain the approval of the regional network to provide

services may not be reimbursed by the insurance carrier, unless the provider requested and received verification from the insurance carrier that the employee was not bound by a network election under Subsection (d) [~~(e)~~].

(o) [~~(p)~~] To resolve an issue regarding the necessity or the appropriateness of care, or referrals to nonregional network physicians or providers, an employee or an employee's treating doctor may request a review by an independent review organization under Section 413.031(d).

(p) [~~(q)~~] An employee who elects to participate in the [~~a~~] regional network pilot project established under Section 408.0221 shall select an initial treating doctor within the regional network as provided by the regional network contract. An employee who requests to change treating doctors within the regional network is not subject to Section 408.022. At the sole discretion of the regional network, an employee may select a treating doctor outside of the regional network if:

(1) the employee has a preexisting relationship with a doctor who maintains the employee's medical records and has a documented history of treatment before the date of injury; and

(2) that doctor agrees in writing to abide by the rules, terms, and conditions of the regional network contract, including an agreement to refer the employee within the regional network for services available through the regional network.

(q) [~~(r)~~] An employee is subject to the selection of doctor, change of doctor, and other medical benefit and income benefit requirements established under this chapter and Chapter 413 [~~if an employee~~]:

(1) if the employee elects not to participate in the [a] regional network pilot project established under Section 408.0221; or

(2) as described by Subsection (e) [~~is employed by an employer for whom the insurance carrier has not elected to participate in a regional network established under Section 408.0221~~].

(r) [~~(s)~~] An employee may change treating doctors within the regional network established under Section 408.0221 in which the employee is participating in accordance with the regional network contract and is entitled to:

(1) make one change from the initial treating doctor to an alternate treating doctor within the regional network unless the change is for the purpose of securing a new impairment rating or new determination of maximum medical improvement; and

(2) request additional changes of the treating doctor in the manner provided by the regional network contract.

(s) [~~(t)~~] An employee or insurance carrier may request that the commission order an examination under Section 408.0041 if an employee has received conflicting impairment

ratings or determinations of maximum medical improvement from more than one treating doctor.

(t) [~~(u)~~] For purposes of this section, the following is not a selection of an alternate doctor in a regional network established under Section 408.0221:

(1) a referral made by the doctor chosen by the employee if the referral is medically reasonable and necessary;

(2) the receipt of services ancillary to surgery;

(3) the obtaining of a second opinion only on the appropriateness of the diagnosis or treatment;

(4) the selection of a doctor because the original doctor:

(A) dies;

(B) retires; or

(C) becomes unavailable, ~~[or]~~ unable, or unwilling to provide medical care to the employee; or

(5) a change of doctor required because of a change of residence by the employee.

SECTION 3. Section 408.023, Labor Code, is amended to read as follows:

Sec. 408.0223. Insurance Carrier Networks.

(a) In this section, "insurance carrier network" means a voluntary workers' compensation health care delivery

network established by an insurance carrier. The term does not include a regional network established under Section 408.0221.

(b) This subtitle does not prohibit an insurance carrier, whether doing business as an individual carrier or as a group, from participating in or maintaining voluntary insurance carrier networks if those voluntary insurance carrier networks allow selection of doctors as provided by Section 408.022.

(c) This subtitle does not prohibit an insurance carrier from concurrently participating in an insurance carrier network and a regional network established under Section 408.0221.

(d) The standards adopted for preferred provider networks under Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, and as subsequently amended, apply as minimum standards for insurance carrier networks and are adopted by reference in this section except to the extent those standards are inconsistent with this subtitle. The advisory committee, defined in Section 408.0221, may recommend additional standards for insurance carrier networks that are no more stringent than the additional standards that the advisory committee recommends for the regional [health-care-delivery] network pilot project [networks] pursuant to Section 408.0221(g).

(e) ~~[The]~~ On behalf of the advisory committee, the Texas Workers' Compensation Commission shall adopt rules, as necessary, to implement additional standards for insurance carrier networks.