~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 8, 2012

**H. 3111**

Introduced by Reps. Young, Sandifer, Hayes and D.C. Moss

S. Printed 5/8/12--S.

Read the first time May 11, 2011.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 3111) to amend Section 38‑73‑525, Code of Laws of South Carolina, 1976, relating to the requirement that an insurer writing a workers’ compensation policy shall file certain, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 42‑15‑90, as contained in SECTION 1, by deleting the SECTION in its entirety and inserting:

/ SECTION 1. Section 42‑15‑90 of the 1976 Code is amended to read:

“Section 42‑15‑90. (A) ~~Fees for attorneys and physicians~~ Attorney fees, physician fees, and ~~charges of hospitals~~ hospital charges for services under this title ~~shall be~~ are subject to the approval of the commission~~;~~, but ~~no~~ a physician or hospital ~~shall be entitled to~~ may not collect ~~fees~~ a fee from an employer or insurance carrier until ~~he~~ the physician or hospital has made the reports required by the commission in connection with the case.

(B)(1) ~~Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or such court or who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each offense, be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment.~~ A person may not:

(a) receive a fee, gratuity, or other consideration for a service rendered pursuant to this title unless the fee, gratuity, or other consideration is approved by the commission or a court of competent jurisdiction; or

(b) make it a business to solicit employment for an attorney or himself with respect to a claim or award for compensation under this title.

(2) A violation of this section constitutes a misdemeanor and, upon conviction, each offense is subject to a fine of not more than five hundred dollars, imprisonment for not more than one year, or both.

(C)(1) The commission may adopt criteria to establish a new fee schedule or adjust an existing fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers based in whole or in part on the requirements of a federally funded program, but if it adopts adjustments to an existing fee schedule, it must adopt these adjustments on an annual basis and the adjustments may not exceed the percentage change indicated by the federally funded program. The commission shall conduct an evidentiary hearing to review a proposed adjustment to increase or reduce these fees by more than ten percent annually to determine whether to:

(a) increase or reduce the proposed adjustment as the commission considers appropriate; or

(b) accept the proposed adjustment.

(2)(a) A decision of the commission to increase or reduce a fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers by more than ten percent is reviewable by expedited appeal to the Administrative Law Court pursuant to the Administrative Procedures Act.

(b) On appeal, the court may:

(i) accept the increase or decrease;

(ii) impose a lesser increase or decrease;

(iii) revert the fee schedule to as it was immediately prior to the annual adjustment;

(iv) adjust the appropriate conversion factors as necessary; or

(v) make other adjustments the court considers reasonable.

(c) The court shall issue a decision within ninety days after it receives the appeal.

(d) During the pendency of this appeal, the portion of the fee schedule under review must remain the same as it was immediately prior to the proposed changes, but all other portions of the fee schedule or conversion factors are effective and remain unchanged.” /

Amend the bill further by adding an appropriately numbered SECTION at the end to read:

/ SECTION \_\_\_. Section 1‑23‑600(A)(4), as last amended by Act 334 of 2008, is further amended to read:

“(4) Workers’ Compensation Commission, except as provided in Section 42‑15‑90; or” /

Renumber sections to conform.

Amend title to conform.

DAVID L. THOMAS for Committee.

**A** **BILL**

TO AMEND SECTION 38‑73‑525, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIREMENT THAT AN INSURER WRITING A WORKERS’ COMPENSATION POLICY SHALL FILE CERTAIN INFORMATION ON WHICH IT RELIES TO SUPPORT ITS RATE REQUEST, SO AS TO REQUIRE THE INSURER TO ADOPT THE MOST RECENT LOSS COST WITHIN ONE HUNDRED TWENTY DAYS OF APPROVAL OF THE LOSS COSTS; AND TO AMEND SECTION 38‑73‑1210, RELATING TO THE REQUIREMENT THAT ITS OBLIGATION TO MAKE CERTAIN FILINGS MAY BE SATISFIED BY MAKING FILINGS AS A MEMBER OF, OR SUBSCRIBER TO, A LICENSED RATING ORGANIZATION THAT MAKES FILINGS, SO AS TO REQUIRE THESE FILINGS BE RULE AND FORM FILINGS AND NOT LOSS COST ADOPTION FILINGS, AND REQUIRE THE INSURER TO FILE FOR CERTAIN APPROVAL IF THE RATING ORGANIZATION TO WHICH IT SUBSCRIBES HAS A RATE INCREASE WITHIN TWELVE MONTHS AFTER THE INSURER BECOMES A MEMBER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 42‑15‑90 of the 1976 Code is amended to read:

“Section 42‑15‑90. (A) ~~Fees for attorneys and physicians~~ Attorney fees, physician fees, and ~~charges of hospitals~~ hospital charges for services under this title ~~shall be~~ are subject to the approval of the commission~~;~~, but ~~no~~ a physician or hospital ~~shall be entitled to~~ may not collect ~~fees~~ a fee from an employer or insurance carrier until ~~he~~ the physician or hospital has made the reports required by the commission in connection with the case.

(B)(1) ~~Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or such court or who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each offense, be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment.~~ A person may not:

(a) receive a fee, gratuity, or other consideration for a service rendered pursuant to this title unless the fee, gratuity, or other consideration is approved by the commission or a court of competent jurisdiction; or

(b) make it a business to solicit employment for an attorney or himself with respect to a claim or award for compensation under this title.

(2) A violation of this section constitutes a misdemeanor and, upon conviction, each offense is subject to a fine of not more than five hundred dollars, imprisonment for not more than one year, or both.

(C)(1) The commission may adopt criteria to establish a new fee schedule or adjust an existing fee schedule based in whole or in part on the requirements of a federally funded program, but if it adopts adjustments to an existing fee schedule, it must adopt these adjustments on an annual basis. The commission shall review a proposed adjustment to increase or reduce these fees by more than ten percent annually to determine whether to:

(a) increase or reduce the proposed adjustment as the commission considers appropriate; or

(b) accept the proposed adjustment.

(2)(a) A decision of the commission to increase or reduce a fee schedule is reviewable by expedited appeal to the Administrative Law Court pursuant to the Administrative Procedures Act.

(b) On appeal, the court may:

(i) accept the increase or decrease;

(ii) impose a lesser increase or decrease;

(iii) revert the fee schedule to as it was immediately prior to the annual adjustment;

(iv) adjust the appropriate conversion factors as necessary; or

(v) make other adjustments the court considers reasonable.

(c) The court shall issue a decision within ninety days after it receives the appeal.

(d) During the pendency of this appeal, the portion of the fee schedule under review must remain the same as it was immediately prior to the proposed changes, but all other portions of the fee schedule or conversion factors are effective and remain unchanged.”

SECTION 2. Section 38‑73‑525 of the 1976 Code, as added by Act 111 of 2007, is amended to read:

“Section 38‑73‑525. (A) Each insurer writing workers’ compensation insurance shall adopt the most recent loss costs within sixty days after approval of these loss costs. This loss costs adoption must become effective no later than one hundred twenty days after the effective date of the approved loss costs. An insurer must notify the department of its adoption of the most recently approved loss costs by filing a notification on a form and in a manner prescribed by the director or his designee. The notification filing required by this subsection does not constitute a rate filing and is not subject to prior approval.

(B)(1) At least ~~thirty~~ sixty days ~~prior to~~ before using a new ~~rates, every~~ multiplier for expenses, assessments, profits, and contingencies, each insurer writing workers’ compensation ~~must~~ shall file its multiplier for expenses, assessments, profit, and contingencies and any information relied upon by the insurer to support the multiplier and any modifications to loss costs. A copy of the filing must be provided simultaneously to the consumer advocate.

(2) ~~The filing~~ Filings submitted pursuant to item (1) must be filed on a form and in the manner prescribed by the director or his designee and must contain, at a minimum, the following information: commission expense; other acquisition expense; general expense; expenses associated with recoveries from the Second Injury Fund; guaranty fund assessments; other assessments; premium taxes; miscellaneous taxes, licenses, or fees; ~~and~~ a provision for profit and contingencies, and the date of approval of the loss costs to which the multiplier is applied, which must be the most recently approved loss costs.

(3) ~~Rate~~ Filings submitted pursuant to item (1) are subject to approval of the director or his designee and must be reviewed by an actuary employed or retained by the department who is a member of the American Academy of Actuaries or an associate or fellow of the Casualty Actuarial Society.

(4)(a) Within the ~~thirty‑day~~ sixty‑dayperiod, if the director or his ~~or her~~ designee believes the information filed is not complete, the director or his ~~or her~~ designee ~~must~~ shall notify the insurer of additional information to be provided. Within fifteen days of receipt of the notification, the insurer ~~must~~ shall provide the requested information or file for a hearing challenging the reasonableness of the director’s or his ~~or her~~ designee’s request. The burden is on the insurer to justify the denial of the additional information.

(b) Unless a hearing ~~has been~~ is requested, upon expiration of the ~~thirty‑day~~ sixty‑day period or the fifteen‑day period, whichever is later, the insurer may use the ~~rates developed using the multiplier of expenses, assessments, profit, and contingencies~~ multiplier for expenses, assessments, profit, and contingencies.” /

SECTION 3. Section 38‑73‑1210 of the 1976 Code is amended to read:

“Section 38‑73‑1210. (A)(1) This item applies to property and casualty insurance but does not apply to workers’ compensation insurance. An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization which makes filings and by authorizing the director or his designee to accept the filings on its behalf. However, notwithstanding ~~any other provisions~~ another provision of this article, ~~no~~ a member or subscriber ~~may~~, within twelve months after its membership or subscribership, may not file to adopt ~~any~~ a rate approved for use for the rating organization if the rate is more than the rate in use by the member or subscriber ~~prior to~~ before its membership or subscribership in the rating organization. Further, notwithstanding the provisions of Sections 38‑73‑1300~~,~~ and 38‑73‑1310, ~~and 38‑73‑1320, no~~ a member or subscriber, within twelve months after its membership or subscribership, may not be granted an upward deviation from its rate in use when becoming a member or subscriber. However, if a rate increase for the rating organization is approved within twelve months after an insurer becomes a member or subscriber, the member or subscriber may increase its rates by the same percentage of increase granted the rating organization. Nothing contained in this chapter may be construed ~~as requiring any~~ to require an insurer to become a member of or a subscriber to ~~any~~ a rating organization.

(2) This item applies to workers’ compensation insurance. An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization that makes filings and by authorizing the director or his designee to accept the filings on its behalf. However, a licensed rating organization may not satisfy the insurer’s obligation to make filings required pursuant to Section 38‑73‑525.

(B) In addition to other activities not prohibited by this chapter, a rating organization may collect, compile, and disseminate to insurers compilations of past and current premiums of insurers.”

SECTION 4. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑