

AN ACT

relating to the continuation and operation of the workers' compensation system of this state and to the abolition of the Texas Workers' Compensation Commission, the establishment of the office of injured employee counsel, and the transfer of the powers and duties of the Texas Workers' Compensation Commission to the division of workers' compensation of the Texas Department of Insurance and the office of injured employee counsel, and to the provision of workers' compensation benefits to injured employees and the regulation of workers' compensation insurers; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. ORGANIZATION OF DEPARTMENT

SECTION 1.001. The heading to Chapter 402, Labor Code, is amended to read as follows:

CHAPTER 402. OPERATION AND ADMINISTRATION OF [TEXAS]

WORKERS' COMPENSATION SYSTEM [~~COMMISSION~~]

SECTION 1.002. The heading to Subchapter A, Chapter 402, Labor Code, is amended to read as follows:

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM; WORKERS'

COMPENSATION DIVISION [~~ORGANIZATION~~]

SECTION 1.003. Section 402.001, Labor Code, is amended to read as follows:

Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT

1 OF INSURANCE; WORKERS' COMPENSATION DIVISION. (a) Except as
2 provided by Section 402.002, the Texas Department of Insurance is
3 the state agency designated to oversee the workers' compensation
4 system of this state.

5 (b) The division of workers' compensation is established as
6 a division within the Texas Department of Insurance to administer
7 and operate the workers' compensation system of this state as
8 provided by this title. [MEMBERSHIP REQUIREMENTS. (a) The Texas

9 Workers' Compensation Commission is composed of six members
10 appointed by the governor with the advice and consent of the senate.

11 [(b) Appointments to the commission shall be made without
12 regard to the race, color, disability, sex, religion, age, or
13 national origin of the appointee. Section 401.011(16) does not
14 apply to the use of the term "disability" in this subsection.

15 [(c) Three members of the commission must be employers of
16 labor and three members of the commission must be wage earners. A
17 person is not eligible for appointment as a member of the commission
18 if the person provides services subject to regulation by the
19 commission or charges fees that are subject to regulation by the
20 commission.

21 [(d) In making appointments to the commission, the governor
22 shall attempt to reflect the social, geographic, and economic
23 diversity of the state. To ensure balanced representation, the
24 governor may consider:

25 [(1) the geographic location of a prospective
26 appointee's domicile,

27 [(2) the prospective appointee's experience as an

~~employer or wage earner,~~

~~[(3) the number of employees employed by a prospective member who would represent employers, and~~

~~[(4) the type of work performed by a prospective member who would represent wage earners.~~

~~[(e) The governor shall consider the factors listed in Subsection (d) in appointing a member to fill a vacancy on the commission.~~

~~[(f) In making an appointment to the commission, the governor shall consider recommendations made by groups that represent employers or wage earners.]~~

SECTION 1.004. Subchapter A, Chapter 402, Labor Code, is amended by adding Sections 402.00111-402.00128 to read as follows:

Sec. 402.00111. RELATIONSHIP BETWEEN COMMISSIONER OF INSURANCE AND COMMISSIONER OF WORKERS' COMPENSATION; SEPARATION OF AUTHORITY; RULEMAKING. (a) The division is administered by the commissioner of workers' compensation as provided by this subchapter. Except as otherwise provided by this title, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under this title.

(b) The commissioner of insurance may delegate to the commissioner of workers' compensation or to that person's designee and may redact any delegation, and the commissioner of workers' compensation may delegate to the commissioner of insurance or to that person's designee, any power or duty regarding workers' compensation imposed on the commissioner of insurance or the commissioner of workers' compensation under this title, including

1 the authority to make final orders or decisions. A delegation made
2 under this subsection must be made in writing.

3 (c) The commissioner of insurance shall develop and
4 implement policies that clearly separate the respective
5 responsibilities of the department and the division.

6 (d) The commissioner of insurance may provide advice,
7 research, and comment regarding the adoption of rules by the
8 commissioner of workers' compensation under this subtitle.

9 Sec. 402.00112. INVESTIGATION OF DIVISION. The department
10 shall investigate the conduct of the work of the division. For that
11 purpose, the department shall have access at any time to all
12 division books and records and may require an officer or employee of
13 the division to furnish written or oral information.

14 Sec. 402.00113. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT.

15 (a) The division of workers' compensation is administratively
16 attached to the department.

17 (b) The department shall provide the staff and facilities
18 necessary to enable the division to perform the duties of the
19 division under this title, including:

20 (1) administrative assistance and services to the
21 division, including budget planning and purchasing;

22 (2) personnel and financial services; and

23 (3) computer equipment and support.

24 (c) The commissioner of workers' compensation and the
25 commissioner of insurance may enter into agreements as necessary to
26 implement this title.

27 Sec. 402.00114. DUTIES OF DIVISION; SINGLE POINT OF

1 CONTACT. (a) In addition to other duties required under this
2 title, the division shall:

3 (1) regulate and administer the business of workers'
4 compensation in this state; and

5 (2) ensure that this title and other laws regarding
6 workers' compensation are executed.

7 (b) To the extent determined feasible by the commissioner,
8 the division shall establish a single point of contact for injured
9 employees receiving services from the division.

10 Sec. 402.00115. COMPOSITION OF DIVISION. The division is
11 composed of the commissioner of workers' compensation and other
12 officers and employees as required to efficiently implement:

13 (1) this title;

14 (2) other workers' compensation laws of this state;

15 and

16 (3) other laws granting jurisdiction or applicable to
17 the division or the commissioner.

18 Sec. 402.00116. CHIEF EXECUTIVE. (a) The commissioner of
19 workers' compensation is the division's chief executive and
20 administrative officer. The commissioner shall administer and
21 enforce this title, other workers' compensation laws of this state,
22 and other laws granting jurisdiction to or applicable to the
23 division or the commissioner. Except as otherwise specifically
24 provided by this title, a reference in this title to the
25 "commissioner" means the commissioner of workers' compensation.

26 (b) The commissioner has the powers and duties vested in the
27 division by this title and other workers' compensation laws of this

1 state.

2 Sec. 402.00117. APPOINTMENT; TERM. (a) The governor, with
3 the advice and consent of the senate, shall appoint the
4 commissioner. The commissioner serves a two-year term that expires
5 on February 1 of each odd-numbered year.

6 (b) The governor shall appoint the commissioner without
7 regard to the race, color, disability, sex, religion, age, or
8 national origin of the appointee.

9 Sec. 402.00118. QUALIFICATIONS. The commissioner must:

10 (1) be a competent and experienced administrator;

11 (2) be well-informed and qualified in the field of
12 workers' compensation; and

13 (3) have at least five years of experience as an
14 executive in the administration of business or government or as a
15 practicing attorney, physician, or certified public accountant.

16 Sec. 402.00119. INELIGIBILITY FOR PUBLIC OFFICE. The
17 commissioner is ineligible to be a candidate for a public elective
18 office in this state unless the commissioner has resigned and the
19 governor has accepted the resignation.

20 Sec. 402.00120. COMPENSATION. The commissioner is entitled
21 to compensation as provided by the General Appropriations Act.

22 Sec. 402.00121. GROUNDS FOR REMOVAL. (a) It is a ground
23 for removal from office that the commissioner:

24 (1) does not have at the time of appointment the
25 qualifications required by Section 402.00118;

26 (2) does not maintain during service as commissioner
27 the qualifications required by Section 402.00118;

1 (3) violates a prohibition established by Section
2 402.00122, 402.00124, 402.00125, or 402.00126; or

3 (4) cannot because of illness or incapacity discharge
4 the commissioner's duties for a substantial part of the
5 commissioner's term.

6 (b) The validity of an action of the commissioner or the
7 division is not affected by the fact that it is taken when a ground
8 for removal of the commissioner exists.

9 Sec. 402.00122. PROHIBITED GIFTS; ADMINISTRATIVE
10 VIOLATION. (a) The commissioner or an employee of the division may
11 not accept a gift, a gratuity, or entertainment from a person having
12 an interest in a matter or proceeding pending before the division.

13 (b) A violation of Subsection (a) is an administrative
14 violation and constitutes a ground for removal from office or
15 termination of employment.

16 Sec. 402.00123. CIVIL LIABILITY OF COMMISSIONER. The
17 commissioner is not liable in a civil action for an act performed in
18 good faith in the execution of duties as commissioner.

19 Sec. 402.00124. CONFLICT OF INTEREST. (a) In this section,
20 "Texas trade association" means a cooperative and voluntarily
21 joined statewide association of business or professional
22 competitors in this state designed to assist its members and its
23 industry or profession in dealing with mutual business or
24 professional problems and in promoting their common interest.

25 (b) A person may not be the commissioner and may not be a
26 division employee employed in a "bona fide executive,
27 administrative, or professional capacity" as that phrase is used

1 for purposes of establishing an exemption to the overtime
2 provisions of the federal Fair Labor Standards Act of 1938 (29
3 U.S.C. Section 201 et seq.) if:

4 (1) the person is an officer, employee, or paid
5 consultant of a Texas trade association in the field of workers'
6 compensation; or

7 (2) the person's spouse is an officer, manager, or paid
8 consultant of a Texas trade association in the field of workers'
9 compensation.

10 Sec. 402.00125. PROHIBITION ON CERTAIN EMPLOYMENT OR
11 REPRESENTATION. (a) A former commissioner or former employee of
12 the division involved in hearing cases under this title may not:

13 (1) be employed by an insurance carrier that was
14 subject to the scope of the commissioner's or employee's official
15 responsibility while the commissioner or employee was associated
16 with the division; or

17 (2) represent a person before the division or a court
18 in a matter:

19 (A) in which the commissioner or employee was
20 personally involved while associated with the division; or

21 (B) that was within the commissioner's or
22 employee's official responsibilities while the commissioner or
23 employee was associated with the division.

24 (b) The prohibition under Subsection (a)(1) applies until
25 the:

26 (1) second anniversary of the date the commissioner
27 ceases to serve as the commissioner; and

(2) first anniversary of the date the employee's employment with the division ceases.

(c) The prohibition under Subsection (a)(2) applies to a current commissioner or employee of the division while the commissioner or employee is involved in hearing cases under this title and at any time thereafter.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Sec. 402.00126. LOBBYING ACTIVITIES. A person may not serve as commissioner or act as general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the division.

Sec. 402.00127. TRAINING PROGRAM FOR COMMISSIONER. (a) Not later than the 90th day after the date on which the commissioner takes office, the commissioner shall complete a training program that complies with this section.

(b) The training program must provide the commissioner with information regarding:

- (1) the legislation that created the division;
- (2) the programs operated by the division;
- (3) the role and functions of the division;
- (4) the rules of the commissioner of insurance relating to the division, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the division;

(6) the results of the most recent formal audit of the division;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

Sec. 402.00128. GENERAL POWERS AND DUTIES OF COMMISSIONER.

(a) The commissioner shall conduct the daily operations of the division and otherwise implement division policy.

(b) The commissioner or the commissioner's designee may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony directly or by deposition or interrogatory;

(6) assess and enforce penalties established under this title;

(7) enter appropriate orders as authorized by this

1 title;

2 (8) institute an action in the division's name to
3 enjoin the violation of this title;

4 (9) initiate an action under Section 410.254 to
5 intervene in a judicial proceeding;

6 (10) prescribe the form, manner, and procedure for the
7 transmission of information to the division;

8 (11) correct clerical errors in the entry of orders;

9 and

10 (12) exercise other powers and perform other duties as
11 necessary to implement and enforce this title.

12 (c) The commissioner is the agent for service of process on
13 out-of-state employers.

14 SECTION 1.005. Section 402.002, Labor Code, is amended to
15 read as follows:

16 Sec. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED
17 EMPLOYEE COUNSEL. The office of injured employee counsel
18 established under Chapter 404 shall perform the functions regarding
19 the provision of workers' compensation benefits in this state
20 designated by this subtitle as under the authority of that office.

21 ~~[TERMS, VACANCY. (a) Members of the commission hold office for~~
22 ~~staggered two-year terms, with the terms of three members expiring~~
23 ~~on February 1 of each year.~~

24 ~~[(b) If a vacancy occurs during a term, the governor shall~~
25 ~~fill the vacancy for the unexpired term. The replacement must be~~
26 ~~from the group represented by the member being replaced.]~~

27 SECTION 1.006. The heading to Subchapter B, Chapter 402,

1 Labor Code, is amended to read as follows:

2 SUBCHAPTER B. SYSTEM GOALS; GENERAL ADMINISTRATION OF SYSTEM

3 SECTION 1.0065. Section 402.021, Labor Code, is amended to
4 read as follows:

5 Sec. 402.021. GOALS; LEGISLATIVE INTENT; GENERAL WORKERS'
6 COMPENSATION MISSION OF DEPARTMENT. (a) The basic goals of the
7 workers' compensation system of this state are as follows:

8 (1) each employee shall be treated with dignity and
9 respect when injured on the job;

10 (2) each injured employee shall have access to a fair
11 and accessible dispute resolution process;

12 (3) each injured employee shall have access to prompt,
13 high-quality medical care within the framework established by this
14 subtitle; and

15 (4) each injured employee shall receive services to
16 facilitate the employee's return to employment as soon as it is
17 considered safe and appropriate by the employee's health care
18 provider.

19 (b) It is the intent of the legislature that, in
20 implementing the goals described by Subsection (a), the workers'
21 compensation system of this state must:

22 (1) promote safe and healthy workplaces through
23 appropriate incentives, education, and other actions;

24 (2) encourage the safe and timely return of injured
25 employees to productive roles in the workplace;

26 (3) provide appropriate income benefits and medical
27 benefits in a manner that is timely and cost-effective;

1 (4) provide timely, appropriate, and high-quality
2 medical care supporting restoration of the injured employee's
3 physical condition and earning capacity;

4 (5) minimize the likelihood of disputes and resolve
5 them promptly and fairly when identified;

6 (6) promote compliance with this subtitle and rules
7 adopted under this subtitle through performance-based incentives;

8 (7) promptly detect and appropriately address acts or
9 practices of noncompliance with this subtitle and rules adopted
10 under this subtitle;

11 (8) effectively educate and clearly inform each person
12 who participates in the system as a claimant, employer, insurance
13 carrier, health care provider, or other participant of the person's
14 rights and responsibilities under the system and how to
15 appropriately interact within the system; and

16 (9) take maximum advantage of technological advances
17 to provide the highest levels of service possible to system
18 participants and to promote communication among system
19 participants.

20 (c) This section may not be construed as:

21 (1) creating a cause of action; or

22 (2) establishing an entitlement to benefits to which a
23 claimant is not otherwise entitled by this subtitle.

24 (d) As provided by this subtitle, the division shall work to
25 promote and help ensure the safe and timely return of injured
26 employees to productive roles in the workforce. [COMMISSION
27 ~~DIVISIONS. (a) The commission shall have.~~

- 1 ~~[(1) a division of workers' health and safety,~~
2 ~~[(2) a division of medical review,~~
3 ~~[(3) a division of compliance and practices, and~~
4 ~~[(4) a division of hearings.~~

5 ~~[(b) In addition to the divisions listed by Subsection (a),~~
6 ~~the executive director, with the approval of the commission, may~~
7 ~~establish divisions within the commission for effective~~
8 ~~administration and performance of commission functions. The~~
9 ~~executive director may allocate and reallocate functions among the~~
10 ~~divisions.~~

11 ~~[(c) The executive director shall appoint the directors of~~
12 ~~the divisions of the commission. The directors serve at the~~
13 ~~pleasure of the executive director.]~~

14 SECTION 1.007. Subchapter C, Chapter 402, Labor Code, is
15 amended to read as follows:

16 SUBCHAPTER C. ~~[EXECUTIVE DIRECTOR AND]~~ PERSONNEL

17 Sec. 402.041. APPOINTMENTS. (a) Subject to the General
18 Appropriations Act or other law, the commissioner shall appoint
19 deputies, assistants, and other personnel as necessary to carry out
20 the powers and duties of the commissioner and the division under
21 this title, other workers' compensation laws of this state, and
22 other laws granting jurisdiction or applicable to the division or
23 the commissioner.

24 (b) A person appointed under this section must have the
25 professional, administrative, and workers' compensation experience
26 necessary to qualify the person for the position to which the person
27 is appointed.

1 Sec. 402.042. DIVISION OF RESPONSIBILITIES. The
2 commissioner shall develop and implement policies that clearly
3 define the respective responsibilities of the commissioner and the
4 staff of the division. ~~[EXECUTIVE DIRECTOR. (a) The executive~~
5 ~~director is the executive officer and administrative head of the~~
6 ~~commission. The executive director exercises all rights, powers,~~
7 ~~and duties imposed or conferred by law on the commission, except for~~
8 ~~rulemaking and other rights, powers, and duties specifically~~
9 ~~reserved under this subtitle to members of the commission.~~

10 ~~[(b) The executive director shall hire personnel as~~
11 ~~necessary to administer this subtitle.~~

12 ~~[(c) The executive director serves at the pleasure of the~~
13 ~~commission.~~

14 ~~[(d) The commission shall develop and implement policies~~
15 ~~that clearly separate the policymaking responsibilities of the~~
16 ~~commission and the management responsibilities of the executive~~
17 ~~director and the staff of the commission.~~

18 ~~[Sec. 402.042. GENERAL POWERS AND DUTIES OF EXECUTIVE~~
19 ~~DIRECTOR. (a) The executive director shall conduct the day-to-day~~
20 ~~operations of the commission in accordance with policies~~
21 ~~established by the commission and otherwise implement commission~~
22 ~~policy.~~

23 ~~[(b) The executive director may:~~

24 ~~[(1) investigate misconduct,~~

25 ~~[(2) hold hearings,~~

26 ~~[(3) issue subpoenas to compel the attendance of~~
27 ~~witnesses and the production of documents,~~

1 ~~[(4) administer oaths,~~
2 ~~[(5) take testimony directly or by deposition or~~
3 ~~interrogatory,~~
4 ~~[(6) assess and enforce penalties established under~~
5 ~~this subtitle,~~
6 ~~[(7) enter appropriate orders as authorized by this~~
7 ~~subtitle,~~
8 ~~[(8) correct clerical errors in the entry of orders,~~
9 ~~[(9) institute an action in the commission's name to~~
10 ~~enjoin the violation of this subtitle,~~
11 ~~[(10) initiate an action under Section 410.254 to~~
12 ~~intervene in a judicial proceeding,~~
13 ~~[(11) prescribe the form, manner, and procedure for~~
14 ~~transmission of information to the commission, and~~
15 ~~[(12) delegate all powers and duties as necessary.~~

16 ~~[(c) The executive director is the agent for service of~~
17 ~~process on out-of-state employers.~~

18 ~~[Sec. 402.043. ADMINISTRATIVE ASSISTANTS. The executive~~
19 ~~director shall employ and supervise.~~

20 ~~[(1) one person representing wage earners permanently~~
21 ~~assigned to act as administrative assistant to the members of the~~
22 ~~commission who represent wage earners, and~~

23 ~~[(2) one person representing employers permanently~~
24 ~~assigned to act as administrative assistant to the members of the~~
25 ~~commission who represent employers.]~~

26 Sec. 402.043 [402.044]. CAREER LADDER; ANNUAL PERFORMANCE
27 EVALUATIONS. (a) The commissioner or the commissioner's designee

1 ~~[executive director]~~ shall develop an intra-agency career ladder
2 program that addresses opportunities for mobility and advancement
3 for employees within the division ~~[commission]~~. The program shall
4 require intra-agency postings of all positions concurrently with
5 any public posting.

6 (b) The commissioner or the commissioner's designee
7 ~~[executive director]~~ shall develop a system of annual performance
8 evaluations that are based on documented employee performance. All
9 merit pay for division ~~[commission]~~ employees must be based on the
10 system established under this subsection.

11 Sec. 402.044 ~~[402.045]~~. EQUAL EMPLOYMENT OPPORTUNITY
12 POLICY STATEMENT. (a) The commissioner or the commissioner's
13 designee ~~[executive director]~~ shall prepare and maintain a written
14 policy statement to ensure implementation of a program of equal
15 employment opportunity under which all personnel transactions are
16 made without regard to race, color, disability, sex, religion, age,
17 or national origin. The policy statement must include:

18 (1) personnel policies, including policies related to
19 recruitment, evaluation, selection, appointment, training, and
20 promotion of personnel that are in compliance with the requirements
21 of Chapter 21;

22 (2) a comprehensive analysis of the division
23 ~~[commission]~~ work force that meets federal and state guidelines;

24 (3) procedures by which a determination can be made of
25 significant underuse in the division ~~[commission]~~ work force of all
26 persons for whom federal or state guidelines encourage a more
27 equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the civil rights division of the Texas Workforce Commission [~~on Human Rights~~] for compliance with Subsection (a)(1); and

(4) be filed with the Texas Workforce Commission [~~governor's office~~].

(c) The Texas Workforce Commission [~~governor's office~~] shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

ARTICLE 2. CONFORMING AMENDMENTS WITHIN CHAPTER 402, LABOR CODE;

GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION DIVISION

SECTION 2.001. Subchapter B, Chapter 402, Labor Code, is amended by adding Section 402.0215 to read as follows:

Sec. 402.0215. REFERENCE TO COMMISSION DIVISIONS. A reference in this title or any other law to the division of workers' health and safety, the division of medical review, the division of compliance and practices, the division of hearings, and the division of self-insurance regulation of the former Texas Workers' Compensation Commission means the division of workers' compensation of the Texas Department of Insurance.

SECTION 2.002. Section 402.022, Labor Code, is amended to

1 read as follows:

2 Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The
3 commissioner [~~executive director~~] shall prepare information of
4 public interest describing the functions of the division
5 [~~commission~~] and the procedures by which complaints are filed with
6 and resolved by the division [~~commission~~].

7 (b) The commissioner [~~executive director~~] shall make the
8 information available to the public and appropriate state agencies.

9 (c) The commissioner by rule shall ensure that each division
10 form, standard letter, and brochure under this subtitle:

11 (1) is written in plain language;

12 (2) is in a readable and understandable format; and

13 (3) complies with all applicable requirements
14 relating to minimum readability requirements.

15 (d) The division shall make informational materials
16 described by this section available in English and Spanish.

17 SECTION 2.003. Subchapter B, Chapter 402, Labor Code, is
18 amended by amending Section 402.023 and adding Section 402.0235 to
19 read as follows:

20 Sec. 402.023. COMPLAINT INFORMATION. (a) The
21 commissioner shall:

22 (1) adopt rules regarding the filing of a complaint
23 under this subtitle against an individual or entity subject to
24 regulation under this subtitle; and

25 (2) ensure that information regarding the complaint
26 process is available on the division's Internet website.

27 (b) The rules adopted under this section must, at a minimum:

1 (1) ensure that the division clearly defines in rule
2 the method for filing a complaint; and

3 (2) define what constitutes a frivolous complaint
4 under this subtitle.

5 (c) The division shall develop and post on the division's
6 Internet website:

7 (1) a simple standardized form for filing complaints
8 under this subtitle; and

9 (2) information regarding the complaint filing
10 process.

11 (d) The division [~~executive director~~] shall keep an
12 information file about each written complaint filed with the
13 division under this subtitle [~~commission~~] that is unrelated to a
14 specific workers' compensation claim, including a complaint
15 regarding the administration of the workers' compensation system.

16 The information must include:

17 (1) the date the complaint is received;

18 (2) the name of the complainant;

19 (3) the subject matter of the complaint;

20 (4) a record of all persons contacted in relation to
21 the complaint;

22 (5) a summary of the results of the review or
23 investigation of the complaint; and

24 (6) for complaints for which the division [~~commission~~]
25 took no action, an explanation of the reason the complaint was
26 closed without action.

27 (e) [~~(b)~~] For each written complaint that is unrelated to a

1 specific workers' compensation claim that the division
2 [~~commission~~] has authority to resolve, the division [~~executive~~
3 ~~director~~] shall provide to the person filing the complaint and the
4 person about whom the complaint is made information about the
5 division's [~~commission's~~] policies and procedures under this
6 subtitle relating to complaint investigation and resolution. The
7 division [~~commission~~], at least quarterly and until final
8 disposition of the complaint, shall notify those persons about the
9 status of the complaint unless the notice would jeopardize an
10 undercover investigation.

11 Sec. 402.0235. PRIORITIES FOR COMPLAINT INVESTIGATIONS.

12 (a) The division shall assign priorities to complaint
13 investigations under this subtitle based on risk. In developing
14 priorities under this section, the division shall develop a formal,
15 risk-based complaint investigation system that considers:

16 (1) the severity of the alleged violation;

17 (2) whether the alleged violator showed continued or
18 wilful noncompliance; and

19 (3) whether a commissioner order has been violated.

20 (b) The commissioner may develop additional risk-based
21 criteria as determined necessary.

22 SECTION 2.004. Section 402.024, Labor Code, is amended to
23 read as follows:

24 Sec. 402.024. PUBLIC PARTICIPATION. (a) The commissioner
25 [~~commission~~] shall develop and implement policies that provide the
26 public with a reasonable opportunity to appear before the division
27 [~~commission~~] and to speak on issues under the general jurisdiction

1 of the division [~~commission~~].

2 (b) The division [~~commission~~] shall comply with federal and
3 state laws related to program and facility accessibility.

4 (c) In addition to compliance with Subsection (a), the
5 commissioner [~~executive director~~] shall prepare and maintain a
6 written plan that describes how a person who does not speak English
7 may be provided reasonable access to the division's [~~commission's~~]
8 programs and services.

9 SECTION 2.005. The heading to Subchapter D, Chapter 402,
10 Labor Code, is amended to read as follows:

11 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND
12 COMMISSIONER [~~COMMISSION~~]

13 SECTION 2.006. Section 402.061, Labor Code, is amended to
14 read as follows:

15 Sec. 402.061. ADOPTION OF RULES. The commissioner
16 [~~commission~~] shall adopt rules as necessary for the implementation
17 and enforcement of this subtitle.

18 SECTION 2.007. Subsection (a), Section 402.062, Labor Code,
19 is amended to read as follows:

20 (a) The division [~~commission~~] may accept gifts, grants, or
21 donations as provided by rules adopted by the commissioner
22 [~~commission~~].

23 SECTION 2.008. Section 402.064, Labor Code, is amended to
24 read as follows:

25 Sec. 402.064. FEES. In addition to fees established by this
26 subtitle, the commissioner [~~commission~~] shall set reasonable fees
27 for services provided to persons requesting services from the

1 division [~~commission~~], including services provided under
2 Subchapter E.

3 SECTION 2.009. Section 402.065, Labor Code, is amended to
4 read as follows:

5 Sec. 402.065. EMPLOYMENT OF COUNSEL. Notwithstanding
6 Article 1.09-1, Insurance Code, or any other law, the commissioner
7 [~~The commission~~] may employ counsel to represent the division
8 [~~commission~~] in any legal action the division [~~commission~~] is
9 authorized to initiate.

10 SECTION 2.010. Section 402.066, Labor Code, is amended to
11 read as follows:

12 Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The
13 commissioner [~~commission~~] shall consider and recommend to the
14 legislature changes to this subtitle, including any statutory
15 changes required by an evaluation conducted under Section 402.074.

16 (b) The commissioner [~~commission~~] shall forward the
17 recommended changes to the legislature not later than December 1 of
18 each even-numbered year.

19 SECTION 2.011. Section 402.0665, Labor Code, is amended to
20 read as follows:

21 Sec. 402.0665. LEGISLATIVE OVERSIGHT. The legislature may
22 adopt requirements relating to legislative oversight of the
23 division [~~commission~~] and the workers' compensation system of this
24 state. The division [~~commission~~] shall comply with any
25 requirements adopted by the legislature under this section.

26 SECTION 2.012. Section 402.067, Labor Code, is amended to
27 read as follows:

1 Sec. 402.067. ADVISORY COMMITTEES. The commissioner
2 ~~[commission]~~ may appoint advisory committees as the commissioner
3 ~~[it]~~ considers necessary.

4 SECTION 2.013. Section 402.068, Labor Code, is amended to
5 read as follows:

6 Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. Except as
7 expressly provided by this subtitle ~~[subchapter]~~, the division
8 ~~[commission]~~ may not delegate rights and duties imposed on it by
9 this subchapter.

10 SECTION 2.014. Section 402.069, Labor Code, is amended to
11 read as follows:

12 Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT
13 INFORMATION. The commissioner or the commissioner's designee
14 ~~[executive director]~~ shall provide to division ~~[members of the~~
15 ~~commission and commission]~~ employees, as often as necessary,
16 information regarding their:

17 (1) qualifications for office or employment under this
18 subtitle; and

19 (2) responsibilities under applicable law relating to
20 standards of conduct for state officers or employees.

21 SECTION 2.015. Subsection (a), Section 402.071, Labor Code,
22 is amended to read as follows:

23 (a) The commissioner ~~[commission]~~ shall establish
24 qualifications for a representative and shall adopt rules
25 establishing procedures for authorization of representatives.

26 SECTION 2.016. Section 402.072, Labor Code, is amended to
27 read as follows:

1 Sec. 402.072. SANCTIONS. (a) The division may impose
2 sanctions against any person regulated by the division under this
3 subtitle.

4 (b) Only the commissioner [~~commission~~] may impose:

5 (1) a sanction that deprives a person of the right to
6 practice before the division [~~commission~~] or of the right to
7 receive remuneration under this subtitle for a period exceeding 30
8 days; or

9 (2) another sanction suspending for more than 30 days
10 or revoking a license, certification, or permit required for
11 practice in the field of workers' compensation.

12 (c) A sanction imposed by the division is binding pending
13 appeal.

14 SECTION 2.017. Section 402.073, Labor Code, is amended to
15 read as follows:

16 Sec. 402.073. COOPERATION WITH STATE OFFICE OF
17 ADMINISTRATIVE HEARINGS. (a) The commissioner [~~commission~~] and
18 the chief administrative law judge of the State Office of
19 Administrative Hearings by rule shall adopt a memorandum of
20 understanding governing administrative procedure law hearings
21 under this subtitle conducted by the State Office of Administrative
22 Hearings in the manner provided for a contested case hearing under
23 Chapter 2001, Government Code [~~(the administrative procedure~~
24 ~~law)~~].

25 (b) In a case in which a hearing is conducted by the State
26 Office of Administrative Hearings under Section [~~411.049,~~
27 ~~413.031,~~] 413.055[~~7~~] or 415.034, the administrative law judge who

1 conducts the hearing for the State Office of Administrative
2 Hearings shall enter the final decision in the case after
3 completion of the hearing.

4 (c) In a case in which a hearing is conducted in conjunction
5 with Section 402.072, 407.046, or 408.023, and in other cases under
6 this subtitle that are not subject to Subsection (b), the
7 administrative law judge who conducts the hearing for the State
8 Office of Administrative Hearings shall propose a decision to the
9 commissioner [~~commission~~] for final consideration and decision by
10 the commissioner [~~commission~~].

11 SECTION 2.018. Subchapter D, Chapter 402, Labor Code, is
12 amended by adding Sections 402.074, 402.075, 402.076, 402.077, and
13 402.078 to read as follows:

14 Sec. 402.074. STRATEGIC MANAGEMENT; EVALUATION. The
15 commissioner shall implement a strategic management plan that:

16 (1) requires the division to evaluate and analyze the
17 effectiveness of the division in implementing:

18 (A) the statutory goals adopted under Section
19 402.021, particularly goals established to encourage the safe and
20 timely return of injured employees to productive work roles; and

21 (B) the other standards and requirements adopted
22 under this code, the Insurance Code, and other applicable laws of
23 this state; and

24 (2) modifies the organizational structure and
25 programs of the division as necessary to address shortfalls in the
26 performance of the workers' compensation system of this state.

27 Sec. 402.075. INCENTIVES; PERFORMANCE-BASED OVERSIGHT.

1 (a) The commissioner by rule shall adopt requirements that:

2 (1) provide incentives for overall compliance in the
3 workers' compensation system of this state; and

4 (2) emphasize performance-based oversight linked to
5 regulatory outcomes.

6 (b) The commissioner shall develop key regulatory goals to
7 be used in assessing the performance of insurance carriers and
8 health care providers. The goals adopted under this subsection
9 must align with the general regulatory goals of the division under
10 this subtitle, such as improving workplace safety and
11 return-to-work outcomes, in addition to goals that support timely
12 payment of benefits and increased communication.

13 (c) At least biennially, the division shall assess the
14 performance of insurance carriers and health care providers in
15 meeting the key regulatory goals. The division shall examine
16 overall compliance records and dispute resolution and complaint
17 resolution practices to identify insurance carriers and health care
18 providers who adversely impact the workers' compensation system and
19 who may require enhanced regulatory oversight. The division shall
20 conduct the assessment through analysis of data maintained by the
21 division and through self-reporting by insurance carriers and
22 health care providers.

23 (d) Based on the performance assessment, the division shall
24 develop regulatory tiers that distinguish among insurance carriers
25 and health care providers who are poor performers, who generally
26 are average performers, and who are consistently high performers.
27 The division shall focus its regulatory oversight on insurance

1 carriers and health care providers identified as poor performers.

2 (e) The commissioner by rule shall develop incentives
3 within each tier under Subsection (d) that promote greater overall
4 compliance and performance. The regulatory incentives may include
5 modified penalties, self-audits, or flexibility based on
6 performance.

7 (f) The division shall:

8 (1) ensure that high-performing entities are publicly
9 recognized; and

10 (2) allow those entities to use that designation as a
11 marketing tool.

12 (g) In conjunction with the division's accident prevention
13 services under Subchapter E, Chapter 411, the division shall
14 conduct audits of accident prevention services offered by insurance
15 carriers based on the comprehensive risk assessment. The division
16 shall periodically review those services, but may provide
17 incentives for less regulation of carriers based on performance.

18 Sec. 402.076. GENERAL DUTIES; FUNDING. (a) The division
19 shall perform the workforce education and safety functions of the
20 workers' compensation system of this state.

21 (b) The operations of the division under this section are
22 funded through the maintenance tax assessed under Section 403.002.

23 Sec. 402.077. EDUCATIONAL PROGRAMS. (a) The division
24 shall provide education on best practices for return-to-work
25 programs and workplace safety.

26 (b) The division shall evaluate and develop the most
27 efficient, cost-effective procedures for implementing this

1 section.

2 Sec. 402.078. REGIONAL OFFICES. The department shall
3 operate regional offices throughout this state as necessary to
4 implement the duties of the division and the department under this
5 subtitle.

6 SECTION 2.019. Section 402.081, Labor Code, is amended to
7 read as follows:

8 Sec. 402.081. DIVISION [~~COMMISSION~~] RECORDS. (a) The
9 commissioner [~~executive director~~] is the custodian of the
10 division's [~~commission's~~] records and shall perform the duties of a
11 custodian required by law, including providing copies and the
12 certification of records.

13 (b) The division shall comply with records retention
14 schedules as provided by Chapter 441.185, Government Code
15 [~~executive director may destroy a record maintained by the~~
16 ~~commission pertaining to an injury after the 50th anniversary of~~
17 ~~the date of the injury to which the record refers unless benefits~~
18 ~~are being paid on the claim on that date].~~

19 (c) A record maintained by the division [~~commission~~] may be
20 preserved in any format permitted by Chapter 441, Government Code,
21 and rules adopted by the Texas State Library and Archives
22 Commission under that chapter.

23 (d) The division [~~commission~~] may charge a reasonable fee
24 for making available for inspection any of its information that
25 contains confidential information that must be redacted before the
26 information is made available. However, when a request for
27 information is for the inspection of 10 or fewer pages, and a copy

1 of the information is not requested, the division [~~commission~~] may
2 charge only the cost of making a copy of the page from which
3 confidential information must be redacted. The fee for access to
4 information under Chapter 552, Government Code, shall be in accord
5 with the rules of the Texas Building and Procurement [~~General~~
6 ~~Services~~] Commission that prescribe the method for computing the
7 charge for copies under that chapter.

8 SECTION 2.020. Section 402.082, Labor Code, is amended to
9 read as follows:

10 Sec. 402.082. INJURY INFORMATION MAINTAINED BY DIVISION
11 [~~COMMISSION~~]. (a) The division [~~commission~~] shall maintain
12 information on every compensable injury as to the:

- 13 (1) race, ethnicity, and sex of the claimant;
14 (2) classification of the injury;
15 (3) identification of whether the claimant is
16 receiving medical care through a workers' compensation health care
17 network certified under Chapter 1305, Insurance Code;
18 (4) amount of wages earned by the claimant before the
19 injury; and
20 (5) [~~44~~] amount of compensation received by the
21 claimant.

22 (b) The division shall provide information maintained under
23 Subsection (a) to the office of injured employee counsel. The
24 confidentiality requirements imposed under Section 402.083 apply
25 to injury information maintained by the division.

26 SECTION 2.021. Subsection (a), Section 402.083, Labor Code,
27 is amended to read as follows:

(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division [~~commission~~] except as provided by this subtitle or other law.

SECTION 2.022. Subsections (a), (b), and (d), Section 402.084, Labor Code, are amended to read as follows:

(a) The division [~~commission~~] shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division [~~commission~~];

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division [~~commission~~] for this purpose and provides all required information.

(b) Information on a claim may be released as provided by Subsection (a) to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty

1 Association established under Subchapter G, Chapter 407, if that
2 association has assumed the obligations of an impaired employer;

3 (6) the Texas Property and Casualty Insurance Guaranty
4 Association, if that association has assumed the obligations of an
5 impaired insurance company;

6 (7) a third-party litigant in a lawsuit in which the
7 cause of action arises from the incident that gave rise to the
8 injury; or

9 (8) a subclaimant under Section 409.009 that is an
10 insurance carrier that has adopted an antifraud plan under
11 Subchapter B, Chapter 704 [~~Article 3.97-3~~], Insurance Code, or the
12 authorized representative of such a subclaimant.

13 (d) Information on a claim relating to a subclaimant under
14 Subsection (b)(8) may include information, in an electronic data
15 format, on all workers' compensation claims necessary to determine
16 if a subclaim exists. The information on a claim remains subject to
17 confidentiality requirements while in the possession of a
18 subclaimant or representative. The commissioner [~~commission~~] by
19 rule may establish a reasonable fee for all information requested
20 under this subsection in an electronic data format by subclaimants
21 or authorized representatives of subclaimants. The commissioner
22 [~~commission~~] shall adopt rules under Section 401.024(d) to
23 establish:

24 (1) reasonable security parameters for all transfers
25 of information requested under this subsection in electronic data
26 format; and

27 (2) requirements regarding the maintenance of

1 electronic data in the possession of a subclaimant or the
2 subclaimant's representative.

3 SECTION 2.023. Section 402.085, Labor Code, is amended to
4 read as follows:

5 Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The
6 division [~~commission~~] shall release information on a claim to:

7 (1) the Texas Department of Insurance for any
8 statutory or regulatory purpose, including a research purpose under
9 Chapter 405;

10 (2) a legislative committee for legislative purposes;

11 (3) a state or federal elected official requested in
12 writing to provide assistance by a constituent who qualifies to
13 obtain injury information under Section 402.084(b), if the request
14 for assistance is provided to the division [~~commission~~];

15 (4) [~~the Research and Oversight Council on Workers'~~
16 ~~Compensation for research purposes, or~~

17 [~~45~~] the attorney general or another entity that
18 provides child support services under Part D, Title IV, Social
19 Security Act (42 U.S.C. Section 651 et seq.), relating to:

20 (A) establishing, modifying, or enforcing a
21 child support or medical support obligation; or

22 (B) locating an absent parent; or

23 (5) the office of injured employee counsel for any
24 statutory or regulatory purpose that relates to a duty of that
25 office.

26 (b) The division [~~commission~~] may release information on a
27 claim to a governmental agency, political subdivision, or

regulatory body to use to:

(1) investigate an allegation of a criminal offense or licensing or regulatory violation;

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an administrative action, to:

(A) establish, modify, or enforce a child support or medical support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family [~~76, Human Resources~~] Code.

SECTION 2.024. Subsections (a), (b), and (d), Section 402.088, Labor Code, are amended to read as follows:

(a) On receipt of a valid request made under and complying with Section 402.087, the division [~~commission~~] shall review its records.

1 (b) If the division [~~commission~~] finds that the applicant
2 has made two or more general injury claims in the preceding five
3 years, the division [~~commission~~] shall release the date and
4 description of each injury to the employer.

5 (d) If the employer requests information on three or more
6 applicants at the same time, the division [~~commission~~] may refuse
7 to release information until it receives the written authorization
8 from each applicant.

9 SECTION 2.025. Section 402.089, Labor Code, is amended to
10 read as follows:

11 Sec. 402.089. FAILURE TO FILE AUTHORIZATION[~~+~~
12 ~~ADMINISTRATIVE VIOLATION~~]. [(a)] An employer who receives
13 information by telephone from the division [~~commission~~] under
14 Section 402.088 and who fails to file the necessary authorization
15 in accordance with Section 402.087 commits an [~~a Class C~~]
16 administrative violation.

17 [~~(b) Each failure to file an authorization is a separate~~
18 ~~violation.~~]

19 SECTION 2.026. Section 402.090, Labor Code, is amended to
20 read as follows:

21 Sec. 402.090. STATISTICAL INFORMATION. The division
22 [~~commission~~], the Texas Department of Insurance [~~research center~~],
23 or any other governmental agency may prepare and release
24 statistical information if the identity of an employee is not
25 explicitly or implicitly disclosed.

26 SECTION 2.027. Subsection (a), Section 402.091, Labor Code,
27 is amended to read as follows:

1 (a) A person commits an offense if the person knowingly,
2 intentionally, or recklessly publishes, discloses, or distributes
3 information that is confidential under this subchapter to a person
4 not authorized to receive the information directly from the
5 division [~~commission~~].

6 SECTION 2.028. Section 402.092, Labor Code, is amended to
7 read as follows:

8 Sec. 402.092. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE
9 OF CERTAIN INFORMATION. (a) In this section, "investigation file"
10 means any information compiled or maintained by the division with
11 respect to a division investigation authorized under this subtitle
12 or other workers' compensation law. The term does not include
13 information or material acquired by the division that is relevant
14 to an investigation by the insurance fraud unit and subject to
15 Section 701.151, Insurance Code.

16 (b) Information maintained in the investigation files of
17 the division [~~commission~~] is confidential and may not be disclosed
18 except:

- 19 (1) in a criminal proceeding;
20 (2) in a hearing conducted by the division
21 [~~commission~~];
22 (3) on a judicial determination of good cause; [~~or~~]
23 (4) to a governmental agency, political subdivision,
24 or regulatory body if the disclosure is necessary or proper for the
25 enforcement of the laws of this or another state or of the United
26 States; or
27 (5) to an insurance carrier if the investigation file

1 relates directly to a felony regarding workers' compensation or to
2 a claim in which restitution is required to be paid to the insurance
3 carrier.

4 (c) Division [~~(b) Commission~~] investigation files are not
5 open records for purposes of Chapter 552, Government Code.

6 (d) [~~(c)~~] Information in an investigation file that is
7 information in or derived from a claim file, or an employer injury
8 report or occupational disease report, is governed by the
9 confidentiality provisions relating to that information.

10 [~~(d) For purposes of this section, "investigation file"~~
11 ~~means any information compiled or maintained by the commission with~~
12 ~~respect to a commission investigation authorized by law.]~~

13 (e) The division [~~commission~~], upon request, shall disclose
14 the identity of a complainant under this section if the division
15 [~~commission~~] finds:

- 16 (1) the complaint was groundless or made in bad faith;
17 [~~or~~]
18 (2) the complaint lacks any basis in fact or evidence;
19 [~~or~~]
20 (3) the complaint is frivolous; or
21 (4) the complaint is done specifically for competitive
22 or economic advantage.

23 (f) Upon completion of an investigation in which [~~where~~] the
24 division [~~commission~~] determines a complaint is described by
25 Subsection (e), [~~groundless, frivolous, made in bad faith, or is~~
26 ~~not supported by evidence or is done specifically for competitive~~
27 ~~or economic advantage]~~ the division [~~commission~~] shall notify the

1 person who was the subject of the complaint of its finding and the
2 identity of the complainant.

3 SECTION 2.029. Chapter 402, Labor Code, is amended by
4 adding Subchapter F to read as follows:

5 SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

6 Sec. 402.251. COOPERATION; FACILITIES. (a) The department
7 and the division shall cooperate with the office of injured
8 employee counsel in providing services to claimants under this
9 subtitle.

10 (b) The department shall provide facilities to the office of
11 injured employee counsel in each regional office operated to
12 administer the duties of the division under this subtitle.

13 ARTICLE 3. GENERAL OPERATION OF WORKERS' COMPENSATION SYSTEM;
14 CONFORMING AMENDMENTS WITHIN LABOR CODE

15 SECTION 3.001. Subsection (b), Section 91.003, Labor Code,
16 is amended to read as follows:

17 (b) In particular, the Texas Workforce Commission, the
18 division of workers' compensation of the Texas Department of
19 Insurance, the Department of Assistive and Rehabilitative
20 Services, [the Texas Workers' Compensation Commission], and the
21 attorney general's office shall assist in the implementation of
22 this chapter and shall provide information to the department on
23 request.

24 SECTION 3.002. Subsection (a), Section 401.003, Labor Code,
25 is amended to read as follows:

26 (a) The division [~~commission~~] is subject to audit by the
27 state auditor in accordance with Chapter 321, Government Code. The

1 state auditor may audit [~~the commission's~~]:

2 (1) the structure and internal controls of the
3 division;

4 (2) the level and quality of service provided by the
5 division to employers, injured employees, insurance carriers,
6 self-insured governmental entities, and other participants;

7 (3) the implementation of statutory mandates by the
8 division;

9 (4) employee turnover;

10 (5) information management systems, including public
11 access to nonconfidential information;

12 (6) the adoption and implementation of administrative
13 rules by the commissioner; and

14 (7) assessment of administrative violations and the
15 penalties for those violations.

16 SECTION 3.003. Section 401.011, Labor Code, is amended by
17 amending Subdivisions (1), (2), (8), (15), (37), (38), and (39) and
18 adding Subdivisions (5-a), (13-a), (16-a), (18-a), (22-a), (31-a),
19 and (42-a) to read as follows:

20 (1) "Adjuster" means a person licensed under Chapter
21 4101, Insurance Code [~~407, Acts of the 63rd Legislature, Regular~~
22 ~~Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code)].~~

23 (2) "Administrative violation" means a violation of
24 this subtitle, [~~or~~] a rule adopted under this subtitle, or an order
25 or decision of the commissioner that is subject to penalties and
26 sanctions as provided by this subtitle.

27 (5-a) "Case management" means a collaborative process

1 of assessment, planning, facilitation, and advocacy for options and
2 services to meet an individual's health needs through communication
3 and application of available resources to promote quality,
4 cost-effective outcomes.

5 (8) "Commissioner" means the commissioner of workers'
6 compensation [~~"Commission" means the Texas Workers' Compensation~~
7 ~~Commission~~].

8 (13-a) "Department" means the Texas Department of
9 Insurance.

10 (15) "Designated doctor" means a doctor appointed by
11 mutual agreement of the parties or by the division [~~commission~~] to
12 recommend a resolution of a dispute as to the medical condition of
13 an injured employee.

14 (16-a) "Division" means the division of workers'
15 compensation of the department.

16 (18-a) "Evidence-based medicine" means the use of
17 current best quality scientific and medical evidence formulated
18 from credible scientific studies, including peer-reviewed medical
19 literature and other current scientifically based texts, and
20 treatment and practice guidelines in making decisions about the
21 care of individual patients.

22 (22-a) "Health care reasonably required" means health
23 care that is clinically appropriate and considered effective for
24 the injured employee's injury and provided in accordance with best
25 practices consistent with:

26 (A) evidence-based medicine; or

27 (B) if that evidence is not available, generally

1 accepted standards of medical practice recognized in the medical
2 community.

3 (31-a) "Network" or "workers' compensation health care
4 network" means an organization that is:

5 (A) formed as a health care provider network to
6 provide health care services to injured employees;

7 (B) certified in accordance with Chapter 1305,
8 Insurance Code, and rules of the commissioner of insurance; and

9 (C) established by, or operates under contract
10 with, an insurance carrier.

11 (37) "Representative" means a person, including an
12 attorney, authorized by the commissioner [~~commission~~] to assist or
13 represent an employee, a person claiming a death benefit, or an
14 insurance carrier in a matter arising under this subtitle that
15 relates to the payment of compensation.

16 (38) "Research center" means the research functions of
17 the Texas Department of Insurance required [~~Texas Workers'~~
18 ~~Compensation Research Center established~~] under Chapter 405 [~~404~~].

19 (39) "Sanction" means a penalty or other punitive
20 action or remedy imposed by the commissioner [~~commission~~] on an
21 insurance carrier, representative, employee, employer, or health
22 care provider for an act or omission in violation of this subtitle
23 or a rule, [~~or~~] order, or decision of the commissioner
24 [~~commission~~].

25 (42-a) "Violation" means an administrative violation
26 subject to penalties and sanctions as provided by this subtitle.

27 SECTION 3.004. Section 401.013, Labor Code, is amended by

1 adding Subsection (c) to read as follows:

2 (c) On the voluntary introduction into the body of any
3 substance listed under Subsection (a)(2)(B), based on a blood test
4 or urinalysis, it is a rebuttable presumption that a person is
5 intoxicated and does not have the normal use of mental or physical
6 faculties.

7 SECTION 3.005. Section 401.021, Labor Code, is amended to
8 read as follows:

9 Sec. 401.021. APPLICATION OF OTHER ACTS. Except as
10 otherwise provided by this subtitle:

11 (1) a proceeding, hearing, judicial review, or
12 enforcement of a commissioner [~~commission~~] order, decision, or rule
13 is governed by the following subchapters and sections of Chapter
14 2001, Government Code:

15 (A) Subchapters A, B, D, E, G, and H, excluding
16 Sections 2001.004(3) and 2001.005;

17 (B) Sections 2001.051, 2001.052, and 2001.053;

18 (C) Sections 2001.056 through 2001.062; and

19 (D) Section 2001.141(c);

20 (2) a proceeding, hearing, judicial review, or
21 enforcement of a commissioner [~~commission~~] order, decision, or rule
22 is governed by Subchapters A and B, Chapter 2002, Government Code,
23 excluding Sections 2002.001(3) [~~2002.001(2)~~] and 2002.023;

24 (3) Chapter 551, Government Code, applies to a
25 proceeding under this subtitle, other than:

26 (A) a benefit review conference;

27 (B) a contested case hearing;

1 (C) a proceeding of the ~~[an]~~ appeals panel
2 ~~[proceeding]~~;

3 (D) arbitration; or

4 (E) another proceeding involving a determination
5 on a workers' compensation claim; and

6 (4) Chapter 552, Government Code, applies to a
7 workers' compensation record of the division, the department,
8 ~~[commission]~~ or the office of injured employee counsel ~~[the~~
9 ~~research center]~~.

10 SECTION 3.006. Subsection (b), Section 401.023, Labor Code,
11 is amended to read as follows:

12 (b) The division ~~[commission]~~ shall compute and publish the
13 interest and discount rate quarterly, using the treasury constant
14 maturity rate for one-year treasury bills issued by the United
15 States government, as published by the Federal Reserve Board on the
16 15th day preceding the first day of the calendar quarter for which
17 the rate is to be effective, plus 3.5 percent. For this purpose,
18 calendar quarters begin January 1, April 1, July 1, and October 1.

19 SECTION 3.007. Subsections (b), (c), and (d), Section
20 401.024, Labor Code, are amended to read as follows:

21 (b) Notwithstanding another provision of this subtitle that
22 specifies the form, manner, or procedure for the transmission of
23 specified information, the commissioner ~~[commission]~~ by rule may
24 permit or require the use of an electronic transmission instead of
25 the specified form, manner, or procedure. If the electronic
26 transmission of information is not authorized or permitted by
27 ~~[commission]~~ rule, the transmission of that information is governed

1 by any applicable statute or rule that prescribes the form, manner,
2 or procedure for the transmission, including standards adopted by
3 the Department of Information Resources.

4 (c) The commissioner [~~commission~~] may designate and
5 contract with a data collection agent to fulfill the data
6 collection requirements of this subtitle.

7 (d) The commissioner [~~executive director~~] may prescribe the
8 form, manner, and procedure for transmitting any authorized or
9 required electronic transmission, including requirements related
10 to security, confidentiality, accuracy, and accountability.

11 SECTION 3.008. Subchapter C, Chapter 401, Labor Code, is
12 amended by adding Section 401.025 to read as follows:

13 Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE
14 DIRECTOR. (a) A reference in this code or other law to the Texas
15 Workers' Compensation Commission or the executive director of that
16 commission means the division or the commissioner as consistent
17 with the respective duties of the commissioner and the division
18 under this code and other workers' compensation laws of this state.

19 (b) A reference in this code or other law to the executive
20 director of the Texas Workers' Compensation Commission means the
21 commissioner.

22 SECTION 3.009. The heading to Chapter 403, Labor Code, is
23 amended to read as follows:

24 CHAPTER 403. DIVISION [~~COMMISSION~~] FINANCING

25 SECTION 3.010. Section 403.001, Labor Code, is amended to
26 read as follows:

27 Sec. 403.001. [~~COMMISSION~~] FUNDS. (a) Except as provided

1 by Sections 403.006 and 403.007 or as otherwise provided by law,
2 money collected under this subtitle, including administrative
3 penalties and advance deposits for purchase of services, shall be
4 deposited in the general revenue fund of the state treasury to the
5 credit of the Texas Department of Insurance operating account
6 ~~[commission]~~.

7 (b) The money may be spent as authorized by legislative
8 appropriation on warrants issued by the comptroller under
9 requisitions made by the commissioner of insurance ~~[commission]~~.

10 (c) Money deposited in the general revenue fund under this
11 section may be used to satisfy the requirements of Section 201.052
12 ~~[Article 4.19]~~, Insurance Code.

13 SECTION 3.011. Section 403.003, Labor Code, is amended to
14 read as follows:

15 Sec. 403.003. RATE OF ASSESSMENT. (a) The commissioner of
16 insurance ~~[commission]~~ shall set and certify to the comptroller the
17 rate of maintenance tax assessment ~~[not later than October 31 of~~
18 ~~each year]~~ taking into account:

19 (1) any expenditure projected as necessary for the
20 division and the office of injured employee counsel ~~[commission]~~
21 to:

22 (A) administer this subtitle during the fiscal
23 year for which the rate of assessment is set; and

24 (B) reimburse the general revenue fund as
25 provided by Section 201.052 ~~[Article 4.19]~~, Insurance Code;

26 (2) projected employee benefits paid from general
27 revenues;

(3) a surplus or deficit produced by the tax in the preceding year;

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this subtitle; and

(5) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud.

(b) In setting the rate of assessment, the commissioner of insurance [~~commission~~] may not consider revenue or expenditures related to:

(1) the State Office of Risk Management;

(2) the workers' compensation research functions of the department under Chapter 405 [~~and oversight council on workers' compensation~~]; or

(3) any other revenue or expenditure excluded from consideration by law.

SECTION 3.012. Section 403.004, Labor Code, is amended to read as follows:

Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS. The commissioner or the [~~insurance~~] commissioner of insurance [~~or the executive director of the commission~~] immediately shall proceed to collect taxes due under this chapter from an insurance carrier that withdraws from business in this state, using legal process as necessary.

SECTION 3.013. Section 403.005, Labor Code, is amended to read as follows:

Sec. 403.005. TAX RATE [~~SURPLUS OR DEFICIT~~]. The

1 commissioner of insurance shall annually adjust the rate of
2 assessment of the maintenance tax imposed under Section 403.003 so
3 that the tax imposed that year, together with any unexpended funds
4 produced by the tax, produces the amount the commissioner of
5 insurance determines is necessary to pay the expenses of
6 administering this subtitle. [~~(a) If the tax rate set by the~~
7 ~~commission for a year does not produce sufficient revenue to make~~
8 ~~all expenditures authorized by legislative appropriation, the~~
9 ~~deficit shall be paid from the general revenue fund.~~

10 [~~(b) If the tax rate set by the commission for a year~~
11 ~~produces revenue that exceeds the amount required to make all~~
12 ~~expenditures authorized by the legislature, the excess shall be~~
13 ~~deposited in the general revenue fund to the credit of the~~
14 ~~commission.~~]

15 SECTION 3.014. Section 403.006, Labor Code, as amended by
16 Chapters 211 and 1296, Acts of the 78th Legislature, Regular
17 Session, 2003, is reenacted and amended to read as follows:

18 Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent
19 injury fund is a dedicated [~~an~~] account in the general revenue fund
20 [~~in the state treasury~~]. Money in the account may be appropriated
21 only for the purposes of this section or as provided by other law.
22 Section 403.095, Government Code, does not apply to the subsequent
23 injury fund.

24 (b) The subsequent injury fund is liable for:

25 (1) the payment of compensation as provided by Section
26 408.162;

27 (2) reimbursement of insurance carrier claims of

1 overpayment of benefits made under an interlocutory order or
2 decision of the commissioner [~~commission~~] as provided by this
3 subtitle, consistent with the priorities established by rule by the
4 commissioner [~~commission~~]; and

5 (3) reimbursement of insurance carrier claims as
6 provided by Sections 408.042 and 413.0141, consistent with the
7 priorities established by rule by the commissioner [~~commission~~]; and

8 [~~(4) the payment of an assessment of feasibility and~~
9 ~~the development of regional networks established under Section~~
10 ~~408.0221]~~.

11 (c) The commissioner [~~executive director~~] shall appoint an
12 administrator for the subsequent injury fund.

13 (d) Based on an actuarial assessment of the funding
14 available under Section 403.007(e), the commissioner [~~commission~~]
15 may make partial payment of insurance carrier claims under
16 Subsection (b)(3).

17 SECTION 3.015. Section 403.007, Labor Code, is amended to
18 read as follows:

19 Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a
20 compensable death occurs and no legal beneficiary survives or a
21 claim for death benefits is not timely made, the insurance carrier
22 shall pay to the division [~~commission~~] for deposit to the credit of
23 the subsequent injury fund an amount equal to 364 weeks of the death
24 benefits otherwise payable.

25 (b) The insurance carrier may elect or the commissioner
26 [~~commission~~] may order that death benefits payable to the fund be
27 commuted on written approval of the commissioner [~~executive~~]

1 ~~director~~]. The commutation may be discounted for present payment
2 at the rate established in Section 401.023, compounded annually.

3 (c) If a claim for death benefits is not filed with the
4 division [~~commission~~] by a legal beneficiary on or before the first
5 anniversary of the date of the death of the employee, it is
6 presumed, for purposes of this section only, that no legal
7 beneficiary survived the deceased employee. The presumption does
8 not apply against a minor beneficiary or an incompetent beneficiary
9 for whom a guardian has not been appointed.

10 (d) If the insurance carrier makes payment to the subsequent
11 injury fund and it is later determined by a final award of the
12 commissioner [~~commission~~] or the final judgment of a court of
13 competent jurisdiction that a legal beneficiary is entitled to the
14 death benefits, the commissioner [~~commission~~] shall order the fund
15 to reimburse the insurance carrier for the amount overpaid to the
16 fund.

17 (e) If the commissioner [~~commission~~] determines that the
18 funding under Subsection (a) is not adequate to meet the expected
19 obligations of the subsequent injury fund established under Section
20 403.006, the fund shall be supplemented by the collection of a
21 maintenance tax paid by insurance carriers, other than a
22 governmental entity, as provided by Sections 403.002 and 403.003.
23 The rate of assessment must be adequate to provide 120 percent of
24 the projected unfunded liabilities of the fund for the next
25 biennium as certified by an independent actuary or financial
26 advisor.

27 (f) The commissioner's [~~commission's~~] actuary or financial

1 advisor shall report biannually to the department [~~Research and~~
 2 ~~Oversight Council on Workers' Compensation~~] on the financial
 3 condition and projected assets and liabilities of the subsequent
 4 injury fund. The commissioner [~~commission~~] shall make the reports
 5 available to members of the legislature and the public. The
 6 division [~~commission~~] may purchase annuities to provide for
 7 payments due to claimants under this subtitle if the commissioner
 8 [~~commission~~] determines that the purchase of annuities is
 9 financially prudent for the administration of the fund.

10 SECTION 3.016. Subtitle A, Title 5, Labor Code, is amended
 11 by adding Chapter 404 to read as follows:

12 CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

13 SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

14 Sec. 404.001. DEFINITIONS. In this chapter:

15 (1) "Office" means the office of injured employee
 16 counsel.

17 (2) "Public counsel" means the injured employee public
 18 counsel.

19 Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE
 20 ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (a) The
 21 office of injured employee counsel is established to represent the
 22 interests of workers' compensation claimants in this state.

23 (b) The office is administratively attached to the
 24 department but is independent of direction by the commissioner, the
 25 commissioner of insurance, and the department.

26 (c) The department shall provide the staff and facilities
 27 necessary to enable the office to perform the duties of the office

1 under this subtitle, including:

2 (1) administrative assistance and services to the
3 office, including budget planning and purchasing;

4 (2) personnel services; and

5 (3) computer equipment and support.

6 (d) The public counsel may enter into interagency contracts
7 and other agreements with the commissioner of workers' compensation
8 and the commissioner of insurance as necessary to implement this
9 chapter.

10 Sec. 404.003. SUNSET PROVISION. The office of injured
11 employee counsel is subject to Chapter 325, Government Code (Texas
12 Sunset Act). Unless continued in existence as provided by that
13 chapter, the office is abolished and this chapter expires
14 September 1, 2009.

15 Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office
16 shall prepare information of public interest describing the
17 functions of the office.

18 (b) The office shall make the information available to the
19 public and appropriate state agencies.

20 Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The
21 office shall prepare and maintain a written plan that describes how
22 a person who does not speak English can be provided reasonable
23 access to the office's programs.

24 (b) The office shall comply with federal and state laws for
25 program and facility accessibility.

26 Sec. 404.006. RULEMAKING. (a) The public counsel shall
27 adopt rules as necessary to implement this chapter.

1 (b) Rulemaking under this section is subject to Chapter
2 2001, Government Code.

3 [Sections 404.007-404.050 reserved for expansion]

4 SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

5 Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with
6 the advice and consent of the senate, shall appoint the injured
7 employee public counsel. The public counsel serves a two-year term
8 that expires on February 1 of each odd-numbered year.

9 (b) The governor shall appoint the public counsel without
10 regard to the race, color, disability, sex, religion, age, or
11 national origin of the appointee. Section 401.011(16) does not
12 apply to the use of the term "disability" in this subchapter.

13 (c) If a vacancy occurs during a term, the governor shall
14 fill the vacancy for the unexpired term.

15 (d) In appointing the public counsel, the governor may
16 consider recommendations made by groups that represent wage
17 earners.

18 Sec. 404.052. QUALIFICATIONS. To be eligible to serve as
19 public counsel, a person must:

- 20 (1) be a resident of Texas;
21 (2) be licensed to practice law in this state;
22 (3) have demonstrated a strong commitment to and
23 involvement in efforts to safeguard the rights of the working
24 public;
25 (4) have management experience;
26 (5) possess knowledge and experience with the workers'
27 compensation system; and

1 (6) have experience with legislative procedures and
2 administrative law.

3 Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL.

4 A person is not eligible for appointment as public counsel if the
5 person or the person's spouse:

6 (1) is employed by or participates in the management
7 of a business entity or other organization that holds a license,
8 certificate of authority, or other authorization from the
9 department or division or that receives funds from the department
10 or division;

11 (2) owns or controls, directly or indirectly, more
12 than a 10 percent interest in a business entity or other
13 organization receiving funds from the department, division, or the
14 office; or

15 (3) uses or receives a substantial amount of tangible
16 goods or funds from the department, division, or the office, other
17 than compensation or reimbursement authorized by law.

18 Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve
19 as public counsel if the person is required to register as a
20 lobbyist under Chapter 305, Government Code, because of the
21 person's activities for compensation related to the operation of
22 the department, the division, or the office.

23 Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for
24 removal from office that the public counsel:

25 (1) does not have at the time of appointment or
26 maintain during service as public counsel the qualifications
27 required by Section 404.052;

1 (2) violates a prohibition established by Section
2 404.053, 404.054, 404.056, or 404.057; or

3 (3) cannot, because of illness or disability,
4 discharge the public counsel's duties for a substantial part of the
5 public counsel's term.

6 (b) The validity of an action of the public counsel or the
7 office is not affected by the fact that the action is taken when a
8 ground for removal of the public counsel exists.

9 Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT.

10 (a) A former public counsel may not make any communication to or
11 appearance before the division, the department, the commissioner,
12 the commissioner of insurance, or an employee of the division or the
13 department before the second anniversary of the date the person
14 ceases to serve as public counsel if the communication or
15 appearance is made:

16 (1) on behalf of another person in connection with any
17 matter on which the person seeks official action; or

18 (2) with the intent to influence a commissioner or
19 commissioner of insurance decision or action, unless the person is
20 acting on the person's own behalf and without remuneration.

21 (b) A former public counsel may not represent any person or
22 receive compensation for services rendered on behalf of any person
23 regarding a matter before the division or the department before the
24 second anniversary of the date the person ceases to serve as public
25 counsel.

26 (c) A person commits an offense if the person violates this
27 section. An offense under this section is a Class A misdemeanor.

1 (d) A former employee of the office may not:

2 (1) be employed by an insurance carrier regarding a
3 matter that was in the scope of the employee's official
4 responsibility while the employee was associated with the office;
5 or

6 (2) represent a person before the division or the
7 department or a court in a matter:

8 (A) in which the employee was personally involved
9 while associated with the office; or

10 (B) that was within the employee's official
11 responsibility while the employee was associated with the office.

12 (e) The prohibition of Subsection (d)(1) applies until the
13 first anniversary of the date the employee's employment with the
14 office ceases.

15 (f) The prohibition of Subsection (d)(2) applies to a
16 current employee of the office while the employee is associated
17 with the office and at any time after.

18 Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section,
19 "trade association" means a nonprofit, cooperative, and
20 voluntarily joined association of business or professional
21 competitors designed to assist its members and its industry or
22 profession in dealing with mutual business or professional problems
23 and in promoting their common interest.

24 (b) A person may not serve as public counsel if the person
25 has been, within the previous two years:

26 (1) an officer, employee, or paid consultant of a
27 trade association in the field of workers' compensation; or

1 (2) the spouse of an officer, manager, or paid
2 consultant of a trade association in the field of workers'
3 compensation.

4 [Sections 404.058-404.100 reserved for expansion]

5 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

6 Sec. 404.101. GENERAL DUTIES. (a) The office shall, as
7 provided by this subtitle:

8 (1) provide assistance to workers' compensation
9 claimants;

10 (2) advocate on behalf of injured employees as a class
11 regarding rulemaking by the commissioner and commissioner of
12 insurance relating to workers' compensation;

13 (3) assist injured employees with contacting
14 appropriate licensing boards for complaints against a health care
15 provider; and

16 (4) assist injured employees with referral to local,
17 state, and federal financial assistance, rehabilitation, and work
18 placement programs, as well as other social services that the
19 office considers appropriate.

20 (b) The office:

21 (1) may assess the impact of workers' compensation
22 laws, rules, procedures, and forms on injured employees in this
23 state; and

24 (2) shall, as provided by this subtitle:

25 (A) monitor the performance and operation of the
26 workers' compensation system, with a focus on the system's effect on
27 the return to work of injured employees;

1 (B) assist injured employees, through the
2 ombudsman program, with the resolution of complaints pending at the
3 division or department;

4 (C) assist injured employees, through the
5 ombudsman program, in the division's administrative dispute
6 resolution system; and

7 (D) advocate in the office's own name positions
8 determined by the public counsel to be most advantageous to a
9 substantial number of injured employees.

10 (c) The office may not appear or intervene, as a party or
11 otherwise, before the commissioner, commissioner of insurance,
12 division, or department on behalf of an individual injured
13 employee, except through the ombudsman program.

14 Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL.
15 The public counsel shall administer and enforce this chapter,
16 including preparing and submitting to the legislature a budget for
17 the office and approving expenditures for professional services,
18 travel, per diem, and other actual and necessary expenses incurred
19 in administering the office.

20 Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The
21 office shall operate the ombudsman program under Subchapter D.

22 (b) The public counsel shall assign staff attorneys, as the
23 public counsel considers appropriate, to supervise the work of the
24 ombudsman program and advise ombudsmen in providing assistance to
25 claimants and preparing for informal and formal hearings.

26 (c) The office shall coordinate services provided by the
27 ombudsman program with services provided by the Department of

1 Assistive and Rehabilitative Services.

2 Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public
3 counsel:

4 (1) may appear or intervene, as a party or otherwise,
5 as a matter of right before the commissioner, commissioner of
6 insurance, division, or department on behalf of injured employees
7 as a class in matters involving rules, agency policies, and forms
8 affecting the workers' compensation system that the commissioner or
9 the commissioner of insurance adopts or approves;

10 (2) may intervene as a matter of right or otherwise
11 appear in a judicial proceeding involving or arising from an action
12 taken by an administrative agency in a proceeding in which the
13 public counsel previously appeared under the authority granted by
14 this chapter;

15 (3) may appear or intervene, as a party or otherwise,
16 as a matter of right on behalf of injured employees as a class in any
17 proceeding in which the public counsel determines that the
18 interests of injured employees as a class are in need of
19 representation, except that the public counsel may not intervene in
20 an enforcement or parens patriae proceeding brought by the attorney
21 general; and

22 (4) may appear or intervene before the commissioner,
23 commissioner of insurance, division, or department, as a party or
24 otherwise, on behalf of injured employees as a class in a matter
25 involving rates, rules, agency policies, or forms affecting injured
26 employees as a class in any proceeding in which the public counsel
27 determines that injured employees are in need of representation.

1 Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED
2 EMPLOYEES IN ADMINISTRATIVE PROCEDURES. The office, through the
3 ombudsman program, may appear before the commissioner or division
4 on behalf of an individual injured employee during an
5 administrative dispute resolution process. This chapter may not be
6 construed as requiring or allowing legal representation for an
7 individual injured employee by an office attorney or ombudsman in
8 any proceeding.

9 Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall
10 report to the governor, lieutenant governor, speaker of the house
11 of representatives, and the chairs of the legislative committees
12 with appropriate jurisdiction not later than December 1 of each
13 even-numbered year. The report must include:

14 (1) a description of the activities of the office;

15 (2) identification of any problems in the workers'
16 compensation system from the perspective of injured employees as a
17 class, as considered by the public counsel, with recommendations
18 for regulatory and legislative action; and

19 (3) an analysis of the ability of the workers'
20 compensation system to provide adequate, equitable, and timely
21 benefits to injured employees at a reasonable cost to employers.

22 (b) The office shall coordinate with the workers'
23 compensation research and evaluation group to obtain needed
24 information and data to make the evaluations required for the
25 report.

26 (c) The office shall publish and disseminate the
27 legislative report to interested persons, and may charge a fee for

1 the publication as necessary to achieve optimal dissemination.

2 Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. The
3 public counsel:

4 (1) is entitled to the same access as a party, other
5 than division staff or department staff, to division or department
6 records available in a proceeding before the commissioner,
7 commissioner of insurance, division, or department under the
8 authority granted to the public counsel by this chapter; and

9 (2) is entitled to obtain discovery under Chapter
10 2001, Government Code, of any nonprivileged matter that is relevant
11 to the subject matter involved in a proceeding or submission before
12 the commissioner, commissioner of insurance, division, or
13 department as authorized by this chapter.

14 Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public
15 counsel may recommend proposed legislation to the legislature that
16 the public counsel determines would positively affect the interests
17 of injured employees as a class.

18 Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public
19 counsel shall submit to the division and the department for
20 adoption by the commissioners a notice of injured employee rights
21 and responsibilities to be distributed as provided by commissioner
22 and commissioner of insurance rules.

23 Sec. 404.110. APPLICABILITY OF CONFIDENTIALITY REQUIREMENTS.
24 Confidentiality requirements applicable to examination reports
25 under Article 1.18, Insurance Code, and to the commissioner of
26 insurance under Section 3A, Article 21.28-A, Insurance Code, apply
27 to the public counsel.

1 Sec. 404.111. ACCESS TO INFORMATION. (a) The office may
2 access information from an executive agency that is otherwise
3 confidential under a law of this state if that information is
4 necessary for the performance of the duties of the office,
5 including information made confidential under:

- 6 (1) Section 843.006, Insurance Code;
7 (2) Chapter 108, Health and Safety Code;
8 (3) Chapter 552, Government Code; and
9 (4) Sections 402.083, 402.091, and 402.092 of this
10 code.

11 (b) On request by the public counsel, the division or the
12 department shall provide any information or data requested by the
13 office in furtherance of the duties of the office under this
14 chapter.

15 (c) The office may not make public any confidential
16 information provided to the office under this chapter but may
17 disclose a summary of the information that does not directly or
18 indirectly identify the individual or entity that is the subject of
19 the information. The office may not release, and an individual or
20 entity may not gain access to, any information that:

- 21 (1) could reasonably be expected to reveal the
22 identity of a health care provider or an injured employee;
23 (2) reveals the zip code of an injured employee's
24 primary residence;
25 (3) discloses a health care provider discount or a
26 differential between a payment and a billed charge; or
27 (4) relates to an actual payment made by a payer to an

1 identified health care provider.

2 (d) Information collected or used by the office under this
 3 chapter is subject to the confidentiality provisions and criminal
 4 penalties of:

5 (1) Section 81.103, Health and Safety Code;

6 (2) Section 311.037, Health and Safety Code;

7 (3) Chapter 159, Occupations Code; and

8 (4) Section 402.091 of this code.

9 (e) Information on health care providers and injured
 10 employees that is in the possession of the office, and any
 11 compilation, report, or analysis produced from the information that
 12 identifies providers and injured employees is not:

13 (1) subject to discovery, subpoena, or other means of
 14 legal compulsion for release to any individual or entity; or

15 (2) admissible in any civil, administrative, or
 16 criminal proceeding.

17 (f) Notwithstanding Subsection (c)(2), the office may use
 18 zip code information to analyze information on a geographical
 19 basis.

20 SECTION 3.017. Subchapter C, Chapter 409, Labor Code, is
 21 redesignated as Subchapter D, Chapter 404, Labor Code, and Sections
 22 409.041 through 409.044, Labor Code, are renumbered as Sections
 23 404.151 through 404.154, Labor Code, and amended to read as
 24 follows:

25 SUBCHAPTER D [C]. OMBUDSMAN PROGRAM

26 Sec. 404.151 [~~409.041~~]. OMBUDSMAN PROGRAM. (a) The
 27 office [~~commission~~] shall maintain an ombudsman program as provided

by this subchapter to assist injured employees [~~workers~~] and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

(1) meet with or otherwise provide information to injured employees [~~workers~~];

(2) investigate complaints;

(3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees [~~workers~~];

(4) assist unrepresented claimants [~~, employers, and other parties~~] to enable those persons to protect their rights in the workers' compensation system; and

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Sec. 404.152 [~~409.042~~]. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. (a) At least one specially qualified employee in each division [~~commission~~] office shall be an ombudsman designated by the office of injured employee counsel, [~~an ombudsman~~] who shall perform the duties under this subchapter [~~section~~] as the person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

(A) this subtitle and the provisions of Subtitle C that relate to claims management;

1 (B) other laws relating to workers'
2 compensation; and

3 (C) rules adopted under this subtitle and the
4 laws described under Subdivision (1)(B);

5 (2) have demonstrated experience in handling and
6 resolving problems for the general public;

7 (3) possess strong interpersonal skills; and

8 (4) have at least one year of demonstrated experience
9 in the field of workers' compensation.

10 (c) The public counsel shall ~~[commission]~~ by rule ~~[shall]~~
11 adopt training guidelines and continuing education requirements
12 for ombudsmen. Training provided under this subsection must:

13 (1) include education regarding this subtitle, rules
14 adopted under this subtitle, and ~~[appeals panel]~~ decisions of the
15 appeals panel, with emphasis on benefits and the dispute resolution
16 process; ~~[and]~~

17 (2) require an ombudsman undergoing training to be
18 observed and monitored by an experienced ombudsman during daily
19 activities conducted under this subchapter; and

20 (3) incorporate the requirements of Section
21 404.103(b).

22 Sec. 404.153 ~~[409.043]~~. EMPLOYER NOTIFICATION; ADMINISTRATIVE
23 VIOLATION. (a) Each employer shall notify its employees of the
24 ombudsman program in the ~~[a]~~ manner prescribed by the office
25 ~~[commission]~~.

26 (b) An employer commits an administrative ~~[a]~~ violation if
27 the employer fails to comply with this section. ~~[A violation under~~

~~this section is a Class C administrative violation.]~~

Sec. 404.154 ~~[409.044]~~. PUBLIC INFORMATION. The office ~~[commission]~~ shall widely disseminate information about the ombudsman program.

SECTION 3.018. Section 405.001, Labor Code, is amended to read as follows:

Sec. 405.001. DEFINITION. In this chapter, "group" ~~["department"]~~ means the workers' compensation research and evaluation group ~~[Texas Department of Insurance]~~.

SECTION 3.019. Subsection (a), Section 405.002, Labor Code, is amended to read as follows:

(a) The workers' compensation research and evaluation group is located within the department and serves as a resource for the commissioner of insurance on workers' compensation issues ~~[department shall conduct professional studies and research related to:~~

~~[(1) the delivery of benefits,~~

~~[(2) litigation and controversy related to workers' compensation,~~

~~[(3) insurance rates and rate-making procedures,~~

~~[(4) rehabilitation and reemployment of injured workers,~~

~~[(5) workplace health and safety issues,~~

~~[(6) the quality and cost of medical benefits, and~~

~~[(7) other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system].~~

SECTION 3.020. Chapter 405, Labor Code, is amended by

1 adding Sections 405.0025 and 405.0026 to read as follows:

2 Sec. 405.0025. RESEARCH DUTIES OF GROUP. (a) The group
3 shall conduct professional studies and research related to:

- 4 (1) the delivery of benefits;
5 (2) litigation and controversy related to workers'
6 compensation;
7 (3) insurance rates and ratemaking procedures;
8 (4) rehabilitation and reemployment of injured
9 employees;
10 (5) the quality and cost of medical benefits;
11 (6) employer participation in the workers'
12 compensation system;
13 (7) employment health and safety issues; and
14 (8) other matters relevant to the cost, quality, and
15 operational effectiveness of the workers' compensation system.

16 (b) The group shall:

- 17 (1) objectively evaluate the impact of the workers'
18 compensation health care networks certified under Chapter 1305,
19 Insurance Code, on the cost and the quality of medical care provided
20 to injured employees; and
21 (2) report the group's findings to the governor, the
22 lieutenant governor, the speaker of the house of representatives,
23 and the members of the legislature not later than December 1 of each
24 even-numbered year.

25 (c) At a minimum, the report required under Subsection (b)
26 must evaluate the impact of workers' compensation health care
27 networks on:

- (1) the average medical and indemnity cost per claim;
- (2) access and utilization of health care;
- (3) injured employee return-to-work outcomes;
- (4) injured employee satisfaction;
- (5) injured employee health-related functional outcomes;
- (6) the frequency, duration, and outcome of complaints; and
- (7) the frequency, duration, and outcome of disputes regarding medical benefits.

Sec. 405.0026. RESEARCH AGENDA. (a) The group shall prepare and publish annually in the Texas Register a proposed workers' compensation research agenda for the commissioner of insurance review and approval.

(b) The commissioner of insurance shall:

- (1) accept public comments on the research agenda; and
- (2) hold a public hearing on the proposed research agenda if a hearing is requested by interested persons.

SECTION 3.021. Subsections (a) and (e), Section 405.003, Labor Code, are amended to read as follows:

(a) The group's ~~[department's]~~ duties under this chapter are funded through the assessment of a maintenance tax collected annually from all insurance carriers, and self-insurance groups that hold certificates of approval under Chapter 407A, except governmental entities.

(e) Amounts received under this section shall be deposited in the general revenue fund ~~[state treasury]~~ in accordance with

1 Section 251.004 [~~Article 5.68(e)~~], Insurance Code, to be used:

2 (1) for the operation of the group's [~~department's~~]
3 duties under this chapter; and

4 (2) to reimburse the general revenue fund in
5 accordance with Section 201.052 [~~Article 4.19~~], Insurance Code.

6 SECTION 3.022. Section 405.004, Labor Code, is amended by
7 amending Subsections (a), (b), and (d) and adding Subsections (e),
8 (f), and (g) to read as follows:

9 (a) As required to fulfill the group's [~~department's~~]
10 objectives under this chapter, the group [~~department~~] is entitled
11 to access to the files and records of:

12 (1) the division [~~commission~~];

13 (2) the Texas Workforce Commission;

14 (3) the [~~Texas~~] Department of Assistive and
15 Rehabilitative [~~Human~~] Services;

16 (4) the office of injured employee counsel;

17 (5) [~~4~~] the State Office of Risk Management; and

18 (6) [~~5~~] other appropriate state agencies.

19 (b) A state agency shall assist and cooperate in providing
20 information to the group [~~department~~].

21 (d) Except as provided by this subsection, the [~~The~~]
22 identity of an individual or entity selected to participate in a
23 [~~department~~] survey conducted by the group or who participates in
24 such a survey is confidential and is not subject to public
25 disclosure under Chapter 552, Government Code. This subsection
26 does not prohibit the identification of a workers' compensation
27 health care network in a report card issued under Section 1305.502,

1 Insurance Code, provided that the report card may not identify any
2 injured employee or other individual.

3 (e) A working paper, including all documentary or other
4 information, prepared or maintained by the group in performing the
5 group's duties under this chapter or other law to conduct an
6 evaluation and prepare a report is excepted from the public
7 disclosure requirements of Section 552.021, Government Code.

8 (f) A record held by another entity that is considered to be
9 confidential by law and that the group receives in connection with
10 the performance of the group's functions under this chapter or
11 another law remains confidential and is excepted from the public
12 disclosure requirements of Section 552.021, Government Code.

13 (g) The commissioner of insurance shall adopt rules as
14 necessary to establish data reporting requirements to support the
15 research duties under this chapter. This section may not be
16 construed as requiring additional reporting requirements on
17 nonsubscribing employers.

18 SECTION 3.023. Section 406.004, Labor Code, is amended to
19 read as follows:

20 Sec. 406.004. EMPLOYER NOTICE TO DIVISION [~~COMMISSION,~~
21 ~~ADMINISTRATIVE VIOLATION~~]. (a) An employer who does not obtain
22 workers' compensation insurance coverage shall notify the division
23 [~~commission~~] in writing, in the time and as prescribed by
24 commissioner [~~commission~~] rule, that the employer elects not to
25 obtain coverage.

26 (b) The commissioner [~~commission~~] shall prescribe forms to
27 be used for the employer notification and shall require the

1 employer to provide reasonable information to the division
2 [~~commission~~] about the employer's business.

3 (c) The division [~~commission~~] may contract with the Texas
4 Workforce [~~Employment~~] Commission or the comptroller for
5 assistance in collecting the notification required under this
6 section. Those agencies shall cooperate with the division
7 [~~commission~~] in enforcing this section.

8 (d) The employer notification filing required under this
9 section shall be filed with the division [~~commission~~] in accordance
10 with Section 406.009.

11 (e) An employer commits an administrative [a] violation if
12 the employer fails to comply with this section. [~~A violation under~~
13 ~~this subsection is a Class D administrative violation. Each day of~~
14 ~~noncompliance constitutes a separate violation.~~]

15 SECTION 3.024. Subsections (c) and (e), Section 406.005,
16 Labor Code, are amended to read as follows:

17 (c) Each employer shall post a notice of whether the
18 employer has workers' compensation insurance coverage at
19 conspicuous locations at the employer's place of business as
20 necessary to provide reasonable notice to the employees. The
21 commissioner [~~commission~~] may adopt rules relating to the form and
22 content of the notice. The employer shall revise the notice when
23 the information contained in the notice is changed.

24 (e) An employer commits an administrative [a] violation if
25 the employer fails to comply with this section. [~~A violation under~~
26 ~~this subsection is a Class D administrative violation.~~]

27 SECTION 3.025. Subsections (a), (b), and (c), Section

1 406.006, Labor Code, are amended to read as follows:

2 (a) An insurance company from which an employer has obtained
3 workers' compensation insurance coverage, a certified
4 self-insurer, a workers' compensation self-insurance group under
5 Chapter 407A, and a political subdivision shall file notice of the
6 coverage and claim administration contact information with the
7 division [~~commission~~] not later than the 10th day after the date on
8 which the coverage or claim administration agreement takes effect,
9 unless the commissioner [~~commission~~] adopts a rule establishing a
10 later date for filing. Coverage takes effect on the date on which a
11 binder is issued, a later date and time agreed to by the parties, on
12 the date provided by the certificate of self-insurance, or on the
13 date provided in an interlocal agreement that provides for
14 self-insurance. The commissioner [~~commission~~] may adopt rules that
15 establish the coverage and claim administration contact
16 information required under this subsection.

17 (b) The notice required under this section shall be filed
18 with the division [~~commission~~] in accordance with Section 406.009.

19 (c) An insurance company, a certified self-insurer, a
20 workers' compensation self-insurance group under Chapter 407A, or a
21 political subdivision commits an administrative [~~a~~] violation if
22 the person fails to file notice with the division [~~commission~~] as
23 provided by this section. [~~A violation under this subsection is a~~
24 ~~Class C administrative violation. Each day of noncompliance~~
25 ~~constitutes a separate violation.~~]

26 SECTION 3.026. Subsections (a), (b), and (c), Section
27 406.007, Labor Code, are amended to read as follows:

1 (a) An employer who terminates workers' compensation
2 insurance coverage obtained under this subtitle shall file a
3 written notice with the division [~~commission~~] by certified mail not
4 later than the 10th day after the date on which the employer
5 notified the insurance carrier to terminate the coverage. The
6 notice must include a statement certifying the date that notice was
7 provided or will be provided to affected employees under Section
8 406.005.

9 (b) The notice required under this section shall be filed
10 with the division [~~commission~~] in accordance with Section 406.009.

11 (c) Termination of coverage takes effect on the later of:

12 (1) the 30th day after the date of filing of notice
13 with the division [~~commission~~] under Subsection (a); or

14 (2) the cancellation date of the policy.

15 SECTION 3.027. Section 406.008, Labor Code, is amended to
16 read as follows:

17 Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY
18 INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels
19 a policy of workers' compensation insurance or that does not renew
20 the policy by the anniversary date of the policy shall deliver
21 notice of the cancellation or nonrenewal by certified mail or in
22 person to the employer and the division [~~commission~~] not later
23 than:

24 (1) the 30th day before the date on which the
25 cancellation or nonrenewal takes effect; or

26 (2) the 10th day before the date on which the
27 cancellation or nonrenewal takes effect if the insurance company

1 cancels or does not renew because of:

2 (A) fraud in obtaining coverage;

3 (B) misrepresentation of the amount of payroll
4 for purposes of premium calculation;

5 (C) failure to pay a premium when due;

6 (D) an increase in the hazard for which the
7 employer seeks coverage that results from an act or omission of the
8 employer and that would produce an increase in the rate, including
9 an increase because of a failure to comply with:

10 (i) reasonable recommendations for loss
11 control; or

12 (ii) recommendations designed to reduce a
13 hazard under the employer's control within a reasonable period; or

14 (E) a determination made by the commissioner of
15 insurance that the continuation of the policy would place the
16 insurer in violation of the law or would be hazardous to the
17 interest of subscribers, creditors, or the general public.

18 (b) The notice required under this section shall be filed
19 with the division [~~commission~~].

20 (c) Failure of the insurance company to give notice as
21 required by this section extends the policy until the date on which
22 the required notice is provided to the employer and the division
23 [~~commission~~].

24 SECTION 3.028. Section 406.009, Labor Code, is amended to
25 read as follows:

26 Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION;
27 MONITORING AND ENFORCING COMPLIANCE. (a) The division

1 ~~[commission]~~ shall collect and maintain the information required
2 under this subchapter and shall monitor compliance with the
3 requirements of this subchapter.

4 (b) The commissioner ~~[commission]~~ may adopt rules as
5 necessary to enforce this subchapter.

6 (c) The commissioner ~~[commission]~~ may designate a data
7 collection agent, implement an electronic reporting and public
8 information access program, and adopt rules as necessary to
9 implement the data collection requirements of this subchapter. The
10 commissioner ~~[executive director]~~ may establish the form, manner,
11 and procedure for the transmission of information to the division
12 ~~[commission as authorized by Section 402.042(b)(11)]~~.

13 (d) The division ~~[commission]~~ may require an employer or
14 insurance carrier subject to this subtitle to identify or confirm
15 an employer's coverage status and claim administration contact
16 information as necessary to achieve the purposes of this subtitle.

17 (e) An employer or insurance carrier commits an
18 administrative [a] violation if that person fails to comply with
19 Subsection (d). ~~[A violation under this subsection is a Class C~~
20 ~~administrative violation.]~~

21 SECTION 3.029. Subsections (c) and (d), Section 406.010,
22 Labor Code, is amended to read as follows:

23 (c) The commissioner ~~[commission]~~ by rule shall further
24 specify the requirements of this section.

25 (d) A person commits an administrative [a] violation if the
26 person violates a rule adopted under this section. ~~[A violation~~
27 ~~under this subsection is a Class C administrative violation. Each~~

~~day of noncompliance constitutes a separate violation.]~~

SECTION 3.030. Section 406.011, Labor Code, is amended to read as follows:

Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION. (a) The commissioner ~~[commission]~~ by rule may require an insurance carrier to designate a representative in Austin to act as the insurance carrier's agent before the division ~~[commission]~~ in Austin. Notice to the designated agent constitutes notice to the insurance carrier.

(b) A person commits an administrative ~~[a]~~ violation if the person violates a rule adopted under this section. ~~[A violation under this subsection is a Class C administrative violation. Each day of noncompliance constitutes a separate violation.]~~

SECTION 3.031. Section 406.033, Labor Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A cause of action described by Subsection (a) may not be waived by an employee after the employee's injury unless:

(1) the employee voluntarily enters into the waiver with knowledge of the waiver's effect;

(2) the waiver is entered into not earlier than the 10th business day after the date of the initial report of injury;

(3) the employee, before signing the waiver, has received a medical evaluation from a nonemergency care doctor; and

(4) the waiver is in a writing under which the true intent of the parties is specifically stated in the document.

(g) The waiver provisions required under Subsection (f) must be conspicuous and appear on the face of the agreement. To be

1 conspicuous, the waiver provisions must appear in a type larger
2 than the type contained in the body of the agreement or in
3 contrasting colors.

4 SECTION 3.032. Subsection (c), Section 406.051, Labor Code,
5 is amended to read as follows:

6 (c) The employer may not transfer:

7 (1) the obligation to accept a report of injury under
8 Section 409.001;

9 (2) the obligation to maintain records of injuries
10 under Section 409.006;

11 (3) the obligation to report injuries to the insurance
12 carrier under Section 409.005;

13 (4) liability for a violation of Section 415.006 or
14 415.008 or of Chapter 451; or

15 (5) the obligation to comply with a commissioner
16 ~~[commission]~~ order.

17 SECTION 3.033. Subsections (b) and (c), Section 406.073,
18 Labor Code, are amended to read as follows:

19 (b) The employer shall file the agreement with the division
20 ~~[executive director]~~ on request.

21 (c) A person commits an administrative [a] violation if the
22 person violates Subsection (b). ~~[A violation under this subsection~~
23 ~~is a Class D administrative violation.]~~

24 SECTION 3.034. Subsections (a) and (b), Section 406.074,
25 Labor Code, are amended to read as follows:

26 (a) The commissioner ~~[executive director]~~ may enter into an
27 agreement with an appropriate agency of another jurisdiction with

respect to:

(1) conflicts of jurisdiction;

(2) assumption of jurisdiction in a case in which the contract of employment arises in one state and the injury is incurred in another;

(3) procedures for proceeding against a foreign employer who fails to comply with this subtitle; and

(4) procedures for the appropriate agency to use to proceed against an employer of this state who fails to comply with the workers' compensation laws of the other jurisdiction.

(b) An executed agreement that has been adopted as a rule by the commissioner [~~commission~~] binds all subject employers and employees.

SECTION 3.035. Subsection (b), Section 406.093, Labor Code, is amended to read as follows:

(b) The commissioner [~~commission~~] by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

SECTION 3.036. Subsection (b), Section 406.095, Labor Code, is amended to read as follows:

(b) The commissioner [~~commission~~] by rule shall establish the procedures and requirements for an election under this section.

SECTION 3.037. Subsection (c), Section 406.098, Labor Code, is amended to read as follows:

(c) The commissioner of insurance [~~Texas Department of Insurance~~] shall adopt rules governing the method of calculating premiums for workers' compensation insurance coverage for

1 volunteer members who are covered pursuant to this section.

2 SECTION 3.038. Subsections (f) and (g), Section 406.123,
3 Labor Code, are amended to read as follows:

4 (f) A general contractor shall file a copy of an agreement
5 entered into under this section with the general contractor's
6 workers' compensation insurance carrier not later than the 10th day
7 after the date on which the contract is executed. If the general
8 contractor is a certified self-insurer, the copy must be filed with
9 the division [~~division of self-insurance regulation~~].

10 (g) A general contractor who enters into an agreement with a
11 subcontractor under this section commits an administrative [a]
12 violation if the contractor fails to file a copy of the agreement as
13 required by Subsection (f). [~~A violation under this subsection is a~~
14 ~~Class B administrative violation.~~]

15 SECTION 3.039. Subsections (c) and (d), Section 406.144,
16 Labor Code, are amended to read as follows:

17 (c) An agreement under this section shall be filed with the
18 division [~~commission~~] either by personal delivery or by registered
19 or certified mail and is considered filed on receipt by the division
20 [~~commission~~].

21 (d) The hiring contractor shall send a copy of an agreement
22 under this section to the hiring contractor's workers' compensation
23 insurance carrier on filing of the agreement with the division
24 [~~commission~~].

25 SECTION 3.040. Subsections (a) through (d) and (f), Section
26 406.145, Labor Code, are amended to read as follows:

27 (a) A hiring contractor and an independent subcontractor

1 may make a joint agreement declaring that the subcontractor is an
2 independent contractor as defined in Section 406.141(2) and that
3 the subcontractor is not the employee of the hiring contractor. If
4 the joint agreement is signed by both the hiring contractor and the
5 subcontractor and filed with the division [~~commission~~], the
6 subcontractor, as a matter of law, is an independent contractor and
7 not an employee, and is not entitled to workers' compensation
8 insurance coverage through the hiring contractor unless an
9 agreement is entered into under Section 406.144 to provide workers'
10 compensation insurance coverage. The commissioner [~~commission~~]
11 shall prescribe forms for the joint agreement.

12 (b) A joint agreement shall be delivered to the division
13 [~~commission~~] by personal delivery or registered or certified mail
14 and is considered filed on receipt by the division [~~commission~~].

15 (c) The hiring contractor shall send a copy of a joint
16 agreement signed under this section to the hiring contractor's
17 workers' compensation insurance carrier on filing of the joint
18 agreement with the division [~~commission~~].

19 (d) The division [~~commission~~] shall maintain a system for
20 accepting and maintaining the joint agreements.

21 (f) If a subsequent hiring agreement is made to which the
22 joint agreement does not apply, the hiring contractor and
23 independent contractor shall notify the division [~~commission~~] and
24 the hiring contractor's workers' compensation insurance carrier in
25 writing.

26 SECTION 3.041. Subsection (b), Section 406.162, Labor Code,
27 is amended to read as follows:

(b) The comptroller shall prepare a consumer price index for this state and shall certify the applicable index factor to the division [~~commission~~] before October 1 of each year. The division [~~commission~~] shall adjust the gross annual payroll requirement under Subsection (a)(2)(B) accordingly.

SECTION 3.042. Subdivision (3), Section 407.001, Labor Code, is amended to read as follows:

(3) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the division [~~commission~~];

(B) who has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

SECTION 3.0421. Section 407.023, Labor Code, is amended to read as follows:

Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER [~~COMMISSION~~]. [~~(a)~~] The commissioner [~~commission, by majority vote,~~] shall:

(1) approve or deny [~~a recommendation by the director concerning~~] the issuance or revocation of a certificate of authority to self-insure; and

(2) certify that a certified self-insurer has suspended payment of compensation or has otherwise become an

1 impaired employer.

2 ~~[(b) The commission may not delegate the powers and duties~~
3 ~~imposed by this section.]~~

4 SECTION 3.0422. Subsection (b), Section 407.024, Labor
5 Code, is amended to read as follows:

6 (b) The commissioner ~~[director]~~ is the agent for service of
7 process for a claim or suit brought by a workers' compensation
8 claimant against the qualified claims servicing contractor of a
9 certified self-insurer.

10 SECTION 3.043. Subsections (a), (b), and (c), Section
11 407.041, Labor Code, are amended to read as follows:

12 (a) An employer who desires to self-insure under this
13 chapter must submit an application to the division ~~[commission]~~ for
14 a certificate of authority to self-insure.

15 (b) The application must be:

16 (1) submitted on a form adopted by the commissioner
17 ~~[commission]~~; and

18 (2) accompanied by a nonrefundable \$1,000 application
19 fee.

20 (c) Not later than the 60th day after the date on which the
21 application is received, the commissioner ~~[director]~~ shall approve
22 or deny ~~[recommend approval or denial of]~~ the application ~~[to the~~
23 ~~commission]~~.

24 SECTION 3.044. Section 407.042, Labor Code, is amended to
25 read as follows:

26 Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval
27 of the Texas Certified Self-Insurer Guaranty Association, ~~[and by~~

1 ~~majority vote,~~ the commissioner [~~commission~~] shall issue a
2 certificate of authority to self-insure to an applicant who meets
3 the certification requirements under this chapter and pays the
4 required fee.

5 SECTION 3.045. Section 407.043, Labor Code, is amended to
6 read as follows:

7 Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If
8 the commissioner [~~commission~~] determines that an applicant for a
9 certificate of authority to self-insure does not meet the
10 certification requirements, the division [~~commission~~] shall notify
11 the applicant in writing of the commissioner's [~~its~~] determination,
12 stating the specific reasons for the denial and the conditions to be
13 met before approval may be granted.

14 (b) The applicant is entitled to a reasonable period, as
15 determined by the commissioner [~~commission~~], to meet the conditions
16 for approval before the application is considered rejected for
17 purposes of appeal.

18 SECTION 3.046. Section 407.044, Labor Code, is amended to
19 read as follows:

20 Sec. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL.

21 (a) A certificate of authority to self-insure is valid for one year
22 after the date of issuance and may be renewed under procedures
23 prescribed by the commissioner [~~commission~~].

24 (b) The commissioner [~~director~~] may stagger the renewal
25 dates of certificates of authority to self-insure to facilitate the
26 work load of the division.

27 SECTION 3.047. Section 407.045, Labor Code, is amended to

1 read as follows:

2 Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A
3 certified self-insurer may withdraw from self-insurance at any time
4 with the approval of the commissioner [~~commission~~]. The
5 commissioner [~~commission~~] shall approve the withdrawal if the
6 certified self-insurer shows to the satisfaction of the
7 commissioner [~~commission~~] that the certified self-insurer has
8 established an adequate program to pay all incurred losses,
9 including unreported losses, that arise out of accidents or
10 occupational diseases first distinctly manifested during the
11 period of operation as a certified self-insurer.

12 (b) A certified self-insurer who withdraws from
13 self-insurance shall surrender to the division [~~commission~~] the
14 certificate of authority to self-insure.

15 SECTION 3.048. Subsections (a), (b), and (d), Section
16 407.046, Labor Code, are amended to read as follows:

17 (a) The commissioner [~~commission by majority vote~~] may
18 revoke the certificate of authority to self-insure of a certified
19 self-insurer who fails to comply with requirements or conditions
20 established by this chapter or a rule adopted by the commissioner
21 [~~commission~~] under this chapter.

22 (b) If the commissioner [~~commission~~] believes that a ground
23 exists to revoke a certificate of authority to self-insure, the
24 commissioner [~~commission~~] shall refer the matter to the State
25 Office of Administrative Hearings. That office shall hold a
26 hearing to determine if the certificate should be revoked. The
27 hearing shall be conducted in the manner provided for a contested

1 case hearing under Chapter 2001, Government Code [~~the~~
2 ~~administrative procedure law~~].

3 (d) If the certified self-insurer fails to show cause why
4 the certificate should not be revoked, the commissioner
5 [~~commission~~] immediately shall revoke the certificate.

6 SECTION 3.049. Subsection (b), Section 407.047, Labor Code,
7 is amended to read as follows:

8 (b) The security required under Sections 407.064 and
9 407.065 shall be maintained with the division [~~commission~~] or under
10 the division's [~~commission's~~] control until each claim for workers'
11 compensation benefits is paid, is settled, or lapses under this
12 subtitle.

13 SECTION 3.050. Subsections (a), (c), (e), and (f), Section
14 407.061, Labor Code, are amended to read as follows:

15 (a) To be eligible for a certificate of authority to
16 self-insure, an applicant for an initial or renewal certificate
17 must present evidence satisfactory to the commissioner
18 [~~commission~~] and the association of sufficient financial strength
19 and liquidity, under standards adopted by the commissioner
20 [~~commission~~], to ensure that all workers' compensation obligations
21 incurred by the applicant under this chapter are met promptly.

22 (c) The applicant must present a plan for claims
23 administration that is acceptable to the commissioner [~~commission~~]
24 and that designates a qualified claims servicing contractor.

25 (e) The applicant must provide to the commissioner
26 [~~commission~~] a copy of each contract entered into with a person that
27 provides claims services, underwriting services, or accident

1 prevention services if the provider of those services is not an
2 employee of the applicant. The contract must be acceptable to the
3 commissioner [~~commission~~] and must be submitted in a standard form
4 adopted by the commissioner [~~commission~~], if the commissioner
5 [~~commission~~] adopts such a form.

6 (f) The commissioner [~~commission~~] shall adopt rules for the
7 requirements for the financial statements required by Subsection
8 (b)(2).

9 SECTION 3.051. Section 407.062, Labor Code, is amended to
10 read as follows:

11 Sec. 407.062. FINANCIAL STRENGTH AND LIQUIDITY
12 REQUIREMENTS. In assessing the financial strength and liquidity of
13 an applicant, the commissioner [~~commission~~] shall consider:

14 (1) the applicant's organizational structure and
15 management background;

16 (2) the applicant's profit and loss history;

17 (3) the applicant's compensation loss history;

18 (4) the source and reliability of the financial
19 information submitted by the applicant;

20 (5) the number of employees affected by
21 self-insurance;

22 (6) the applicant's access to excess insurance
23 markets;

24 (7) financial ratios, indexes, or other financial
25 measures that the commissioner [~~commission~~] finds appropriate; and

26 (8) any other information considered appropriate by
27 the commissioner [~~commission~~].

1 SECTION 3.052. Subsection (a), Section 407.063, Labor Code,
2 is amended to read as follows:

3 (a) In addition to meeting the other certification
4 requirements imposed under this chapter, an applicant for an
5 initial certificate of authority to self-insure must present
6 evidence satisfactory to the commissioner [~~commission~~] of a total
7 unmodified workers' compensation insurance premium in this state in
8 the calendar year of application of at least \$500,000.

9 SECTION 3.053. Subsections (a), (b), and (e), Section
10 407.064, Labor Code, are amended to read as follows:

11 (a) Each applicant shall provide security for incurred
12 liabilities for compensation through a deposit with the division
13 [~~director~~], in a combination and from institutions approved by the
14 commissioner [~~director~~], of the following security:

15 (1) cash or negotiable securities of the United States
16 or of this state;

17 (2) a surety bond that names the commissioner
18 [~~director~~] as payee; or

19 (3) an irrevocable letter of credit that names the
20 commissioner [~~director~~] as payee.

21 (b) If an applicant who has provided a letter of credit as
22 all or part of the security required under this section desires to
23 cancel the existing letter of credit and substitute a different
24 letter of credit or another form of security, the applicant shall
25 notify the division [~~commission~~] in writing not later than the 60th
26 day before the effective date of the cancellation of the original
27 letter of credit.

1 (e) If an applicant is granted a certificate of authority to
2 self-insure, any interest or other income that accrues from cash or
3 negotiable securities deposited by the applicant as security under
4 this section while the cash or securities are on deposit with the
5 division [~~director~~] shall be paid to the applicant quarterly.

6 SECTION 3.054. Subsections (b)-(f), Section 407.065, Labor
7 Code, are amended to read as follows:

8 (b) A surety bond, irrevocable letter of credit, or document
9 indicating issuance of an irrevocable letter of credit must be in a
10 form approved by the commissioner [~~director~~] and must be issued by
11 an institution acceptable to the commissioner [~~director~~]. The
12 instrument may be released only according to its terms but may not
13 be released by the deposit of additional security.

14 (c) The certified self-insurer shall deposit the security
15 with the comptroller on behalf of the division [~~director~~]. The
16 comptroller may accept securities for deposit or withdrawal only on
17 the written order of the commissioner [~~director~~].

18 (d) On receipt by the division [~~director~~] of a request to
19 renew, submit, or increase or decrease a security deposit, a
20 perfected security interest is created in the certified
21 self-insurer's assets in favor of the commissioner [~~director~~] to
22 the extent of any then unsecured portion of the self-insurer's
23 incurred liabilities for compensation. That perfected security
24 interest transfers to cash or securities deposited by the
25 self-insurer with the division [~~director~~] after the date of the
26 request and may be released only on:

27 (1) the acceptance by the commissioner [~~director~~] of a

1 surety bond or irrevocable letter of credit for the full amount of
2 the incurred liabilities for compensation; or

3 (2) the return of cash or securities by the division
4 [~~director~~].

5 (e) The certified self-insurer loses all right to, title to,
6 interest in, and control of the assets or obligations submitted or
7 deposited as security. The commissioner [~~director~~] may liquidate
8 the deposit and apply it to the certified self-insurer's incurred
9 liabilities for compensation either directly or through the
10 association.

11 (f) If the commissioner [~~director~~] determines that a
12 security deposit is not immediately available for the payment of
13 compensation, the commissioner [~~director~~] shall determine the
14 appropriate method of payment and claims administration, which may
15 include payment by the surety that issued the bond or by the issuer
16 of an irrevocable letter of credit, and administration by a surety,
17 an adjusting agency, the association, or through any combination of
18 those entities approved by the commissioner [~~director~~].

19 SECTION 3.055. Subsections (a) and (b), Section 407.066,
20 Labor Code, are amended to read as follows:

21 (a) The commissioner [~~director~~], after notice to the
22 concerned parties and an opportunity for a hearing, shall resolve a
23 dispute concerning the deposit, renewal, termination, release, or
24 return of all or part of the security, liability arising out of the
25 submission or failure to submit security, or the adequacy of the
26 security or reasonableness of the administrative costs, including
27 legal fees, that arises among:

- (1) a surety;
- (2) an issuer of an agreement of assumption and guarantee of workers' compensation liabilities;
- (3) an issuer of a letter of credit;
- (4) a custodian of the security deposit;
- (5) a certified self-insurer; or
- (6) the association.

(b) A party aggrieved by a decision of the commissioner ~~[director]~~ is entitled to judicial review. Venue for an appeal is in Travis County.

SECTION 3.056. Section 407.067, Labor Code, is amended to read as follows:

Sec. 407.067. EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE VIOLATION. (a) Each applicant shall obtain excess insurance or reinsurance to cover liability for losses not paid by the self-insurer in an amount not less than the amount required by the commissioner ~~[director]~~.

(b) The commissioner ~~[director]~~ shall require excess insurance or reinsurance in at least the amount of \$5 million per occurrence.

(c) A certified self-insurer shall notify the division ~~[director]~~ not later than the 10th day after the date on which the certified self-insurer has notice of the cancellation or termination of excess insurance or reinsurance coverage required under this section.

(d) A person commits an administrative ~~[a]~~ violation if the person violates Subsection (c). ~~[A violation under this subsection~~

1 ~~is a Class B administrative violation. Each day of noncompliance~~
2 ~~constitutes a separate violation.]~~

3 SECTION 3.057. Subsections (a) through (d), (f), and (g),
4 Section 407.081, Labor Code, are amended to read as follows:

5 (a) Each certified self-insurer shall file an annual report
6 with the division [~~commission~~]. The commissioner [~~commission~~]
7 shall prescribe the form of the report and shall furnish blank forms
8 for the preparation of the report to each certified self-insurer.

9 (b) The report must:

10 (1) include payroll information, in the form
11 prescribed by this chapter and the commissioner [~~commission~~];

12 (2) state the number of injuries sustained in the
13 three preceding calendar years; and

14 (3) indicate separately the amount paid during each
15 year for income benefits, medical benefits, death benefits, burial
16 benefits, and other proper expenses related to worker injuries.

17 (c) Each certified self-insurer shall file with the
18 division [~~commission~~] as part of the annual report annual
19 independent financial statements that reflect the financial
20 condition of the self-insurer. The division [~~commission~~] shall
21 make a financial statement filed under this subsection available
22 for public review.

23 (d) The division [~~commission~~] may require that the report
24 include additional financial and statistical information.

25 (f) The report must include an estimate of future liability
26 for compensation. The estimate must be signed and sworn to by a
27 certified casualty actuary every third year, or more frequently if

1 required by the commissioner [~~commission~~].

2 (g) If the commissioner [~~commission~~] considers it
3 necessary, the commissioner [~~it~~] may order a certified self-insurer
4 whose financial condition or claims record warrants closer
5 supervision to report as provided by this section more often than
6 annually.

7 SECTION 3.058. Subsections (a), (c), (d), and (e), Section
8 407.082, Labor Code, are amended to read as follows:

9 (a) Each certified self-insurer shall maintain the books,
10 records, and payroll information necessary to compile the annual
11 report required under Section 407.081 and any other information
12 reasonably required by the commissioner [~~commission~~].

13 (c) The material maintained by the certified self-insurer
14 shall be open to examination by an authorized agent or
15 representative of the division [~~commission~~] at reasonable times to
16 ascertain the correctness of the information.

17 (d) The examination may be conducted at any location,
18 including the division's [~~commission's~~] Austin offices, or, at the
19 certified self-insurer's option, in the offices of the certified
20 self-insurer. The certified self-insurer shall pay the reasonable
21 expenses, including travel expenses, of an inspector who conducts
22 an inspection at its offices.

23 (e) An unreasonable refusal on the part of a certified
24 self-insurer to make available for inspection the books, records,
25 payroll information, or other required information constitutes
26 grounds for the revocation of the certificate of authority to
27 self-insure and is an [~~a Class A~~] administrative violation. [~~Each~~

1 ~~day of noncompliance constitutes a separate violation.]~~

2 SECTION 3.059. Subsection (b), Section 407.101, Labor Code,
3 is amended to read as follows:

4 (b) The department [~~commission~~] shall deposit the
5 application fee for a certificate of authority to self-insure in
6 the Texas Department of Insurance operating account [~~state~~
7 ~~treasury~~] to the credit of the division [~~workers' compensation~~
8 ~~self-insurance fund~~].

9 SECTION 3.060. Section 407.102, Labor Code, is amended to
10 read as follows:

11 Sec. 407.102. REGULATORY FEE. (a) Each certified
12 self-insurer shall pay an annual fee to cover the administrative
13 costs incurred by the division [~~commission~~] in implementing this
14 chapter.

15 (b) The division [~~commission~~] shall base the fee on the
16 total amount of income benefit payments made in the preceding
17 calendar year. The division [~~commission~~] shall assess each
18 certified self-insurer a pro rata share based on the ratio that the
19 total amount of income benefit payments made by that certified
20 self-insurer bears to the total amount of income benefit payments
21 made by all certified self-insurers.

22 SECTION 3.061. Subsections (a), (b), and (d), Section
23 407.103, Labor Code, are amended to read as follows:

24 (a) Each certified self-insurer shall pay a self-insurer
25 maintenance tax for the administration of the division and the
26 office of injured employee counsel [~~commission~~] and to support the
27 prosecution of workers' compensation insurance fraud in this state.

1 Not more than two percent of the total tax base of all certified
2 self-insurers, as computed under Subsection (b), may be assessed
3 for a maintenance tax under this section.

4 (b) To determine the tax base of a certified self-insurer
5 for purposes of this chapter, the department [~~director~~] shall
6 multiply the amount of the certified self-insurer's liabilities for
7 workers' compensation claims incurred in the previous year,
8 including claims incurred but not reported, plus the amount of
9 expense incurred by the certified self-insurer in the previous year
10 for administration of self-insurance, including legal costs, by
11 1.02.

12 (d) In setting the rate of maintenance tax assessment for
13 insurance companies, the commissioner of insurance [~~commission~~]
14 may not consider revenue or expenditures related to the operation
15 of the self-insurer program under this chapter [~~division~~].

16 SECTION 3.062. Subsections (b) through (e), Section
17 407.104, Labor Code, are amended to read as follows:

18 (b) The department [~~commission~~] shall compute the fee and
19 taxes of a certified self-insurer and notify the certified
20 self-insurer of the amounts due. The taxes and fees shall be
21 remitted to the division [~~commission~~].

22 (c) The regulatory fee imposed under Section 407.102 shall
23 be deposited in the Texas Department of Insurance operating account
24 [~~state treasury~~] to the credit of the division [~~workers'~~
25 ~~compensation self-insurance fund~~]. The self-insurer maintenance
26 tax shall be deposited in the Texas Department of Insurance
27 operating account [~~state treasury~~] to the credit of the division

1 ~~[commission]~~.

2 (d) A certified self-insurer commits an administrative [a]
 3 violation if the self-insurer does not pay the taxes and fee imposed
 4 under Sections 407.102 and 407.103 in a timely manner. ~~[A violation~~
 5 ~~under this subsection is a Class B administrative violation. Each~~
 6 ~~day of noncompliance constitutes a separate violation.]~~

7 (e) If the certificate of authority to self-insure of a
 8 certified self-insurer is terminated, the ~~[insurance]~~ commissioner
 9 or the commissioner of insurance ~~[executive director of the~~
 10 ~~commission]~~ shall proceed immediately to collect taxes due under
 11 this subtitle, using legal process as necessary.

12 SECTION 3.063. Subsection (b), Section 407.122, Labor Code,
 13 is amended to read as follows:

14 (b) The board of directors is composed of the following
 15 voting members:

16 (1) three certified self-insurers;

17 (2) one member designated by the commissioner ~~[one~~
 18 ~~commission member representing wage earners,~~

19 ~~[(3) one commission member representing employers];~~

20 and

21 (3) ~~[(4)]~~ the public counsel of the office of public
 22 insurance counsel.

23 SECTION 3.064. Subsection (b), Section 407.123, Labor Code,
 24 is amended to read as follows:

25 (b) Rules adopted by the board are subject to the approval
 26 of the commissioner ~~[commission]~~.

27 SECTION 3.065. Section 407.124, Labor Code, is amended to

1 read as follows:

2 Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. (a) On
3 determination by the division [~~commission~~] that a certified
4 self-insurer has become an impaired employer, the commissioner
5 [~~director~~] shall secure release of the security deposit required by
6 this chapter and shall promptly estimate:

7 (1) the amount of additional funds needed to
8 supplement the security deposit;

9 (2) the available assets of the impaired employer for
10 the purpose of making payment of all incurred liabilities for
11 compensation; and

12 (3) the funds maintained by the association for the
13 emergency payment of compensation liabilities.

14 (b) The commissioner [~~director~~] shall advise the board of
15 directors of the association of the estimate of necessary
16 additional funds, and the board shall promptly assess each
17 certified self-insurer to collect the required funds. An
18 assessment against a certified self-insurer shall be made in
19 proportion to the ratio that the total paid income benefit payment
20 for the preceding reported calendar year for that self-insurer
21 bears to the total paid income benefit payment by all certified
22 self-insurers, except impaired employers, in this state in that
23 calendar year.

24 (c) A certified self-insurer designated as an impaired
25 employer is exempt from assessments beginning on the date of the
26 designation until the division [~~commission~~] determines that the
27 employer is no longer impaired.

1 SECTION 3.066. Subsection (d), Section 407.126, Labor Code,
2 is amended to read as follows:

3 (d) The board of directors shall administer the trust fund
4 in accordance with rules adopted by the commissioner [~~commission~~].

5 SECTION 3.067. Subsection (a), Section 407.127, Labor Code,
6 is amended to read as follows:

7 (a) If the commissioner [~~commission~~] determines that the
8 payment of benefits and claims administration shall be made through
9 the association, the association assumes the workers' compensation
10 obligations of the impaired employer and shall begin the payment of
11 the obligations for which it is liable not later than the 30th day
12 after the date of notification by the director.

13 SECTION 3.068. Section 407.128, Labor Code, is amended to
14 read as follows:

15 Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. On
16 the assumption of obligations by the association under the
17 commissioner's [~~director's~~] determination, the association is
18 entitled to immediate possession of any deposited security, and the
19 custodian, surety, or issuer of an irrevocable letter of credit
20 shall deliver the security to the association with any accrued
21 interest.

22 SECTION 3.069. Section 407.132, Labor Code, is amended to
23 read as follows:

24 Sec. 407.132. SPECIAL FUND. Funds advanced by the
25 association under this subchapter do not become assets of the
26 impaired employer but are a special fund advanced to the
27 commissioner [~~director~~], trustee in bankruptcy, receiver, or other

1 lawful conservator only for the payment of compensation
2 liabilities, including the costs of claims administration and legal
3 costs.

4 SECTION 3.070. Subsection (a), Section 407.133, Labor Code,
5 is amended to read as follows:

6 (a) The commissioner [~~commission, after notice and hearing~~
7 ~~and by majority vote,~~] may suspend or revoke the certificate of
8 authority to self-insure of a certified self-insurer who fails to
9 pay an assessment. The association promptly shall report such a
10 failure to the director.

11 SECTION 3.071. Subsection (d), Section 407A.053, Labor
12 Code, is amended to read as follows:

13 (d) Any securities posted must be deposited in the state
14 treasury and must be assigned to and made negotiable by the
15 commissioner of workers' compensation [~~executive director of the~~
16 ~~commission~~] under a trust document acceptable to the commissioner
17 of insurance. Interest accruing on a negotiable security deposited
18 under this subsection shall be collected and transmitted to the
19 depositor if the depositor is not in default.

20 SECTION 3.072. Subsection (c), Section 407A.201, Labor
21 Code, is amended to read as follows:

22 (c) The membership of an individual member of a group is
23 subject to cancellation by the group as provided by the bylaws of
24 the group. An individual member may also elect to terminate
25 participation in the group. The group shall notify the
26 commissioner and the commissioner of workers' compensation
27 [~~commission~~] of the cancellation or termination of a membership not

1 later than the 10th day after the date on which the cancellation or
2 termination takes effect and shall maintain coverage of each
3 canceled or terminated member until the 30th day after the date of
4 the notice, at the terminating member's expense, unless before that
5 date the commissioner of workers' compensation [~~commission~~]
6 notifies the group that the canceled or terminated member has:

7 (1) obtained workers' compensation insurance
8 coverage;

9 (2) become a certified self-insurer; or

10 (3) become a member of another group.

11 SECTION 3.073. The heading to Section 407A.301, Labor Code,
12 is amended to read as follows:

13 Sec. 407A.301. MAINTENANCE TAX FOR DIVISION [~~COMMISSION~~]
14 AND RESEARCH FUNCTIONS OF DEPARTMENT [~~AND OVERSIGHT COUNCIL~~].

15 SECTION 3.074. Subsections (a) and (c), Section 407A.301,
16 Labor Code, are amended to read as follows:

17 (a) Each group shall pay a self-insurance group maintenance
18 tax under this section for:

19 (1) the administration of the division of workers'
20 compensation of the department [~~commission~~];

21 (2) the prosecution of workers' compensation insurance
22 fraud in this state; [~~and~~]

23 (3) the research functions of the department under
24 Chapter 405; and

25 (4) the administration of the office of injured
26 employee counsel under Chapter 404 [~~Research and Oversight Council~~
27 ~~on Workers' Compensation~~].

(c) The tax liability of a group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Section 405.003 [~~404.003~~].

SECTION 3.075. Section 407A.303, Labor Code, is amended to read as follows:

Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The group shall remit the taxes for deposit in the Texas Department of Insurance operating account [~~state treasury~~] to the credit of the division [~~commission~~].

(b) A group commits an administrative [a] violation if the group does not pay the taxes imposed under Sections 407A.301 and 407A.302 in a timely manner. [~~A violation under this subsection is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.~~]

(c) If the certificate of approval of a group is terminated, the commissioner or the commissioner of insurance [~~executive director of the commission~~] shall immediately notify the comptroller to collect taxes as directed under Sections 407A.301 and 407A.302.

SECTION 3.076. Subsection (b), Section 407A.357, Labor Code, is amended to read as follows:

(b) The guaranty association advisory committee is composed of the following voting members:

(1) three members who represent different groups under this chapter, subject to Subsection (c);

(2) one member designated by the commissioner of workers' compensation [~~one commission member who represents wage~~]

1 ~~earners~~];

2 (3) one member designated by the insurance
3 commissioner; and

4 (4) the public counsel of the office of public
5 insurance counsel.

6 SECTION 3.077. Section 408.001, Labor Code, is amended by
7 adding Subsection (d) to read as follows:

8 (d) A determination under Section 406.032, 409.002, or
9 409.004 that a work-related injury is noncompensable does not
10 adversely affect the exclusive remedy provisions under Subsection
11 (a).

12 SECTION 3.078. Subsection (c), Section 408.003, Labor Code,
13 is amended to read as follows:

14 (c) The employer shall notify the division [~~commission~~] and
15 the insurance carrier on forms prescribed by the commissioner
16 [~~commission~~] of the initiation of and amount of payments made under
17 this section.

18 SECTION 3.079. Subsections (a), (b), and (d) through (g),
19 Section 408.004, Labor Code, are amended to read as follows:

20 (a) The commissioner [~~commission~~] may require an employee
21 to submit to medical examinations to resolve any question about[+]

22 [~~(1)~~] the appropriateness of the health care received
23 by the employee[~~+or~~

24 [~~(2)~~ similar issues].

25 (b) The commissioner [~~commission~~] may require an employee
26 to submit to a medical examination at the request of the insurance
27 carrier, but only after the insurance carrier has attempted and

1 failed to receive the permission and concurrence of the employee
2 for the examination. Except as otherwise provided by this
3 subsection, the insurance carrier is entitled to the examination
4 only once in a 180-day period. The commissioner [~~commission~~] may
5 adopt rules that require an employee to submit to not more than
6 three medical examinations in a 180-day period under specified
7 circumstances, including to determine whether there has been a
8 change in the employee's condition and[~~7~~] whether it is necessary
9 to change the employee's diagnosis[~~7 and whether treatment should~~
10 ~~be extended to another body part or system~~]. The commissioner
11 [~~commission~~] by rule shall adopt a system for monitoring requests
12 made under this subsection by insurance carriers. That system must
13 ensure that good cause exists for any additional medical
14 examination allowed under this subsection that is not requested by
15 the employee. A subsequent examination must be performed by the
16 same doctor unless otherwise approved by the commissioner
17 [~~commission~~].

18 (d) An injured employee is entitled to have a doctor of the
19 employee's choice present at an examination required by the
20 division [~~commission~~] at the request of an insurance carrier. The
21 insurance carrier shall pay a fee set by the commissioner
22 [~~commission~~] to the doctor selected by the employee.

23 (e) An employee who, without good cause as determined by the
24 commissioner [~~commission~~], fails or refuses to appear at the time
25 scheduled for an examination under Subsection (a) or (b) commits an
26 administrative [~~a~~] violation. [~~A violation under this subsection~~
27 ~~is a Class D administrative violation. An employee is not entitled~~

1 ~~to temporary income benefits, and an insurance carrier may suspend~~
2 ~~the payment of temporary income benefits, during and for a period in~~
3 ~~which the employee fails to submit to an examination under~~
4 ~~Subsection (a) or (b) unless the commission determines that the~~
5 ~~employee had good cause for the failure to submit to the~~
6 ~~examination. The commission may order temporary income benefits to~~
7 ~~be paid for the period that the commission determines the employee~~
8 ~~had good cause.]~~ The commissioner [~~commission~~] by rule shall
9 ensure that an employee receives reasonable notice of an
10 examination [~~and of the insurance carrier's basis for suspension of~~
11 ~~payment,~~] and that the employee is provided a reasonable
12 opportunity to reschedule an examination missed by the employee for
13 good cause.

14 (f) This section does not apply to health care provided
15 through a workers' compensation health care network established
16 under Chapter 1305, Insurance Code [~~If the report of a doctor~~
17 ~~selected by an insurance carrier indicates that an employee can~~
18 ~~return to work immediately or has reached maximum medical~~
19 ~~improvement, the insurance carrier may suspend or reduce the~~
20 ~~payment of temporary income benefits on the 14th day after the date~~
21 ~~on which the insurance carrier files a notice of suspension with the~~
22 ~~commission as provided by this subsection. The commission shall~~
23 ~~hold an expedited benefit review conference, by personal appearance~~
24 ~~or by telephone, not later than the 10th day after the date on which~~
25 ~~the commission receives the insurance carrier's notice of~~
26 ~~suspension. If a benefit review conference is not held by the 14th~~
27 ~~day after the date on which the commission receives the insurance~~

~~carrier's notice of suspension, an interlocutory order, effective from the date of the report certifying maximum medical improvement, is automatically entered for the continuation of temporary income benefits until a benefit review conference is held, and the insurance carrier is eligible for reimbursement for any overpayment of benefits as provided by Chapter 410. The commission is not required to automatically schedule a contested case hearing as required by Section 410.025(b) if a benefit review conference is scheduled under this subsection. If a benefit review conference is held not later than the 14th day, the commission may enter an interlocutory order for the continuation of benefits, and the insurance carrier is eligible for reimbursement for any overpayments of benefits as provided by Chapter 410. The commission shall adopt rules as necessary to implement this subsection under which.~~

~~[(1) an insurance carrier is required to notify the employee and the treating doctor of the suspension of benefits under this subsection by certified mail or another verifiable delivery method,~~

~~[(2) the commission makes a reasonable attempt to obtain the treating doctor's opinion before the commission makes a determination regarding the entry of an interlocutory order, and~~

~~[(3) the commission may allow abbreviated contested case hearings by personal appearance or telephone to consider issues relating to overpayment of benefits under this section].~~

(g) An insurance carrier who makes a frivolous request for ~~[unreasonably requests]~~ a medical examination under Subsection

1 (b), as determined by the commissioner, commits an administrative
2 [a] violation. ~~[A violation under this subsection is a Class B~~
3 ~~administrative violation.]~~

4 SECTION 3.080. Section 408.0041, Labor Code, is amended to
5 read as follows:

6 Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the
7 request of an insurance carrier or an employee, or on the
8 commissioner's own order, the commissioner may ~~[commission shall]~~
9 order a medical examination to resolve any question about:

- 10 (1) the impairment caused by the compensable injury;
11 ~~[or]~~
- 12 (2) the attainment of maximum medical improvement;
13 (3) the extent of the employee's compensable injury;
14 (4) whether the injured employee's disability is a
15 direct result of the work-related injury;
- 16 (5) the ability of the employee to return to work; or
17 (6) issues similar to those described by Subdivisions
18 (1)-(5).

19 (b) A medical examination requested under Subsection (a)
20 shall be performed by the next available doctor on the division's
21 ~~[commission's]~~ list of designated doctors whose credentials are
22 appropriate for the issue in question and the injured employee's
23 medical condition as determined by commissioner rule. ~~[The~~
24 ~~designated doctor doing the review must be trained and experienced~~
25 ~~with the treatment and procedures used by the doctor treating the~~
26 ~~patient's medical condition, and the treatment and procedures~~
27 ~~performed must be within the scope of practice of the designated~~

1 ~~doctor.~~] The division [~~commission~~] shall assign a designated
2 doctor not later than the 10th day after the date on which the
3 request under Subsection (a) is approved [~~received~~], and the
4 examination must be conducted not later than the 21st day after the
5 date on which the commissioner [~~commission~~] issues the order under
6 Subsection (a). An examination under this section may not be
7 conducted more frequently than every 60 days, unless good cause for
8 more frequent examinations exists, as defined by commissioner
9 [~~commission~~] rules.

10 (c) The treating doctor and the insurance carrier are both
11 responsible for sending to the designated doctor all of the injured
12 employee's medical records relating to the issue to be evaluated by
13 the designated doctor that are in their possession. The treating
14 doctor and insurance carrier may send the records without a signed
15 release from the employee. The designated doctor is authorized to
16 receive the employee's confidential medical records to assist in
17 the resolution of disputes. The treating doctor and insurance
18 carrier may also send the designated doctor an analysis of the
19 injured employee's medical condition, functional abilities, and
20 return-to-work opportunities.

21 (d) To avoid undue influence on a person selected as a
22 designated doctor under this section, and except as provided by
23 Subsection (c), only the injured employee or an appropriate member
24 of the division's staff [~~of the commission~~] may communicate with
25 the designated doctor about the case regarding the injured
26 employee's medical condition or history before the examination of
27 the injured employee by the designated doctor. After that

1 examination is completed, communication with the designated doctor
2 regarding the injured employee's medical condition or history may
3 be made only through appropriate division ~~[commission]~~ staff
4 members. The designated doctor may initiate communication with any
5 doctor or health care provider who has previously treated or
6 examined the injured employee for the work-related injury or with
7 peer reviewers identified by the insurance carrier.

8 (e) The designated doctor shall report to the division
9 ~~[commission]~~. The report of the designated doctor has presumptive
10 weight unless the preponderance ~~[great weight]~~ of the evidence is
11 to the contrary. An employer may make a bona fide offer of
12 employment subject to Sections 408.103(e) and 408.144(c) based on
13 the designated doctor's report.

14 (f) Unless otherwise ordered by the commissioner, the
15 insurance carrier shall pay benefits based on the opinion of the
16 designated doctor during the pendency of any dispute. If an
17 insurance carrier is not satisfied with the opinion rendered by a
18 designated doctor under this section, the insurance carrier may
19 request the commissioner ~~[commission]~~ to order an employee to
20 attend an examination by a doctor selected by the insurance
21 carrier. ~~[The commission shall allow the insurance carrier~~
22 ~~reasonable time to obtain and present the opinion of the doctor~~
23 ~~selected under this subsection before the commission makes a~~
24 ~~decision on the merits of the issue in question.]~~

25 (g) Except as otherwise provided by this subsection, an
26 injured employee is entitled to have a doctor of the employee's
27 choice present at an examination requested by an insurance carrier

1 under Subsection (f). The insurance carrier shall pay a fee set by
2 the commissioner to the doctor selected by the employee. If the
3 injured employee is subject to a workers' compensation health care
4 network under Chapter 1305, Insurance Code, the doctor must be the
5 employee's treating doctor.

6 (h) The insurance carrier shall pay for:

7 (1) an examination required under Subsection (a) or
8 (f); and

9 (2) the reasonable expenses incident to the employee
10 in submitting to the examination.

11 (i) ~~[(h)]~~ An employee who, without good cause as determined
12 by the commissioner, fails or refuses to appear at the time
13 scheduled for an examination under Subsection (a) or (f) commits an
14 administrative violation. An injured employee may not be fined
15 more than \$10,000 for a violation of this subsection.

16 (j) An employee is not entitled to temporary income benefits
17 [compensation], and an insurance carrier is authorized to suspend
18 the payment of temporary income benefits, during and for a period in
19 which the employee fails to submit to an examination required by
20 Subsection (a) or (f) [this chapter] unless the commissioner
21 [commission] determines that the employee had good cause for the
22 failure to submit to the examination. The commissioner
23 [commission] may order temporary income benefits to be paid for the
24 period for which the commissioner [commission] determined that the
25 employee had good cause. The commissioner [commission] by rule
26 shall ensure that:

27 (1) an employee receives reasonable notice of an

1 examination and the insurance carrier's basis for suspension; and

2 (2) the employee is provided a reasonable opportunity
3 to reschedule an examination for good cause.

4 (k) [~~(i)~~] If the report of a designated doctor indicates
5 that an employee has reached maximum medical improvement or is
6 otherwise able to return to work immediately, the insurance carrier
7 may suspend or reduce the payment of temporary income benefits
8 immediately.

9 (l) A person who makes a frivolous request for a medical
10 examination under Subsection (a) or (f), as determined by the
11 commissioner, commits an administrative violation.

12 SECTION 3.0805. Subchapter A, Chapter 408, Labor Code, is
13 amended by adding Section 408.0042 to read as follows:

14 Sec. 408.0042. MEDICAL EXAMINATION BY TREATING DOCTOR TO
15 DEFINE COMPENSABLE INJURY. (a) The division shall require an
16 injured employee to submit to a single medical examination to
17 define the compensable injury on request by the insurance carrier.

18 (b) A medical examination under this section shall be
19 performed by the employee's treating doctor. The insurance carrier
20 shall pay the costs of the examination.

21 (c) After the medical examination is performed, the
22 treating doctor shall submit to the insurance carrier a report that
23 details all injuries and diagnoses related to the compensable
24 injury, on receipt of which the insurance carrier shall:

25 (1) accept all injuries and diagnoses as related to
26 the compensable injury; or

27 (2) dispute the determination of specific injuries and

1 diagnoses.

2 (d) Any treatment for an injury or diagnosis that is not
3 accepted by the insurance carrier under Subsection (c) as
4 compensable at the time of the medical examination under Subsection
5 (a) must be preauthorized before treatment is rendered. If the
6 insurance carrier denies preauthorization because the treatment is
7 for an injury or diagnosis unrelated to the compensable injury, the
8 injured employee or affected health care provider may file an
9 extent of injury dispute.

10 (e) Any treatment for an injury or diagnosis that is
11 accepted by the insurance carrier under Subsection (c) as
12 compensable at the time of the medical examination under Subsection
13 (a) may not be reviewed for compensability, but may be reviewed for
14 medical necessity.

15 (f) The commissioner may adopt rules relating to
16 requirements for a report under this section, including
17 requirements regarding the contents of a report.

18 (g) This section does not limit an injured employee or
19 insurance carrier's ability to request an examination under Section
20 408.004 or 408.0041, as provided by those sections.

21 SECTION 3.081. Subsections (d), (e), (f), and (g), Section
22 408.005, Labor Code, are amended to read as follows:

23 (d) A settlement must be signed by the commissioner
24 ~~[director of the division of hearings]~~ and all parties to the
25 dispute.

26 (e) The commissioner ~~[director of the division of hearings]~~
27 shall approve a settlement if the commissioner ~~[director]~~ is

1 satisfied that:

2 (1) the settlement accurately reflects the agreement
3 between the parties;

4 (2) the settlement reflects adherence to all
5 appropriate provisions of law and the policies of the division
6 [~~commission~~]; and

7 (3) under the law and facts, the settlement is in the
8 best interest of the claimant.

9 (f) A settlement that is not approved or rejected before the
10 16th day after the date the settlement is submitted to the
11 commissioner [~~director of the division of hearings~~] is considered
12 to be approved by the commissioner [~~director~~] on that date.

13 (g) A settlement takes effect on the date it is approved by
14 the commissioner [~~director of the division of hearings~~].

15 SECTION 3.082. Section 408.022, Labor Code, is amended by
16 amending Subsections (a), (b), and (c) and adding Subsection (f) to
17 read as follows:

18 (a) Except in an emergency, the division [~~commission~~] shall
19 require an employee to receive medical treatment from a doctor
20 chosen from a list of doctors approved by the commissioner
21 [~~commission~~]. A doctor may perform only those procedures that are
22 within the scope of the practice for which the doctor is licensed.
23 The employee is entitled to the employee's initial choice of a
24 doctor from the division's [~~commission's~~] list.

25 (b) If an employee is dissatisfied with the initial choice
26 of a doctor from the division's [~~commission's~~] list, the employee
27 may notify the division [~~commission~~] and request authority to

1 select an alternate doctor. The notification must be in writing
 2 stating the reasons for the change, except notification may be by
 3 telephone when a medical necessity exists for immediate change.

4 (c) The commissioner [~~commission~~] shall prescribe criteria
 5 to be used by the division [~~commission~~] in granting the employee
 6 authority to select an alternate doctor. The criteria may include:

7 (1) whether treatment by the current doctor is
 8 medically inappropriate;

9 (2) the professional reputation of the doctor;

10 (3) whether the employee is receiving appropriate
 11 medical care to reach maximum medical improvement; and

12 (4) whether a conflict exists between the employee and
 13 the doctor to the extent that the doctor-patient relationship is
 14 jeopardized or impaired.

15 (f) This section does not apply to requirements regarding
 16 the selection of a doctor under a workers' compensation health care
 17 network established under Chapter 1305, Insurance Code, except as
 18 provided by that chapter.

19 SECTION 3.083. Section 408.023, Labor Code, is amended to
 20 read as follows:

21 Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING
 22 DOCTORS. (a) The division [~~commission~~] shall develop a list of
 23 doctors licensed in this state who are approved to provide health
 24 care services under this subtitle. A [~~Each~~] doctor [~~licensed in~~
 25 ~~this state on September 1, 2001,~~] is eligible to be included on the
 26 division's [~~commission's~~] list of approved doctors if the doctor:

27 (1) registers with the division [~~commission~~] in the

1 manner prescribed by commissioner [~~commission~~] rules; and

2 (2) complies with the requirements adopted by the
3 commissioner [~~commission~~] under this section.

4 (b) The commissioner [~~commission~~] by rule shall establish
5 reasonable requirements for training for doctors as a prerequisite
6 for inclusion on the list [~~and health care providers financially~~
7 ~~related to those doctors regarding training, impairment rating~~
8 ~~testing, and disclosure of financial interests as required by~~
9 ~~Section 413.041, and for monitoring of those doctors and health~~
10 ~~care providers as provided by Sections 408.0231 and 413.0512. The~~
11 ~~commission by rule shall provide a reasonable period, not to exceed~~
12 ~~18 months after the adoption of rules under this section, for~~
13 ~~doctors to comply with the registration and training requirements~~
14 ~~of this subchapter~~]. Except as otherwise provided by this section,
15 the requirements adopted under this subsection apply to doctors and
16 other health care providers who:

17 (1) provide health care services as treating doctors;

18 (2) provide health care services as authorized by this
19 chapter;

20 (3) perform medical peer review under this subtitle;

21 (4) perform utilization review of medical benefits
22 provided under this subtitle; or

23 (5) provide health care services on referral from a
24 treating doctor, as provided by commissioner [~~commission~~] rule.

25 (c) The division [~~commission~~] shall issue to a doctor who is
26 approved by the commissioner [~~commission~~] a certificate of
27 registration. In determining whether to issue a certificate of

1 registration, the commissioner [~~commission~~] may consider and
2 condition [~~its~~] approval on any practice restrictions applicable to
3 the applicant that are relevant to services provided under this
4 subtitle. The commissioner [~~commission~~] may also consider the
5 practice restrictions of an applicant when determining appropriate
6 sanctions under Section 408.0231.

7 (d) A certificate of registration issued under this section
8 is valid, unless revoked, suspended, or revised, for the period
9 provided by commissioner [~~commission~~] rule and may be renewed on
10 application to the division [~~commission~~]. The division
11 [~~commission~~] shall provide notice to each doctor on the approved
12 doctor list of the pending expiration of the doctor's certificate
13 of registration not later than the 60th day before the date of
14 expiration of the certificate.

15 (e) Notwithstanding other provisions of this section, a
16 doctor not licensed in this state but licensed in another state or
17 jurisdiction who treats employees or performs utilization review of
18 health care for an insurance carrier may apply for a certificate of
19 registration under this section to be included on the division's
20 [~~commission's~~] list of approved doctors.

21 (f) Except in an emergency or for immediate post-injury
22 medical care as defined by commissioner [~~commission~~] rule, or as
23 provided by Subsection (h), ~~or~~ (i), or (j), each doctor who
24 performs functions under this subtitle, including examinations
25 under this chapter, must hold a certificate of registration and be
26 on the division's list of approved doctors in order to perform
27 services or receive payment for those services.

1 (g) The commissioner [~~commission~~] by rule shall modify
2 registration and training requirements for doctors who
3 infrequently provide health care or [~~7~~] who perform utilization
4 review or peer review functions for insurance carriers [~~7~~, ~~or who~~
5 ~~participate in regional networks established under this~~
6 ~~subchapter,~~] as necessary to ensure that those doctors are informed
7 of the regulations that affect health care benefit delivery under
8 this subtitle.

9 (h) Notwithstanding Section 4(h), Article 21.58A, Insurance
10 Code, a utilization review agent that uses doctors to perform
11 reviews of health care services provided under this subtitle may
12 use doctors licensed by another state to perform the reviews, but
13 the reviews must be performed under the direction of a doctor
14 licensed to practice in this state.

15 (i) The commissioner [~~commission~~] may grant exceptions to
16 the requirement imposed under Subsection (f) as necessary to ensure
17 that:

18 (1) employees have access to health care; and

19 (2) insurance carriers have access to evaluations of
20 an employee's health care and income benefit eligibility as
21 provided by this subtitle.

22 (j) A doctor who contracts with a workers' compensation
23 health care network certified under Chapter 1305, Insurance Code,
24 is not subject to the registration requirements of Subsections
25 (a)-(i) for the purpose of providing health care services under
26 that network contract. The doctor is subject to the requirements of
27 Subsections (l)-(p), and Subsection (q) applies to health care

1 services and functions provided by a doctor who contracts with a
2 certified workers' compensation health care network.

3 (k) The requirements of Subsections (a)-(g) and Subsection
4 (i) expire September 1, 2007. Before that date, the commissioner
5 may waive the application of the provisions of Subsections (a)-(g)
6 and Subsection (i) that require doctors to hold a certificate of
7 registration and to be on the list of approved doctors if the
8 commissioner determines that:

9 (1) injured employees have adequate access to health
10 care providers who are willing to treat injured employees for
11 compensable injuries through workers' compensation health care
12 networks certified under Chapter 1305, Insurance Code; or

13 (2) injured employees who are not covered by a workers'
14 compensation health care network certified under Chapter 1305,
15 Insurance Code, do not have adequate access to health care
16 providers who are willing to treat injured employees for
17 compensable injuries.

18 (1) The injured employee's treating doctor is responsible
19 for the efficient management of medical care as required by Section
20 408.025(c) and commissioner [commission] rules. The division
21 [commission] shall collect information regarding:

22 (1) return-to-work outcomes;

23 (2) patient satisfaction; and

24 (3) cost and utilization of health care provided or
25 authorized by a treating doctor on the list of approved doctors.

26 (m) [(k)] The commissioner [commission] may adopt rules to
27 define the role of the treating doctor and to specify outcome

1 information to be collected for a treating doctor.

2 (n) The commissioner by rule shall establish reasonable
3 requirements for doctors, and health care providers financially
4 related to those doctors, regarding training, impairment rating
5 testing, and disclosure of financial interests as required by
6 Section 413.041, and for monitoring of those doctors and health
7 care providers as provided by Sections 408.0231, 413.0511, and
8 413.0512.

9 (o) A doctor, including a doctor who contracts with a
10 workers' compensation health care network, shall:

11 (1) comply with the requirements established by
12 commissioner rule under Subsections (l) and (m) and with Section
13 413.041 regarding the disclosure of financial interests; and

14 (2) if the doctor intends to provide certifications of
15 maximum medical improvement or assign impairment ratings, comply
16 with the impairment rating training and testing requirements
17 established by commissioner rule under Subsection (n).

18 (p) A person required to comply with Subsection (o),
19 including a doctor who contracts with a workers' compensation
20 health care network, who does not comply with that section commits
21 an administrative violation.

22 (q) An insurance carrier may not use, for the purpose of
23 suspending temporary income benefits or computing impairment
24 income benefits, a certification of maximum medical improvement or
25 an impairment rating assigned by a doctor, including a doctor who
26 contracts with a workers' compensation health care network
27 certified under Chapter 1305, Insurance Code, who fails to comply

1 with Subsection (o)(2).

2 (r) Notwithstanding the waiver or expiration of Subsections
3 (a)-(g) and (i), there may be no direct or indirect provision of
4 health care under this subtitle and rules adopted under this
5 subtitle, and no direct or indirect receipt of remuneration under
6 this subtitle and rules adopted under this subtitle by a doctor who:

7 (1) before September 1, 2007:

8 (A) was removed or deleted from the list of
9 approved doctors either by action of the Texas Workers'
10 Compensation Commission or the division or by agreement with the
11 doctor;

12 (B) was not admitted to the list of approved
13 doctors either by action of the Texas Workers' Compensation
14 Commission or the division or by agreement with the doctor;

15 (C) was suspended from the list of approved
16 doctors either by action of the Texas Workers' Compensation
17 Commission or the division or by agreement with the doctor; or

18 (D) had the doctor's license to practice
19 suspended by the appropriate licensing agency, including a
20 suspension that was stayed, deferred, or probated, or voluntarily
21 relinquished the license to practice; and

22 (2) was not reinstated or restored by the Texas
23 Workers' Compensation Commission or the division to the list of
24 approved doctors before September 1, 2007.

25 (s) The waiver or expiration of Subsections (a)-(g) and (i)
26 do not limit the division's ability to impose sanctions as provided
27 by this subtitle and commissioner rules.

1 SECTION 3.084. Section 408.0231, Labor Code, is amended to
2 read as follows:

3 Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS;
4 SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. (a) The
5 commissioner [~~executive director~~] shall delete from the list of
6 approved doctors a doctor:

7 (1) who fails to register with the division
8 [~~commission~~] as provided by this chapter and commissioner
9 [~~commission~~] rules;

10 (2) who is deceased;

11 (3) whose license to practice in this state is
12 revoked, suspended, or not renewed by the appropriate licensing
13 authority; or

14 (4) who requests to be removed from the list.

15 (b) The commissioner [~~commission~~] by rule shall establish
16 criteria for:

17 (1) deleting or suspending a doctor from the list of
18 approved doctors;

19 (2) imposing sanctions on a doctor or an insurance
20 carrier as provided by this section;

21 (3) monitoring of utilization review agents, as
22 provided by a memorandum of understanding between the division
23 [~~commission~~] and the Texas Department of Insurance; and

24 (4) authorizing increased or reduced utilization
25 review and preauthorization controls on a doctor.

26 (c) Rules adopted under Subsection (b) are in addition to,
27 and do not affect, the rules adopted under Section 415.023(b). The

criteria for deleting a doctor from the list or for recommending or imposing sanctions may include anything the commissioner [~~commission~~] considers relevant, including:

(1) a sanction of the doctor by the commissioner [~~commission~~] for a violation of Chapter 413 or Chapter 415;

(2) a sanction by the Medicare or Medicaid program for:

(A) substandard medical care;

(B) overcharging;

(C) overutilization of medical services; or

(D) any other substantive noncompliance with requirements of those programs regarding professional practice or billing;

(3) evidence from the division's [~~commission's~~] medical records that the applicable insurance carrier's utilization review practices or the doctor's charges, fees, diagnoses, treatments, evaluations, or impairment ratings are substantially different from those the commissioner [~~commission~~] finds to be fair and reasonable based on either a single determination or a pattern of practice;

(4) a suspension or other relevant practice restriction of the doctor's license by an appropriate licensing authority;

(5) professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health, safety, and welfare;

(6) findings of fact and conclusions of law made by a

1 court, an administrative law judge of the State Office of
2 Administrative Hearings, or a licensing or regulatory authority; or
3 (7) a criminal conviction.

4 (d) The commissioner [~~commission~~] by rule shall establish
5 procedures under which a doctor may apply for:

- 6 (1) reinstatement to the list of approved doctors; or
- 7 (2) restoration of doctor practice privileges removed
- 8 by the commissioner [~~commission~~] based on sanctions imposed under
- 9 this section.

10 (e) The commissioner [~~commission~~] shall act on a
11 recommendation by the medical advisor selected under Section
12 413.0511 and, after notice and the opportunity for a hearing, may
13 impose sanctions under this section on a doctor or an insurance
14 carrier or may recommend action regarding a utilization review
15 agent. The commissioner [~~commission~~] and the commissioner of
16 insurance [~~Texas Department of Insurance~~] shall enter into a
17 memorandum of understanding to coordinate the regulation of
18 insurance carriers and utilization review agents as necessary to
19 ensure:

- 20 (1) compliance with applicable regulations; and
- 21 (2) that appropriate health care decisions are reached
- 22 under this subtitle and under Article 21.58A, Insurance Code.

23 (f) The sanctions the commissioner [~~commission~~] may
24 recommend or impose under this section include:

- 25 (1) reduction of allowable reimbursement;
- 26 (2) mandatory preauthorization of all or certain
- 27 health care services;

1 (3) required peer review monitoring, reporting, and
2 audit;

3 (4) deletion or suspension from the approved doctor
4 list and the designated doctor list;

5 (5) restrictions on appointment under this chapter;

6 (6) conditions or restrictions on an insurance carrier
7 regarding actions by insurance carriers under this subtitle in
8 accordance with the memorandum of understanding adopted under
9 Subsection (e) [between the commission and the Texas Department of
10 Insurance regarding Article 21.58A, Insurance Code]; and

11 (7) mandatory participation in training classes or
12 other courses as established or certified by the division
13 [commission].

14 (g) The commissioner shall adopt rules regarding doctors
15 who perform peer review functions for insurance carriers. Those
16 rules may include standards for peer review, imposition of
17 sanctions on doctors performing peer review functions, including
18 restriction, suspension, or removal of the doctor's ability to
19 perform peer review on behalf of insurance carriers in the workers'
20 compensation system, and other issues important to the quality of
21 peer review, as determined by the commissioner. A doctor who
22 performs peer review under this subtitle must hold the appropriate
23 professional license issued by this state.

24 SECTION 3.085. Section 408.024, Labor Code, is amended to
25 read as follows:

26 Sec. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS.
27 Except as otherwise provided, and after notice and an opportunity

1 for hearing, the commissioner [~~commission~~] may relieve an insurance
2 carrier of liability for health care that is furnished by a health
3 care provider or another person selected in a manner inconsistent
4 with the requirements of this subchapter.

5 SECTION 3.086. Subsections (a), (b), and (d), Section
6 408.025, Labor Code, are amended to read as follows:

7 (a) The commissioner [~~commission~~] by rule shall adopt
8 requirements for reports and records that are required to be filed
9 with the division [~~commission~~] or provided to the injured employee,
10 the employee's attorney, or the insurance carrier by a health care
11 provider.

12 (b) The commissioner [~~commission~~] by rule shall adopt
13 requirements for reports and records that are to be made available
14 by a health care provider to another health care provider to prevent
15 unnecessary duplication of tests and examinations.

16 (d) On the request of an injured employee, the employee's
17 attorney, or the insurance carrier, a health care provider shall
18 furnish records relating to treatment or hospitalization for which
19 compensation is being sought. The division [~~commission~~] may
20 regulate the charge for furnishing a report or record, but the
21 charge may not be less than the fair and reasonable charge for
22 furnishing the report or record. A health care provider may
23 disclose to the insurance carrier of an affected employer records
24 relating to the diagnosis or treatment of the injured employee
25 without the authorization of the injured employee to determine the
26 amount of payment or the entitlement to payment.

27 SECTION 3.087. Subchapter B, Chapter 408, Labor Code, is

1 amended by adding Sections 408.0251 and 408.0252 to read as
2 follows:

3 Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) The
4 commissioner, by rule and in cooperation with the commissioner of
5 insurance, shall adopt rules regarding the electronic submission
6 and processing of medical bills by health care providers to
7 insurance carriers.

8 (b) Insurance carriers shall accept medical bills submitted
9 electronically by health care providers in accordance with
10 commissioner rule.

11 (c) The commissioner shall by rule establish criteria for
12 granting exceptions to insurance carriers and health care providers
13 who are unable to submit or accept medical bills electronically.

14 (d) On or after January 1, 2008, the commissioner may adopt
15 rules regarding the electronic payment of medical bills by
16 insurance carriers to health care providers.

17 Sec. 408.0252. UNDERSERVED AREAS. The commissioner by rule
18 may identify areas of this state in which access to health care
19 providers is less available and may adopt appropriate standards,
20 guidelines, and rules regarding the delivery of health care in
21 those areas.

22 SECTION 3.088. Section 408.026, Labor Code, is amended to
23 read as follows:

24 Sec. 408.026. SPINAL SURGERY. Except in a medical
25 emergency, an insurance carrier is liable for medical costs related
26 to spinal surgery only as provided by Section 413.014 and
27 commissioner ~~[commission]~~ rules.

1 SECTION 3.089. Section 408.027, Labor Code, is amended to
2 read as follows:

3 Sec. 408.027. PAYMENT OF HEALTH CARE PROVIDER. (a) A
4 health care provider shall submit a claim for payment to the
5 insurance carrier not later than the 95th day after the date on
6 which the health care services are provided to the injured
7 employee. Failure by the health care provider to timely submit a
8 claim for payment constitutes a forfeiture of the provider's right
9 to reimbursement for that claim for payment [~~An insurance carrier~~
10 ~~shall pay the fee allowed under Section 413.011 for a service~~
11 ~~rendered by a health care provider not later than the 45th day after~~
12 ~~the date the insurance carrier receives the charge unless the~~
13 ~~amount of the payment or the entitlement to payment is disputed~~].

14 (b) The insurance carrier must pay, reduce, deny, or
15 determine to audit the health care provider's claim not later than
16 the 45th day after the date of receipt by the carrier of the
17 provider's claim. The carrier may request additional documentation
18 necessary to clarify the provider's charges at any time during the
19 45-day period. If the insurance carrier requests additional
20 documentation under this subsection, the health care provider must
21 provide the requested documentation not later than the 15th day
22 after the date of receipt of the carrier's request. If the
23 insurance carrier elects to audit the claim, the carrier must
24 complete the audit not later than the 160th day after the date of
25 receipt by the carrier of the health care provider's claim, and, not
26 later than the 160th day after the receipt of the claim, must make a
27 determination regarding the relationship of the health care

1 services provided to the compensable injury, the extent of the
2 injury, and the medical necessity of the services provided. If the
3 insurance carrier chooses to audit the claim, the insurance carrier
4 must pay to the health care provider not later than the 45th day
5 after the date of receipt by the carrier of the provider's claim 85
6 percent of:

7 (1) the amount for the health care service established
8 under the fee guidelines authorized under this subtitle if the
9 health care service is not provided through a workers' compensation
10 health care network under Chapter 1305, Insurance Code; or

11 (2) the amount of the contracted rate for that health
12 care service if the health care service is provided through a
13 workers' compensation health care network under Chapter 1305,
14 Insurance Code [~~If an insurance carrier disputes the amount charged~~
15 ~~by a health care provider and requests an audit of the services~~
16 ~~rendered, the insurance carrier shall pay 50 percent of the amount~~
17 ~~charged by the health care provider not later than the 45th day~~
18 ~~after the date the insurance carrier receives the statement of~~
19 ~~charge].~~

20 (c) If the health care services provided are determined to
21 be appropriate, the insurance carrier shall pay the health care
22 provider the remaining 15 percent of the claim not later than the
23 160th day after the date of receipt by the carrier of the health
24 care provider's documentation of the claim. An insurance carrier
25 commits an administrative violation if the carrier, in violation of
26 Subsection (b), fails to:

27 (1) pay, reduce, deny, or notify the health care

1 provider of the intent to audit the claim by the 45th day after the
2 date of receipt by the carrier of the health care provider's claim;
3 or

4 (2) pay, reduce, or deny an audited claim by the 160th
5 day after the date of receipt of the claim.

6 (d) If an insurance carrier contests the compensability of
7 an injury and the injury is determined not to be compensable, the
8 carrier may recover the amounts paid for health care services from
9 the employee's ~~[denies liability or the health care provider's~~
10 ~~entitlement to payment and an]~~ accident or health benefit plan, or
11 any other person who may be obligated for the cost of the ~~[insurance~~
12 ~~company provides benefits to the employee for medical or other]~~
13 health care services~~[, the right to recover that amount may be~~
14 ~~assigned by the employee to the accident or health insurance~~
15 ~~company]~~. If an accident or health insurance carrier or other
16 person obligated for the cost of health care services has paid for
17 health care services for an employee for an injury for which a
18 workers' compensation insurance carrier denies compensability, and
19 the injury is later determined to be compensable, the accident or
20 health insurance carrier or other person may recover the amounts
21 paid for such services from the workers' compensation insurance
22 carrier.

23 (e) ~~[(d)]~~ If an insurance carrier disputes the amount of
24 payment or the health care provider's entitlement to payment, the
25 insurance carrier shall send to the division ~~[commission]~~, the
26 health care provider, and the injured employee a report that
27 sufficiently explains the reasons for the reduction or denial of

1 payment for health care services provided to the employee. The
2 insurance carrier is entitled to a hearing as provided by Section
3 413.031(d).

4 (f) Any payment made by an insurance carrier under this
5 section shall be in accordance with the fee guidelines authorized
6 under this subtitle if the health care service is not provided
7 through a workers' compensation health care network under Chapter
8 1305, Insurance Code, or at a contracted rate for that health care
9 service if the health care service is provided through a workers'
10 compensation health care network under Chapter 1305, Insurance
11 Code.

12 (g) Notwithstanding any other provision in this subtitle or
13 Chapter 1305, Insurance Code, this section and Section 408.0271
14 apply to health care provided through a workers' compensation
15 health care network established under Chapter 1305, Insurance Code.
16 The commissioner shall adopt rules as necessary to implement the
17 provisions of this section and Section 408.0271.

18 SECTION 3.0895. Subchapter B, Chapter 408, Labor Code, is
19 amended by adding Section 408.0271 to read as follows:

20 Sec. 408.0271. REIMBURSEMENT BY HEALTH CARE PROVIDER. (a)
21 If the health care services provided to an injured employee are
22 determined by the insurance carrier to be inappropriate, the
23 insurance carrier shall:

24 (1) notify the health care provider in writing of the
25 carrier's decision; and

26 (2) demand a refund by the health care provider of the
27 portion of payment on the claim that was received by the health care

1 provider for the inappropriate services.

2 (b) The health care provider may appeal the insurance
3 carrier's determination under Subsection (a). The health care
4 provider must file an appeal under this subsection with the
5 insurance carrier not later than the 45th day after the date of the
6 insurance carrier's request for the refund. The insurance carrier
7 must act on the appeal not later than the 45th day after the date on
8 which the provider files the appeal.

9 (c) A health care provider shall reimburse the insurance
10 carrier for payments received by the provider for inappropriate
11 charges not later than the 45th day after the date of the carrier's
12 notice. The failure by the health care provider to timely remit
13 payment to the carrier constitutes an administrative violation.

14 SECTION 3.090. Section 408.028, Labor Code, is amended by
15 amending Subsections (b), (d), and (e) and adding Subsections (f)
16 and (g) to read as follows:

17 (b) The commissioner ~~[commission]~~ by rule shall require
18 ~~[develop an open formulary under Section 413.011 that requires]~~ the
19 use of generic pharmaceutical medications and clinically
20 appropriate over-the-counter alternatives to prescription
21 medications unless otherwise specified by the prescribing doctor,
22 in accordance with applicable state law. The commissioner by rule
23 shall adopt a closed formulary under Section 413.011. Rules
24 adopted by the commissioner shall allow an appeals process for
25 claims in which a treating doctor determines and documents that a
26 drug not included in the formulary is necessary to treat an injured
27 employee's compensable injury.

1 (d) The commissioner [~~commission~~] shall adopt rules to
2 allow an employee to purchase over-the-counter alternatives to
3 prescription medications prescribed or ordered under Subsection
4 (a) or (b) and to obtain reimbursement from the insurance carrier
5 for those medications.

6 (e) Notwithstanding Subsection (b), the commissioner
7 [~~commission~~] by rule shall allow an employee to purchase a brand
8 name drug rather than a generic pharmaceutical medication or
9 over-the-counter alternative to a prescription medication if a
10 health care provider prescribes a generic pharmaceutical
11 medication or an over-the-counter alternative to a prescription
12 medication. The employee shall be responsible for paying the
13 difference between the cost of the brand name drug and the cost of
14 the generic pharmaceutical medication or of an over-the-counter
15 alternative to a prescription medication. The employee may not
16 seek reimbursement for the difference in cost from an insurance
17 carrier and is not entitled to use the medical dispute resolution
18 provisions of Chapter 413 with regard to the prescription. A
19 payment described by this subsection by an employee to a health care
20 provider does not violate Section 413.042. This subsection does
21 not affect the duty of a health care provider to comply with the
22 requirements of Subsection (b) when prescribing medications or
23 ordering over-the-counter alternatives to prescription
24 medications.

25 (f) Notwithstanding any other provision of this title, the
26 commissioner by rule shall adopt a fee schedule for pharmacy and
27 pharmaceutical services that will:

1 (1) provide reimbursement rates that are fair and
2 reasonable;

3 (2) assure adequate access to medications and services
4 for injured workers; and

5 (3) minimize costs to employees and insurance
6 carriers.

7 (g) Insurance carriers must reimburse for pharmacy benefits
8 and services using the fee schedule as developed by this section, or
9 at rates negotiated by contract.

10 SECTION 3.091. Section 408.030, Labor Code, is amended to
11 read as follows:

12 Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. If the
13 division [~~commission~~] discovers an act or omission by a physician
14 that may constitute a felony, a misdemeanor involving moral
15 turpitude, a violation of a state or federal narcotics or
16 controlled substance law, an offense involving fraud or abuse under
17 the Medicare or Medicaid program, or a violation of this subtitle,
18 the division [~~commission~~] shall immediately report that act or
19 omission to the Texas State Board of Medical Examiners.

20 SECTION 3.092. Subchapter B, Chapter 408, Labor Code, is
21 amended by adding Section 408.031 to read as follows:

22 Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS.
23 (a) Notwithstanding any other provision of this chapter, an
24 injured employee may receive benefits under a workers' compensation
25 health care network established under Chapter 1305, Insurance Code,
26 in the manner provided by that chapter.

27 (b) In the event of a conflict between this title and

Chapter 1305, Insurance Code, as to the provision of medical benefits for injured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of the health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks, Chapter 1305, Insurance Code, prevails.

SECTION 3.093. Subchapter B, Chapter 408, Labor Code, is amended by adding Section 408.032 to read as follows:

Sec. 408.032. STUDY ON INTERDISCIPLINARY PAIN REHABILITATION PROGRAM AND FACILITY ACCREDITATION REQUIREMENT.
The division shall study the issue of required accreditation of interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities that provide services to injured employees and shall report to the legislature regarding any statutory changes that the division considers necessary to require that accreditation.

SECTION 3.094. Subsection (c), Section 408.041, Labor Code, is amended to read as follows:

(c) If Subsection (a) or (b) cannot reasonably be applied because the employee's employment has been irregular or because the employee has lost time from work during the 13-week period immediately preceding the injury because of illness, weather, or another cause beyond the control of the employee, the commissioner [~~commission~~] may determine the employee's average weekly wage by any method that the commissioner [~~commission~~] considers fair, just,

1 and reasonable to all parties and consistent with the methods
2 established under this section.

3 SECTION 3.095. Subsections (d), (f), and (g), Section
4 408.042, Labor Code, are amended to read as follows:

5 (d) The commissioner [~~commission~~] shall:

6 (1) prescribe a form to collect information regarding
7 the wages of employees with multiple employment; and

8 (2) by rule, determine the manner by which the
9 division [~~commission~~] collects and distributes wage information to
10 implement this section.

11 (f) If the commissioner [~~commission~~] determines that
12 computing the average weekly wage for an employee as provided by
13 Subsection (c) is impractical or unreasonable, the commissioner
14 [~~commission~~] shall set the average weekly wage in a manner that more
15 fairly reflects the employee's average weekly wage and that is fair
16 and just to both parties or is in the manner agreed to by the
17 parties. The commissioner [~~commission~~] by rule may define methods
18 to determine a fair and just average weekly wage consistent with
19 this section.

20 (g) An insurance carrier is entitled to apply for and
21 receive reimbursement at least annually from the subsequent injury
22 fund for the amount of income benefits paid to a worker under this
23 section that are based on employment other than the employment
24 during which the compensable injury occurred. The commissioner
25 [~~commission~~] may adopt rules that govern the documentation,
26 application process, and other administrative requirements
27 necessary to implement this subsection.

1 SECTION 3.096. Subsection (c), Section 408.043, Labor Code,
2 is amended to read as follows:

3 (c) If, for good reason, the commissioner [~~commission~~]
4 determines that computing the average weekly wage for a seasonal
5 employee as provided by this section is impractical, the
6 commissioner [~~commission~~] shall compute the average weekly wage as
7 of the time of the injury in a manner that is fair and just to both
8 parties.

9 SECTION 3.097. Subsection (b), Section 408.0445, Labor
10 Code, is amended to read as follows:

11 (b) For purposes of computing income benefits or death
12 benefits under Section 88.303, Education Code, the average weekly
13 wage of a Texas Task Force 1 member, as defined by Section 88.301,
14 Education Code, who is engaged in authorized training or duty is an
15 amount equal to the sum of the member's regular weekly wage at any
16 employment, including self-employment, that the member holds in
17 addition to serving as a member of Texas Task Force 1, except that
18 the amount may not exceed 100 percent of the state average weekly
19 wage as determined under Section 408.047. A member for whom an
20 average weekly wage cannot be computed shall be paid the minimum
21 weekly benefit established by the division [~~commission~~].

22 SECTION 3.098. Subsections (d) and (e), Section 408.0446,
23 Labor Code, are amended to read as follows:

24 (d) If the commissioner [~~commission~~] determines that
25 computing the average weekly wage of a school district employee as
26 provided by this section is impractical because the employee did
27 not earn wages during the 12 months immediately preceding the date

1 of the injury, the commissioner [~~commission~~] shall compute the
2 average weekly wage in a manner that is fair and just to both
3 parties.

4 (e) The commissioner [~~commission~~] shall adopt rules as
5 necessary to implement this section.

6 SECTION 3.099. Section 408.045, Labor Code, is amended to
7 read as follows:

8 Sec. 408.045. NONPECUNIARY WAGES. The division
9 [~~commission~~] may not include nonpecuniary wages in computing an
10 employee's average weekly wage during a period in which the
11 employer continues to provide the nonpecuniary wages.

12 SECTION 3.100. Section 408.047, Labor Code, is amended to
13 read as follows:

14 Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On and after
15 October 1, 2006, the state average weekly wage is equal to 88
16 percent of the average weekly wage in covered employment computed
17 by the Texas Workforce Commission under Section 207.002(c).

18 (b) The state average weekly wage for the period [~~fiscal~~
19 ~~year~~] beginning September 1, 2005 [~~2003~~], and ending September 30,
20 2006 [~~August 31, 2004~~], is \$540 [~~\$537, and for the fiscal year~~
21 ~~beginning September 1, 2004, and ending August 31, 2005, is \$539~~].
22 This subsection expires October 1, 2006.

23 (c) Notwithstanding Subsection (a), the commissioner by
24 rule may increase the state average weekly wage to an amount not to
25 exceed 100 percent of the average weekly wage in covered employment
26 computed by the Texas Workforce Commission under Section
27 207.002(c).

1 SECTION 3.101. Subsection (f), Section 408.061, Labor Code,
2 is amended to read as follows:

3 (f) The division [~~commission~~] shall compute the maximum
4 weekly income benefits for each state fiscal year not later than
5 October [~~September~~] 1 of each year.

6 SECTION 3.102. Subsection (b), Section 408.062, Labor Code,
7 is amended to read as follows:

8 (b) The division [~~commission~~] shall compute the minimum
9 weekly income benefit for each state fiscal year not later than
10 October [~~September~~] 1 of each year.

11 SECTION 3.103. Subsections (a) and (c), Section 408.063,
12 Labor Code, are amended to read as follows:

13 (a) To expedite the payment of income benefits, the
14 commissioner [~~commission~~] may by rule establish reasonable
15 presumptions relating to the wages earned by an employee, including
16 the presumption that an employee's last paycheck accurately
17 reflects the employee's usual wage.

18 (c) An employer who fails to file a wage statement in
19 accordance with Subsection (b) commits an administrative [~~a~~]
20 violation. [~~A violation under this subsection is a Class D~~
21 ~~administrative violation.~~]

22 SECTION 3.104. Subsections (b) and (c), Section 408.081,
23 Labor Code, are amended to read as follows:

24 (b) Except as otherwise provided by this section or this
25 subtitle, income benefits shall be paid weekly as and when they
26 accrue without order from the commissioner [~~commission~~]. Interest
27 on accrued but unpaid benefits shall be paid, without order of the

1 commissioner [~~commission~~], at the time the accrued benefits are
2 paid.

3 (c) The commissioner [~~commission~~] by rule shall establish
4 requirements for agreements under which income benefits may be paid
5 monthly. Income benefits may be paid monthly only:

6 (1) on the request of the employee and the agreement of
7 the employee and the insurance carrier; and

8 (2) in compliance with the requirements adopted by the
9 commissioner [~~commission~~].

10 SECTION 3.105. Subsection (c), Section 408.082, Labor Code,
11 is amended to read as follows:

12 (c) If the disability continues for two [~~four~~] weeks or
13 longer after the date it begins, compensation shall be computed
14 from the date the disability begins.

15 SECTION 3.106. Subsections (a) and (b), Section 408.084,
16 Labor Code, are amended to read as follows:

17 (a) At the request of the insurance carrier, the
18 commissioner [~~commission~~] may order that impairment income
19 benefits and supplemental income benefits be reduced in a
20 proportion equal to the proportion of a documented impairment that
21 resulted from earlier compensable injuries.

22 (b) The commissioner [~~commission~~] shall consider the
23 cumulative impact of the compensable injuries on the employee's
24 overall impairment in determining a reduction under this section.

25 SECTION 3.107. Section 408.085, Labor Code, is amended to
26 read as follows:

27 Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If

1 there is a likelihood that income benefits will be paid, the
2 commissioner [~~commission~~] may grant an employee suffering
3 financial hardship advances as provided by this subtitle against
4 the amount of income benefits to which the employee may be entitled.
5 An advance may be ordered before or after the employee attains
6 maximum medical improvement. An insurance carrier shall pay the
7 advance ordered.

8 (b) An employee must apply to the division [~~commission~~] for
9 an advance on a form prescribed by the commissioner [~~commission~~].
10 The application must describe the hardship that is the grounds for
11 the advance.

12 (c) An advance under this section may not exceed an amount
13 equal to four times the maximum weekly benefit for temporary income
14 benefits as computed in Section 408.061. The commissioner
15 [~~commission~~] may not grant more than three advances to a particular
16 employee based on the same injury.

17 (d) The commissioner [~~commission~~] may not grant an advance
18 to an employee who is receiving, on the date of the application
19 under Subsection (b), at least 90 percent of the employee's net
20 preinjury wages under Section 408.003 or 408.129.

21 SECTION 3.108. Section 408.086, Labor Code, is amended to
22 read as follows:

23 Sec. 408.086. DIVISION [~~COMMISSION~~] DETERMINATION OF
24 EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) During the period
25 that impairment income benefits or supplemental income benefits are
26 being paid to an employee, the commissioner [~~commission~~] shall
27 determine at least annually whether any extended unemployment or

1 underemployment is a direct result of the employee's impairment.

2 (b) To make this determination, the commissioner
3 [~~commission~~] may require periodic reports from the employee and the
4 insurance carrier and, at the insurance carrier's expense, may
5 require physical or other examinations, vocational assessments, or
6 other tests or diagnoses necessary to perform the commissioner's
7 [~~its~~] duty under this section and Subchapter H.

8 SECTION 3.109. Subsection (b), Section 408.102, Labor Code,
9 is amended to read as follows:

10 (b) The commissioner [~~commission~~] by rule shall establish a
11 presumption that maximum medical improvement has been reached based
12 on a lack of medical improvement in the employee's condition.

13 SECTION 3.110. Subsection (b), Section 408.103, Labor Code,
14 is amended to read as follows:

15 (b) A temporary income benefit under Subsection (a)(2) may
16 not exceed the employee's actual earnings for the previous year. It
17 is presumed that the employee's actual earnings for the previous
18 year are equal to:

19 (1) the sum of the employee's wages as reported in the
20 most recent four quarterly wage reports to the Texas Workforce
21 [~~Employment~~] Commission divided by 52;

22 (2) the employee's wages in the single quarter of the
23 most recent four quarters in which the employee's earnings were
24 highest, divided by 13, if the commissioner [~~commission~~] finds that
25 the employee's most recent four quarters' earnings reported in the
26 Texas Workforce [~~Employment~~] Commission wage reports are not
27 representative of the employee's usual earnings; or

1 (3) the amount the commissioner [~~commission~~]
2 determines from other credible evidence to be the actual earnings
3 for the previous year if the Texas Workforce [~~Employment~~]
4 Commission does not have a wage report reflecting at least one
5 quarter's earnings because the employee worked outside the state
6 during the previous year.

7 SECTION 3.111. Subsections (a) and (c), Section 408.104,
8 Labor Code, are amended to read as follows:

9 (a) On application by either the employee or the insurance
10 carrier, the commissioner [~~commission~~] by order may extend the
11 104-week period described by Section 401.011(30)(B) if the employee
12 has had spinal surgery, or has been approved for spinal surgery
13 under Section 408.026 and commissioner [~~commission~~] rules, within
14 12 weeks before the expiration of the 104-week period. If an order
15 is issued under this section, the order shall extend the statutory
16 period for maximum medical improvement to a date certain, based on
17 medical evidence presented to the commissioner [~~commission~~].

18 (c) The commissioner [~~commission~~] shall adopt rules to
19 implement this section, including rules establishing procedures
20 for requesting and disputing an extension.

21 SECTION 3.112. Subchapter G, Chapter 408, Labor Code, is
22 amended by amending Section 408.122 and adding Section 408.1225 to
23 read as follows:

24 Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS[+
25 ~~DESIGNATED DOCTOR~~]. [(a)] A claimant may not recover impairment
26 income benefits unless evidence of impairment based on an objective
27 clinical or laboratory finding exists. If the finding of

1 impairment is made by a doctor chosen by the claimant and the
2 finding is contested, a designated doctor or a doctor selected by
3 the insurance carrier must be able to confirm the objective
4 clinical or laboratory finding on which the finding of impairment
5 is based.

6 Sec. 408.1225. DESIGNATED DOCTOR. (a) ~~[(b)]~~ To be
7 eligible to serve as a designated doctor, a doctor must meet
8 specific qualifications, including training in the determination
9 of impairment ratings and demonstrated expertise in performing
10 examinations and making evaluations as described by Section
11 408.0041. The commissioner ~~[executive director]~~ shall develop
12 qualification standards and administrative policies to implement
13 this subsection~~[7]~~ and ~~[the commission]~~ may adopt rules as
14 necessary.

15 (b) The commissioner shall ensure the quality of designated
16 doctor decisions and reviews through active monitoring of the
17 decisions and reviews, and may take action as necessary to:

18 (1) restrict the participation of a designated doctor;
19 or

20 (2) remove a doctor from inclusion on the department's
21 list of designated doctors. ~~[The designated doctor doing the~~
22 ~~review must be trained and experienced with the treatment and~~
23 ~~procedures used by the doctor treating the patient's medical~~
24 ~~condition, and the treatment and procedures performed must be~~
25 ~~within the scope of practice of the designated doctor. A designated~~
26 ~~doctor's credentials must be appropriate for the issue in question~~
27 ~~and the injured employee's medical condition.]~~

1 (c) The report of the designated doctor has presumptive
2 weight, and the division [~~commission~~] shall base its determination
3 of whether the employee has reached maximum medical improvement on
4 the report unless the preponderance [~~great weight~~] of the other
5 medical evidence is to the contrary.

6 (d) The commissioner shall develop rules to ensure that a
7 designated doctor called on to conduct an examination under Section
8 408.0041 has no conflict of interest in serving as a designated
9 doctor in performing any examination.

10 SECTION 3.113. Section 408.123, Labor Code, is amended and
11 reenacted to read as follows:

12 Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL
13 IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an
14 employee has been certified by a doctor as having reached maximum
15 medical improvement, the certifying doctor shall evaluate the
16 condition of the employee and assign an impairment rating using the
17 impairment rating guidelines described by Section 408.124. If the
18 certification and evaluation are performed by a doctor other than
19 the employee's treating doctor, the certification and evaluation
20 shall be submitted to the treating doctor, and the treating doctor
21 shall indicate agreement or disagreement with the certification and
22 evaluation.

23 (b) A certifying doctor shall issue a written report
24 certifying that maximum medical improvement has been reached,
25 stating the employee's impairment rating, and providing any other
26 information required by the commissioner [~~commission~~] to:

27 (1) the division [~~commission~~];

1 (2) the employee; and

2 (3) the insurance carrier.

3 (c) The commissioner shall adopt a rule that provides that,
4 at the conclusion of any examination in which maximum medical
5 improvement is certified and any impairment rating is assigned by
6 the treating doctor, written notice shall be given to the employee
7 that the employee may dispute the certification of maximum medical
8 improvement and assigned impairment rating. The notice to the
9 employee must state how to dispute the certification of maximum
10 medical improvement and impairment rating.

11 (d) If an employee is not certified as having reached
12 maximum medical improvement before the expiration of 102 weeks
13 after the date income benefits begin to accrue, the division
14 [~~commission~~] shall notify the treating doctor of the requirements
15 of this subchapter.

16 (e) [~~(d)~~] Except as otherwise provided by this section, an
17 employee's first valid certification of maximum medical
18 improvement and first valid assignment of an impairment rating is
19 final if the certification or assignment is not disputed before the
20 91st day after the date written notification of the certification
21 or assignment is provided to the employee and the carrier by
22 verifiable means.

23 (f) [~~(e)~~] An employee's first certification of maximum
24 medical improvement or assignment of an impairment rating may be
25 disputed after the period described by Subsection (e) [~~(d)~~] if:

26 (1) compelling medical evidence exists of:

27 (A) a significant error by the certifying doctor

1 in applying the appropriate American Medical Association
2 guidelines or in calculating the impairment rating;

3 (B) a clearly mistaken diagnosis or a previously
4 undiagnosed medical condition; or

5 (C) improper or inadequate treatment of the
6 injury before the date of the certification or assignment that
7 would render the certification or assignment invalid; or

8 (2) other compelling circumstances exist as
9 prescribed by commissioner [~~commission~~] rule.

10 (g) [~~(f)~~] If an employee has not been certified as having
11 reached maximum medical improvement before the expiration of 104
12 weeks after the date income benefits begin to accrue or the
13 expiration date of any extension of benefits under Section 408.104,
14 the impairment rating assigned after the expiration of either of
15 those periods is final if the impairment rating is not disputed
16 before the 91st day after the date written notification of the
17 certification or assignment is provided to the employee and the
18 carrier by verifiable means. A certification or assignment may be
19 disputed after the 90th day only as provided by Subsection (f)
20 [~~(e)~~].

21 (h) [~~(g)~~] If an employee's disputed certification of
22 maximum medical improvement or assignment of impairment rating is
23 finally modified, overturned, or withdrawn, the first
24 certification or assignment made after the date of the
25 modification, overturning, or withdrawal becomes final if the
26 certification or assignment is not disputed before the 91st day
27 after the date notification of the certification or assignment is

1 provided to the employee and the carrier by verifiable means. A
2 certification or assignment may be disputed after the 90th day only
3 as provided by Subsection (f) [~~(e)~~].

4 SECTION 3.114. Section 408.124, Labor Code, is amended to
5 read as follows:

6 Sec. 408.124. IMPAIRMENT RATING GUIDELINES. (a) An award
7 of an impairment income benefit, whether by the commissioner
8 [~~commission~~] or a court, must be based [~~shall be made~~] on an
9 impairment rating determined using the impairment rating
10 guidelines described by [~~in~~] this section.

11 (b) For determining the existence and degree of an
12 employee's impairment, the division [~~commission~~] shall use "Guides
13 to the Evaluation of Permanent Impairment," third edition, second
14 printing, dated February 1989, published by the American Medical
15 Association.

16 (c) Notwithstanding Subsection (b), the commissioner
17 [~~commission~~] by rule may adopt the fourth edition of the "Guides to
18 the Evaluation of Permanent Impairment," published by the American
19 Medical Association, or a subsequent edition of those guides, for
20 determining the existence and degree of an employee's impairment.

21 SECTION 3.115. Subsections (a) through (d) and (f), Section
22 408.125, Labor Code, are amended to read as follows:

23 (a) If an impairment rating is disputed, the commissioner
24 [~~commission~~] shall direct the employee to the next available doctor
25 on the division's [~~commission's~~] list of designated doctors, as
26 provided by Section 408.0041.

27 (b) The designated doctor shall report in writing to the

1 division [~~commission~~].

2 (c) The report of the designated doctor shall have
3 presumptive weight, and the division [~~commission~~] shall base the
4 impairment rating on that report unless the preponderance [~~great~~
5 ~~weight~~] of the other medical evidence is to the contrary. If the
6 preponderance [~~great weight~~] of the medical evidence contradicts
7 the impairment rating contained in the report of the designated
8 doctor chosen by the division [~~commission~~], the division
9 [~~commission~~] shall adopt the impairment rating of one of the other
10 doctors.

11 (d) To avoid undue influence on a person selected as a
12 designated doctor under this section, only the injured employee or
13 an appropriate member of the staff of the division [~~commission~~] may
14 communicate with the designated doctor about the case regarding the
15 injured employee's medical condition or history before the
16 examination of the injured employee by the designated doctor.
17 After that examination is completed, communication with the
18 designated doctor regarding the injured employee's medical
19 condition or history may be made only through appropriate division
20 [~~commission~~] staff members. The designated doctor may initiate
21 communication with any doctor who has previously treated or
22 examined the injured employee for the work-related injury.

23 (f) A violation of Subsection (d) is an [~~a Class C~~]
24 administrative violation.

25 SECTION 3.116. Subsection (c), Section 408.127, Labor Code,
26 is amended to read as follows:

27 (c) The commissioner [~~commission~~] shall adopt rules and

1 forms to ensure the full reporting and the accuracy of reductions
2 and reimbursements made under this section.

3 SECTION 3.117. Subsections (a), (b), and (d), Section
4 408.129, Labor Code, are amended to read as follows:

5 (a) On approval by the commissioner [~~commission~~] of a
6 written request received from an employee, an insurance carrier
7 shall accelerate the payment of impairment income benefits to the
8 employee. The accelerated payment may not exceed a rate of payment
9 equal to that of the employee's net preinjury wage.

10 (b) The commissioner [~~commission~~] shall approve the request
11 and order the acceleration of the benefits if the commissioner
12 [~~commission~~] determines that the acceleration is:

13 (1) required to relieve hardship; and

14 (2) in the overall best interest of the employee.

15 (d) The commissioner [~~commission~~] may prescribe forms
16 necessary to implement this section.

17 SECTION 3.118. Section 408.141, Labor Code, is amended to
18 read as follows:

19 Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An
20 award of a supplemental income benefit, whether by the commissioner
21 [~~commission~~] or a court, shall be made in accordance with this
22 subchapter.

23 SECTION 3.119. Subchapter H, Chapter 408, Labor Code, is
24 amended by adding Section 408.1415 to read as follows:

25 Sec. 408.1415. WORK SEARCH COMPLIANCE STANDARDS. (a) The
26 commissioner by rule shall adopt compliance standards for
27 supplemental income benefit recipients that require each recipient

1 to demonstrate an active effort to obtain employment. To be
2 eligible to receive supplemental income benefits under this
3 chapter, a recipient must provide evidence satisfactory to the
4 division of:

5 (1) active participation in a vocational
6 rehabilitation program conducted by the Department of Assistive and
7 Rehabilitative Services or a private vocational rehabilitation
8 provider;

9 (2) active participation in work search efforts
10 conducted through the Texas Workforce Commission; or

11 (3) active work search efforts documented by job
12 applications submitted by the recipient.

13 (b) In adopting rules under this section, the commissioner
14 shall:

15 (1) establish the level of activity that a recipient
16 should have with the Texas Workforce Commission and the Department
17 of Assistive and Rehabilitative Services;

18 (2) define the number of job applications required to
19 be submitted by a recipient to satisfy the work search
20 requirements; and

21 (3) consider factors affecting the availability of
22 employment, including recognition of access to employment in rural
23 areas, economic conditions, and other appropriate employment
24 availability factors.

25 (c) The commissioner may consult with the Texas Workforce
26 Commission, the Department of Assistive and Rehabilitative
27 Services, and other appropriate entities in adopting rules under

1 this section.

2 SECTION 3.1195. Subsection (a), Section 408.142, Labor
3 Code, is amended to read as follows:

4 (a) An employee is entitled to supplemental income benefits
5 if on the expiration of the impairment income benefit period
6 computed under Section 408.121(a)(1) the employee:

7 (1) has an impairment rating of 15 percent or more as
8 determined by this subtitle from the compensable injury;

9 (2) has not returned to work or has returned to work
10 earning less than 80 percent of the employee's average weekly wage
11 as a direct result of the employee's impairment;

12 (3) has not elected to commute a portion of the
13 impairment income benefit under Section 408.128; and

14 (4) has complied with the requirements adopted under
15 Section 408.1415 [~~attempted in good faith to obtain employment~~
16 ~~commensurate with the employee's ability to work~~].

17 SECTION 3.120. Subsections (a) and (b), Section 408.143,
18 Labor Code, are amended to read as follows:

19 (a) After the commissioner's [~~commission's~~] initial
20 determination of supplemental income benefits, the employee must
21 file a statement with the insurance carrier stating:

22 (1) that the employee has earned less than 80 percent
23 of the employee's average weekly wage as a direct result of the
24 employee's impairment;

25 (2) the amount of wages the employee earned in the
26 filing period provided by Subsection (b); and

27 (3) that the employee has complied with the

1 requirements adopted under Section 408.1415 [~~in good faith sought~~
2 ~~employment commensurate with the employee's ability to work~~].

3 (b) The statement required under this section must be filed
4 quarterly on a form and in the manner provided by the commissioner
5 [~~commission~~]. The commissioner [~~commission~~] may modify the filing
6 period as appropriate to an individual case.

7 SECTION 3.1205. Subsection (b), Section 408.144, Labor
8 Code, is amended to read as follows:

9 (b) Subject to Section 408.061, the amount of a supplemental
10 income benefit for a week is equal to 80 percent of the amount
11 computed by subtracting the weekly wage the employee earned during
12 the reporting period provided by Section 408.143(b) from 80 percent
13 of the employee's average weekly wage determined under Section
14 408.041, 408.042, 408.043, [~~or~~] 408.044, 408.0445, or 408.0446.

15 SECTION 3.121. Subsection (c), Section 408.147, Labor Code,
16 is amended to read as follows:

17 (c) If an insurance carrier disputes the commissioner's [~~a~~
18 ~~commission~~] determination that an employee is entitled to
19 supplemental income benefits or the amount of supplemental income
20 benefits due and the employee prevails on any disputed issue, the
21 insurance carrier is liable for reasonable and necessary attorney's
22 fees incurred by the employee as a result of the insurance carrier's
23 dispute and for supplemental income benefits accrued but not paid
24 and interest on that amount, according to Section 408.064.
25 Attorney's fees awarded under this subsection are not subject to
26 Sections 408.221(b), (f), and (i).

27 SECTION 3.122. Section 408.148, Labor Code, is amended to

1 read as follows:

2 Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. The
3 commissioner [~~commission~~] may reinstate supplemental income
4 benefits to an employee who is discharged within 12 months of the
5 date of losing entitlement to supplemental income benefits under
6 Section 408.146(c) if the commissioner [~~commission~~] finds that the
7 employee was discharged at that time with the intent to deprive the
8 employee of supplemental income benefits.

9 SECTION 3.123. Section 408.149, Labor Code, is amended to
10 read as follows:

11 Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE.
12 (a) Not more than once in each period of 12 calendar months, an
13 employee and an insurance carrier each may request the commissioner
14 [~~commission~~] to review the status of the employee and determine
15 whether the employee's unemployment or underemployment is a direct
16 result of impairment from the compensable injury.

17 (b) Either party may request a benefit review conference to
18 contest a determination of the commissioner [~~commission~~] at any
19 time, subject only to the limits placed on the insurance carrier by
20 Section 408.147.

21 SECTION 3.124. Section 408.150, Labor Code, is amended to
22 read as follows:

23 Sec. 408.150. VOCATIONAL REHABILITATION. (a) The
24 division [~~commission~~] shall refer an employee to the Department of
25 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
26 ~~Commission~~] with a recommendation for appropriate services if the
27 division [~~commission~~] determines that an employee [~~entitled to~~

1 ~~supplemental income benefits~~] could be materially assisted by
2 vocational rehabilitation or training in returning to employment or
3 returning to employment more nearly approximating the employee's
4 preinjury employment. The division [~~commission~~] shall also notify
5 insurance carriers of the need for vocational rehabilitation or
6 training services. The insurance carrier may provide services
7 through a private provider of vocational rehabilitation services
8 under Section 409.012.

9 (b) An employee who refuses services or refuses to cooperate
10 with services provided under this section by the Department of
11 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
12 ~~Commission~~] or a private provider loses entitlement to supplemental
13 income benefits.

14 SECTION 3.125. Section 408.151, Labor Code, is amended to
15 read as follows:

16 Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME
17 BENEFITS. (a) On or after the second anniversary of the date the
18 commissioner [~~commission~~] makes the initial award of supplemental
19 income benefits, an insurance carrier may not require an employee
20 who is receiving supplemental income benefits to submit to a
21 medical examination more than annually if, in the preceding year,
22 the employee's medical condition resulting from the compensable
23 injury has not improved sufficiently to allow the employee to
24 return to work.

25 (b) If a dispute exists as to whether the employee's medical
26 condition has improved sufficiently to allow the employee to return
27 to work, the commissioner [~~commission~~] shall direct the employee to

1 be examined by a designated doctor chosen by the division
2 [~~commission~~]. The designated doctor shall report to the division
3 [~~commission~~]. The report of the designated doctor has presumptive
4 weight, and the division [~~commission~~] shall base its determination
5 of whether the employee's medical condition has improved
6 sufficiently to allow the employee to return to work on that report
7 unless the preponderance [~~great weight~~] of the other medical
8 evidence is to the contrary.

9 [~~(c) The commission may require an employee to whom~~
10 ~~Subsection (a) applies to submit to a medical examination under~~
11 ~~Section 408.004 only to determine whether the employee's medical~~
12 ~~condition is a direct result of impairment from a compensable~~
13 ~~injury.~~]

14 SECTION 3.126. Subsection (d), Section 408.161, Labor Code,
15 is amended to read as follows:

16 (d) An insurance carrier may pay lifetime income benefits
17 through an annuity if the annuity agreement meets the terms and
18 conditions for annuity agreements adopted by the commissioner
19 [~~commission~~] by rule. The establishment of an annuity under this
20 subsection does not relieve the insurance carrier of the liability
21 under this title for ensuring that the lifetime income benefits are
22 paid.

23 SECTION 3.127. Subsections (c) and (d), Section 408.181,
24 Labor Code, are amended to read as follows:

25 (c) The commissioner [~~commission~~] by rule shall establish
26 requirements for agreements under which death benefits may be paid
27 monthly. Death benefits may be paid monthly only:

(1) on the request of the legal beneficiary and the agreement of the legal beneficiary and the insurance carrier; and

(2) in compliance with the requirements adopted by the commissioner [~~commission~~].

(d) An insurance carrier may pay death benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner [~~commission~~] by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the death benefits are paid.

SECTION 3.128. Subsection (f), Section 408.182, Labor Code, is amended to read as follows:

(f) In this section:

(1) "Eligible child" means a child of a deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or

(C) a dependent of the deceased employee at the time of the employee's death.

(2) "Eligible grandchild" means a grandchild of a deceased employee who is a dependent of the deceased employee and whose parent is not an eligible child.

(3) "Eligible spouse" means the surviving spouse of a deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good

1 cause, as determined by the division [~~commission~~].

2 SECTION 3.129. Subsection (b), Section 408.183, Labor Code,
3 is amended to read as follows:

4 (b) An eligible spouse is entitled to receive death benefits
5 for life or until remarriage. On remarriage, the eligible spouse is
6 entitled to receive 104 weeks of death benefits, commuted as
7 provided by commissioner [~~commission~~] rule.

8 SECTION 3.130. Subsection (c), Section 408.187, Labor Code,
9 is amended to read as follows:

10 (c) The commissioner [~~commission~~] shall require the
11 insurance carrier to pay the costs of a procedure ordered under this
12 section.

13 SECTION 3.131. Section 408.202, Labor Code, is amended to
14 read as follows:

15 Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not
16 assignable, except a legal beneficiary may, with the commissioner's
17 [~~commission~~] approval, assign the right to death benefits.

18 SECTION 3.132. Subsections (a) through (g), Section
19 408.221, Labor Code, are amended to read as follows:

20 (a) An attorney's fee, including a contingency fee, for
21 representing a claimant before the division [~~commission~~] or court
22 under this subtitle must be approved by the commissioner
23 [~~commission~~] or court.

24 (b) Except as otherwise provided, an attorney's fee under
25 this section is based on the attorney's time and expenses according
26 to written evidence presented to the division [~~commission~~] or
27 court. Except as provided by Subsection (c) or Section 408.147(c),

1 the attorney's fee shall be paid from the claimant's recovery.

2 (c) An insurance carrier that seeks judicial review under
3 Subchapter G, Chapter 410, of a final decision of the [~~a commission~~]
4 appeals panel regarding compensability or eligibility for, or the
5 amount of, income or death benefits is liable for reasonable and
6 necessary attorney's fees as provided by Subsection (d) incurred by
7 the claimant as a result of the insurance carrier's appeal if the
8 claimant prevails on an issue on which judicial review is sought by
9 the insurance carrier in accordance with the limitation of issues
10 contained in Section 410.302. If the carrier appeals multiple
11 issues and the claimant prevails on some, but not all, of the issues
12 appealed, the court shall apportion and award fees to the
13 claimant's attorney only for the issues on which the claimant
14 prevails. In making that apportionment, the court shall consider
15 the factors prescribed by Subsection (d). This subsection does not
16 apply to attorney's fees for which an insurance carrier may be
17 liable under Section 408.147. An award of attorney's fees under
18 this subsection is not subject to commissioner [~~commission~~] rules
19 adopted under Subsection (f). [~~This subsection expires September~~
20 ~~1, 2005.~~]

21 (d) In approving an attorney's fee under this section, the
22 commissioner [~~commission~~] or court shall consider:

- 23 (1) the time and labor required;
24 (2) the novelty and difficulty of the questions
25 involved;
26 (3) the skill required to perform the legal services
27 properly;

1 (4) the fee customarily charged in the locality for
2 similar legal services;

3 (5) the amount involved in the controversy;

4 (6) the benefits to the claimant that the attorney is
5 responsible for securing; and

6 (7) the experience and ability of the attorney
7 performing the services.

8 (e) The commissioner [~~commission~~] by rule or the court may
9 provide for the commutation of an attorney's fee, except that the
10 attorney's fee shall be paid in periodic payments in a claim
11 involving death benefits if the only dispute is as to the proper
12 beneficiary or beneficiaries.

13 (f) The commissioner [~~commission~~] by rule shall provide
14 guidelines for maximum attorney's fees for specific services in
15 accordance with this section.

16 (g) An attorney's fee may not be allowed in a case involving
17 a fatal injury or lifetime income benefit if the insurance carrier
18 admits liability on all issues and tenders payment of maximum
19 benefits in writing under this subtitle while the claim is pending
20 before the division [~~commission~~].

21 SECTION 3.133. Section 408.222, Labor Code, is amended to
22 read as follows:

23 Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL.

24 (a) The amount of an attorney's fee for defending an insurance
25 carrier in a workers' compensation action brought under this
26 subtitle must be approved by the division [~~commission~~] or court and
27 determined by the division [~~commission~~] or court to be reasonable

1 and necessary.

2 (b) In determining whether a fee is reasonable under this
3 section, the division [~~commission~~] or court shall consider issues
4 analogous to those listed under Section 408.221(d). The defense
5 counsel shall present written evidence to the division [~~commission~~]
6 or court relating to:

7 (1) the time spent and expenses incurred in defending
8 the case; and

9 (2) other evidence considered necessary by the
10 division [~~commission~~] or court in making a determination under this
11 section.

12 SECTION 3.134. Section 409.002, Labor Code, is amended to
13 read as follows:

14 Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to
15 notify an employer as required by Section 409.001(a) relieves the
16 employer and the employer's insurance carrier of liability under
17 this subtitle unless:

18 (1) the employer, a person eligible to receive notice
19 under Section 409.001(b), or the employer's insurance carrier has
20 actual knowledge of the employee's injury;

21 (2) the division [~~commission~~] determines that good
22 cause exists for failure to provide notice in a timely manner; or

23 (3) the employer or the employer's insurance carrier
24 does not contest the claim.

25 SECTION 3.135. Section 409.003, Labor Code, is amended to
26 read as follows:

27 Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a

1 person acting on the employee's behalf shall file with the division
2 [~~commission~~] a claim for compensation for an injury not later than
3 one year after the date on which:

4 (1) the injury occurred; or

5 (2) if the injury is an occupational disease, the
6 employee knew or should have known that the disease was related to
7 the employee's employment.

8 SECTION 3.136. Section 409.004, Labor Code, is amended to
9 read as follows:

10 Sec. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR
11 COMPENSATION. Failure to file a claim for compensation with the
12 division [~~commission~~] as required under Section 409.003 relieves
13 the employer and the employer's insurance carrier of liability
14 under this subtitle unless:

15 (1) good cause exists for failure to file a claim in a
16 timely manner; or

17 (2) the employer or the employer's insurance carrier
18 does not contest the claim.

19 SECTION 3.137. Subsections (d), (e), (f), and (h) through
20 (1), Section 409.005, Labor Code, are amended to read as follows:

21 (d) The insurance carrier shall file the report of the
22 injury on behalf of the policyholder. Except as provided by
23 Subsection (e), the insurance carrier must electronically file the
24 report with the division [~~commission~~] not later than the seventh
25 day after the date on which the carrier receives the report from the
26 employer.

27 (e) The commissioner [~~executive director~~] may waive the

1 electronic filing requirement under Subsection (d) and allow an
2 insurance carrier to mail or deliver the report to the division
3 [~~commission~~] not later than the seventh day after the date on which
4 the carrier receives the report from the employer.

5 (f) A report required under this section may not be
6 considered to be an admission by or evidence against an employer or
7 an insurance carrier in a proceeding before the division
8 [~~commission~~] or a court in which the facts set out in the report are
9 contradicted by the employer or insurance carrier.

10 (h) The commissioner [~~commission~~] may adopt rules relating
11 to:

12 (1) the information that must be contained in a report
13 required under this section, including the summary of rights and
14 responsibilities required under Subsection (g); and

15 (2) the development and implementation of an
16 electronic filing system for injury reports under this section.

17 (i) An employer and insurance carrier shall file subsequent
18 reports as required by commissioner [~~commission~~] rule.

19 (j) The employer shall, on the written request of the
20 employee, a doctor, the insurance carrier, or the division
21 [~~commission~~], notify the employee, the employee's treating doctor
22 if known to the employer, and the insurance carrier of the existence
23 or absence of opportunities for modified duty or a modified duty
24 return-to-work program available through the employer. If those
25 opportunities or that program exists, the employer shall identify
26 the employer's contact person and provide other information to
27 assist the doctor, the employee, and the insurance carrier to

1 assess modified duty or return-to-work options.

2 (k) This section does not prohibit the commissioner
3 ~~[commission]~~ from imposing requirements relating to return-to-work
4 under other authority granted to the division ~~[commission]~~ in this
5 subtitle.

6 (l) A person commits an administrative [a] violation if the
7 person fails to comply with this section unless good cause exists.
8 ~~[A violation under this subsection is a Class D administrative~~
9 ~~violation.]~~

10 SECTION 3.138. Subsections (b), (c), and (e), Section
11 409.006, Labor Code, are amended to read as follows:

12 (b) The record shall be available to the division
13 ~~[commission]~~ at reasonable times and under conditions prescribed by
14 the commissioner ~~[commission]~~.

15 (c) The commissioner ~~[commission]~~ may adopt rules relating
16 to the information that must be contained in an employer record
17 under this section.

18 (e) A person commits an administrative [a] violation if the
19 person fails to comply with this section. ~~[A violation under this~~
20 ~~subsection is a Class D administrative violation.]~~

21 SECTION 3.139. Subsection (a), Section 409.007, Labor Code,
22 is amended to read as follows:

23 (a) A person must file a claim for death benefits with the
24 division ~~[commission]~~ not later than the first anniversary of the
25 date of the employee's death.

26 SECTION 3.140. Section 409.009, Labor Code, is amended to
27 read as follows:

1 Sec. 409.009. SUBCLAIMS. A person may file a written claim
2 with the division [~~commission~~] as a subclaimant if the person has:

3 (1) provided compensation, including health care
4 provided by a health care insurer, directly or indirectly, to or for
5 an employee or legal beneficiary; and

6 (2) sought and been refused reimbursement from the
7 insurance carrier.

8 SECTION 3.141. Section 409.010, Labor Code, is amended to
9 read as follows:

10 Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL
11 BENEFICIARY. Immediately on receiving notice of an injury or death
12 from any person, the division [~~commission~~] shall mail to the
13 employee or legal beneficiary a clear and concise description of:

14 (1) the services provided by:

15 (A) the division; and

16 (B) the office of injured employee counsel
17 [~~commission~~], including the services of the ombudsman program;

18 (2) the division's [~~commission's~~] procedures; and

19 (3) the person's rights and responsibilities under
20 this subtitle.

21 SECTION 3.142. Subsections (a) and (c), Section 409.011,
22 Labor Code, are amended to read as follows:

23 (a) Immediately on receiving notice of an injury or death
24 from any person, the division [~~commission~~] shall mail to the
25 employer a description of:

26 (1) the services provided by the division and the
27 office of injured employee counsel [~~commission~~];

1 (2) the division's [~~commission's~~] procedures; and

2 (3) the employer's rights and responsibilities under
3 this subtitle.

4 (c) The division [~~commission~~] is not required to provide the
5 information to an employer more than once during a calendar year.

6 SECTION 3.143. Section 409.012, Labor Code, is amended to
7 read as follows:

8 Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION.

9 (a) The division [~~commission~~] shall analyze each report of injury
10 received from an employer under this chapter to determine whether
11 the injured employee would be assisted by vocational
12 rehabilitation.

13 (b) If the division [~~commission~~] determines that an injured
14 employee would be assisted by vocational rehabilitation, the
15 division [~~commission~~] shall notify:

16 (1) the injured employee in writing of the services
17 and facilities available through the Department of Assistive and
18 Rehabilitative Services [~~Texas Rehabilitation Commission~~] and
19 private providers of vocational rehabilitation; and

20 (2) [~~The commission shall notify~~] the Department of
21 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
22 ~~Commission~~] and the affected insurance carrier that the injured
23 employee has been identified as one who could be assisted by
24 vocational rehabilitation.

25 (c) The division [~~commission~~] shall cooperate with the
26 office of injured employee counsel, the Department of Assistive and
27 Rehabilitative Services, [~~Texas Rehabilitation Commission~~] and

1 private providers of vocational rehabilitation in the provision of
2 services and facilities to employees by the Department of Assistive
3 and Rehabilitative Services [~~Texas Rehabilitation Commission~~].

4 (d) A private provider of vocational rehabilitation
5 services may register with the division [~~commission~~].

6 (e) The commissioner [~~commission~~] by rule may require that a
7 private provider of vocational rehabilitation services maintain
8 certain credentials and qualifications in order to provide services
9 in connection with a workers' compensation insurance claim.

10 (f) The division and the Department of Assistive and
11 Rehabilitative Services shall report to the legislature not later
12 than August 1, 2006, on their actions to improve access to and the
13 effectiveness of vocational rehabilitation programs for injured
14 employees. The report must include:

15 (1) a description of the actions each agency has taken
16 to improve communication regarding and coordination of vocational
17 rehabilitation programs;

18 (2) an analysis identifying the population of injured
19 employees that have the poorest return-to-work outcomes and are in
20 the greatest need for vocational rehabilitation services;

21 (3) any changes recommended to improve the access to
22 and effectiveness of vocational rehabilitation programs for the
23 populations identified in Subdivision (2); and

24 (4) a plan to implement these changes.

25 SECTION 3.144. Section 409.013, Labor Code, is amended to
26 read as follows:

27 Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF

1 INJURED EMPLOYEE [~~WORKER~~]. (a) The division [~~commission~~] shall
2 develop information for public dissemination about the benefit
3 process and the compensation procedures established under this
4 chapter. The information must be written in plain language and must
5 be available in English and Spanish.

6 (b) On receipt of a report under Section 409.005, the
7 division [~~commission~~] shall contact the affected employee by mail
8 or by telephone and shall provide the information required under
9 Subsection (a) to that employee, together with any other
10 information that may be prepared by the office of injured employee
11 counsel or the division [~~commission~~] for public dissemination that
12 relates to the employee's situation, such as information relating
13 to back injuries or occupational diseases.

14 SECTION 3.145. Section 409.021, Labor Code, is amended by
15 amending Subsections (a) and (b) and adding Subsection (j) to read
16 as follows:

17 (a) An insurance carrier shall initiate compensation under
18 this subtitle promptly. Not later than the 15th day after the date
19 on which an insurance carrier receives written notice of an injury,
20 the insurance carrier shall:

21 (1) begin the payment of benefits as required by this
22 subtitle; or

23 (2) notify the division [~~commission~~] and the employee
24 in writing of its refusal to pay and advise the employee of:

25 (A) the right to request a benefit review
26 conference; and

27 (B) the means to obtain additional information

1 from the division ~~[commission]~~.

2 (b) An insurance carrier shall notify the division
3 ~~[commission]~~ in writing of the initiation of income or death
4 benefit payments in the manner prescribed by commissioner
5 ~~[commission]~~ rules.

6 (j) Each insurance carrier shall establish a single point of
7 contact in the carrier's office for an injured employee for whom the
8 carrier receives a notice of injury.

9 SECTION 3.146. Subsection (c), Section 409.022, Labor Code,
10 is amended to read as follows:

11 (c) An insurance carrier commits an administrative ~~[a]~~
12 violation if the insurance carrier does not have reasonable grounds
13 for a refusal to pay benefits, as determined by the commissioner
14 ~~[commission. A violation under this subsection is a Class B~~
15 ~~administrative violation]~~.

16 SECTION 3.147. Subsections (a), (c), and (d), Section
17 409.023, Labor Code, are amended to read as follows:

18 (a) An insurance carrier shall continue to pay benefits
19 promptly as and when the benefits accrue without a final decision,
20 order, or other action of the commissioner ~~[commission]~~, except as
21 otherwise provided.

22 (c) An insurance carrier commits an administrative ~~[a]~~
23 violation if the insurance carrier fails to comply with this
24 section. ~~[A violation under this subsection is a Class B~~
25 ~~administrative violation. Each day of noncompliance constitutes a~~
26 ~~separate violation.]~~

27 (d) An insurance carrier that commits multiple violations

1 of this section commits an additional ~~[a Class A]~~ administrative
2 violation and is subject to:

3 (1) the sanctions provided under Section 415.023; and

4 (2) revocation of the right to do business under the
5 workers' compensation laws of this state.

6 SECTION 3.148. Subsection (b), Section 409.0231, Labor
7 Code, is amended to read as follows:

8 (b) The commissioner ~~[commission]~~ shall adopt rules in
9 consultation with the Texas Department of Information Resources as
10 necessary to implement this section, including rules prescribing a
11 period of benefits that is of sufficient duration to allow payment
12 by electronic funds transfer.

13 SECTION 3.149. Section 409.024, Labor Code, is amended to
14 read as follows:

15 Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE;
16 ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file
17 with the division ~~[commission]~~ a notice of termination or reduction
18 of benefits, including the reasons for the termination or
19 reduction, not later than the 10th day after the date on which
20 benefits are terminated or reduced.

21 (b) An insurance carrier commits an administrative ~~[a]~~
22 violation if the insurance carrier does not have reasonable grounds
23 to terminate or reduce benefits, as determined by the commissioner
24 ~~[commission. A violation under this subsection is a Class B~~
25 ~~administrative violation]~~.

26 SECTION 3.150. Section 410.002, Labor Code, is amended to
27 read as follows:

1 Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A
2 proceeding before the division [~~commission~~] to determine the
3 liability of an insurance carrier for compensation for an injury or
4 death under this subtitle is governed by this chapter.

5 SECTION 3.151. Section 410.005, Labor Code, is amended by
6 amending Subsection (a) and adding Subsection (d) to read as
7 follows:

8 (a) Unless the division [~~commission~~] determines that good
9 cause exists for the selection of a different location, a benefit
10 review conference or a contested case hearing may not be conducted
11 at a site more than 75 miles from the claimant's residence at the
12 time of the injury.

13 (d) Notwithstanding Subsection (a), the division may
14 conduct a benefit review conference telephonically on agreement by
15 the injured employee.

16 SECTION 3.152. Subchapter A, Chapter 410, Labor Code, is
17 amended by adding Section 410.007 to read as follows:

18 Sec. 410.007. INFORMATION LIST. (a) The division shall
19 determine the type of information that is most useful to parties to
20 help resolve disputes regarding income benefits. That information
21 may include:

22 (1) reports regarding the compensable injury;

23 (2) medical information regarding the injured
24 employee; and

25 (3) wage records.

26 (b) The division shall publish a list developed from the
27 information described under Subsection (a) in appropriate media,

1 including the division's Internet website, to provide guidance to a
2 party to a dispute regarding the type of information the party
3 should have available at a benefit review conference or a contested
4 case hearing.

5 (c) At the time a benefit review conference or contested
6 case hearing is scheduled, the division shall make available a copy
7 of the list developed under Subsection (b) to each party to the
8 dispute.

9 SECTION 3.153. Section 410.021, Labor Code, is amended to
10 read as follows:

11 Sec. 410.021. PURPOSE. A benefit review conference is a
12 nonadversarial, informal dispute resolution proceeding designed
13 to:

14 (1) explain, orally and in writing, the rights of the
15 respective parties to a workers' compensation claim and the
16 procedures necessary to protect those rights;

17 (2) discuss the facts of the claim, review available
18 information in order to evaluate the claim, and delineate the
19 disputed issues; and

20 (3) mediate and resolve disputed issues by agreement
21 of the parties in accordance with this subtitle and the policies of
22 the division [~~commission~~].

23 SECTION 3.154. Subsections (b) and (c), Section 410.022,
24 Labor Code, are amended to read as follows:

25 (b) A benefit review officer must:

26 (1) be an employee of the division [~~commission~~]; [and]

27 (2) be trained in the principles and procedures of

1 dispute mediation; and

2 (3) have documentation satisfactory to the
3 commissioner that evidences the completion by the officer of at
4 least 40 classroom hours of training in dispute resolution
5 techniques from an alternative dispute resolution organization
6 recognized by the commissioner.

7 (c) The division [~~commission~~] shall institute and maintain
8 an education and training program for benefit review officers and
9 shall consult or contract with the Federal Mediation and
10 Conciliation Service or other appropriate organizations for this
11 purpose.

12 SECTION 3.155. Section 410.023, Labor Code, is amended to
13 read as follows:

14 Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. (a)
15 On receipt of a request from a party or on its own motion, the
16 division [~~commission~~] may direct the parties to a disputed workers'
17 compensation claim to meet in a benefit review conference to
18 attempt to reach agreement on disputed issues involved in the
19 claim.

20 (b) The division shall require the party requesting the
21 benefit review conference to provide documentation of efforts made
22 to resolve the disputed issues before the request was submitted.
23 The commissioner by rule shall adopt guidelines regarding the type
24 of information necessary to satisfy this requirement.

25 SECTION 3.156. Section 410.024, Labor Code, is amended to
26 read as follows:

27 Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO

1 FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise
2 provided by law or commissioner [~~commission~~] rule, the parties to a
3 disputed compensation claim are not entitled to a contested case
4 hearing or arbitration on the claim unless a benefit review
5 conference is conducted as provided by this subchapter.

6 (b) The commissioner [~~commission~~] by rule shall adopt
7 guidelines relating to claims that do not require a benefit review
8 conference and may proceed directly to a contested case hearing or
9 arbitration.

10 SECTION 3.157. Section 410.025, Labor Code, is amended to
11 read as follows:

12 Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE;
13 NOTICE. (a) The commissioner [~~commission~~] by rule shall prescribe
14 the time within which a benefit review conference must be
15 scheduled.

16 (b) The division [~~At the time a benefit review conference is~~
17 ~~scheduled, the commissioner~~] shall schedule a contested case hearing
18 to be held not later than the 60th day after the date of the benefit
19 review conference if the disputed issues are not resolved at the
20 benefit review conference.

21 (c) The division [~~commission~~] shall send written notice of
22 the benefit review conference to the parties to the claim and the
23 employer.

24 (d) The commissioner [~~commission~~] by rule shall provide for
25 expedited proceedings in cases in which compensability or liability
26 for essential medical treatment is in dispute.

27 SECTION 3.158. Subsections (a) and (b), Section 410.026,

1 Labor Code, are amended to read as follows:

2 (a) A benefit review officer shall:

3 (1) mediate disputes between the parties and assist in
4 the adjustment of the claim consistent with this subtitle and the
5 policies of the division [~~commission~~];

6 (2) thoroughly inform all parties of their rights and
7 responsibilities under this subtitle, especially in a case in which
8 the employee is not represented by an attorney or other
9 representative; [~~and~~]

10 (3) ensure that all documents and information relating
11 to the employee's wages, medical condition, and any other
12 information pertinent to the resolution of disputed issues are
13 contained in the claim file at the conference, especially in a case
14 in which the employee is not represented by an attorney or other
15 representative; and

16 (4) prepare a written report that details each issue
17 that is not resolved at the benefit review conference, as required
18 under Section 410.031, including any issue raised for the first
19 time at the conclusion of an additional benefit review conference
20 conducted under Subsection (b).

21 (b) A benefit review officer may schedule an additional
22 [~~reschedule a~~] benefit review conference if:

23 (1) the benefit review officer determines that any
24 available information pertinent to the resolution of disputed
25 issues was [~~is~~] not produced at the initial benefit review
26 conference; and

27 (2) a second benefit review conference has not already

1 been conducted.

2 SECTION 3.159. Subsection (a), Section 410.027, Labor Code,
3 is amended to read as follows:

4 (a) The commissioner [~~commission~~] shall adopt rules for
5 conducting benefit review conferences.

6 SECTION 3.160. Subsection (b), Section 410.028, Labor Code,
7 is amended to read as follows:

8 (b) A party commits an administrative [a] violation if the
9 party fails to attend a benefit review conference without good
10 cause as determined by the benefit review officer. [~~A violation~~
11 ~~under this subsection is a Class D administrative violation.~~]

12 SECTION 3.161. Section 410.030, Labor Code, is amended to
13 read as follows:

14 Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An
15 agreement signed in accordance with Section 410.029 is binding on
16 the insurance carrier through the conclusion of all matters
17 relating to the claim, unless the division [~~commission~~] or a court,
18 on a finding of fraud, newly discovered evidence, or other good and
19 sufficient cause, relieves the insurance carrier of the effect of
20 the agreement.

21 (b) The agreement is binding on the claimant, if represented
22 by an attorney, to the same extent as on the insurance carrier. If
23 the claimant is not represented by an attorney, the agreement is
24 binding on the claimant through the conclusion of all matters
25 relating to the claim while the claim is pending before the division
26 [~~commission~~], unless the commissioner [~~commission~~] for good cause
27 relieves the claimant of the effect of the agreement.

SECTION 3.162. Sections 410.031 and 410.032, Labor Code, are amended to read as follows:

Sec. 410.031. INCOMPLETE RESOLUTION; REPORT. (a) If a dispute is not entirely resolved at a benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not resolved ~~[settled]~~ at the conference.

(b) The report must also include:

- (1) a statement of each resolved issue;
- (2) a statement of each issue raised but not resolved;
- (3) a statement of the position of the parties regarding each unresolved issue;

~~(4) [the officer's recommendation regarding each unresolved issue,~~

~~[(5) the officer's recommendations regarding the payment or denial of benefits,~~

~~[(6) a statement of any interlocutory orders entered under Sections 410.032 and 410.033(a), and~~

~~[(7)]~~ a statement of the procedures required to request a contested case hearing or arbitration and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings; and

(5) the date of the contested case hearing scheduled in accordance with Section 410.025(b).

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. As designated by the commissioner, division staff, other

1 than the benefit review officer who presided or will preside at the
2 benefit review conference, shall consider a request for an
3 interlocutory order and shall issue an interlocutory order if
4 determined to be appropriate. [~~If a benefit review officer~~
5 ~~recommends that benefits be paid or not paid, the benefit review~~
6 ~~officer may issue an interlocutory order for the payment of all or~~
7 ~~part of medical benefits or income benefits.]~~ The order may address
8 accrued benefits, future benefits, or both accrued benefits and
9 future benefits.

10 SECTION 3.163. Subsection (a), Section 410.033, Labor Code,
11 is amended to read as follows:

12 (a) If there is a dispute as to which of two or more
13 insurance carriers is liable for compensation for one or more
14 compensable injuries, the commissioner [~~benefit review officer~~]
15 may issue an interlocutory order directing each insurance carrier
16 to pay a proportionate share of benefits due pending a final
17 decision on liability. The proportionate share is computed by
18 dividing the compensation due by the number of insurance carriers
19 involved.

20 SECTION 3.164. Section 410.034, Labor Code, is amended to
21 read as follows:

22 Sec. 410.034. FILING OF AGREEMENT AND REPORT. (a) The
23 benefit review officer shall file the signed agreement and the
24 report with the division [~~director~~].

25 (b) The commissioner [~~commission~~] by rule shall prescribe
26 the times within which the agreement and report must be filed.

27 (c) The division [~~director~~] shall furnish a copy of the

1 file-stamped report to:

- 2 (1) the claimant;
- 3 (2) the employer; and
- 4 (3) the insurance carrier.

5 SECTION 3.165. Section 410.102, Labor Code, is amended to
6 read as follows:

7 Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An
8 arbitrator must be an employee of the division [~~commission~~], except
9 that the division [~~commission~~] may contract with qualified
10 arbitrators on a determination of special need.

11 (b) An arbitrator must:

12 (1) be a member of the National Academy of
13 Arbitrators;

14 (2) be on an approved list of the American Arbitration
15 Association or Federal Mediation and Conciliation Service; or

16 (3) meet qualifications established by the
17 commissioner [~~commission~~] by rule [~~and be approved by an~~
18 ~~affirmative vote of at least two commission members representing~~
19 ~~employers of labor and at least two commission members representing~~
20 ~~wage earners~~].

21 (c) The division [~~commission~~] shall require that each
22 arbitrator have appropriate training in the workers' compensation
23 laws of this state. The commissioner [~~commission~~] shall establish
24 procedures to carry out this subsection.

25 SECTION 3.166. Section 410.103, Labor Code, is amended to
26 read as follows:

27 Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

1 (1) protect the interests of all parties;

2 (2) ensure that all relevant evidence has been
3 disclosed to the arbitrator and to all parties; and

4 (3) render an award consistent with this subtitle and
5 the policies of the division [~~commission~~].

6 SECTION 3.167. Subsections (b) and (c), Section 410.104,
7 Labor Code, are amended to read as follows:

8 (b) To elect arbitration, the parties must file the election
9 with the division [~~commission~~] not later than the 20th day after the
10 last day of the benefit review conference. The commissioner
11 [~~commission~~] shall prescribe a form for that purpose.

12 (c) An election to engage in arbitration under this
13 subchapter is irrevocable and binding on all parties for the
14 resolution of all disputes arising out of the claims that are under
15 the jurisdiction of the division [~~commission~~].

16 SECTION 3.168. Section 410.105, Labor Code, is amended to
17 read as follows:

18 Sec. 410.105. LISTS OF ARBITRATORS. (a) The division
19 [~~commission~~] shall establish regional lists of arbitrators who meet
20 the qualifications prescribed under Sections 410.102(a) and (b).
21 Each regional list shall be initially prepared in a random name
22 order, and subsequent additions to a list shall be added
23 chronologically.

24 (b) The commissioner [~~commission~~] shall review the lists of
25 arbitrators annually and determine if each arbitrator is fair and
26 impartial and makes awards that are consistent with and in
27 accordance with this subtitle and the rules of the commissioner

1 ~~[commission]~~. The commissioner ~~[commission]~~ shall remove an
2 arbitrator if, after the review, the commissioner determines that
3 the arbitrator is not fair and impartial or does not make awards
4 consistent with this subtitle and commissioner rules ~~[arbitrator~~
5 ~~does not receive an affirmative vote of at least two commission~~
6 ~~members representing employers of labor and at least two commission~~
7 ~~members representing wage earners]~~.

8 (c) The division's ~~[commission's]~~ lists are confidential
9 and are not subject to disclosure under Chapter 552, Government
10 Code. The lists may not be revealed by any division ~~[commission]~~
11 employee to any person who is not a division ~~[commission]~~ employee.
12 The lists are exempt from discovery in civil litigation unless the
13 party seeking the discovery establishes reasonable cause to believe
14 that a violation of the requirements of this section or Section
15 410.106, 410.107, 410.108, or 410.109(b) occurred and that the
16 violation is relevant to the issues in dispute.

17 SECTION 3.169. Section 410.106, Labor Code, is amended to
18 read as follows:

19 Sec. 410.106. SELECTION OF ARBITRATOR. The division
20 ~~[commission]~~ shall assign the arbitrator for a particular case by
21 selecting the next name after the previous case's selection in
22 consecutive order. The division ~~[commission]~~ may not change the
23 order of names once the order is established under this subchapter,
24 except that once each arbitrator on the list has been assigned to a
25 case, the names shall be randomly reordered.

26 SECTION 3.170. Subsection (a), Section 410.107, Labor Code,
27 is amended to read as follows:

1 (a) The division [~~commission~~] shall assign an arbitrator to
2 a pending case not later than the 30th day after the date on which
3 the election for arbitration is filed with the division
4 [~~commission~~].

5 SECTION 3.171. Subsection (a), Section 410.108, Labor Code,
6 is amended to read as follows:

7 (a) Each party is entitled, in its sole discretion, to one
8 rejection of the arbitrator in each case. If a party rejects the
9 arbitrator, the division [~~commission~~] shall assign another
10 arbitrator as provided by Section 410.106.

11 SECTION 3.172. Section 410.109, Labor Code, is amended to
12 read as follows:

13 Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The
14 arbitrator shall schedule arbitration to be held not later than the
15 30th day after the date of the arbitrator's assignment and shall
16 notify the parties and the division [~~commission~~] of the scheduled
17 date.

18 (b) If an arbitrator is unable to schedule arbitration in
19 accordance with Subsection (a), the division [~~commission~~] shall
20 appoint the next arbitrator on the applicable list. Each party is
21 entitled to reject the arbitrator appointed under this subsection
22 in the manner provided under Section 410.108.

23 SECTION 3.173. Section 410.111, Labor Code, is amended to
24 read as follows:

25 Sec. 410.111. RULES. The commissioner [~~commission~~] shall
26 adopt rules for arbitration consistent with generally recognized
27 arbitration principles and procedures.

1 SECTION 3.174. Subsection (b), Section 410.112, Labor Code,
2 is amended to read as follows:

3 (b) A party commits an administrative [a] violation if the
4 party, without good cause as determined by the arbitrator, fails to
5 comply with Subsection (a). [~~A violation under this subsection is a~~
6 ~~Class D administrative violation.~~]

7 SECTION 3.175. Subsection (b), Section 410.113, Labor Code,
8 is amended to read as follows:

9 (b) A party commits an administrative [a] violation if the
10 party does not attend the arbitration unless the arbitrator
11 determines that the party had good cause not to attend. [A
12 ~~violation under this subsection is a Class D administrative~~
13 ~~violation.~~]

14 SECTION 3.176. Subsection (b), Section 410.114, Labor Code,
15 is amended to read as follows:

16 (b) The division [~~commission~~] shall make an electronic
17 recording of the proceeding.

18 SECTION 3.177. Subsection (d), Section 410.118, Labor Code,
19 is amended to read as follows:

20 (d) The arbitrator shall file a copy of the award as part of
21 the permanent claim file at the division [~~commission~~] and shall
22 notify the parties in writing of the decision.

23 SECTION 3.178. Subsection (b), Section 410.119, Labor Code,
24 is amended to read as follows:

25 (b) An arbitrator's award is a final order of the division
26 [~~commission~~].

27 SECTION 3.179. Subsections (a) and (b), Section 410.121,

1 Labor Code, are amended to read as follows:

2 (a) On application of an aggrieved party, a court of
3 competent jurisdiction shall vacate an arbitrator's award on a
4 finding that:

5 (1) the award was procured by corruption, fraud, or
6 misrepresentation;

7 (2) the decision of the arbitrator was arbitrary and
8 capricious; or

9 (3) the award was outside the jurisdiction of the
10 division [~~commission~~].

11 (b) If an award is vacated, the case shall be remanded to the
12 division [~~commission~~] for another arbitration proceeding.

13 SECTION 3.180. Subsection (b), Section 410.151, Labor Code,
14 is amended to read as follows:

15 (b) An issue that was not raised at a benefit review
16 conference or that was resolved at a benefit review conference may
17 not be considered unless:

18 (1) the parties consent; or

19 (2) if the issue was not raised, the commissioner
20 [~~commission~~] determines that good cause existed for not raising the
21 issue at the conference.

22 SECTION 3.181. Section 410.153, Labor Code, is amended to
23 read as follows:

24 Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.
25 Chapter 2001, Government Code, applies to a contested case hearing
26 to the extent that the commissioner [~~commission~~] finds appropriate,
27 except that the following do not apply:

- (1) Section 2001.054;
- (2) Sections 2001.061 and 2001.062;
- (3) Section 2001.202; and
- (4) Subchapters F, G, I, and Z, except for Section 2001.141(c).

SECTION 3.182. Section 410.154, Labor Code, is amended to read as follows:

Sec. 410.154. SCHEDULING OF HEARING. The division ~~[commission]~~ shall schedule a contested case hearing in accordance with Section 410.024 or 410.025(b).

SECTION 3.183. Section 410.155, Labor Code, is amended to read as follows:

Sec. 410.155. CONTINUANCE. (a) A written request by a party for a continuance of a contested case hearing to another date must be directed to the division ~~[commission]~~.

(b) The division ~~[commission]~~ may grant a continuance only if the division ~~[commission]~~ determines that there is good cause for the continuance.

SECTION 3.184. Subsection (b), Section 410.156, Labor Code, is amended to read as follows:

(b) A party commits an administrative ~~[a]~~ violation if the party, without good cause as determined by the hearing officer, does not attend a contested case hearing. ~~[A violation under this subsection is a Class C administrative violation.]~~

SECTION 3.185. Section 410.157, Labor Code, is amended to read as follows:

Sec. 410.157. RULES. The commissioner ~~[commission]~~ shall

1 adopt rules governing procedures under which contested case
2 hearings are conducted.

3 SECTION 3.186. Subsection (a), Section 410.158, Labor Code,
4 is amended to read as follows:

5 (a) Except as provided by Section 410.162, discovery is
6 limited to:

7 (1) depositions on written questions to any health
8 care provider;

9 (2) depositions of other witnesses as permitted by the
10 hearing officer for good cause shown; and

11 (3) interrogatories as prescribed by the commissioner
12 [~~commission~~].

13 SECTION 3.187. Section 410.159, Labor Code, is amended to
14 read as follows:

15 Sec. 410.159. STANDARD INTERROGATORIES. (a) The
16 commissioner [~~commission~~] by rule shall prescribe standard form
17 sets of interrogatories to elicit information from claimants and
18 insurance carriers.

19 (b) Standard interrogatories shall be answered by each
20 party and served on the opposing party within the time prescribed by
21 commissioner [~~commission~~] rule, unless the parties agree
22 otherwise.

23 SECTION 3.188. Section 410.160, Labor Code, is amended to
24 read as follows:

25 Sec. 410.160. EXCHANGE OF INFORMATION. Within the time
26 prescribed by commissioner [~~commission~~] rule, the parties shall
27 exchange:

1 (1) all medical reports and reports of expert
2 witnesses who will be called to testify at the hearing;

3 (2) all medical records;

4 (3) any witness statements;

5 (4) the identity and location of any witness known to
6 the parties to have knowledge of relevant facts; and

7 (5) all photographs or other documents that a party
8 intends to offer into evidence at the hearing.

9 SECTION 3.189. Section 410.161, Labor Code, is amended to
10 read as follows:

11 Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who
12 fails to disclose information known to the party or documents that
13 are in the party's possession, custody, or control at the time
14 disclosure is required by Sections 410.158-410.160 may not
15 introduce the evidence at any subsequent proceeding before the
16 division [~~commission~~] or in court on the claim unless good cause is
17 shown for not having disclosed the information or documents under
18 those sections.

19 SECTION 3.190. Subsections (d) and (e), Section 410.168,
20 Labor Code, are amended to read as follows:

21 (d) On a form that the commissioner [~~commission~~] by rule
22 prescribes, the hearing officer shall issue a separate written
23 decision regarding attorney's fees and any matter related to
24 attorney's fees. The decision regarding attorney's fees and the
25 form may not be made known to a jury in a judicial review of an
26 award, including an appeal.

27 (e) The commissioner [~~commission~~] by rule shall prescribe

1 the times within which the hearing officer must file the decisions
2 with the division.

3 SECTION 3.191. Subsection (a), Section 410.201, Labor Code,
4 is amended to read as follows:

5 (a) Appeals judges, in a three-member panel [~~panels of~~
6 ~~three~~], shall conduct administrative appeals proceedings.

7 SECTION 3.192. Section 410.203, Labor Code, is amended to
8 read as follows:

9 Sec. 410.203. POWERS AND DUTIES OF APPEALS PANEL; PRIORITY
10 OF HEARING ON REMAND. (a) The [~~An~~] appeals panel shall consider:

11 (1) the record developed at the contested case
12 hearing; and

13 (2) the written request for appeal and response filed
14 with the appeals panel.

15 (b) The [~~An~~] appeals panel may:

16 (1) [~~affirm the decision of the hearing officer,~~
17 [~~(2)~~] reverse the [~~that~~] decision of the hearings
18 officer and render a new decision; or

19 (2) [~~(3)~~] reverse the [~~that~~] decision of the hearings
20 officer and remand the case to the hearing officer for further
21 consideration and development of evidence.

22 (c) The [~~An~~] appeals panel may not remand a case under
23 Subsection (b)(2) [~~(b)(3)~~] more than once.

24 (d) A hearing on remand shall be accelerated and the
25 commissioner [~~commission~~] shall adopt rules to give priority to the
26 hearing over other proceedings.

27 (e) The appeals panel shall issue and maintain a precedent

1 manual. The precedent manual shall be composed of
2 precedent-establishing decisions and may include other information
3 as identified by the appeals panel.

4 SECTION 3.193. Subsections (a), (b), and (c), Section
5 410.204, Labor Code, are amended to read as follows:

6 (a) The [An] appeals panel shall review each request and
7 issue a written decision on each reversed or remanded case ~~[that~~
8 ~~determines each issue on which review was requested]~~. The decision
9 must be in writing and shall be issued not later than the 45th
10 ~~[30th]~~ day after the date on which the written response to the
11 request for appeal is filed. The appeals panel shall file a copy of
12 the decision with the commissioner ~~[director]~~.

13 (b) A copy of the decision of the appeals panel shall be sent
14 to each party not later than the seventh day after the date the
15 decision is filed with the division ~~[commission]~~.

16 (c) If the [an] appeals panel does not issue a [its]
17 decision in accordance with this section, the decision of the
18 hearing officer becomes final and is the final decision of the
19 appeals panel.

20 SECTION 3.194. Subsection (a), Section 410.205, Labor Code,
21 is amended to read as follows:

22 (a) A decision of the [an] appeals panel regarding benefits
23 is final in the absence of a timely appeal for judicial review.

24 SECTION 3.195. Section 410.206, Labor Code, is amended to
25 read as follows:

26 Sec. 410.206. CLERICAL ERROR. The division ~~[executive~~
27 ~~director]~~ may revise a decision in a contested case hearing on a

1 finding of clerical error.

2 SECTION 3.196. Section 410.207, Labor Code, is amended to
3 read as follows:

4 Sec. 410.207. CONTINUATION OF DIVISION [~~COMMISSION~~]
5 JURISDICTION. During judicial review of the [~~an~~] appeals panel
6 decision on any disputed issue relating to a workers' compensation
7 claim, the division [~~commission~~] retains jurisdiction of all other
8 issues related to the claim.

9 SECTION 3.197. Section 410.208, Labor Code, is amended to
10 read as follows:

11 Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION;
12 ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to
13 comply with an interlocutory order, final order, or decision of the
14 commissioner [~~commission~~], the division [~~commission~~] may bring
15 suit in Travis County to enforce the order or decision.

16 (b) If an insurance carrier refuses or fails to comply with
17 an interlocutory order, a final order, or a decision of the
18 commissioner [~~commission~~], the claimant may bring suit in the
19 county of the claimant's residence at the time of the injury, or
20 death if the employee is deceased, or, in the case of an
21 occupational disease, in [~~or~~] the county in which the employee
22 resided on the date disability began or any county agreed to by the
23 parties [~~injury occurred to enforce the order or decision~~].

24 (c) If the division [~~commission~~] brings suit to enforce an
25 interlocutory order, final order, or decision of the commissioner
26 [~~commission~~], the division [~~commission~~] is entitled to reasonable
27 attorney's fees and costs for the prosecution and collection of the

1 claim, in addition to a judgment enforcing the order or decision and
2 any other remedy provided by law.

3 (d) A claimant who brings suit to enforce an interlocutory
4 order, final order, or decision of the commissioner [~~commission~~] is
5 entitled to a penalty equal to 12 percent of the amount of benefits
6 recovered in the judgment, interest, and reasonable attorney's fees
7 for the prosecution and collection of the claim, in addition to a
8 judgment enforcing the order or decision.

9 (e) A person commits an administrative [~~a~~] violation if the
10 person fails or refuses to comply with an interlocutory order,
11 final order, or decision of the commissioner [~~commission~~] within 20
12 days after the date the order or decision becomes final. [A
13 ~~violation under this subsection is a Class A administrative~~
14 ~~violation.~~]

15 SECTION 3.198. Section 410.209, Labor Code, is amended to
16 read as follows:

17 Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. The
18 subsequent injury fund shall reimburse an insurance carrier for any
19 overpayments of benefits made under an interlocutory order or
20 decision if that order or decision is reversed or modified by final
21 arbitration, order, or decision of the commissioner [~~commission~~] or
22 a court. The commissioner [~~commission~~] shall adopt rules to
23 provide for a periodic reimbursement schedule, providing for
24 reimbursement at least annually.

25 SECTION 3.199. Section 410.253, Labor Code, is amended to
26 read as follows:

27 Sec. 410.253. SERVICE; NOTICE. (a) A party seeking

1 judicial review shall simultaneously:

- 2 (1) file a copy of the party's petition with the court;
3 (2) serve any opposing party to the suit; and
4 (3) provide written notice of the suit or notice of
5 appeal to the division [~~commission~~].

6 (b) A party may not seek judicial review under Section
7 410.251 unless the party has provided written notice of the suit to
8 the division [~~commission~~] as required by this section.

9 SECTION 3.200. Section 410.254, Labor Code, is amended to
10 read as follows:

11 Sec. 410.254. [~~COMMISSION~~] INTERVENTION. On timely motion
12 initiated by the commissioner [~~executive director~~], the division
13 [~~commission~~] shall be permitted to intervene in any judicial
14 proceeding under this subchapter or Subchapter G.

15 SECTION 3.2001. Subsection (a), Section 410.256, Labor
16 Code, is amended to read as follows:

17 (a) A claim or issue may not be settled contrary to the
18 provisions of the [~~an~~] appeals panel decision issued on the claim or
19 issue unless a party to the proceeding has filed for judicial review
20 under this subchapter or Subchapter G. The trial court must approve
21 a settlement made by the parties after judicial review of an award
22 is sought and before the court enters judgment.

23 SECTION 3.2002. Subsection (a), Section 410.257, Labor
24 Code, is amended to read as follows:

25 (a) A judgment entered by a court on judicial review of the
26 [~~an~~] appeals panel decision under this subchapter or Subchapter G
27 must comply with all appropriate provisions of the law.

1 SECTION 3.201. The heading to Section 410.258, Labor Code,
2 is amended to read as follows:

3 Sec. 410.258. NOTIFICATION OF DIVISION [~~COMMISSION~~] OF
4 PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

5 SECTION 3.202. Subsections (a) through (e), Section
6 410.258, Labor Code, are amended to read as follows:

7 (a) The party who initiated a proceeding under this
8 subchapter or Subchapter G must file any proposed judgment or
9 settlement made by the parties to the proceeding, including a
10 proposed default judgment, with the division [~~executive director of~~
11 ~~the commission~~] not later than the 30th day before the date on which
12 the court is scheduled to enter the judgment or approve the
13 settlement. The proposed judgment or settlement must be mailed to
14 the division [~~executive director~~] by certified mail, return receipt
15 requested.

16 (b) The division [~~commission~~] may intervene in a proceeding
17 under Subsection (a) not later than the 30th day after the date of
18 receipt of the proposed judgment or settlement.

19 (c) The commissioner [~~commission~~] shall review the proposed
20 judgment or settlement to determine compliance with all appropriate
21 provisions of the law. If the commissioner [~~commission~~] determines
22 that the proposal is not in compliance with the law, the division
23 [~~commission~~] may intervene as a matter of right in the proceeding
24 not later than the 30th day after the date of receipt of the
25 proposed judgment or settlement. The court may limit the extent of
26 the division's [~~commission's~~] intervention to providing the
27 information described by Subsection (e).

1 (d) If the division [~~commission~~] does not intervene before
2 the 31st day after the date of receipt of the proposed judgment or
3 settlement, the court shall enter the judgment or approve the
4 settlement if the court determines that the proposed judgment or
5 settlement is in compliance with all appropriate provisions of the
6 law.

7 (e) If the division [~~commission~~] intervenes in the
8 proceeding, the commissioner [~~commission~~] shall inform the court of
9 each reason the commissioner [~~commission~~] believes the proposed
10 judgment or settlement is not in compliance with the law. The court
11 shall give full consideration to the information provided by the
12 commissioner [~~commission~~] before entering a judgment or approving a
13 settlement.

14 SECTION 3.203. Subsection (a), Section 410.301, Labor Code,
15 is amended to read as follows:

16 (a) Judicial review of a final decision of the [~~a~~
17 ~~commission~~] appeals panel regarding compensability or eligibility
18 for or the amount of income or death benefits shall be conducted as
19 provided by this subchapter.

20 SECTION 3.204. Section 410.302, Labor Code, is amended to
21 read as follows:

22 Sec. 410.302. ADMISSIBILITY OF RECORDS; LIMITATION OF
23 ISSUES. (a) The records of a contested case hearing conducted
24 under this chapter are admissible in a trial under this subchapter
25 in accordance with the Texas Rules of Evidence.

26 (b) A trial under this subchapter is limited to issues
27 decided by the [~~commission~~] appeals panel and on which judicial

1 review is sought. The pleadings must specifically set forth the
2 determinations of the appeals panel by which the party is
3 aggrieved.

4 SECTION 3.205. Section 410.304, Labor Code, is amended to
5 read as follows:

6 Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION.

7 (a) In a jury trial, the court, before submitting the case to the
8 jury, shall inform the jury in the court's instructions, charge, or
9 questions to the jury of the [~~commission~~] appeals panel decision on
10 each disputed issue described by Section 410.301(a) that is
11 submitted to the jury.

12 (b) In a trial to the court without a jury, the court in
13 rendering its judgment on an issue described by Section 410.301(a)
14 shall consider the decision of the [~~commission~~] appeals panel.

15 SECTION 3.206. Subsections (b) and (c), Section 410.306,
16 Labor Code, are amended to read as follows:

17 (b) The division [~~commission~~] on payment of a reasonable fee
18 shall make available to the parties a certified copy of the
19 division's [~~commission's~~] record. All facts and evidence the
20 record contains are admissible to the extent allowed under the
21 Texas Rules of [~~Civil~~] Evidence.

22 (c) Except as provided by Section 410.307, evidence of
23 extent of impairment shall be limited to that presented to the
24 division [~~commission~~]. The court or jury, in its determination of
25 the extent of impairment, shall adopt one of the impairment ratings
26 under Subchapter G, Chapter 408.

27 SECTION 3.207. Subsections (a) and (d), Section 410.307,

1 Labor Code, are amended to read as follows:

2 (a) Evidence of the extent of impairment is not limited to
3 that presented to the division [~~commission~~] if the court, after a
4 hearing, finds that there is a substantial change of condition. The
5 court's finding of a substantial change of condition may be based
6 only on:

7 (1) medical evidence from the same doctor or doctors
8 whose testimony or opinion was presented to the division
9 [~~commission~~];

10 (2) evidence that has come to the party's knowledge
11 since the contested case hearing;

12 (3) evidence that could not have been discovered
13 earlier with due diligence by the party; and

14 (4) evidence that would probably produce a different
15 result if it is admitted into evidence at the trial.

16 (d) If the court finds a substantial change of condition
17 under this section, new medical evidence of the extent of
18 impairment must be from and is limited to the same doctor or doctors
19 who made impairment ratings before the division [~~commission~~] under
20 Section 408.123.

21 SECTION 3.208. Subsection (a), Section 410.308, Labor Code,
22 is amended to read as follows:

23 (a) The division [~~commission or the Texas Department of~~
24 ~~Insurance~~] shall furnish any interested party in the claim with a
25 certified copy of the notice of the employer securing compensation
26 with the insurance carrier, filed with the division [~~commission~~].

27 SECTION 3.2085. Subsection (a), Section 411.003, Labor

1 Code, is amended to read as follows:

2 (a) An insurance company, the agent, servant, or employee of
3 the insurance company, or a safety consultant who performs a safety
4 consultation under this chapter [~~Subchapter D or E~~] has no
5 liability for an accident, injury, or occupational disease based on
6 an allegation that the accident, injury, or occupational disease
7 was caused or could have been prevented by a program, inspection, or
8 other activity or service undertaken by the insurance company for
9 the prevention of accidents in connection with operations of the
10 employer.

11 SECTION 3.209. Section 411.013, Labor Code, is amended to
12 read as follows:

13 Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. The [~~With~~
14 ~~the approval of the commission, the~~] division may:

15 (1) enter into contracts with the federal government
16 to perform occupational safety projects; and

17 (2) apply for federal funds through any federal
18 program relating to occupational safety.

19 SECTION 3.2095. Subsection (a), Section 411.014, Labor
20 Code, is amended to read as follows:

21 (a) The division shall promote workers' health and safety
22 through educational and other innovative programs developed by the
23 department, the division, or other state agencies [~~division~~].

24 SECTION 3.210. Subsections (b) and (c), Section 411.031,
25 Labor Code, are amended to read as follows:

26 (b) The division shall obtain from any appropriate state
27 agency, including the Texas Workforce Commission [~~Department of~~

1 ~~Insurance~~], the ~~[Texas]~~ Department of State Health Services, and
2 the Department of Assistive and Rehabilitative Services ~~[Texas~~
3 ~~Employment Commission]~~, data and statistics, including data and
4 statistics compiled for rate-making purposes.

5 (c) The division shall consult with the Texas Workforce
6 ~~[Department of Insurance and the Texas Employment]~~ Commission in
7 the design of data information and retrieval systems to accomplish
8 the mutual purposes of the division ~~[those agencies]~~ and ~~[of]~~ the
9 Texas Workforce Commission ~~[division]~~.

10 SECTION 3.211. Section 411.032, Labor Code, is amended to
11 read as follows:

12 Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE
13 REPORT; ADMINISTRATIVE VIOLATION. (a) An employer shall file with
14 the division ~~[commission]~~ a report of each:

15 (1) on-the-job injury that results in the employee's
16 absence from work for more than one day; and

17 (2) occupational disease of which the employer has
18 knowledge.

19 (b) The commissioner ~~[commission]~~ shall adopt rules and
20 prescribe the form and manner of reports filed under this section.

21 (c) An employer commits an administrative violation if the
22 employer fails to report to the division ~~[commission]~~ as required
23 under Subsection (a) unless good cause exists, as determined by the
24 commissioner ~~[commission]~~, for the failure. ~~[A violation under~~
25 ~~this subsection is a Class D administrative violation.]~~

26 SECTION 3.212. Section 411.035, Labor Code, is amended to
27 read as follows:

1 Sec. 411.035. USE OF INJURY REPORT. A report made under
2 Section 411.032 may not be considered to be an admission by or
3 evidence against an employer or an insurance carrier in a
4 proceeding before the division [~~commission~~] or a court in which the
5 facts set out in the report are contradicted by the employer or
6 insurance carrier.

7 SECTION 3.213. Subsections (a) and (c), Section 411.064,
8 Labor Code, are amended to read as follows:

9 (a) The division may [~~shall~~] conduct inspections [~~an~~
10 ~~inspection at least every two years~~] to determine the adequacy of
11 the accident prevention services required by Section 411.061 for
12 each insurance company writing workers' compensation insurance in
13 this state.

14 (c) The insurance company shall reimburse the division
15 [~~commission~~] for the reasonable cost of the reinspection, including
16 a reasonable allocation of the division's [~~commission's~~]
17 administrative costs incurred in conducting the inspections.

18 SECTION 3.214. Subsection (b), Section 411.065, Labor Code,
19 is amended to read as follows:

20 (b) The information must include:

21 (1) the amount of money spent by the insurance company
22 on accident prevention services;

23 (2) [~~the number and qualifications of field safety~~
24 ~~representatives employed by the insurance company,~~

25 [~~(3)~~] the number of site inspections performed;

26 (3) [~~(4)~~] accident prevention services for which the
27 insurance company contracts;

1 (4) [~~(5)~~] a breakdown of the premium size of the risks
2 to which services were provided;

3 (5) [~~(6)~~] evidence of the effectiveness of and
4 accomplishments in accident prevention; and

5 (6) [~~(7)~~] any additional information required by the
6 commissioner [~~commission~~].

7 SECTION 3.215. The heading to Section 411.067, Labor Code,
8 is amended to read as follows:

9 Sec. 411.067. DIVISION [~~COMMISSION~~] PERSONNEL.

10 SECTION 3.216. Subsection (a), Section 411.067, Labor Code,
11 is amended to read as follows:

12 (a) The division [~~commission~~] shall employ the personnel
13 necessary to enforce this subchapter, including at least 10 safety
14 inspectors to perform inspections at a job site and at an insurance
15 company to determine the adequacy of the accident prevention
16 services provided by the insurance company.

17 SECTION 3.217. Subsection (b), Section 411.068, Labor Code,
18 is amended to read as follows:

19 (b) A violation under Subsection (a) is an [~~a Class B~~]
20 administrative violation. [~~Each day of noncompliance constitutes a~~
21 ~~separate violation.~~]

22 SECTION 3.218. The heading to Subchapter F, Chapter 411,
23 Labor Code, is amended to read as follows:

24 SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL
25 MATERIALS

26 SECTION 3.219. Section 411.081, Labor Code, is amended to
27 read as follows:

1 Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall
2 maintain a 24-hour toll-free telephone service in English and
3 Spanish for reports of violations of occupational health or safety
4 law.

5 (b) Each employer shall notify its employees of this service
6 in a manner prescribed by the commissioner [~~commission~~]. The
7 commissioner shall, by rule, require the notice to be posted in
8 English and Spanish, as appropriate.

9 (c) The commissioner shall adopt rules requiring that the
10 notice required by Subsection (b) be posted:

11 (1) in a conspicuous place in the employer's place of
12 business; and

13 (2) in sufficient locations to be convenient to all
14 employees.

15 SECTION 3.220. Subchapter F, Chapter 411, Labor Code, is
16 amended by adding Section 411.084 to read as follows:

17 Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) The division
18 shall provide to employers and employees educational material,
19 including books, pamphlets, brochures, films, videotapes, or other
20 informational material.

21 (b) Educational material shall be provided to employees in
22 English and Spanish.

23 (c) The department shall adopt minimum content requirements
24 for the educational material required under this section,
25 including:

26 (1) information on an employee's right to report an
27 unsafe working environment;

1 (2) instructions on how to report unsafe working
2 conditions and safety violations; and

3 (3) information on state laws regarding retaliation by
4 employers.

5 SECTION 3.221. Section 411.105, Labor Code, is amended to
6 read as follows:

7 Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. (a) The
8 division [~~commission~~] and its employees may not disclose at a
9 public hearing or otherwise information relating to secret
10 processes, methods of manufacture, or products.

11 (b) The commissioner [~~A member~~] or an employee of the
12 division [~~commission~~] commits an offense if the commissioner
13 [~~member~~] or employee wilfully discloses or conspires to disclose
14 information made confidential under this section. An offense under
15 this subsection is a misdemeanor punishable by a fine not to exceed
16 \$1,000 and by forfeiture of the person's appointment as
17 commissioner [~~a member~~] or as an employee of the division
18 [~~commission~~].

19 SECTION 3.222. Section 411.106, Labor Code, is amended to
20 read as follows:

21 Sec. 411.106. SAFETY CLASSIFICATION. (a) To establish a
22 safety classification for employers, the division [~~commission~~]
23 shall:

24 (1) obtain medical and compensation cost information
25 regularly compiled by the department [~~Texas Department of~~
26 ~~Insurance~~] in performing [~~that agency's~~] rate-making duties and
27 functions regarding employer liability and workers' compensation

1 insurance; and

2 (2) collect and compile information relating to:

3 (A) the frequency rate of accidents;

4 (B) the existence and implementation of private
5 safety programs;

6 (C) the number of work-hour losses because of
7 injuries; and

8 (D) other facts showing accident experience.

9 (b) From the information obtained under Subsection (a), the
10 division [~~commission~~] shall classify employers as appropriate to
11 implement this subchapter.

12 SECTION 3.223. Section 411.107, Labor Code, is amended to
13 read as follows:

14 Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. The
15 division [~~commission~~] may endeavor to eliminate an impediment to
16 occupational or industrial safety that is reported to the division
17 [~~commission~~] by an affected employer. In attempting to eliminate
18 an impediment the division [~~commission~~] may advise and consult with
19 an employer, or a representative of an employer, who is directly
20 involved.

21 SECTION 3.224. Section 411.108, Labor Code, is amended to
22 read as follows:

23 Sec. 411.108. ACCIDENT REPORTS. The division [~~commission~~]
24 may require an employer and any other appropriate person to report
25 accidents, personal injuries, fatalities, or other statistics and
26 information relating to accidents on forms prescribed by and
27 covering periods designated by the commissioner [~~commission~~].

SECTION 3.225. Subsections (g), (i), and (l), Section 412.041, Labor Code, are amended to read as follows:

(g) The director shall act as an adversary before the division ~~[commission]~~ and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(i) In administering Chapter 501, the director is subject to the rules, orders, and decisions of the commissioner ~~[commission]~~ in the same manner as a private employer, insurer, or association.

(l) The director shall furnish copies of all rules to:

(1) the commissioner of insurance ~~[commission]~~;

(2) the commissioner ~~[of the Texas Department of Insurance]~~; and

(3) the administrative heads of all state agencies affected by this chapter and Chapter 501.

SECTION 3.226. The heading to Subchapter A, Chapter 413, Labor Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS ~~[DIVISION OF MEDICAL REVIEW]~~

SECTION 3.227. Section 413.002, Labor Code, is amended to read as follows:

Sec. 413.002. ~~[DIVISION OF]~~ MEDICAL REVIEW. (a) ~~[The commission shall maintain a division of medical review to ensure compliance with the rules and to implement this chapter under the policies adopted by the commission.]~~

~~[(b)]~~ The division shall monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner

1 ~~[commission]~~ relating to health care, including medical policies
2 and fee guidelines.

3 (b) ~~[(e)]~~ In monitoring health care providers who serve as
4 designated doctors under Chapter 408 and independent review
5 organizations who provide services described by this chapter, the
6 division shall evaluate:

7 (1) ~~[the]~~ compliance ~~[of those providers]~~ with this
8 subtitle and with rules adopted by the commissioner ~~[commission]~~
9 relating to medical policies, fee guidelines, treatment
10 guidelines, return-to-work guidelines, and impairment ratings; and

11 (2) the quality and timeliness of decisions made under
12 Section 408.0041, 408.122, 408.151, or 413.031.

13 (c) The division shall report the results of the monitoring
14 of independent review organizations under Subsection (b) to the
15 department on at least a quarterly basis.

16 (d) If the commissioner determines that an independent
17 review organization is in violation of this chapter, rules adopted
18 by the commissioner under this chapter, applicable provisions of
19 this code or rules adopted under this code, or applicable
20 provisions of the Insurance Code or rules adopted under that code,
21 the commissioner or a designated representative shall notify the
22 independent review organization of the alleged violation and may
23 compel the production of any documents or other information as
24 necessary to determine whether the violation occurred.

25 SECTION 3.228. Section 413.003, Labor Code, is amended to
26 read as follows:

27 Sec. 413.003. AUTHORITY TO CONTRACT. The division

1 ~~[commission]~~ may contract with a private or public entity to
2 perform a duty or function of the division.

3 SECTION 3.229. Section 413.004, Labor Code, is amended to
4 read as follows:

5 Sec. 413.004. COORDINATION WITH PROVIDERS. The division
6 shall coordinate its activities with health care providers as
7 necessary to perform its duties under this chapter. The
8 coordination may include:

9 (1) conducting educational seminars on commissioner
10 ~~[commission]~~ rules and procedures; or

11 (2) providing information to and requesting
12 assistance from professional peer review organizations.

13 SECTION 3.230. Section 413.006, Labor Code, is amended to
14 read as follows:

15 Sec. 413.006. ADVISORY COMMITTEES. The commissioner
16 ~~[commission]~~ may appoint advisory committees ~~[in addition to the~~
17 ~~medical advisory committee]~~ as the commissioner ~~[it]~~ considers
18 necessary.

19 SECTION 3.231. Subsections (a) and (c), Section 413.007,
20 Labor Code, are amended to read as follows:

21 (a) The division shall maintain a statewide data base of
22 medical charges, actual payments, and treatment protocols that may
23 be used by:

24 (1) the commissioner ~~[commission]~~ in adopting the
25 medical policies and fee guidelines; and

26 (2) the division in administering the medical
27 policies, fee guidelines, or rules.

1 (c) The division shall ensure that the data base is
2 available for public access for a reasonable fee established by the
3 commissioner [~~commission~~]. The identities of injured workers and
4 beneficiaries may not be disclosed.

5 SECTION 3.232. Section 413.008, Labor Code, is amended to
6 read as follows:

7 Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS;
8 ADMINISTRATIVE VIOLATION. (a) On request from the division
9 [~~commission~~] for specific information, an insurance carrier shall
10 provide to the division any information in the carrier's [~~its~~]
11 possession, custody, or control that reasonably relates to the
12 division's [~~commission's~~] duties under this subtitle and to health
13 care:

- 14 (1) treatment;
- 15 (2) services;
- 16 (3) fees; and
- 17 (4) charges.

18 (b) The division [~~commission~~] shall keep confidential
19 information that is confidential by law.

20 (c) An insurance carrier commits an administrative [~~a~~]
21 violation if the insurance carrier fails or refuses to comply with a
22 request or violates a rule adopted to implement this section. [A
23 ~~violation under this subsection is a Class C administrative~~
24 ~~violation. Each day of noncompliance constitutes a separate~~
25 ~~violation.~~]

26 SECTION 3.233. Section 413.011, Labor Code, is amended to
27 read as follows:

1 Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES;
2 TREATMENT GUIDELINES AND PROTOCOLS. (a) The commissioner
3 ~~[commission]~~ shall adopt ~~[use]~~ health care reimbursement policies
4 and guidelines that reflect the standardized reimbursement
5 structures found in other health care delivery systems with minimal
6 modifications to those reimbursement methodologies as necessary to
7 meet occupational injury requirements. To achieve
8 standardization, the commissioner ~~[commission]~~ shall adopt the
9 most current reimbursement methodologies, models, and values or
10 weights used by the federal Centers for Medicare and Medicaid
11 Services ~~[Health Care Financing Administration]~~, including
12 applicable payment policies relating to coding, billing, and
13 reporting, and may modify documentation requirements as necessary
14 to meet the requirements of Section 413.053.

15 (b) In determining the appropriate fees, the commissioner
16 ~~[commission]~~ shall also develop one or more conversion factors or
17 other payment adjustment factors taking into account economic
18 indicators in health care and the requirements of Subsection (d).
19 The commissioner ~~[commission]~~ shall also provide for reasonable
20 fees for the evaluation and management of care as required by
21 Section 408.025(c) and commissioner ~~[commission]~~ rules. This
22 section does not adopt the Medicare fee schedule, and the
23 commissioner may ~~[commission shall]~~ not adopt conversion factors or
24 other payment adjustment factors based solely on those factors as
25 developed by the federal Centers for Medicare and Medicaid Services
26 ~~[Health Care Financing Administration]~~.

27 (c) This section may not be interpreted in a manner that

1 would discriminate in the amount or method of payment or
2 reimbursement for services in a manner prohibited by Section
3 1451.104 [~~3(d), Article 21.52~~], Insurance Code, or as restricting
4 the ability of chiropractors to serve as treating doctors as
5 authorized by this subtitle. The commissioner [~~commission~~] shall
6 also develop guidelines relating to fees charged or paid for
7 providing expert testimony relating to an issue arising under this
8 subtitle.

9 (d) Fee guidelines [~~Guidelines for medical services fees~~]
10 must be fair and reasonable and designed to ensure the quality of
11 medical care and to achieve effective medical cost control. The
12 guidelines may not provide for payment of a fee in excess of the fee
13 charged for similar treatment of an injured individual of an
14 equivalent standard of living and paid by that individual or by
15 someone acting on that individual's behalf. The commissioner
16 [~~commission~~] shall consider the increased security of payment
17 afforded by this subtitle in establishing the fee guidelines.
18 Notwithstanding Section 413.016 or any other provision of this
19 title, an insurance carrier may pay fees to a health care provider
20 that are inconsistent with the fee guidelines adopted by the
21 division if the insurance carrier or a network under Chapter 1305,
22 Insurance Code, has a contract with the health care provider and
23 that contract includes a specific fee schedule.

24 (e) The commissioner [~~commission~~] by rule shall [~~may~~] adopt
25 treatment guidelines and [~~including~~] return-to-work guidelines [~~and~~]
26 and may adopt individual treatment protocols. Treatment [~~Except as~~
27 ~~otherwise provided by this subsection, the treatment~~] guidelines

1 and protocols must be evidence-based [~~nationally recognized~~],
2 scientifically valid, and outcome-focused [~~outcome-based~~] and
3 designed to reduce excessive or inappropriate medical care while
4 safeguarding necessary medical care. Treatment may not be denied
5 solely on the basis that the treatment for the compensable injury in
6 question is not specifically addressed by the treatment guidelines
7 [~~If a nationally recognized treatment guideline or protocol is not~~
8 ~~available for adoption by the commission, the commission may adopt~~
9 ~~another treatment guideline or protocol as long as it is~~
10 ~~scientifically valid and outcome-based~~].

11 (f) In addition to complying with the requirements of
12 Subsection (e), [~~The commission by rule may establish medical~~
13 ~~policies or treatment guidelines or protocols relating to necessary~~
14 ~~treatments for injuries.~~

15 [~~(g) Any~~] medical policies or guidelines adopted by the
16 commissioner [~~commission~~] must be:

17 (1) designed to ensure the quality of medical care and
18 to achieve effective medical cost control;

19 (2) designed to enhance a timely and appropriate
20 return to work; and

21 (3) consistent with Sections 413.013, 413.020,
22 413.052, and 413.053.

23 (g) The commissioner may adopt rules relating to disability
24 management that are designed to promote appropriate health care at
25 the earliest opportunity after the injury to maximize injury
26 healing and improve stay-at-work and return-to-work outcomes
27 through appropriate management of work-related injuries or

1 conditions. The commissioner by rule may identify claims in which
2 application of disability management activities is required and
3 prescribe at what point in the claim process a treatment plan is
4 required. The determination may be based on any factor considered
5 relevant by the commissioner. Rules adopted under this subsection
6 do not apply to claims subject to workers' compensation health care
7 networks under Chapter 1305, Insurance Code.

8 (h) A dispute involving a treatment plan required under
9 Subsection (g) may be appealed to an independent review
10 organization in the manner described by Section 413.031.

11 (i) The division shall examine whether injured employees
12 have reasonable access to surgically implanted, inserted, or
13 otherwise applied devices or tissues and investigate whether
14 reimbursement rates or any other barriers exist that reduce the
15 ability of an injured employee to access those medical needs. The
16 division shall recommend to the legislature any statutory changes
17 necessary to ensure appropriate access to those medical needs.

18 SECTION 3.234. Subchapter B, Chapter 413, Labor Code, is
19 amended by adding Section 413.0111 to read as follows:

20 Sec. 413.0111. PROCESSING AGENTS. The rules adopted by the
21 commissioner for the reimbursement of prescription medications and
22 services must authorize pharmacies to use agents or assignees to
23 process claims and act on the behalf of the pharmacies under terms
24 and conditions agreed on by the pharmacies.

25 SECTION 3.235. Section 413.013, Labor Code, is amended to
26 read as follows:

27 Sec. 413.013. PROGRAMS. The commissioner [~~commission~~] by

1 rule shall establish:

2 (1) a program for prospective, concurrent, and
3 retrospective review and resolution of a dispute regarding health
4 care treatments and services;

5 (2) a program for the systematic monitoring of the
6 necessity of treatments administered and fees charged and paid for
7 medical treatments or services, including the authorization of
8 prospective, concurrent, or retrospective review under the medical
9 policies of the division [~~commission~~] to ensure that the medical
10 policies or guidelines are not exceeded;

11 (3) a program to detect practices and patterns by
12 insurance carriers in unreasonably denying authorization of
13 payment for medical services requested or performed if
14 authorization is required by the medical policies of the division
15 [~~commission~~]; and

16 (4) a program to increase the intensity of review for
17 compliance with the medical policies or fee guidelines for any
18 health care provider that has established a practice or pattern in
19 charges and treatments inconsistent with the medical policies and
20 fee guidelines.

21 SECTION 3.236. Section 413.014, Labor Code, is amended by
22 amending Subsections (b)-(e) and adding Subsection (f) to read as
23 follows:

24 (b) The commissioner [~~commission~~] by rule shall specify
25 which health care treatments and services require express
26 preauthorization or concurrent review by the insurance carrier.
27 Treatments and services for a medical emergency do not require

1 express preauthorization.

2 (c) The commissioner's [~~commission~~] rules adopted under
3 this section must provide that preauthorization and concurrent
4 review are required at a minimum for:

5 (1) spinal surgery, as provided by Section 408.026;

6 (2) work-hardening or work-conditioning services
7 provided by a health care facility that is not credentialed by an
8 organization recognized by commissioner [~~commission~~] rules;

9 (3) inpatient hospitalization, including any
10 procedure and length of stay;

11 (4) physical and occupational therapy;

12 (5) outpatient or ambulatory surgical services, as
13 defined by commissioner [~~commission~~] rule; and

14 (6) [~~45~~] any investigational or experimental
15 services or devices.

16 (d) The insurance carrier is not liable for those specified
17 treatments and services requiring preauthorization unless
18 preauthorization is sought by the claimant or health care provider
19 and either obtained from the insurance carrier or ordered by the
20 commissioner [~~commission~~].

21 (e) If a specified health care treatment or service is
22 preauthorized as provided by this section, that treatment or
23 service is not subject to retrospective review of the medical
24 necessity of the treatment or service.

25 (f) The division [~~commission~~] may not prohibit an insurance
26 carrier and a health care provider from voluntarily discussing
27 health care treatment and treatment plans and pharmaceutical

1 services, either prospectively or concurrently, and may not
2 prohibit an insurance carrier from certifying or agreeing to pay
3 for health care consistent with those agreements. The insurance
4 carrier is liable for health care treatment and treatment plans and
5 pharmaceutical services that are voluntarily preauthorized and may
6 not dispute the certified or agreed-on preauthorized health care
7 treatment and treatment plans and pharmaceutical services at a
8 later date.

9 SECTION 3.237. Section 413.0141, Labor Code, is amended to
10 read as follows:

11 Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The
12 commissioner [~~commission~~] may by rule provide that an insurance
13 carrier shall provide for payment of specified pharmaceutical
14 services sufficient for the first seven days following the date of
15 injury if the health care provider requests and receives
16 verification of insurance coverage and a verbal confirmation of an
17 injury from the employer or from the insurance carrier as provided
18 by Section 413.014. The rules adopted by the commissioner
19 [~~commission~~] shall provide that an insurance carrier is eligible
20 for reimbursement for pharmaceutical services paid under this
21 section from the subsequent injury fund in the event the injury is
22 determined not to be compensable.

23 SECTION 3.238. Subsection (b), Section 413.015, Labor Code,
24 is amended to read as follows:

25 (b) The commissioner [~~commission~~] shall provide by rule for
26 the review and audit of the payment by insurance carriers of charges
27 for medical services provided under this subtitle to ensure

1 compliance of health care providers and insurance carriers with the
2 medical policies and fee guidelines adopted by the commissioner
3 [~~commission~~].

4 SECTION 3.239. Subsection (b), Section 413.016, Labor Code,
5 is amended to read as follows:

6 (b) If the division determines that an insurance carrier has
7 paid medical charges that are inconsistent with the medical
8 policies or fee guidelines adopted by the commissioner
9 [~~commission~~], the division shall investigate the potential
10 violation [~~refer the insurance carrier alleged to have violated~~
11 ~~this subtitle to the division of compliance and practices~~]. If the
12 insurance carrier reduced a charge of a health care provider that
13 was within the guidelines, the insurance carrier shall be directed
14 to submit the difference to the provider unless the reduction is in
15 accordance with an agreement between the health care provider and
16 the insurance carrier.

17 SECTION 3.240. Section 413.017, Labor Code, is amended to
18 read as follows:

19 Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following
20 medical services are presumed reasonable:

21 (1) medical services consistent with the medical
22 policies and fee guidelines adopted by the commissioner
23 [~~commission~~]; and

24 (2) medical services that are provided subject to
25 prospective, concurrent, or retrospective review as required by the
26 medical policies of the division [~~commission~~] and that are
27 authorized by an insurance carrier.

1 SECTION 3.241. Subsections (a), (c), (d), and (e), Section
2 413.018, Labor Code, are amended to read as follows:

3 (a) The commissioner [~~commission~~] by rule shall provide for
4 the periodic review of medical care provided in claims in which
5 guidelines for expected or average return to work time frames are
6 exceeded.

7 (c) The division [~~commission~~] shall implement a program to
8 encourage employers and treating doctors to discuss the
9 availability of modified duty to encourage the safe and more timely
10 return to work of injured employees. The division [~~commission~~] may
11 require a treating or examining doctor, on the request of the
12 employer, insurance carrier, or division [~~commission~~], to provide a
13 functional capacity evaluation of an injured employee and to
14 determine the employee's ability to engage in physical activities
15 found in the workplace or in activities that are required in a
16 modified duty setting.

17 (d) The division [~~commission~~] shall provide through the
18 division's [~~commission's~~] health and safety information and medical
19 review outreach programs information to employers regarding
20 effective return to work programs. This section does not require an
21 employer to provide modified duty or an employee to accept a
22 modified duty assignment. An employee who does not accept an
23 employer's offer of modified duty determined by the division
24 [~~commission~~] to be a bona fide job offer is subject to Section
25 408.103(e).

26 (e) The commissioner [~~commission~~] may adopt rules and forms
27 as necessary to implement this section.

1 SECTION 3.242. Section 413.020, Labor Code, is amended to
2 read as follows:

3 Sec. 413.020. DIVISION [~~COMMISSION~~] CHARGES. The
4 commissioner [~~commission~~] by rule shall establish procedures to
5 enable the division [~~commission~~] to charge:

6 (1) an insurance carrier a reasonable fee for access
7 to or evaluation of health care treatment, fees, or charges under
8 this subtitle; and

9 (2) a health care provider who exceeds a fee or
10 utilization guideline established under this subtitle or an
11 insurance carrier who unreasonably disputes charges that are
12 consistent with a fee or utilization guideline established under
13 this subtitle a reasonable fee for review of health care treatment,
14 fees, or charges under this subtitle.

15 SECTION 3.243. Subsections (a), (d), and (e), Section
16 413.021, Labor Code, are amended to read as follows:

17 (a) An insurance carrier shall, with the agreement of a
18 participating employer, provide the employer with return-to-work
19 coordination services as necessary to facilitate an employee's
20 return to employment. The insurance carrier shall notify the
21 employer of the availability of return-to-work coordination
22 services. In offering the services, insurance carriers and the
23 division [~~commission~~] shall target employers without
24 return-to-work programs and shall focus return-to-work efforts on
25 workers who begin to receive temporary income benefits. The
26 insurance carrier shall evaluate a compensable injury in which the
27 injured employee sustains an injury that could potentially result

1 in lost time from employment as early as practicable to determine if
2 skilled case management is necessary for the injured employee's
3 case. As necessary, case managers who are appropriately licensed to
4 practice in this state shall be used to perform these evaluations.
5 A claims adjuster may not be used as a case manager. These services
6 may be offered by insurance carriers in conjunction with the
7 accident prevention services provided under Section 411.061.
8 Nothing in this section supersedes the provisions of a collective
9 bargaining agreement between an employer and the employer's
10 employees, and nothing in this section authorizes or requires an
11 employer to engage in conduct that would otherwise be a violation of
12 the employer's obligations under the National Labor Relations Act
13 (29 U.S.C. Section 151 et seq.) [~~and its subsequent amendments~~].

14 (d) The division [~~commission~~] shall use certified
15 rehabilitation counselors or other appropriately trained or
16 credentialed specialists to provide training to division
17 [~~commission~~] staff regarding the coordination of return-to-work
18 services under this section.

19 (e) The commissioner [~~commission~~] shall adopt rules
20 necessary to collect data on return-to-work outcomes to allow full
21 evaluations of successes and of barriers to achieving timely return
22 to work after an injury.

23 SECTION 3.244. Subchapter B, Chapter 413, Labor Code, is
24 amended by adding Sections 413.022-413.025 to read as follows:

25 Sec. 413.022. RETURN-TO-WORK PILOT PROGRAM FOR SMALL
26 EMPLOYERS; FUND. (a) In this section:

27 (1) "Account" means the workers' compensation

1 return-to-work account.

2 (2) "Eligible employer" means any employer, other than
3 this state or a political subdivision subject to Subtitle C, who
4 employs at least two but not more than 50 employees on each business
5 day during the preceding calendar year and who has workers'
6 compensation insurance coverage.

7 (b) The commissioner shall establish by rule a
8 return-to-work pilot program designed to promote the early and
9 sustained return to work of an injured employee who sustains a
10 compensable injury.

11 (c) The pilot program shall reimburse from the account an
12 eligible employer for expenses incurred by the employer to make
13 workplace modifications necessary to accommodate an injured
14 employee's return to modified or alternative work. Reimbursement
15 under this section to an eligible employer may not exceed \$2,500.
16 The expenses must be incurred to allow the employee to perform
17 modified or alternative work within doctor-imposed work
18 restrictions. Allowable expenses may include:

19 (1) physical modifications to the worksite;

20 (2) equipment, devices, furniture, or tools; and

21 (3) other costs necessary for reasonable
22 accommodation of the employee's restrictions.

23 (d) The account is established as a special account in the
24 general revenue fund. From administrative penalties received by
25 the division under this subtitle, the commissioner shall deposit in
26 the account an amount not to exceed \$100,000 annually. Money in the
27 account may be spent by the division, on appropriation by the

1 legislature, only for the purposes of implementing this section.

2 (e) An employer who wilfully applies for or receives
3 reimbursement from the account under this section knowing that the
4 employer is not an eligible employer commits a violation.

5 (f) Notwithstanding Subsections (a)-(e), this section may
6 be implemented only to the extent funds are available.

7 (g) This section expires September 1, 2009.

8 Sec. 413.023. INFORMATION TO EMPLOYERS. (a) The division
9 shall provide employers with information on methods to enhance the
10 ability of an injured employee to return to work. The information
11 may include access to available research and best practice
12 information regarding return-to-work programs for employers.

13 (b) The division shall augment return-to-work program
14 information provided to employers to include information regarding
15 methods for an employer to appropriately assist an injured employee
16 to obtain access to doctors who:

17 (1) provide high-quality care; and

18 (2) use effective occupational medicine treatment
19 practices that lead to returning employees to productive work.

20 (c) The information provided to employers under this
21 section must help to foster:

22 (1) effective working relationships with local
23 doctors and with insurance carriers or workers' compensation health
24 care networks certified under Chapter 1305, Insurance Code, to
25 improve return-to-work communication; and

26 (2) access to return-to-work coordination services
27 provided by insurance carriers.

1 (d) The division shall develop and make available the
2 information described by this section.

3 Sec. 413.024. INFORMATION TO EMPLOYEES. The division shall
4 provide injured employees with information regarding the benefits
5 of early return to work. The information must include information
6 on how to receive assistance in accessing high-quality medical care
7 through the workers' compensation system.

8 Sec. 413.025. RETURN-TO-WORK GOALS AND ASSISTANCE. (a)
9 The division shall assist recipients of income benefits to return
10 to the workforce. The division shall develop improved data
11 sharing, within the standards of federal privacy requirements, with
12 all appropriate state agencies and workforce programs to inform the
13 division of changes needed to assist income benefit recipients to
14 successfully reenter the workforce.

15 (b) The division shall train staff dealing with income
16 benefits to respond to questions and assist injured employees in
17 their effort to return to the workforce. If the division determines
18 that an injured employee is unable to ever return to the workforce,
19 the division shall inform the employee of possible eligibility for
20 other forms of benefits, such as social security disability income
21 benefits.

22 (c) As necessary to implement the requirements of this
23 section, the division shall:

24 (1) attempt to remove any barriers to successful
25 employment that are identified at the division, the Texas Workforce
26 Commission, the Department of Assistive and Rehabilitative
27 Services, and private vocational rehabilitation programs;

1 (2) ensure that data is tracked among the division,
2 the Texas Workforce Commission, the Department of Assistive and
3 Rehabilitative Services, and insurance carriers, including outcome
4 data;

5 (3) establish a mechanism to refer income benefit
6 recipients to the Texas Workforce Commission and local workforce
7 development centers for employment opportunities; and

8 (4) develop a mechanism to promote employment success
9 that includes post-referral contacts by the division with income
10 benefit recipients.

11 SECTION 3.245. Section 413.031, Labor Code, is amended by
12 amending Subsections (a) through (d), (e-1), (f), (g), (h), (k),
13 and (m) and adding Subsection (n) to read as follows:

14 (a) A party, including a health care provider, is entitled
15 to a review of a medical service provided or for which authorization
16 of payment is sought if a health care provider is:

17 (1) denied payment or paid a reduced amount for the
18 medical service rendered;

19 (2) denied authorization for the payment for the
20 service requested or performed if authorization is required or
21 allowed by this subtitle or commissioner [~~commission~~] rules;

22 (3) ordered by the commissioner [~~commission~~] to refund
23 a payment received; or

24 (4) ordered to make a payment that was refused or
25 reduced for a medical service rendered.

26 (b) A health care provider who submits a charge in excess of
27 the fee guidelines or treatment policies is entitled to a review of

1 the medical service to determine if reasonable medical
2 justification exists for the deviation. A claimant is entitled to a
3 review of a medical service for which preauthorization is sought by
4 the health care provider and denied by the insurance carrier. The
5 commissioner [~~commission~~] shall adopt rules to notify claimants of
6 their rights under this subsection.

7 (c) In resolving disputes over the amount of payment due for
8 services determined to be medically necessary and appropriate for
9 treatment of a compensable injury, the role of the division
10 [~~commission~~] is to adjudicate the payment given the relevant
11 statutory provisions and commissioner [~~commission~~] rules. The
12 division [~~commission~~] shall publish on its Internet website the
13 division's [~~its~~] medical dispute decisions, including decisions of
14 independent review organizations, and any subsequent decisions by
15 the State Office of Administrative Hearings. Before publication,
16 the division [~~commission~~] shall redact only that information
17 necessary to prevent identification of the injured worker.

18 (d) A review of the medical necessity of a health care
19 service requiring preauthorization under Section 413.014 or
20 commissioner [~~commission~~] rules under that section or Section
21 413.011(g) shall be conducted by an independent review organization
22 under Article 21.58C, Insurance Code, in the same manner as reviews
23 of utilization review decisions by health maintenance
24 organizations. It is a defense for the insurance carrier if the
25 carrier timely complies with the decision of the independent review
26 organization.

27 (e-1) In performing a review of medical necessity under

1 Subsection (d) or (e), the independent review organization shall
2 consider the division's ~~[commission's]~~ health care reimbursement
3 policies and guidelines adopted under Section 413.011 ~~[if those~~
4 ~~policies and guidelines are raised by one of the parties to the~~
5 ~~dispute]~~. If the independent review organization's decision is
6 contrary to the division's ~~[commission's]~~ policies or guidelines
7 adopted under Section 413.011, the independent review organization
8 must indicate in the decision the specific basis for its divergence
9 in the review of medical necessity. ~~[This subsection does not~~
10 ~~prohibit an independent review organization from considering the~~
11 ~~payment policies adopted under Section 413.011 in any dispute,~~
12 ~~regardless of whether those policies are raised by a party to the~~
13 ~~dispute.]~~

14 (f) The commissioner ~~[commission]~~ by rule shall specify the
15 appropriate dispute resolution process for disputes in which a
16 claimant has paid for medical services and seeks reimbursement.

17 (g) In performing a review of medical necessity under
18 Subsection (d) or (e), an independent review organization may
19 request that the commissioner ~~[commission]~~ order an examination by
20 a designated doctor under Chapter 408.

21 (h) The insurance carrier shall pay the cost of the review
22 if the dispute arises in connection with:

23 (1) a request for health care services that require
24 preauthorization under Section 413.014 or commissioner
25 ~~[commission]~~ rules under that section; or

26 (2) a treatment plan under Section 413.011(g) or
27 commissioner rules under that section.

1 (k) Except as provided by Subsection (l), a party to a
2 medical dispute that remains unresolved after a review of the
3 medical service under this section ~~[is entitled to a hearing. The~~
4 ~~hearing shall be conducted by the State Office of Administrative~~
5 ~~Hearings within 90 days of receipt of a request for a hearing in the~~
6 ~~manner provided for a contested case under Chapter 2001, Government~~
7 ~~Code (the administrative procedure law). A party who has exhausted~~
8 ~~the party's administrative remedies under this subtitle and who is~~
9 ~~aggrieved by a final decision of the State Office of Administrative~~
10 ~~Hearings]~~ may seek judicial review of the decision. The division
11 and the department are not considered to be parties to the medical
12 dispute for purposes of this subsection. Judicial review under
13 this subsection shall be conducted in the manner provided for
14 judicial review of contested cases under Subchapter G, Chapter
15 2001, Government Code.

16 (m) The decision of an independent review organization
17 under Subsection (d) is binding during the pendency of a dispute.

18 (n) The commissioner ~~[commission]~~ by rule may prescribe an
19 alternate dispute resolution process to resolve disputes regarding
20 medical services costing less than the cost of a review of the
21 medical necessity of a health care service by an independent review
22 organization. The cost of a review under the alternate dispute
23 resolution process shall be paid by the nonprevailing party.

24 SECTION 3.246. Subsections (a), (b), and (d), Section
25 413.041, Labor Code, are amended to read as follows:

26 (a) Each health care practitioner shall disclose to the
27 division ~~[commission]~~ the identity of any health care provider in

1 which the health care practitioner, or the health care provider
 2 that employs the health care practitioner, has a financial
 3 interest. The health care practitioner shall make the disclosure
 4 in the manner provided by commissioner [~~commission~~] rule.

5 (b) The commissioner [~~commission~~] shall require by rule
 6 that a doctor disclose financial interests in other health care
 7 providers as a condition of registration for the approved doctor
 8 list established under Section 408.023 and shall define "financial
 9 interest" for purposes of this section [~~subsection~~] as provided by
 10 analogous federal regulations. The commissioner [~~commission~~] by
 11 rule shall adopt the federal standards that prohibit the payment or
 12 acceptance of payment in exchange for health care referrals
 13 relating to fraud, abuse, and antikickbacks.

14 (d) The division [~~commission~~] shall publish all final
 15 disclosure enforcement orders issued under this section on the
 16 division's [~~commission's~~] Internet website.

17 SECTION 3.247. Subchapter C, Chapter 413, Labor Code, is
 18 amended by adding Section 413.032 to read as follows:

19 Sec. 413.032. INDEPENDENT REVIEW ORGANIZATION DECISION;
 20 APPEAL. (a) An independent review organization that conducts a
 21 review under this chapter shall specify the elements on which the
 22 decision of the organization is based. At a minimum, the decision
 23 must include:

24 (1) a list of all medical records and other documents
 25 reviewed by the organization;

26 (2) a description and the source of the screening
 27 criteria or clinical basis used in making the decision;

(3) an analysis of and explanation for the decision, including the findings and conclusions used to support the decision; and

(4) a description of the qualifications of each physician or other health care provider who reviews the decision.

(b) The independent review organization shall certify that each physician or other health care provider who reviews the decision certifies that no known conflicts of interest exist between that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the independent review organization.

SECTION 3.248. Subsection (b), Section 413.042, Labor Code, is amended to read as follows:

(b) A health care provider commits an administrative [a] violation if the provider violates Subsection (a). [~~A violation under this subsection is a Class B administrative violation.~~]

SECTION 3.249. Section 413.044, Labor Code, is amended to read as follows:

Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. (a) In addition to or in lieu of an administrative penalty under Section 415.021 or a sanction imposed under Section 415.023, the commissioner [~~commission~~] may impose sanctions against a person who serves as a designated doctor under Chapter 408 who, after an evaluation conducted under Section 413.002(b) [~~413.002(e)~~], is determined by the division to be out of compliance with this

1 subtitle or with rules adopted by the commissioner [~~commission~~]
2 relating to:

3 (1) medical policies, fee guidelines, and impairment
4 ratings; or

5 (2) the quality of decisions made under Section
6 408.0041 or Section 408.122.

7 (b) Sanctions imposed under Subsection (a) may include:

8 (1) removal or suspension from the division list of
9 designated doctors; or

10 (2) restrictions on the reviews made by the person as a
11 designated doctor.

12 SECTION 3.250. Section 413.051, Labor Code, is amended to
13 read as follows:

14 Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND
15 HEALTH CARE PROVIDERS. (a) In this section, "health care provider
16 professional review organization" includes an independent review
17 organization.

18 (b) The division [~~commission~~] may contract with a health
19 care provider, health care provider professional review
20 organization, or other entity to develop, maintain, or review
21 medical policies or fee guidelines or to review compliance with the
22 medical policies or fee guidelines.

23 (c) [(b)] For purposes of review or resolution of a dispute
24 as to compliance with the medical policies or fee guidelines, the
25 division [~~commission~~] may contract with a health care provider,
26 health care provider professional review organization, or other
27 entity that includes in the review process health care

1 practitioners who are licensed in the category under review and are
2 of the same field or specialty as the category under review.

3 (d) [~~(e)~~] The division [~~commission~~] may contract with a
4 health care provider, health care provider professional review
5 organization, or other entity for medical consultant services,
6 including:

- 7 (1) independent medical examinations;
8 (2) medical case reviews; or
9 (3) establishment of medical policies and fee
10 guidelines.

11 (e) [~~(d)~~] The commissioner [~~commission~~] shall establish
12 standards for contracts under this section.

13 ~~[(e) For purposes of this section, "health care provider~~
14 ~~professional review organization" includes an independent review~~
15 ~~organization.]~~

16 SECTION 3.251. Section 413.0511, Labor Code, is amended to
17 read as follows:

18 Sec. 413.0511. MEDICAL ADVISOR. (a) The division
19 [~~commission~~] shall employ or contract with a medical advisor, who
20 must be a doctor as that term is defined by Section 401.011.

21 (b) The medical advisor shall make recommendations
22 regarding the adoption of rules and policies to:

- 23 (1) develop, maintain, and review guidelines as
24 provided by Section 413.011, including rules regarding impairment
25 ratings;
26 (2) review compliance with those guidelines;
27 (3) regulate or perform other acts related to medical

benefits as required by the commissioner [~~commission~~];

(4) impose sanctions or delete doctors from the division's [~~commission's~~] list of approved doctors under Section 408.023 for:

(A) any reason described by Section 408.0231; or

(B) noncompliance with commissioner [~~commission~~] rules;

(5) impose conditions or restrictions as authorized by Section 408.0231(f);

(6) receive, and share with the medical quality review panel established under Section 413.0512, confidential information, and other information to which access is otherwise restricted by law, as provided by Sections 413.0512, 413.0513, and 413.0514 from the Texas State Board of Medical Examiners, the Texas 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 division [~~commission~~] on the list of approved doctors; [~~and~~]

(7) determine minimal modifications to the reimbursement methodology and model used by the Medicare system as necessary to meet occupational injury requirements; and

(8) monitor the quality and timeliness of decisions made by designated doctors and independent review organizations, and the imposition of sanctions regarding those decisions.

SECTION 3.252. Subsections (a) and (c), Section 413.0512, Labor Code, are amended to read as follows:

(a) The medical advisor shall establish a medical quality

1 review panel of health care providers to assist the medical advisor
2 in performing the duties required under Section 413.0511. The
3 panel is [~~independent of the medical advisory committee created~~
4 ~~under Section 413.005 and is~~] not subject to Chapter 2110,
5 Government Code.

6 (c) The medical quality review panel shall recommend to the
7 medical advisor:

8 (1) appropriate action regarding doctors, other
9 health care providers, insurance carriers, [~~and~~] utilization
10 review agents, and independent review organizations; and

11 (2) the addition or deletion of doctors from the list
12 of approved doctors under Section 408.023 or the list of designated
13 doctors established under Section 408.1225 [~~408.122~~].

14 SECTION 3.253. Section 413.0513, Labor Code, is amended to
15 read as follows:

16 Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information
17 collected, assembled, or maintained by or on behalf of the division
18 [~~commission~~] under Section 413.0511 or 413.0512 constitutes an
19 investigation file for purposes of Section 402.092 and may not be
20 disclosed under Section 413.0511 or 413.0512 except as provided by
21 that section.

22 (b) Confidential information, and other information to
23 which access is restricted by law, developed by or on behalf of the
24 division [~~commission~~] under Section 413.0511 or 413.0512 is not
25 subject to discovery or court subpoena in any action other than:

26 (1) an action to enforce this subtitle brought by the
27 division [~~commission~~], an appropriate licensing or regulatory

1 agency, or an appropriate enforcement authority; or

2 (2) a criminal proceeding.

3 SECTION 3.254. Section 413.0514, Labor Code, is amended to
4 read as follows:

5 Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL
6 LICENSING BOARDS. (a) This section applies only to information
7 held by or for the division [~~commission~~], the Texas State Board of
8 Medical Examiners, and Texas Board of Chiropractic Examiners that
9 relates to a person who is licensed or otherwise regulated by any of
10 those state agencies.

11 (b) The division [~~commission~~] and the Texas State Board of
12 Medical Examiners on request or on its own initiative, may share
13 with each other confidential information or information to which
14 access is otherwise restricted by law. The division [~~commission~~]
15 and the Texas State Board of Medical Examiners shall cooperate with
16 and assist each other when either agency is conducting an
17 investigation by providing information to each other that the
18 sending agency determines is relevant to the investigation. Except
19 as provided by this section, confidential information that is
20 shared under this section remains confidential under law and legal
21 restrictions on access to the information remain in effect.
22 Furnishing information by the Texas State Board of Medical
23 Examiners to the division [~~commission~~] or by the division
24 [~~commission~~] to the Texas State Board of Medical Examiners under
25 this subsection does not constitute a waiver of privilege or
26 confidentiality as established by law.

27 (c) Information that is received by the division

1 ~~[commission]~~ from the Texas State Board of Medical Examiners or by
2 the Texas State Board of Medical Examiners from the division
3 ~~[commission]~~ remains confidential, may not be disclosed by the
4 division ~~[commission]~~ except as necessary to further the
5 investigation, and shall be exempt from disclosure under Sections
6 402.092 and 413.0513.

7 (d) The division ~~[commission]~~ and the Texas Board of
8 Chiropractic Examiners on request or on its own initiative, may
9 share with each other confidential information or information to
10 which access is otherwise restricted by law. The division
11 ~~[commission]~~ and the Texas Board of Chiropractic Examiners shall
12 cooperate with and assist each other when either agency is
13 conducting an investigation by providing information to each other
14 that is relevant to the investigation. Except as provided by this
15 section, confidential information that is shared under this section
16 remains confidential under law and legal restrictions on access to
17 the information remain in effect unless the agency sharing the
18 information approves use of the information by the receiving agency
19 for enforcement purposes. Furnishing information by the Texas
20 Board of Chiropractic Examiners to the division ~~[commission]~~ or by
21 the division ~~[commission]~~ to the Texas Board of Chiropractic
22 Examiners under this subsection does not constitute a waiver of
23 privilege or confidentiality as established by law.

24 (e) Information that is received by the division
25 ~~[commission]~~ from the Texas Board of Chiropractic Examiners or by
26 the Texas Board of Chiropractic Examiners from the division remains
27 confidential and may not be disclosed by the division ~~[commission]~~

1 except as necessary to further the investigation unless the agency
2 sharing the information and the agency receiving the information
3 agree to use of the information by the receiving agency for
4 enforcement purposes.

5 (f) The division [~~commission~~] and the Texas State Board of
6 Medical Examiners shall provide information to each other on all
7 disciplinary actions taken.

8 (g) The division [~~commission~~] and the Texas Board of
9 Chiropractic Examiners shall provide information to each other on
10 all disciplinary actions taken.

11 SECTION 3.255. Section 413.0515, Labor Code, is amended to
12 read as follows:

13 Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR
14 VIOLATIONS. (a) If the division [~~commission~~] or the Texas State
15 Board of Medical Examiners discovers an act or omission by a
16 physician that may constitute a felony, a misdemeanor involving
17 moral turpitude, a violation of state or federal narcotics or
18 controlled substance law, an offense involving fraud or abuse under
19 the Medicare or Medicaid program, or a violation of this subtitle,
20 the agency shall report that act or omission to the other agency.

21 (b) If the division [~~commission~~] or the Texas Board of
22 Chiropractic Examiners discovers an act or omission by a
23 chiropractor that may constitute a felony, a misdemeanor involving
24 moral turpitude, a violation of state or federal narcotics or
25 controlled substance law, an offense involving fraud or abuse under
26 the Medicare or Medicaid program, or a violation of this subtitle,
27 the agency shall report that act or omission to the other agency.

1 SECTION 3.256. Section 413.052, Labor Code, is amended to
2 read as follows:

3 Sec. 413.052. PRODUCTION OF DOCUMENTS. The commissioner
4 [~~commission~~] by rule shall establish procedures to enable the
5 division [~~commission~~] to compel the production of documents.

6 SECTION 3.257. Section 413.053, Labor Code, is amended to
7 read as follows:

8 Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The
9 commissioner [~~commission~~] by rule shall establish standards of
10 reporting and billing governing both form and content.

11 SECTION 3.258. Subsection (a), Section 413.054, Labor Code,
12 is amended to read as follows:

13 (a) A person who performs services for the division
14 [~~commission~~] as a designated doctor, an independent medical
15 examiner, a doctor performing a medical case review, or a member of
16 a peer review panel has the same immunity from liability as the
17 commissioner [~~a commission member~~] under Section 402.0024
18 [~~402.010~~].

19 SECTION 3.259. Subsections (a) and (b), Section 413.055,
20 Labor Code, are amended to read as follows:

21 (a) The commissioner [~~executive director, as provided by~~
22 ~~commission rule,~~] may enter an interlocutory order for the payment
23 of all or part of medical benefits. The order may address accrued
24 benefits, future benefits, or both accrued benefits and future
25 benefits.

26 (b) The subsequent injury fund shall reimburse an insurance
27 carrier for any overpayments of benefits made under an order

1 entered under Subsection (a) if the order is reversed or modified by
2 final arbitration, order, or decision of the commissioner
3 [~~commission~~] or a court. The commissioner [~~commission~~] shall adopt
4 rules to provide for a periodic reimbursement schedule, providing
5 for reimbursement at least annually.

6 SECTION 3.2595. The heading to Chapter 414, Labor Code, is
7 amended to read as follows:

8 CHAPTER 414. ENFORCEMENT [~~DIVISION~~] OF COMPLIANCE

9 AND PRACTICE REQUIREMENTS [~~PRACTICES~~]

10 SECTION 3.260. Subsection (a), Section 414.002, Labor Code,
11 is amended to read as follows:

12 (a) The division shall monitor for compliance with
13 commissioner [~~commission~~] rules, this subtitle, and other laws
14 relating to workers' compensation the conduct of persons subject to
15 this subtitle[, ~~other than persons monitored by the division of~~
16 ~~medical review~~]. Persons to be monitored include:

- 17 (1) persons claiming benefits under this subtitle;
18 (2) employers;
19 (3) insurance carriers; [~~and~~]
20 (4) attorneys and other representatives of parties;
21 and
22 (5) health care providers.

23 SECTION 3.261. Section 414.003, Labor Code, is amended to
24 read as follows:

25 Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The
26 division shall compile and maintain statistical and other
27 information as necessary to detect practices or patterns of conduct

1 by persons subject to monitoring under this chapter that:

2 (1) violate this subtitle, commissioner [~~ex~~
3 ~~commission~~] rules, or a commissioner order or decision; or

4 (2) otherwise adversely affect the workers'
5 compensation system of this state.

6 (b) The commissioner [~~commission~~] shall use the information
7 compiled under this section to impose appropriate penalties and
8 other sanctions under Chapters 415 and 416.

9 SECTION 3.262. Section 414.005, Labor Code, is amended to
10 read as follows:

11 Sec. 414.005. INVESTIGATION UNIT. The division shall
12 maintain an investigation unit to conduct investigations relating
13 to alleged violations of this subtitle, commissioner [~~ex~~
14 ~~commission~~] rules, or a commissioner order or decision, with
15 particular emphasis on violations of Chapters 415 and 416.

16 SECTION 3.263. Section 414.006, Labor Code, is amended to
17 read as follows:

18 Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. For further
19 investigation or the institution of appropriate proceedings, the
20 division may refer the persons involved in a case subject to an
21 investigation to [+

22 [~~(1) the division of hearings, or~~

23 [~~(2)~~] other appropriate authorities, including
24 licensing agencies, district and county attorneys, or the attorney
25 general.

26 SECTION 3.264. Section 414.007, Labor Code, is amended to
27 read as follows:

1 Sec. 414.007. [~~REVIEW OF REFERRALS FROM DIVISION OF~~
2 MEDICAL REVIEW. The division shall review information [~~and~~
3 ~~referrals received from the division of medical review~~] concerning
4 alleged violations of this subtitle regarding the provision of
5 medical benefits, commissioner rules, or a commissioner order or
6 decision, and, under Sections 414.005 and 414.006 and Chapters 415
7 and 416, may conduct investigations, make referrals to other
8 authorities, and initiate administrative violation proceedings.

9 SECTION 3.265. Section 415.001, Labor Code, is amended to
10 read as follows:

11 Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE
12 OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee
13 or legal beneficiary commits an administrative violation if the
14 person [~~wilfully or intentionally~~]:

15 (1) fails without good cause to attend a dispute
16 resolution proceeding within the division [~~commission~~];

17 (2) attends a dispute resolution proceeding within the
18 division [~~commission~~] without complete authority or fails to
19 exercise authority to effectuate an agreement or settlement;

20 (3) commits an act of barratry under Section 38.12,
21 Penal Code;

22 (4) withholds from the employee's or legal
23 beneficiary's weekly benefits or from advances amounts not
24 authorized to be withheld by the division [~~commission~~];

25 (5) enters into a settlement or agreement without the
26 knowledge, consent, and signature of the employee or legal
27 beneficiary;

(6) takes a fee or withholds expenses in excess of the amounts authorized by the division [~~commission~~];

(7) refuses or fails to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(8) violates the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas;

(9) misrepresents the provisions of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(10) violates a commissioner [~~commission~~] rule; or

(11) fails to comply with this subtitle.

SECTION 3.266. Section 415.002, Labor Code, is amended to read as follows:

Sec. 415.002. ADMINISTRATIVE VIOLATION BY [AN] INSURANCE CARRIER. (a) An insurance carrier or its representative commits an administrative violation if that person [~~wilfully or intentionally~~]:

(1) misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(2) terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law;

(3) instructs an employer not to file a document required to be filed with the division [~~commission~~];

1 (4) instructs or encourages an employer to violate a
2 claimant's right to medical benefits under this subtitle;

3 (5) fails to tender promptly full death benefits if a
4 legitimate dispute does not exist as to the liability of the
5 insurance carrier;

6 (6) allows an employer, other than a self-insured
7 employer, to dictate the methods by which and the terms on which a
8 claim is handled and settled;

9 (7) fails to confirm medical benefits coverage to a
10 person or facility providing medical treatment to a claimant if a
11 legitimate dispute does not exist as to the liability of the
12 insurance carrier;

13 (8) fails, without good cause, to attend a dispute
14 resolution proceeding within the division [~~commission~~];

15 (9) attends a dispute resolution proceeding within the
16 division [~~commission~~] without complete authority or fails to
17 exercise authority to effectuate agreement or settlement;

18 (10) adjusts a workers' compensation claim in a manner
19 contrary to license requirements for an insurance adjuster,
20 including the requirements of Chapter 4101, Insurance Code [407,
21 ~~Acts of the 63rd Legislature, Regular Session, 1973 (Article~~
22 ~~21.07-4, Vernon's Texas Insurance Code)], or the rules of the
23 commissioner [~~State Board~~] of insurance [~~Insurance~~];~~

24 (11) fails to process claims promptly in a reasonable
25 and prudent manner;

26 (12) fails to initiate or reinstate benefits when 'due
27 if a legitimate dispute does not exist as to the liability of the

1 insurance carrier;

2 (13) misrepresents the reason for not paying benefits
3 or terminating or reducing the payment of benefits;

4 (14) dates documents to misrepresent the actual date
5 of the initiation of benefits;

6 (15) makes a notation on a draft or other instrument
7 indicating that the draft or instrument represents a final
8 settlement of a claim if the claim is still open and pending before
9 the division [~~commission~~];

10 (16) fails or refuses to pay benefits from week to week
11 as and when due directly to the person entitled to the benefits;

12 (17) fails to pay an order awarding benefits;

13 (18) controverts a claim if the evidence clearly
14 indicates liability;

15 (19) unreasonably disputes the reasonableness and
16 necessity of health care;

17 (20) violates a commissioner [~~commission~~] rule; [~~or~~]

18 (21) makes a statement denying all future medical care
19 for a compensable injury; or

20 (22) fails to comply with a provision of this
21 subtitle.

22 (b) An insurance carrier or its representative does not
23 commit an administrative violation under Subsection (a)(6) by
24 allowing an employer to:

25 (1) freely discuss a claim;

26 (2) assist in the investigation and evaluation of a
27 claim; or

1 (3) attend a proceeding of the division [~~commission~~]
2 and participate at the proceeding in accordance with this subtitle.

3 SECTION 3.267. Section 415.003, Labor Code, is amended to
4 read as follows:

5 Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE
6 PROVIDER. A health care provider commits an administrative
7 violation if the person [~~wilfully or intentionally~~]:

8 (1) submits a charge for health care that was not
9 furnished;

10 (2) administers improper, unreasonable, or medically
11 unnecessary treatment or services;

12 (3) makes an unnecessary referral;

13 (4) violates the division's [~~commission's~~] fee and
14 treatment guidelines;

15 (5) violates a commissioner [~~commission~~] rule; or

16 (6) fails to comply with a provision of this subtitle.

17 SECTION 3.268. Subsections (a), (b), (e), and (f), Section
18 415.0035, Labor Code, are amended to read as follows:

19 (a) An insurance carrier or its representative commits an
20 administrative violation if that person:

21 (1) fails to submit to the division [~~commission~~] a
22 settlement or agreement of the parties;

23 (2) fails to timely notify the division [~~commission~~]
24 of the termination or reduction of benefits and the reason for that
25 action; or

26 (3) denies preauthorization in a manner that is not in
27 accordance with rules adopted by the commissioner [~~commission~~]

1 under Section 413.014.

2 (b) A health care provider commits an administrative
3 violation if that person:

4 (1) fails or refuses to timely file required reports
5 or records; or

6 (2) fails to file with the division [~~commission~~] the
7 annual disclosure statement required by Section 413.041.

8 (e) An insurance carrier or health care provider commits an
9 administrative violation if that person violates this subtitle or a
10 rule, order, or decision of the commissioner [~~commission~~].

11 (f) A subsequent administrative violation under this
12 section, after prior notice to the insurance carrier or health care
13 provider of noncompliance, is subject to penalties as provided by
14 Section 415.021. Prior notice under this subsection is not
15 required [~~if the violation was committed wilfully or intentionally,~~
16 ~~or~~] if the violation was of a decision or order of the commissioner
17 [~~commission~~].

18 SECTION 3.269. Subsection (b), Section 415.005, Labor Code,
19 is amended to read as follows:

20 (b) A violation under this section is an [~~a Class B~~]
21 administrative violation. A health care provider may be liable for
22 an administrative penalty regardless of whether a criminal action
23 is initiated under Section 413.043.

24 SECTION 3.270. Subsection (c), Section 415.006, Labor Code,
25 is amended to read as follows:

26 (c) A person commits an administrative [~~a~~] violation if the
27 person violates Subsection (a). [~~A violation under this subsection~~

1 ~~is a Class C administrative violation.]~~

2 SECTION 3.271. Subsection (a), Section 415.007, Labor Code,
3 is amended to read as follows:

4 (a) An attorney who represents a claimant before the
5 division ~~[commission]~~ may not lend money to the claimant during the
6 pendency of the workers' compensation claim.

7 SECTION 3.272. Subsection (e), Section 415.008, Labor Code,
8 is amended to read as follows:

9 (e) If an administrative violation proceeding is pending
10 under this section against an employee or person claiming death
11 benefits, the division ~~[commission]~~ may not take final action on
12 the person's benefits.

13 SECTION 3.273. Subsection (a), Section 415.009, Labor Code,
14 is amended to read as follows:

15 (a) A person commits a violation if the person [~~knowingly~~]
16 brings, prosecutes, or defends an action for benefits under this
17 subtitle or requests initiation of an administrative violation
18 proceeding that does not have a basis in fact or is not warranted by
19 existing law or a good faith argument for the extension,
20 modification, or reversal of existing law.

21 SECTION 3.274. Subsection (a), Section 415.010, Labor Code,
22 is amended to read as follows:

23 (a) A party to an agreement approved by the division
24 ~~[commission]~~ commits a violation if the person [~~knowingly~~] breaches
25 a provision of the agreement.

26 SECTION 3.275. Section 415.021, Labor Code, is amended to
27 read as follows:

1 Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES.

2 (a) In addition to any other provisions in this subtitle relating
3 to violations, a person commits an administrative violation if the
4 person violates, fails to comply with, or refuses to comply with
5 this subtitle or a rule, order, or decision of the commissioner. In
6 addition to any sanctions, administrative penalty, or other remedy
7 authorized by this subtitle, the commissioner ~~[The commission]~~ may
8 assess an administrative penalty against a person who commits an
9 administrative violation. The administrative penalty shall not
10 exceed \$25,000 per day per occurrence. Each day of noncompliance
11 constitutes a separate violation. The commissioner's authority
12 under this chapter is in addition to any other authority to enforce
13 a sanction, penalty, fine, forfeiture, denial, suspension, or
14 revocation otherwise authorized by law ~~[Notwithstanding Subsection~~
15 ~~(c), the commission by rule shall adopt a schedule of specific~~
16 ~~monetary administrative penalties for specific violations under~~
17 ~~this subtitle]~~.

18 (b) The commissioner ~~[commission may assess an~~
19 ~~administrative penalty not to exceed \$10,000 and]~~ may enter a cease
20 and desist order against a person who:

- 21 (1) commits repeated administrative violations;
22 (2) allows, as a business practice, the commission of
23 repeated administrative violations; or
24 (3) violates an order or decision of the commissioner
25 ~~[commission]~~.

26 (c) In assessing an administrative penalty:

- 27 (1) [7] the commissioner ~~[commission]~~ shall consider:

(A) ~~[(1)]~~ the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(B) ~~[(2)]~~ the history and extent of previous administrative violations;

(C) ~~[(3)]~~ the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(D) ~~[(4)] the economic benefit resulting from the prohibited act,~~

~~[(5)]~~ the penalty necessary to deter future violations; and

(E) ~~[(6)]~~ other matters that justice may require; and

(2) the commissioner shall, to the extent reasonable, consider the economic benefit resulting from the prohibited act.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter C.

SECTION 3.276. Subsection (b), Section 415.023, Labor Code, is amended to read as follows:

(b) The commissioner ~~[commission]~~ may adopt rules providing for:

(1) a reduction or denial of fees;

(2) public or private reprimand by the commissioner ~~[commission]~~;

(3) suspension from practice before the division

1 ~~[commission]~~;

2 (4) restriction, suspension, or revocation of the
3 right to receive reimbursement under this subtitle; or

4 (5) referral and petition to the appropriate licensing
5 authority for appropriate disciplinary action, including the
6 restriction, suspension, or revocation of the person's license.

7 SECTION 3.277. Section 415.024, Labor Code, is amended to
8 read as follows:

9 Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT;
10 ADMINISTRATIVE VIOLATION. A material and substantial breach of a
11 settlement agreement that establishes a compliance plan is an ~~a~~
12 ~~Class A~~ administrative violation. In determining the amount of
13 the penalty, the commissioner ~~[commission]~~ shall consider the total
14 volume of claims handled by the insurance carrier.

15 SECTION 3.278. Subchapter B, Chapter 415, Labor Code, is
16 amended by adding Section 415.025 to read as follows:

17 Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR
18 PENALTY. A reference in this code or other law, or in rules of the
19 former Texas Workers' Compensation Commission or the commissioner,
20 to a particular class of violation, administrative violation, or
21 penalty shall be construed as a reference to an administrative
22 penalty. Except as otherwise provided by this subtitle, an
23 administrative penalty may not exceed \$25,000 per day per
24 occurrence. Each day of noncompliance constitutes a separate
25 violation.

26 SECTION 3.279. Section 415.031, Labor Code, is amended to
27 read as follows:

1 Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION
2 PROCEEDINGS. Any person may request the initiation of
3 administrative violation proceedings by filing a written
4 allegation with the [~~director of the~~] division [~~of compliance and~~
5 ~~practices~~].

6 SECTION 3.280. Section 415.032, Labor Code, is amended to
7 read as follows:

8 Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION;
9 RESPONSE. (a) If investigation by the division [~~of compliance and~~
10 ~~practices~~] indicates that an administrative violation has
11 occurred, the division shall notify the person alleged to have
12 committed the violation in writing of:

13 (1) the charge;

14 (2) the proposed penalty;

15 (3) the right to consent to the charge and the penalty;

16 and

17 (4) the right to request a hearing.

18 (b) Not later than the 20th day after the date on which
19 notice is received, the charged party shall:

20 (1) remit the amount of the penalty to the division
21 [~~commission~~]; or

22 (2) submit to the division [~~commission~~] a written
23 request for a hearing.

24 SECTION 3.281. Section 415.033, Labor Code, is amended to
25 read as follows:

26 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a
27 charged party fails to respond as required under Section 415.032, .

1 the penalty is due and the division [~~commission~~] shall initiate
2 enforcement proceedings.

3 SECTION 3.282. Subsection (a), Section 415.034, Labor Code,
4 is amended to read as follows:

5 (a) On the request of the charged party or the commissioner
6 [~~executive director~~], the State Office of Administrative Hearings
7 shall set a hearing. The hearing shall be conducted in the manner
8 provided for a contested case under Chapter 2001, Government Code
9 (the administrative procedure law).

10 SECTION 3.283. Subsections (b) and (d), Section 415.035,
11 Labor Code, are amended to read as follows:

12 (b) If an administrative penalty is assessed, the person
13 charged shall:

14 (1) forward the amount of the penalty to the division
15 [~~executive director~~] for deposit in an escrow account; or

16 (2) post with the division [~~executive director~~] a bond
17 for the amount of the penalty, effective until all judicial review
18 of the determination is final.

19 (d) If the court determines that the penalty should not have
20 been assessed or reduces the amount of the penalty, the division
21 [~~executive director~~] shall:

22 (1) remit the appropriate amount, plus accrued
23 interest, if the administrative penalty was paid; or

24 (2) release the bond.

25 SECTION 3.284. Section 416.001, Labor Code, is amended to
26 read as follows:

27 Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An

1 action taken by an insurance carrier under an order of the
2 commissioner [~~commission~~] or recommendations of a benefit review
3 officer under Section 410.031, 410.032, or 410.033 may not be the
4 basis of a cause of action against the insurance carrier for a
5 breach of the duty of good faith and fair dealing.

6 SECTION 3.285. Subsections (c) and (d), Section 417.001,
7 Labor Code, are amended to read as follows:

8 (c) If a claimant receives benefits from the subsequent
9 injury fund, the division [~~commission~~] is:

10 (1) considered to be the insurance carrier under this
11 section for purposes of those benefits;

12 (2) subrogated to the rights of the claimant; and

13 (3) entitled to reimbursement in the same manner as
14 the insurance carrier.

15 (d) The division [~~commission~~] shall remit money recovered
16 under this section to the comptroller for deposit to the credit of
17 the subsequent injury fund.

18 SECTION 3.286. Subsection (b), Section 417.003, Labor Code,
19 is amended to read as follows:

20 (b) An attorney who represents the claimant and is also to
21 represent the subrogated insurance carrier shall make a full
22 written disclosure to the claimant before employment as an attorney
23 by the insurance carrier. The claimant must acknowledge the
24 disclosure and consent to the representation. A signed copy of the
25 disclosure shall be furnished to all concerned parties and made a
26 part of the division [~~commission~~] file. A copy of the disclosure
27 with the claimant's consent shall be filed with the claimant's

pleading before a judgment is entered and approved by the court. The claimant's attorney may not receive a fee under this section to which the attorney is otherwise entitled under an agreement with the insurance carrier unless the attorney complies with the requirements of this subsection.

SECTION 3.287. Subtitle A, Title 5, Labor Code, is amended by adding Chapter 419 to read as follows:

CHAPTER 419. MISUSE OF DIVISION NAME

Sec. 419.001. DEFINITIONS. (a) In this chapter:

(1) "Representation of the division's logo" includes a nonexact representation that is deceptively similar to the logo used by the division.

(2) "Representation of the state seal" has the meaning assigned by Section 17.08(a)(2), Business & Commerce Code.

(b) A term or representation is "deceptively similar" for purposes of this chapter if:

(1) a reasonable person would believe that the term or representation is in any manner approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the circumstances under which the term is used could mislead a reasonable person as to its identity.

Sec. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS PROHIBITED. (a) Except as authorized by law, a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, document, product, or service made or offered by the person regarding workers' compensation

1 coverage or benefits, may not knowingly use or cause to be used:

2 (1) the words "Texas Department of Insurance,"
3 "Department of Insurance," "Texas Workers' Compensation," or
4 "division of workers' compensation";

5 (2) any term using both "Texas" and "Workers'
6 Compensation" or any term using both "Texas" and "Workers' Comp";

7 (3) the initials "T.D.I."; or

8 (4) any combination or variation of the words or
9 initials, or any term deceptively similar to the words or initials,
10 described by Subdivisions (1)-(3).

11 (b) A person subject to Subsection (a) may not knowingly use
12 or cause to be used a word, term, or initials described by
13 Subsection (a) alone or in conjunction with:

14 (1) the state seal or a representation of the state
15 seal;

16 (2) a picture or map of this state; or

17 (3) the official logo of the department or the
18 division or a representation of the department's or division's
19 logo.

20 Sec. 419.003. RULES. The commissioner may adopt rules
21 relating to the regulation of the use of the division's name and
22 other rules as necessary to implement this chapter.

23 Sec. 419.004. CIVIL PENALTY. (a) A person who violates
24 Section 419.002 or a rule adopted under this chapter is liable for a
25 civil penalty not to exceed \$5,000 for each violation.

26 (b) The attorney general, at the request of the
27 commissioner, shall bring an action to collect a civil penalty

1 under this section in a district court in Travis County.

2 Sec. 419.005. ADMINISTRATIVE PENALTY. (a) The division
3 may assess an administrative penalty against a person who violates
4 Section 419.002 or a rule adopted under this chapter.

5 (b) An administrative penalty imposed under this section is
6 subject to the procedural requirements adopted for administrative
7 penalties imposed under Section 415.021.

8 Sec. 419.006. INJUNCTIVE RELIEF. (a) At the request of the
9 commissioner, the attorney general or a district attorney may bring
10 an action in district court in Travis County to enjoin or restrain a
11 violation or threatened violation of this chapter on a showing that
12 a violation has occurred or is likely to occur.

13 (b) The division may recover the costs of investigating an
14 alleged violation of this chapter if an injunction is issued.

15 Sec. 419.007. REMEDIES NOT EXCLUSIVE. The remedies
16 provided by this chapter are not exclusive and may be sought in any
17 combination determined by the commissioner as necessary to enforce
18 this chapter.

19 SECTION 3.288. Subdivisions (1) and (5), Section 501.001,
20 Labor Code, are amended to read as follows:

21 (1) "Division" [~~"Commission"~~] means the division of
22 workers' compensation of the Texas Department of Insurance
23 [~~Workers' Compensation Commission~~].

24 (5) "Employee" means a person who is:

25 (A) in the service of the state pursuant to an
26 election, appointment, or express oral or written contract of hire;

27 (B) paid from state funds but whose duties

require that the person work and frequently receive supervision in a political subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 2.12 [~~12~~], Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g), Code of Criminal Procedure;

(D) a member of the state military forces, as defined by Section 431.001, Government Code, who is engaged in authorized training or duty; or

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the governor's division of emergency management or is injured during any training session sponsored or sanctioned by Texas Task Force 1.

SECTION 3.289. Subsection (a), Section 501.002, Labor Code, is amended to read as follows:

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and [~~Chapter~~] 405;

(5) Subchapters B and D through H, Chapter 406, other

1 than Sections 406.071(a), 406.073, and 406.075;

2 (6) Chapter 408, other than Sections 408.001(b) and
3 (c);

4 (7) Chapters 409 and 410;

5 (8) Subchapters A and G, Chapter 411, other than
6 Sections 411.003 and 411.004;

7 (9) Chapters 412-417; and

8 (10) Chapter 451.

9 SECTION 3.290. Subsection (d), Section 501.026, Labor Code,
10 is amended to read as follows:

11 (d) A person entitled to benefits under this section may
12 receive the benefits only if the person seeks medical attention
13 from a doctor for the injury not later than 48 hours after the
14 occurrence of the injury or after the date the person knew or should
15 have known the injury occurred. The person shall comply with the
16 requirements of Section 409.001 by providing notice of the injury
17 to the division [~~commission~~] or the state agency with which the
18 officer or employee under Subsection (b) is associated.

19 SECTION 3.291. Subsection (a), Section 501.050, Labor Code,
20 is amended to read as follows:

21 (a) In each case appealed from the division [~~commission~~] to
22 a county or district court:

23 (1) the clerk of the court shall mail to the division
24 [~~commission~~]:

25 (A) not later than the 20th day after the date the
26 case is filed, a notice containing the style, number, and date of
27 filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

SECTION 3.292. The heading to Chapter 502, Labor Code, is amended to read as follows:

CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR
EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM
AND EMPLOYEES OF INSTITUTIONS OF THE TEXAS A&M UNIVERSITY SYSTEM

SECTION 3.293. Subdivision (1), Section 502.001, Labor Code, is amended to read as follows:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance [~~"Commission" means the Texas Workers' Compensation Commission~~].

SECTION 3.294. Subsections (a) and (b), Section 502.002, Labor Code, are amended to read as follows:

(a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and [~~Chapter~~] 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and

1 (c);

2 (7) Chapters 409 and 410;

3 (8) Subchapters A and G, Chapter 411, other than
4 Sections 411.003 and 411.004; and

5 (9) Chapters 412-417.

6 (b) For the purpose of applying the provisions listed by
7 Subsection (a) to this chapter, "employer" means "the institution,"
8 and "system" means the insurance carrier under Section 502.022.["]

9 SECTION 3.295. Subsection (a), Section 502.021, Labor Code,
10 is amended to read as follows:

11 (a) The system [~~institution~~] shall pay benefits as provided
12 by this chapter to an employee with a compensable injury.

13 SECTION 3.296. Section 502.041, Labor Code, is amended to
14 read as follows:

15 Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An
16 employee may elect to use accrued sick leave before receiving
17 income benefits. If an employee elects to use sick leave, the
18 employee is not entitled to income benefits under this chapter
19 until the employee has exhausted the employee's accrued sick leave
20 [institution may provide that an injured employee may remain on the
21 payroll until the employee's earned annual and sick leave is
22 exhausted].

23 (b) An employee may elect to use all or any number of weeks
24 of accrued annual leave after the employee's accrued sick leave is
25 exhausted. If an employee elects to use annual leave, the employee
26 is not entitled to income benefits under this chapter until the
27 elected number of weeks of leave have been exhausted [While an

1 ~~injured employee remains on the payroll under Subsection (a),~~
2 ~~medical services remain available to the employee, but workers'~~
3 ~~compensation benefits do not accrue or become payable to the~~
4 ~~injured employee].~~

5 SECTION 3.297. Subsections (a) and (c), Section 502.061,
6 Labor Code, are amended to read as follows:

7 (a) The system [~~Each institution~~] shall administer this
8 chapter.

9 (c) The system [~~institution~~] may:

10 (1) adopt and publish rules and prescribe and furnish
11 forms necessary for the administration of this chapter; and

12 (2) adopt and enforce rules necessary for the
13 prevention of accidents and injuries.

14 SECTION 3.298. Section 502.063, Labor Code, is amended to
15 read as follows:

16 Sec. 502.063. CERTIFIED COPIES OF DIVISION [~~COMMISSION~~]
17 DOCUMENTS. (a) The division [~~commission~~] shall furnish a
18 certified copy of an order, award, decision, or paper on file in the
19 division's [~~commission's~~] office to a person entitled to the copy on
20 written request and payment of the fee for the copy. The fee is the
21 same as that charged for similar services by the secretary of
22 state's office.

23 (b) The system or an [~~An~~] institution may obtain certified
24 copies under this section without charge.

25 (c) A fee or salary may not be paid to an [~~a member or~~]
26 employee of the division [~~commission~~] for making a copy under
27 Subsection (a) that exceeds the fee charged for the copy.

1 SECTION 3.299. Subsection (a), Section 502.065, Labor Code,
2 is amended to read as follows:

3 (a) In addition to a report of an injury filed with the
4 division [~~commission~~] under Section 409.005(a), an institution
5 shall file a supplemental report that contains:

6 (1) the name, age, sex, and occupation of the injured
7 employee;

8 (2) the character of work in which the employee was
9 engaged at the time of the injury;

10 (3) the place, date, and hour of the injury; and

11 (4) the nature and cause of the injury.

12 SECTION 3.300. Subsections (a), (b), (d), and (e), Section
13 502.066, Labor Code, are amended to read as follows:

14 (a) The division [~~commission~~] may require an employee who
15 claims to have been injured to submit to an examination by the
16 division [~~commission~~] or a person acting under the division's
17 [~~commission's~~] authority at a reasonable time and place in this
18 state.

19 (b) On the request of an employee or the system
20 [~~institution~~], the employee, ~~[or]~~ the institution, or the system is
21 entitled to have a physician or chiropractor selected by the
22 employee, ~~[or]~~ the institution, or the system, as appropriate,
23 present to participate in an examination under Subsection (a) or
24 Section 408.004.

25 (d) The system or the institution may have an injured
26 employee examined at a reasonable time and at a place suitable to
27 the employee's condition and convenient and accessible to the

1 employee by a physician or chiropractor selected by the system or
2 the institution. The system or the institution shall pay for an
3 examination under this subsection and for the employee's reasonable
4 expenses incident to the examination. The employee is entitled to
5 have a physician or chiropractor selected by the employee present
6 to participate in an examination under this subsection.

7 (e) The system or the institution shall pay the fee set by
8 the division for the services [~~commission~~] of a physician or
9 chiropractor selected by the employee under Subsection (b) or (d).

10 SECTION 3.301. Subsection (a), Section 502.067, Labor Code,
11 is amended to read as follows:

12 (a) The commissioner of workers' compensation [~~commission~~]
13 may order or direct the system or the institution to reduce or
14 suspend the compensation of an injured employee who:

15 (1) persists in insanitary or injurious practices that
16 tend to imperil or retard the employee's recovery; or

17 (2) refuses to submit to medical, surgical,
18 chiropractic, or other remedial treatment recognized by the state
19 that is reasonably essential to promote the employee's recovery.

20 SECTION 3.302. Section 502.068, Labor Code, is amended to
21 read as follows:

22 Sec. 502.068. POSTPONEMENT OF HEARING. If an injured
23 employee is receiving benefits under this chapter and the system or
24 the institution is providing hospitalization, medical treatment,
25 or chiropractic care to the employee, the division [~~commission~~] may
26 postpone the hearing on the employee's claim. An appeal may not be
27 taken from a division [~~commission~~] order under this section.

SECTION 3.303. Subsection (a), Section 502.069, Labor Code, is amended to read as follows:

(a) In each case appealed from the division [~~commission~~] to a county or district court:

(1) the clerk of the court shall mail to the division [~~commission~~]:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

SECTION 3.304. The heading to Chapter 503, Labor Code, is amended to read as follows:

CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR
EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND
EMPLOYEES OF INSTITUTIONS OF THE UNIVERSITY OF TEXAS SYSTEM

SECTION 3.305. Section 503.001, Labor Code, is amended by amending Subdivision (1) and by adding Subdivision (1-a) to read as follows:

(1) "Commissioner" means the commissioner of workers' compensation [~~"Commission" means the Texas Workers' Compensation Commission~~].

(1-a) "Division" means the division of workers' compensation of the Texas Department of Insurance.

SECTION 3.306. Subsections (a) and (b), Section 503.002,

Labor Code, are amended to read as follows:

(a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and ~~[Chapter]~~ 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 503.022. ["-"]

SECTION 3.307. Subsection (a), Section 503.021, Labor Code, is amended to read as follows:

(a) The system ~~[institution]~~ shall pay benefits as provided by this chapter to an employee with a compensable injury.

SECTION 3.308. Section 503.022, Labor Code, is amended to read as follows:

Sec. 503.022. AUTHORITY TO SELF-INSURE. An institution may

1 self-insure as part of a system insurance plan.

2 SECTION 3.309. Section 503.041, Labor Code, is amended to
3 read as follows:

4 Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An
5 employee may elect to use accrued sick leave before receiving
6 income benefits. If an employee elects to use sick leave, the
7 employee is not entitled to income benefits under this chapter
8 until the employee has exhausted the employee's accrued sick leave
9 ~~[An institution may provide that an injured employee may remain on~~
10 ~~the payroll until the employee's earned annual and sick leave is~~
11 ~~exhausted].~~

12 (b) An employee may elect to use all or any number of weeks
13 of accrued annual leave after the employee's accrued sick leave is
14 exhausted. If an employee elects to use annual leave, the employee
15 is not entitled to income benefits under this chapter until the
16 elected number of weeks of leave have been exhausted ~~[While an~~
17 ~~injured employee remains on the payroll under Subsection (a), the~~
18 ~~employee is entitled to medical benefits but income benefits do not~~
19 ~~accrue].~~

20 SECTION 3.310. Subsections (a) and (c), Section 503.061,
21 Labor Code, are amended to read as follows:

22 (a) The system ~~[Each institution]~~ shall administer this
23 chapter.

24 (c) The system ~~[institution]~~ may:

25 (1) adopt and publish rules and prescribe and furnish
26 forms necessary for the administration of this chapter; and

27 (2) adopt and enforce rules necessary for the

1 prevention of accidents and injuries.

2 SECTION 3.311. Section 503.063, Labor Code, is amended to
3 read as follows:

4 Sec. 503.063. CERTIFIED COPIES OF DIVISION [~~COMMISSION~~]
5 DOCUMENTS. (a) The division [~~commission~~] shall furnish a
6 certified copy of an order, award, decision, or paper on file in the
7 division's [~~commission's~~] office to a person entitled to the copy on
8 written request and payment of the fee for the copy. The fee is the
9 same as that charged for similar services by the secretary of
10 state's office.

11 (b) The system or the institution may obtain certified
12 copies under this section without charge.

13 (c) A fee or salary may not be paid to an [~~a member or~~]
14 employee of the division [~~commission~~] for making a copy under
15 Subsection (a) that exceeds the fee charged for the copy.

16 SECTION 3.312. Subsection (a), Section 503.065, Labor Code,
17 is amended to read as follows:

18 (a) In addition to a report of an injury filed with the
19 division [~~commission~~] under Section 409.005(a), an institution
20 shall file a supplemental report that contains:

21 (1) the name, age, sex, and occupation of the injured
22 employee;

23 (2) the character of work in which the employee was
24 engaged at the time of the injury;

25 (3) the place, date, and hour of the injury; and

26 (4) the nature and cause of the injury.

27 SECTION 3.313. Subsections (a), (b), (d), and (e), Section

1 503.066, Labor Code, are amended to read as follows:

2 (a) The division [~~commission~~] may require an employee who
3 claims to have been injured to submit to an examination by the
4 division [~~commission~~] or a person acting under the division's
5 [~~commission's~~] authority at a reasonable time and place in this
6 state.

7 (b) On the request of an employee, the system, or the
8 institution, the employee, the system, or the institution is
9 entitled to have a physician selected by the employee, the system,
10 or the institution, as appropriate, present to participate in an
11 examination under Subsection (a) or Section 408.004.

12 (d) The system or the institution may have an injured
13 employee examined at a reasonable time and at a place suitable to
14 the employee's condition and convenient and accessible to the
15 employee by a physician selected by the system or the institution.
16 The system or the institution shall pay for an examination under
17 this subsection and for the employee's reasonable expenses incident
18 to the examination. The employee is entitled to have a physician
19 selected by the employee present to participate in an examination
20 under this subsection.

21 (e) The system or the institution shall pay the fee, as set
22 by the division [~~commission~~], of a physician selected by the
23 employee under Subsection (b) or (d).

24 SECTION 3.314. Subsection (a), Section 503.067, Labor Code,
25 is amended to read as follows:

26 (a) The commissioner [~~commission~~] may order or direct the
27 system or the institution to reduce or suspend the compensation of

1 an injured employee who:

2 (1) persists in insanitary or injurious practices that
3 tend to imperil or retard the employee's recovery; or

4 (2) refuses to submit to medical, surgical, or other
5 remedial treatment recognized by the state that is reasonably
6 essential to promote the employee's recovery.

7 SECTION 3.315. Section 503.068, Labor Code, is amended to
8 read as follows:

9 Sec. 503.068. POSTPONEMENT OF HEARING. If an injured
10 employee is receiving benefits under this chapter and the system or
11 the institution is providing hospitalization or medical treatment
12 to the employee, the division [~~commission~~] may postpone the hearing
13 on the employee's claim. An appeal may not be taken from a
14 commissioner [~~commission~~] order under this section.

15 SECTION 3.316. Subsection (a), Section 503.069, Labor Code,
16 is amended to read as follows:

17 (a) In each case appealed from the division [~~commission~~] to
18 a county or district court:

19 (1) the clerk of the court shall mail to the division
20 [~~commission~~]:

21 (A) not later than the 20th day after the date the
22 case is filed, a notice containing the style, number, and date of
23 filing of the case; and

24 (B) not later than the 20th day after the date the
25 judgment is rendered, a certified copy of the judgment; and

26 (2) the attorney preparing the judgment shall file the
27 original and a copy of the judgment with the clerk.

SECTION 3.317. Subsection (a), Section 503.070, Labor Code, is amended to read as follows:

(a) A party who does not consent to abide by the final decision of the commissioner [~~commission~~] shall file notice with the division [~~commission~~] as required by Section 410.253 and bring suit in the county in which the injury occurred to set aside the final decision of the commissioner [~~commission~~].

SECTION 3.318. Section 504.001, Labor Code, is amended by amending Subdivision (1) and adding Subdivision (4) to read as follows:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance [~~"Commission" means the Texas Workers' Compensation Commission~~].

(4) "Pool" means two or more political subdivisions collectively self-insuring under an interlocal contract under Chapter 791, Government Code.

SECTION 3.319. Subsection (a), Section 504.002, Labor Code, is amended to read as follows:

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.006-406.009 and Subchapters B and

D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(6) ~~[(45)]~~ Chapter 408, other than Sections 408.001(b) and (c);

(7) ~~[(46)]~~ Chapters 409-412 ~~[409-417]~~; ~~[and]~~

(8) ~~[(47)]~~ Chapter 413, except as provided by Section 504.053;

(9) Chapters 414-417; and

(10) Chapter 451.

SECTION 3.320. The heading to Section 504.018, Labor Code, is amended to read as follows:

Sec. 504.018. NOTICE TO DIVISION ~~[COMMISSION]~~ AND EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

SECTION 3.321. Subsection (a), Section 504.018, Labor Code, is amended to read as follows:

(a) A political subdivision shall notify the division ~~[commission]~~ of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

SECTION 3.322. Subchapter C, Chapter 504, Labor Code, is amended by adding Section 504.053 to read as follows:

Sec. 504.053. ELECTION. (a) A political subdivision that self-insures either individually or collectively shall provide workers' compensation medical benefits to the injured employees of the political subdivision through a workers' compensation health care network certified under Chapter 1305, Insurance Code, if the governing body of the political subdivision determines that

1 provision of those benefits through a network is available to the
2 employees and practical for the political subdivision. A political
3 subdivision may enter into interlocal agreements and other
4 agreements with other political subdivisions to establish or
5 contract with networks under this section.

6 (b) If a political subdivision or a pool determines that a
7 workers' compensation health care network certified under Chapter
8 1305, Insurance Code, is not available or practical for the
9 political subdivision or pool, the political subdivision or pool
10 may provide medical benefits to its injured employees or to the
11 injured employees of the members of the pool:

12 (1) in the manner provided by Chapter 408, other than
13 Sections 408.001(b) and (c) and Section 408.002, and by Subchapters
14 B and C, Chapter 413; or

15 (2) by directly contracting with health care providers
16 or by contracting through a health benefits pool established under
17 Chapter 172, Local Government Code.

18 (c) If the political subdivision or pool provides medical
19 benefits in the manner authorized under Subsection (b)(2), the
20 following do not apply:

21 (1) Sections 408.004 and 408.0041, unless use of a
22 required medical examination or designated doctor is necessary to
23 resolve an issue relating to the entitlement to or amount of income
24 benefits under this title;

25 (2) Subchapter B, Chapter 408, except for Section
26 408.021;

27 (3) Chapter 413, except for Section 413.042; and

1 (4) Chapter 1305, Insurance Code, except for Sections
2 1305.501, 1305.502, and 1305.503.

3 (d) If the political subdivision or pool provides medical
4 benefits in the manner authorized under Subsection (b)(2), the
5 following standards apply:

6 (1) the political subdivision or pool must ensure that
7 workers' compensation medical benefits are reasonably available to
8 all injured workers of the political subdivision or the injured
9 workers of the members of the pool within a designed service area;

10 (2) the political subdivision or pool must ensure that
11 all necessary health care services are provided in a manner that
12 will ensure the availability of and accessibility to adequate
13 health care providers, specialty care, and facilities;

14 (3) the political subdivision or pool must have an
15 internal review process for resolving complaints relating to the
16 manner of providing medical benefits, including an appeal to the
17 governing body or its designee and appeal to an independent review
18 organization;

19 (4) the political subdivision or pool must establish
20 reasonable procedures for the transition of injured workers to
21 contract providers and for the continuity of treatment, including
22 notice of impending termination of providers and a current list of
23 contract providers;

24 (5) the political subdivision or pool shall provide
25 for emergency care if an injured worker cannot reasonably reach a
26 contract provider and the care is for medical screening or other
27 evaluation that is necessary to determine whether a medical

1 emergency condition exists, necessary emergency care services
2 including treatment and stabilization, and services originating in
3 a hospital emergency facility following treatment or stabilization
4 of an emergency medical condition;

5 (6) prospective or concurrent review of the medical
6 necessity and appropriateness of health care services must comply
7 with Article 21.58A, Insurance Code;

8 (7) the political subdivision or pool shall continue
9 to report data to the appropriate agency as required by Title 5 of
10 this code and Chapter 1305, Insurance Code; and

11 (8) a political subdivision or pool is subject to the
12 requirements under Sections 1305.501, 1305.502, and 1305.503,
13 Insurance Code.

14 (e) Nothing in this chapter waives sovereign immunity or
15 creates a new cause of action.

16 SECTION 3.323. Subsection (a), Section 505.002, Labor Code,
17 is amended to read as follows:

18 (a) The following provisions of Subtitles A and B apply to
19 and are included in this chapter except to the extent that they are
20 inconsistent with this chapter:

21 (1) Chapter 401, other than Section 401.012, defining
22 "employee";

23 (2) Chapter 402;

24 (3) Chapter 403, other than Sections 403.001-403.005;

25 (4) Chapters 404 and [Chapter] 405;

26 (5) Subchapters B, D, E, and H, Chapter 406, other than
27 Sections 406.071-406.073, and 406.075;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;

(9) Chapters 412-417; and

(10) Chapter 451.

SECTION 3.324. The heading to Section 505.053, Labor Code, is amended to read as follows:

Sec. 505.053. CERTIFIED COPIES OF DIVISION [~~COMMISSION~~] DOCUMENTS.

SECTION 3.325. Subsections (a) and (c), Section 505.053, Labor Code, are amended to read as follows:

(a) The division of workers' compensation [~~commission~~] shall furnish a certified copy of an order, award, decision, or paper on file with the division [~~in the commission's office~~] to a person entitled to the copy on written request and payment of the fee for the copy. The fee shall be the same as that charged for similar services by the secretary of state's office.

(c) A fee or salary may not be paid to an employee of [~~a person in~~] the division of workers' compensation [~~commission~~] for making the copies that exceeds the fee charged for the copies.

SECTION 3.326. Subsection (d), Section 505.054, Labor Code, is amended to read as follows:

(d) A physician designated under Subsection (c) who conducts an examination shall file with the department a complete transcript of the examination on a form furnished by the

1 department. The department shall maintain all reports under this
2 subsection as part of the department's permanent records. A report
3 under this subsection is admissible in evidence before the division
4 of workers' compensation [~~commission~~] and in an appeal from a final
5 award or ruling of the commissioner of workers' compensation [~~the~~
6 ~~commission~~] in which the individual named in the examination is a
7 claimant for compensation under this chapter. A report under this
8 subsection that is admitted is prima facie evidence of the facts
9 stated in the report.

10 SECTION 3.327. Section 505.055, Labor Code, is amended to
11 read as follows:

12 Sec. 505.055. REPORTS OF INJURIES. (a) A report of an
13 injury filed with the division of workers' compensation
14 [~~commission~~] under Section 409.005, in addition to the information
15 required by commissioner of workers' compensation [~~commission~~]
16 rules, must contain:

17 (1) the name, age, sex, and occupation of the injured
18 employee;

19 (2) the character of work in which the employee was
20 engaged at the time of the injury;

21 (3) the place, date, and hour of the injury; and

22 (4) the nature and cause of the injury.

23 (b) In addition to subsequent reports of an injury filed
24 with the division of workers' compensation [~~commission~~] under
25 Section 409.005(e), the department shall file a subsequent report
26 on a form obtained for that purpose:

27 (1) on the termination of incapacity of the injured

1 employee; or

2 (2) if the incapacity extends beyond 60 days.

3 SECTION 3.328. Subsections (a) and (d), Section 505.056,
4 Labor Code, are amended to read as follows:

5 (a) The division of workers' compensation [~~commission~~] may
6 require an employee who claims to have been injured to submit to an
7 examination by the division [~~commission~~] or a person acting under
8 the division's [~~commission's~~] authority at a reasonable time and
9 place in this state.

10 (d) On the request of an employee or the department, the
11 employee or the department is entitled to have a physician selected
12 by the employee or the department present to participate in an
13 examination under Subsection (a) or Section 408.004. The employee
14 is entitled to have a physician selected by the employee present to
15 participate in an examination under Subsection (c). The department
16 shall pay the fee set by the commissioner of workers' compensation
17 [~~commission~~] of a physician selected by the employee under this
18 subsection.

19 SECTION 3.329. Subsection (a), Section 505.057, Labor Code,
20 is amended to read as follows:

21 (a) The commissioner of workers' compensation [~~commission~~]
22 may order or direct the department to reduce or suspend the
23 compensation of an injured employee if the employee:

24 (1) persists in insanitary or injurious practices that
25 tend to imperil or retard the employee's recovery; or

26 (2) refuses to submit to medical, surgical, or other
27 remedial treatment recognized by the state that is reasonably

1 essential to promote the employee's recovery.

2 SECTION 3.330. Section 505.058, Labor Code, is amended to
3 read as follows:

4 Sec. 505.058. POSTPONEMENT OF HEARING. If an injured
5 employee is receiving benefits under this chapter and the
6 department is providing hospitalization or medical treatment to the
7 employee, the division of workers' compensation [~~commission~~] may
8 postpone the hearing of the employee's claim. An appeal may not be
9 taken from an [~~a commission~~] order of the commissioner of workers'
10 compensation under this section.

11 SECTION 3.331. Subsection (a), Section 505.059, Labor Code,
12 is amended to read as follows:

13 (a) In each case appealed from the division of workers'
14 compensation [~~commission~~] to a county or district court:

15 (1) the clerk of the court shall mail to the division
16 [~~commission~~]:

17 (A) not later than the 20th day after the date the
18 case is filed, a notice containing the style, number, and date of
19 filing of the case; and

20 (B) not later than the 20th day after the date the
21 judgment is rendered, a certified copy of the judgment; and

22 (2) the attorney preparing the judgment shall file the
23 original and a copy of the judgment with the clerk.

24 ARTICLE 4. PROVISION OF WORKERS' COMPENSATION MEDICAL BENEFITS
25 THROUGH WORKERS' COMPENSATION HEALTH CARE NETWORKS

26 SECTION 4.01. The heading to Subtitle D, Title 8, Insurance
27 Code, is amended to read as follows:

1 SUBTITLE D. [~~PREFERRED~~] PROVIDER [~~BENEFIT~~] PLANS

2 SECTION 4.02. Subtitle D, Title 8, Insurance Code, is
3 amended by adding Chapter 1305 to read as follows:

4 CHAPTER 1305. WORKERS' COMPENSATION HEALTH CARE NETWORKS5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 1305.001. SHORT TITLE. This chapter may be cited as
7 the Workers' Compensation Health Care Network Act.

8 Sec. 1305.002. PURPOSE. The purpose of this chapter is to:

9 (1) authorize the establishment of workers'
10 compensation health care networks for the provision of workers'
11 compensation medical benefits; and

12 (2) provide standards for the certification,
13 administration, evaluation, and enforcement of the delivery of
14 health care services to injured employees by networks contracting
15 with or established by:

16 (A) workers' compensation insurance carriers;

17 (B) employers certified to self-insure under
18 Chapter 407, Labor Code;

19 (C) groups of employers certified to self-insure
20 under Chapter 407A, Labor Code; and

21 (D) governmental entities that self-insure,
22 either individually or collectively.

23 Sec. 1305.003. LIMITATIONS ON APPLICABILITY. (a) This
24 chapter does not affect the authority of the division of workers'
25 compensation of the department to exercise the powers granted to
26 the division under Title 5, Labor Code, that do not conflict with
27 this chapter.

1 (b) In the event of a conflict between Title 5, Labor Code,
2 and this chapter as to the provision of medical benefits for injured
3 employees, the establishment and regulation of fees for medical
4 treatments and services, the time frames for payment of medical
5 bills, the operation and regulation of workers' compensation health
6 care networks, the regulation of health care providers who contract
7 with those networks, or the resolution of disputes regarding
8 medical benefits provided through those networks, this chapter
9 prevails.

10 Sec. 1305.004. DEFINITIONS. (a) In this chapter, unless
11 the context clearly indicates otherwise:

12 (1) "Adverse determination" means a determination,
13 made through utilization review or retrospective review, that the
14 health care services furnished or proposed to be furnished to an
15 employee are not medically necessary or appropriate.

16 (2) "Affiliate" means a person that directly, or
17 indirectly through one or more intermediaries, controls or is
18 controlled by, or is under common control with, the person
19 specified.

20 (3) "Capitation" means a method of compensation for
21 arranging for or providing health care services to employees for a
22 specified period that is based on a predetermined payment for each
23 employee for the specified period, without regard to the quantity
24 of services provided for the compensable injury.

25 (4) "Complainant" means a person who files a complaint
26 under this chapter. The term includes:

27 (A) an employee;

(B) an employer;
 (C) a health care provider; and
 (D) another person designated to act on behalf of
an employee.

(5) "Complaint" means any dissatisfaction expressed orally or in writing by a complainant to a network regarding any aspect of the network's operation. The term includes dissatisfaction relating to medical fee disputes and the network's administration and the manner in which a service is provided. The term does not include:

(A) a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the complainant; or

(B) an oral or written expression of dissatisfaction or disagreement with an adverse determination.

(6) "Credentialing" means the review, under nationally recognized standards to the extent that those standards do not conflict with other laws of this state, of qualifications and other relevant information relating to a health care provider who seeks a contract with a network.

(7) "Emergency" means either a medical or mental health emergency.

(8) "Employee" has the meaning assigned by Section 401.012, Labor Code.

(9) "Fee dispute" means a dispute over the amount of payment due for health care services determined to be medically

1 necessary and appropriate for treatment of a compensable injury.

2 (10) "Independent review" means a system for final
3 administrative review by an independent review organization of the
4 medical necessity and appropriateness of health care services being
5 provided, proposed to be provided, or that have been provided to an
6 employee.

7 (11) "Independent review organization" means an
8 entity that is certified by the commissioner to conduct independent
9 review under Article 21.58C and rules adopted by the commissioner.

10 (12) "Life-threatening" has the meaning assigned by
11 Section 2, Article 21.58A.

12 (13) "Medical emergency" means the sudden onset of a
13 medical condition manifested by acute symptoms of sufficient
14 severity, including severe pain, that the absence of immediate
15 medical attention could reasonably be expected to result in:

16 (A) placing the patient's health or bodily
17 functions in serious jeopardy; or

18 (B) serious dysfunction of any body organ or
19 part.

20 (14) "Medical records" means the history of diagnosis
21 and treatment for an injury, including medical, dental, and other
22 health care records from each health care practitioner who provides
23 care to an injured employee.

24 (15) "Mental health emergency" means a condition that
25 could reasonably be expected to present danger to the person
26 experiencing the mental health condition or another person.

27 (16) "Network" or "workers' compensation health care

1 network" means an organization that is:

2 (A) formed as a health care provider network to
 3 provide health care services to injured employees;

4 (B) certified in accordance with this chapter and
 5 commissioner rules; and

6 (C) established by, or operates under contract
 7 with, an insurance carrier.

8 (17) "Nurse" has the meaning assigned by Section 2,
 9 Article 21.58A.

10 (18) "Person" means any natural or artificial person,
 11 including an individual, partnership, association, corporation,
 12 organization, trust, hospital district, community mental health
 13 center, mental retardation center, mental health and mental
 14 retardation center, limited liability company, or limited
 15 liability partnership.

16 (19) "Preauthorization" means the process required to
 17 request approval from the insurance carrier or the network to
 18 provide a specific treatment or service before the treatment or
 19 service is provided.

20 (20) "Quality improvement program" means a system
 21 designed to continuously examine, monitor, and revise processes and
 22 systems that support and improve administrative and clinical
 23 functions.

24 (21) "Retrospective review" means the process of
 25 reviewing the medical necessity and reasonableness of health care
 26 that has been provided to an injured employee.

27 (22) "Rural area" means:

(A) a county with a population of 50,000 or less;

(B) an area that is not designated as an urbanized area by the United States Census Bureau; or

(C) any other area designated as rural under rules adopted by the commissioner.

(23) "Screening criteria" means the written policies, medical protocols, and treatment guidelines used by an insurance carrier or a network as part of utilization review or retrospective review.

(24) "Service area" means a geographic area within which health care services from network providers are available and accessible to employees who live within that geographic area.

(25) "Texas Workers' Compensation Act" means Subtitle A, Title 5, Labor Code.

(26) "Transfer of risk" means, for purposes of this chapter only, an insurance carrier's transfer of financial risk for the provision of health care services to a network through capitation or other means.

(27) "Utilization review" has the meaning assigned by Section 2, Article 21.58A.

(28) "Utilization review agent" has the meaning assigned by Article 21.58A.

(29) "Utilization review plan" means the screening criteria and utilization review procedures of an insurance carrier, a workers' compensation health care network, or a utilization review agent.

(b) In this chapter, the following terms have the meanings

1 assigned by Section 401.011, Labor Code:

- 2 (1) "compensable injury";
- 3 (2) "doctor";
- 4 (3) "employer";
- 5 (4) "health care";
- 6 (5) "health care facility";
- 7 (6) "health care practitioner";
- 8 (7) "health care provider";
- 9 (8) "injury";
- 10 (9) "insurance carrier"; and
- 11 (10) "treating doctor."

12 Sec. 1305.005. PARTICIPATION IN NETWORK; NOTICE OF NETWORK
13 REQUIREMENTS. (a) An employer that elects to provide workers'
14 compensation insurance coverage under the Texas Workers'
15 Compensation Act may receive workers' compensation health care
16 services for the employer's injured employees through a workers'
17 compensation health care network.

18 (b) An insurance carrier may establish or contract with
19 networks certified under this chapter to provide health care
20 services under the Texas Workers' Compensation Act. If an employer
21 elects to contract with an insurance company for the provision of
22 health care services through a network, or if a self-insured
23 employer under Chapter 407, Labor Code, a group of employers
24 certified to self-insure under Chapter 407A, Labor Code, or a
25 public employer under Subtitle C, Title 5, Labor Code, elects to
26 establish or contract with a network, the employer's employees who
27 live within the network's service area are required to obtain

1 medical treatment for a compensable injury within the network,
2 except as provided by Sections 1305.006(1) and (3).

3 (c) Notwithstanding Subsection (b), the State Office of
4 Risk Management shall have exclusive authority to establish or
5 contract with networks certified under this chapter to provide
6 health care services under Chapter 501, Labor Code.

7 (d) The insurance carrier shall provide to the employer, and
8 the employer shall provide to the employer's employees, notice of
9 network requirements, including all information required by
10 Section 1305.451. The employer shall:

11 (1) obtain a signed acknowledgment from each employee,
12 written in English, Spanish, and any other language common to the
13 employer's employees, that the employee has received information
14 concerning the network and the network's requirements; and

15 (2) post notice of the network requirements at each
16 place of employment.

17 (e) The employer shall provide to each employee hired after
18 the notice is given under Subsection (d) the notice and information
19 required under that subsection not later than the third day after
20 the date of hire.

21 (f) An injured employee who has received notice of network
22 requirements but refuses to sign the acknowledgment form required
23 under Subsection (d) remains subject to the network requirements
24 established under this chapter.

25 (g) The employer shall notify an injured employee of the
26 network requirements at the time the employer receives actual or
27 constructive notice of an injury.

1 (h) An injured employee is not required to comply with the
2 network requirements until the employee receives the notice under
3 Subsection (d), (e), or (g). An insurance carrier that establishes
4 or contracts with a network is liable for the payment of medical
5 care under the requirements of Title 5, Labor Code, for an injured
6 employee who does not receive notice until the employee receives
7 notice of network requirements under this section.

8 (i) The commissioner may adopt rules as necessary to
9 implement this section.

10 Sec. 1305.006. INSURANCE CARRIER LIABILITY FOR
11 OUT-OF-NETWORK HEALTH CARE. An insurance carrier that establishes
12 or contracts with a network is liable for the following
13 out-of-network health care that is provided to an injured employee:

14 (1) emergency care;

15 (2) health care provided to an injured employee who
16 does not live within the service area of any network established by
17 the insurance carrier or with which the insurance carrier has a
18 contract; and

19 (3) health care provided by an out-of-network provider
20 pursuant to a referral from the injured employee's treating doctor
21 that has been approved by the network pursuant to Section 1305.103.

22 Sec. 1305.007. RULES. The commissioner may adopt rules as
23 necessary to implement this chapter.

24 [Sections 1305.008-1305.050 reserved for expansion]

25 SUBCHAPTER B. CERTIFICATION

26 Sec. 1305.051. CERTIFICATION REQUIRED. (a) A person may
27 not operate a workers' compensation health care network in this

1 state unless the person holds a certificate issued under this
2 chapter and rules adopted by the commissioner.

3 (b) A person may not perform any act of a workers'
4 compensation health care network except in accordance with the
5 specific authorization of this chapter or rules adopted by the
6 commissioner.

7 (c) A health maintenance organization regulated under
8 Chapter 843 or an organization of physicians and providers that
9 operates as a preferred provider benefit plan, as defined by
10 Chapter 1301, may obtain a certification as a workers' compensation
11 health care network in the same manner as any other person if that
12 entity meets the requirements of this chapter and rules adopted by
13 the commissioner under this chapter.

14 Sec. 1305.052. CERTIFICATE APPLICATION. (a) A person who
15 seeks to operate as a workers' compensation health care network
16 shall apply to the department for a certificate to organize and
17 operate as a network.

18 (b) A certificate application must be:

19 (1) filed with the department in the form prescribed
20 by the commissioner;

21 (2) verified by the applicant or an officer or other
22 authorized representative of the applicant; and

23 (3) accompanied by a nonrefundable fee set by
24 commissioner rule.

25 Sec. 1305.053. CONTENTS OF APPLICATION. Each certificate
26 application must include:

27 (1) a description or a copy of the applicant's basic

1 organizational structure documents and other related documents,
2 including organizational charts or lists that show:

3 (A) the relationships and contracts between the
4 applicant and any affiliates of the applicant; and

5 (B) the internal organizational structure of the
6 applicant's management and administrative staff;

7 (2) biographical information regarding each person
8 who governs or manages the affairs of the applicant, accompanied by
9 information sufficient to allow the commissioner to determine the
10 competence, fitness, and reputation of each officer or director of
11 the applicant or other person having control of the applicant;

12 (3) a copy of the form of any contract between the
13 applicant and any provider or group of providers, and with any third
14 party performing services on behalf of the applicant under
15 Subchapter D;

16 (4) a copy of the form of each contract with an
17 insurance carrier, as described by Section 1305.154;

18 (5) a financial statement, current as of the date of
19 the application, that is prepared using generally accepted
20 accounting practices and includes:

21 (A) a balance sheet that reflects a solvent
22 financial position;

23 (B) an income statement;

24 (C) a cash flow statement; and

25 (D) the sources and uses of all funds;

26 (6) a statement acknowledging that lawful process in a
27 legal action or proceeding against the network on a cause of action

1 arising in this state is valid if served in the manner provided by
2 Chapter 804 for a domestic company;

3 (7) a description and a map of the applicant's service
4 area or areas, with key and scale, that identifies each county or
5 part of a county to be served;

6 (8) a description of programs and procedures to be
7 utilized, including:

8 (A) a complaint system, as required under
9 Subchapter I;

10 (B) a quality improvement program, as required
11 under Subchapter G; and

12 (C) the utilization review and retrospective
13 review programs described in Subchapter H;

14 (9) a list of all contracted network providers that
15 demonstrates the adequacy of the network to provide comprehensive
16 health care services sufficient to serve the population of injured
17 employees within the service area and maps that demonstrate that
18 the access and availability standards under Subchapter G are met;
19 and

20 (10) any other information that the commissioner
21 requires by rule to implement this chapter.

22 Sec. 1305.054. ACTION ON APPLICATION; RENEWAL OF
23 CERTIFICATION. (a) The commissioner shall approve or disapprove
24 an application for certification as a network not later than the
25 60th day after the date the completed application is received by the
26 department. An application is considered complete on receipt of
27 all information required by this chapter and any commissioner

1 rules, including receipt of any additional information requested by
2 the commissioner as needed to make the determination.

3 (b) Additional information requested by the commissioner
4 under Subsection (a) may include information derived from an
5 on-site quality-of-care examination.

6 (c) The department shall notify the applicant of any
7 deficiencies in the application and may allow the applicant to
8 request additional time to revise the application, in which case
9 the 60-day period for approval or disapproval is tolled. The
10 commissioner may grant or deny requests for additional time at the
11 commissioner's discretion.

12 (d) An order issued by the commissioner disapproving an
13 application must specify in what respects the application does not
14 comply with applicable statutes and rules. An applicant whose
15 application is disapproved may request a hearing not later than the
16 30th day after the date of the commissioner's disapproval order.
17 The hearing is a contested case hearing under Chapter 2001,
18 Government Code.

19 (e) A certificate issued under this subchapter is valid
20 until revoked or suspended.

21 Sec. 1305.055. USE OF CERTAIN INSURANCE TERMS BY NETWORK
22 PROHIBITED. A network is not an insurer and may not use in the
23 network's name or informational literature the word "insurance,"
24 "casualty," "surety," or "mutual" or any other word that is:

25 (1) descriptive of the insurance, casualty, or surety
26 business; or

27 (2) deceptively similar to the name or description of

1 an insurer or surety corporation engaging in the business of
2 insurance in this state.

3 Sec. 1305.056. RESTRAINT OF TRADE; APPLICATION OF CERTAIN
4 LAWS. (a) A network that contracts with a provider or providers
5 practicing individually or as a group is not, because of the
6 contract or arrangement, considered to have entered into a
7 conspiracy in restraint of trade in violation of Chapter 15,
8 Business & Commerce Code.

9 (b) Notwithstanding any other law, a person who contracts
10 under this chapter with one or more providers in the process of
11 conducting activities that are permitted by law but that do not
12 require a certificate of authority or other authorization under
13 this code is not, because of the contract, considered to have
14 entered into a conspiracy in restraint of trade in violation of
15 Chapter 15, Business & Commerce Code.

16 (c) A network is subject to Articles 21.28 and 21.28-A and
17 is considered an insurer or insurance company, as applicable, for
18 purposes of those laws.

19 [Sections 1305.057-1305.100 reserved for expansion]

20 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION

21 HEALTH CARE NETWORKS

22 Sec. 1305.101. PROVIDING OR ARRANGING FOR HEALTH CARE.

23 (a) Except for emergencies and out-of-network referrals, a
24 network shall provide or arrange for health care services only
25 through providers or provider groups that are under contract with
26 or are employed by the network.

27 (b) A network doctor may not serve as a designated doctor or

1 perform a required medical examination, as those terms are used
2 under the Texas Workers' Compensation Act, for an employee
3 receiving medical care through a network with which the doctor
4 contracts or is employed.

5 (c) Notwithstanding any other provision of this chapter,
6 prescription medication or services, as defined by Section
7 401.011(19)(E), Labor Code, may not be delivered through a workers'
8 compensation health care network. Prescription medication and
9 services shall be reimbursed as provided by the Texas Workers'
10 Compensation Act and applicable rules of the commissioner of
11 workers' compensation.

12 Sec. 1305.102. MANAGEMENT CONTRACTS. (a) A network may
13 not enter into a contract with another entity for management
14 services unless the proposed contract is first filed with the
15 department and approved by the commissioner.

16 (b) The commissioner shall approve or disapprove the
17 contract not later than the 30th day after the date the contract is
18 filed, or within a reasonable extended period that the commissioner
19 specifies by notice given within the 30-day period.

20 (c) The contract must state that:

21 (1) the contract may not be canceled without cause
22 without at least 90 days' prior written notice;

23 (2) notice of any cancellation must be sent
24 simultaneously to the commissioner by certified mail; and

25 (3) the network is responsible for ensuring that all
26 functions delegated by the contract are performed in accordance
27 with applicable statutes and rules, subject to the carrier's

1 oversight and monitoring of the network's performance.

2 (d) The management contractor proposing to contract shall
3 provide to the commissioner information sufficient to allow the
4 commissioner to determine the competence, fitness, or reputation of
5 each of the contractor's officers and directors or other person
6 having control of the contractor, including criminal history
7 information demonstrating that none of those individuals has been
8 convicted of a felony involving moral turpitude or breach of
9 fiduciary duty.

10 (e) The commissioner shall disapprove the proposed contract
11 if the commissioner determines that the contract authorizes a
12 person who is not sufficiently trustworthy, competent,
13 experienced, and free from conflict of interest to manage the
14 network with due regard for the interests of employers, employees,
15 creditors, or the public.

16 (f) The commissioner may not approve a proposed management
17 contract unless the management contractor has in force in the
18 management contractor's own name a fidelity bond on the
19 contractor's officers and employees in the amount of \$250,000 or a
20 greater amount prescribed by the commissioner.

21 (g) The fidelity bond must be issued by an insurer
22 authorized to engage in business in this state and must be filed
23 with the department. If the commissioner determines that a
24 fidelity bond is not available from an insurer authorized to engage
25 in business in this state, the management contractor may obtain a
26 fidelity bond procured by a surplus lines agent under Chapter 981.

27 (h) The fidelity bond must obligate the surety to pay any

1 loss of money or other property or damage that the network sustains
2 because of an act of fraud or dishonesty by an employee or officer
3 of the management contractor during the period that the management
4 contract is in effect.

5 (i) In lieu of a fidelity bond, and at the commissioner's
6 discretion, the management contractor may deposit with the
7 comptroller cash or readily marketable liquid securities
8 acceptable to the commissioner. The deposit must be maintained in
9 the amount of, and is subject to the same conditions required for, a
10 fidelity bond under this section.

11 (j) A management contract approved by the commissioner
12 under this section may not be assigned to any other entity.

13 (k) A management contract filed with the department under
14 this section is confidential and is not subject to disclosure as
15 public information under Chapter 552, Government Code.

16 Sec. 1305.103. TREATING DOCTOR; REFERRALS. (a) A network
17 shall determine the specialty or specialties of doctors who may
18 serve as treating doctors.

19 (b) For each injury, an injured employee shall select a
20 treating doctor from the list of all treating doctors under
21 contract with the network in that service area.

22 (c) An employee who lives within the service area of a
23 network and who is being treated by a non-network provider for an
24 injury that occurred before the employer's insurance carrier
25 established or contracted with the network, shall select a network
26 treating doctor on notification by the carrier that health care
27 services are being provided through the network. The carrier shall

1 provide to the employee all information required by Section
2 1305.451. If the employee fails to select a treating doctor on or
3 before the 14th day after the date of receipt of the information
4 required by Section 1305.451, the network may assign the employee a
5 network treating doctor.

6 (d) Each network shall, by contract, require treating
7 doctors to provide, at a minimum, the functions and services for
8 injured employees described by this section.

9 (e) A treating doctor shall provide health care to the
10 employee for the employee's compensable injury and shall make
11 referrals to other network providers, or request referrals to
12 out-of-network providers if medically necessary services are not
13 available within the network. Referrals to out-of-network
14 providers must be approved by the network. The network shall
15 approve a referral to an out-of-network provider not later than the
16 seventh day after the date on which the referral is requested, or
17 sooner if circumstances and the condition of the employee require
18 expedited approval. If the network denies the referral request,
19 the employee may appeal the decision through the network's
20 complaint process under Subchapter I.

21 (f) The treating doctor shall participate in the medical
22 case management process as required by the network, including
23 participation in return-to-work planning.

24 Sec. 1305.104. SELECTION OF TREATING DOCTOR. (a) An
25 injured employee is entitled to the employee's initial choice of a
26 treating doctor from the list provided by the network of all
27 treating doctors under contract with the network who provide

1 services within the service area in which the injured employee
2 lives. The following does not constitute an initial choice of
3 treating doctor:

4 (1) a doctor salaried by the employer;
5 (2) a doctor providing emergency care; or
6 (3) any doctor who provides care before the employee
7 is enrolled in the network, except for a doctor selected under
8 Section 1305.105.

9 (b) An employee who is dissatisfied with the initial choice
10 of a treating doctor is entitled to select an alternate treating
11 doctor from the network's list of treating doctors who provide
12 services within the service area in which the injured employee
13 lives by notifying the network in the manner prescribed by the
14 network. The network may not deny a selection of an alternate
15 treating doctor.

16 (c) An employee who is dissatisfied with an alternate
17 treating doctor must obtain authorization from the network to
18 select any subsequent treating doctor. The network shall establish
19 procedures and criteria to be used in authorizing an employee to
20 select subsequent treating doctors. The criteria must include, at
21 a minimum, whether:

22 (1) treatment by the current treating doctor is
23 medically inappropriate;

24 (2) the employee is receiving appropriate medical care
25 to reach maximum medical improvement or medical care in compliance
26 with the network's treatment guidelines; and

27 (3) a conflict exists between the employee and the

1 current treating doctor to the extent that the doctor-patient
2 relationship is jeopardized or impaired.

3 (d) Denial of a request for any subsequent treating doctor
4 is subject to the appeal process for a complaint filed under
5 Subchapter I.

6 (e) For purposes of this section, the following do not
7 constitute the selection of an alternate or any subsequent treating
8 doctor:

9 (1) a referral made by the treating doctor, including
10 a referral for a second or subsequent opinion;

11 (2) the selection of a treating doctor because the
12 original treating doctor:

13 (A) dies;

14 (B) retires; or

15 (C) leaves the network; or

16 (3) a change of treating doctor required because of a
17 change of address by the employee to a location outside the service
18 area distance requirements, as described by Section 1305.302(g).

19 (f) A network shall provide that an injured employee with a
20 chronic, life-threatening injury or chronic pain related to a
21 compensable injury may apply to the network's medical director to
22 use a nonprimary care physician specialist that is in the network as
23 the injured employee's treating doctor.

24 (g) An application under Subsection (f) must:

25 (1) include information specified by the network,
26 including certification of the medical need provided by the
27 nonprimary care physician specialist; and

1 (2) be signed by the injured employee and the
2 nonprimary care physician specialist interested in serving as the
3 injured employee's treating doctor.

4 (h) To be eligible to serve as the injured employee's
5 treating doctor, a physician specialist must agree to accept the
6 responsibility to coordinate all of the injured employee's health
7 care needs.

8 (i) If a network denies a request under Subsection (f), the
9 injured employee may appeal the decision through the network's
10 established complaint resolution process under Subchapter I.

11 Sec. 1305.105. TREATMENT BY A PRIMARY CARE PHYSICIAN OR
12 PROVIDER UNDER CHAPTER 843; RECOMMENDATIONS REGARDING USE OF
13 PREFERRED PROVIDER PLAN. (a) Notwithstanding any other provision
14 of this chapter, an injured employee required to receive health
15 care services within a network may select as the employee's
16 treating doctor a doctor who the employee selected, prior to
17 injury, as the employee's primary care physician or provider under
18 Chapter 843, as the terms "physician" and "provider" are defined in
19 that chapter.

20 (b) A doctor serving as an employee's treating doctor under
21 Subsection (a) must agree to abide by the terms of the network's
22 contract and comply with the provisions of this subchapter and
23 Subchapters D and G. Services provided by such a doctor are
24 considered to be network services and are subject to Subchapters H
25 and I.

26 (c) Any change of doctor requested by an employee being
27 treated by a doctor under Subsection (a) must be to a network doctor

1 and is subject to the requirements of this chapter.

2 (d) In studying the adequacy of networks under this chapter,
3 the department shall offer recommendations to the 80th Legislature
4 regarding whether to make statutory changes to allow treatment by
5 non-network providers through a preferred provider benefit plan, as
6 defined by Chapter 1301.

7 Sec. 1305.106. PAYMENT OF HEALTH CARE PROVIDER.

8 Notwithstanding any other provision of this chapter, an insurance
9 carrier shall pay, reduce, deny, or determine to audit, a claim for
10 services provided through a workers' compensation health care
11 network only in accordance with Section 408.027, Labor Code.

12 Sec. 1305.107. TELEPHONE ACCESS. (a) Each network shall
13 have appropriate personnel reasonably available through a
14 toll-free telephone service at least 40 hours per week during
15 normal business hours, in both time zones in this state if
16 applicable, to discuss an employee's care and to allow response to
17 requests for information, including information regarding adverse
18 determinations.

19 (b) A network must have a telephone system capable of
20 accepting or recording or providing instructions to incoming calls
21 during other than normal business hours. The network shall respond
22 to those calls not later than two business days after the date:

23 (1) the call was received by the network; or

24 (2) the details necessary to respond were received by
25 the network from the caller.

26 [Sections 1305.108-1305.150 reserved for expansion]

1 SUBCHAPTER D. CONTRACTING PROVISIONS

2 Sec. 1305.151. TRANSFER OF RISK. A contract under this
3 subchapter may not involve a transfer of risk.

4 Sec. 1305.152. NETWORK CONTRACTS WITH PROVIDERS. (a) A
5 network shall enter into a written contract with each provider or
6 group of providers that participates in the network. A provider
7 contract under this section is confidential and is not subject to
8 disclosure as public information under Chapter 552, Government
9 Code.

10 (b) A network is not required to accept an application for
11 participation in the network from a health care provider who
12 otherwise meets the requirements specified in this chapter for
13 participation if the network determines that the network has
14 contracted with a sufficient number of qualified health care
15 providers.

16 (c) Provider contracts and subcontracts must include, at a
17 minimum, the following provisions:

18 (1) a hold-harmless clause stating that the network
19 and the network's contracted providers are prohibited from billing
20 or attempting to collect any amounts from employees for health care
21 services under any circumstances, including the insolvency of the
22 insurance carrier or the network, except as provided by Section
23 1305.451(b)(6);

24 (2) a statement that the provider agrees to follow
25 treatment guidelines adopted by the network under Section 1305.304,
26 as applicable to an employee's injury;

27 (3) a continuity of treatment clause that states that

1 if a provider leaves the network, the insurance carrier or network
2 is obligated to continue to reimburse the provider for a period not
3 to exceed 90 days at the contracted rate for care of an employee
4 with a life-threatening condition or an acute condition for which
5 disruption of care would harm the employee;

6 (4) a clause regarding appeal by the provider of
7 termination of provider status and applicable written notification
8 to employees regarding such a termination, including provisions
9 determined by the commissioner; and

10 (5) any other provisions required by the commissioner
11 by rule.

12 (d) Continued care as described by Subsection (c)(3) must be
13 requested by a provider. A dispute involving continuity of care is
14 subject to the dispute resolution process under Subchapter I.

15 (e) An insurance carrier and a network may not use any
16 financial incentive or make a payment to a health care provider that
17 acts directly or indirectly as an inducement to limit medically
18 necessary services.

19 Sec. 1305.153. PROVIDER REIMBURSEMENT. (a) The amount of
20 reimbursement for services provided by a network provider is
21 determined by the contract between the network and the provider or
22 group of providers.

23 (b) If an insurance carrier or network has preauthorized a
24 health care service, the insurance carrier or network or the
25 network's agent or other representative may not deny payment to a
26 provider except for reasons other than medical necessity.

27 (c) Out-of-network providers who provide care as described

1 by Section 1305.006 shall be reimbursed as provided by the Texas
2 Workers' Compensation Act and applicable rules of the commissioner
3 of workers' compensation.

4 (d) Subject to Subsection (a), billing by, and
5 reimbursement to, contracted and out-of-network providers is
6 subject to the requirements of the Texas Workers' Compensation Act
7 and applicable rules of the commissioner of workers' compensation,
8 as consistent with this chapter. This subsection may not be
9 construed to require application of rules of the commissioner of
10 workers' compensation regarding reimbursement if application of
11 those rules would negate reimbursement amounts negotiated by the
12 network.

13 (e) An insurance carrier shall notify in writing a network
14 provider if the carrier contests the compensability of the injury
15 for which the provider provides health care services. A carrier may
16 not deny payment for health care services provided by a network
17 provider before that notification on the grounds that the injury
18 was not compensable. Payment for medically necessary health care
19 services provided prior to written notification of a compensability
20 denial is not subject to denial, recoupment, or refund from a
21 network provider based on compensability. If the insurance carrier
22 successfully contests compensability, the carrier is liable for
23 health care provided before issuance of the notification required
24 by this subsection, up to a maximum of \$7,000.

25 Sec. 1305.154. NETWORK-CARRIER CONTRACTS. (a) Except for
26 emergencies and out-of-network referrals, a network may provide
27 health care services to employees only through a written contract

1 with an insurance carrier. A network-carrier contract under this
2 section is confidential and is not subject to disclosure as public
3 information under Chapter 552, Government Code.

4 (b) A carrier and a network may negotiate the functions to
5 be provided by the network, except that the network shall contract
6 with providers for the provision of health care, and shall perform
7 functions related to the operation of a quality improvement program
8 and credentialing in accordance with the requirements of this
9 chapter.

10 (c) A network's contract with a carrier must include:

11 (1) a description of the functions that the carrier
12 delegates to the network, consistent with the requirements of
13 Subsection (b), and the reporting requirements for each function;

14 (2) a statement that the network and any management
15 contractor or third party to which the network delegates a function
16 will perform all delegated functions in full compliance with all
17 requirements of this chapter, the Texas Workers' Compensation Act,
18 and rules of the commissioner or the commissioner of workers'
19 compensation;

20 (3) a provision that the contract:

21 (A) may not be terminated without cause by either
22 party without 90 days' prior written notice; and

23 (B) must be terminated immediately if cause
24 exists;

25 (4) a hold-harmless provision stating that the
26 network, a management contractor, a third party to which the
27 network delegates a function, and the network's contracted

1 providers are prohibited from billing or attempting to collect any
2 amounts from employees for health care services under any
3 circumstances, including the insolvency of the carrier or the
4 network, except as provided by Section 1305.451(b)(6);

5 (5) a statement that the carrier retains ultimate
6 responsibility for ensuring that all delegated functions and all
7 management contractor functions are performed in accordance with
8 applicable statutes and rules and that the contract may not be
9 construed to limit in any way the carrier's responsibility,
10 including financial responsibility, to comply with all statutory
11 and regulatory requirements;

12 (6) a statement that the network's role is to provide
13 the services described under Subsection (b) as well as any other
14 services or functions delegated by the carrier, including functions
15 delegated to a management contractor, subject to the carrier's
16 oversight and monitoring of the network's performance;

17 (7) a requirement that the network provide the
18 carrier, at least monthly and in a form usable for audit purposes,
19 the data necessary for the carrier to comply with reporting
20 requirements of the department and the division of workers'
21 compensation with respect to any services provided under the
22 contract, as determined by commissioner rules;

23 (8) a requirement that the carrier, the network, any
24 management contractor, and any third party to which the network
25 delegates a function comply with the data reporting requirements of
26 the Texas Workers' Compensation Act and rules of the commissioner
27 of workers' compensation;

1 (9) a contingency plan under which the carrier would,
2 in the event of termination of the contract or a failure to perform,
3 reassume one or more functions of the network under the contract,
4 including functions related to:

5 (A) payments to providers and notification to
6 employees;

7 (B) quality of care;

8 (C) utilization review;

9 (D) retrospective review; and

10 (E) continuity of care, including a plan for
11 identifying and transitioning employees to new providers;

12 (10) a provision that requires that any agreement by
13 which the network delegates any function to a management contractor
14 or any third party be in writing, and that such an agreement require
15 the delegated third party or management contractor to be subject to
16 all the requirements of this subchapter;

17 (11) a provision that requires the network to provide
18 to the department the license number of a management contractor or
19 any delegated third party who performs a function that requires a
20 license as a utilization review agent under Article 21.58A or any
21 other license under this code or another insurance law of this
22 state;

23 (12) an acknowledgment that:

24 (A) any management contractor or third party to
25 whom the network delegates a function must perform in compliance
26 with this chapter and other applicable statutes and rules, and that
27 the management contractor or third party is subject to the

1 carrier's and the network's oversight and monitoring of its
2 performance; and

3 (B) if the management contractor or the third
4 party fails to meet monitoring standards established to ensure that
5 functions delegated to the management contractor or the third party
6 under the delegation contract are in full compliance with all
7 statutory and regulatory requirements, the carrier or the network
8 may cancel the delegation of one or more delegated functions;

9 (13) a requirement that the network and any management
10 contractor or third party to which the network delegates a function
11 provide all necessary information to allow the carrier to provide
12 information to employees as required by Section 1305.451; and

13 (14) a provision that requires the network, in
14 contracting with a third party directly or through another third
15 party, to require the third party to permit the commissioner to
16 examine at any time any information the commissioner believes is
17 relevant to the third party's financial condition or the ability of
18 the network to meet the network's responsibilities in connection
19 with any function the third party performs or has been delegated.

20 Sec. 1305.1545. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT.

21 (a) An insurance carrier or third-party administrator may not
22 reimburse a doctor or other health care provider, an institutional
23 provider, or an organization of doctors and health care providers
24 on a discounted fee basis for services that are provided to an
25 injured employee unless:

26 (1) the carrier or third-party administrator has
27 contracted with either:

1 (A) the doctor or other health care provider,
2 institutional provider, or organization of doctors and health care
3 providers; or

4 (B) a network that has contracted with the doctor
5 or other health care provider, institutional provider, or
6 organization of doctors and health care providers; and

7 (2) the doctor or other health care provider,
8 institutional provider, or organization of doctors and health care
9 providers has agreed to the contract and has agreed to provide
10 health care services under the terms of the contract.

11 (b) A party to a carrier-network contract may not sell,
12 lease, or otherwise transfer information regarding the payment or
13 reimbursement terms of the contract without the express authority
14 of and prior adequate notification to the other contracting
15 parties. This subsection does not affect the authority of the
16 commissioner under this code to request and obtain information.

17 (c) An insurance carrier or third-party administrator who
18 violates this section:

19 (1) commits an unfair claim settlement practice in
20 violation of Subchapter A, Chapter 542, Insurance Code; and

21 (2) is subject to administrative penalties under
22 Chapters 82 and 84, Insurance Code.

23 Sec. 1305.155. COMPLIANCE REQUIREMENTS. (a) An insurance
24 carrier that becomes aware of any information that indicates that
25 the network, any management contractor, or any third party to which
26 the network delegates a function is not operating in accordance
27 with the contract or is operating in a condition that renders the

1 continuance of the network's business hazardous to employees shall:

2 (1) notify the network in writing of those findings;

3 (2) request in writing a written explanation, with
4 documentation supporting the explanation, of:

5 (A) the network's apparent noncompliance with
6 the contract; or

7 (B) the existence of the condition that
8 apparently renders the continuance of the network's business
9 hazardous to employees; and

10 (3) notify the commissioner and provide the department
11 with copies of all notices and requests submitted to the network and
12 the responses and other documentation the carrier generates or
13 receives in response to the notices and requests.

14 (b) A network shall respond to a request from a carrier
15 under Subsection (a) in writing not later than the 30th day after
16 the date the request is received.

17 (c) The carrier shall cooperate with the network to correct
18 any failure by the network to comply with any regulatory
19 requirement of the department.

20 (d) On receipt of a notice under Subsection (a), or if a
21 complaint is filed with the department, on receipt of that
22 complaint, the commissioner or the commissioner's designated
23 representative shall examine the matters contained in the notice or
24 complaint as well as any other matter relating to the financial
25 solvency of the network or the network's ability to meet its
26 responsibilities in connection with any function performed by the
27 network or delegated to the network by the carrier.

1 (e) Except as provided by this subsection, on completion of
2 the examination, the department shall report to the network and the
3 carrier the results of the examination and any action the
4 department determines is necessary to ensure that the carrier meets
5 its responsibilities under this chapter, this code, and rules
6 adopted by the commissioner, and that the network can meet the
7 network's responsibilities in connection with any function
8 delegated by the carrier or performed by the network, any
9 management contractor, or any third party to which the network
10 delegates a function. The department may not report to the carrier
11 any information regarding fee schedules, prices, cost of care, or
12 other information not relevant to the monitoring plan.

13 (f) The network and the carrier shall respond to the
14 department's report and submit a corrective plan to the department
15 not later than the 30th day after the date of receipt of the report.

16 (g) The commissioner may order a carrier to take any action
17 the commissioner determines is necessary to ensure that the carrier
18 can provide all health care services under the Texas Workers'
19 Compensation Act, including:

20 (1) reassuming the functions performed by or delegated
21 to the network, including claims payments for services previously
22 provided to injured employees;

23 (2) temporarily or permanently ceasing coverage of
24 employees through the network;

25 (3) complying with the contingency plan required by
26 Section 1305.154(c)(9), including permitting an injured employee
27 to select a treating doctor in the manner provided by Section

1 408.022, Labor Code; or

2 (4) terminating the carrier's contract with the
3 network.

4 (h) The carrier retains ultimate responsibility for
5 ensuring that all delegated functions and all management contractor
6 functions are performed in accordance with applicable statutes and
7 rules and nothing in this section may be construed to limit in any
8 way the carrier's responsibility, including financial
9 responsibility, to comply with all statutory and regulatory
10 requirements.

11 [Sections 1305.156-1305.200 reserved for expansion]

12 SUBCHAPTER E. FINANCIAL REQUIREMENTS

13 Sec. 1305.201. NETWORK FINANCIAL REQUIREMENTS. (a) Each
14 network shall prepare financial statements in accordance with
15 generally accepted accounting standards, which must include
16 adequate provisions for liabilities, including incurred but not
17 reported obligations relating to providing benefits or services.

18 (b) Each network shall file the financial statement under
19 Subsection (a) with the department in the manner prescribed by
20 commissioner rule.

21 [Sections 1305.202-1305.250 reserved for expansion]

22 SUBCHAPTER F. EXAMINATIONS

23 Sec. 1305.251. EXAMINATION OF NETWORK. (a) As often as
24 the commissioner considers necessary, the commissioner or the
25 commissioner's designated representative may review the operations
26 of a network to determine compliance with this chapter. The review
27 may include on-site visits to the network's premises.

(b) During on-site visits, the network must make available to the department all records relating to the network's operations.

Sec. 1305.252. EXAMINATION OF PROVIDER OR THIRD PARTY. If requested by the commissioner or the commissioner's representative, each provider, provider group, or third party with which the network has contracted to provide health care services or any other services delegated to the network by an insurance carrier shall make available for examination by the department that portion of the books and records of the provider, provider group, or third party that is relevant to the relationship with the network of the provider, provider group, or third party.

[Sections 1305.253-1305.300 reserved for expansion]

SUBCHAPTER G. PROVISION OF SERVICES BY NETWORK; QUALITY
IMPROVEMENT PROGRAM

Sec. 1305.301. NETWORK ORGANIZATION; SERVICE AREAS.

(a) The chief executive officer, operations officer, or governing body of a network is responsible for:

(1) the development, approval, implementation, and
enforcement of:

(A) administrative, operational, personnel, and
patient care policies; and

(B) network procedures; and

(2) the development of any documents necessary for the
operation of the network.

(b) Each network shall have a chief executive officer or
operations officer who:

(1) is accountable for the day-to-day administration

1 of the network; and

2 (2) shall ensure compliance with all applicable
3 statutes and rules pertaining to the operation of the network.

4 (c) Each network shall have a medical director, who must be
5 an occupational medicine specialist or employ or contract with an
6 occupational medicine specialist, and who must be licensed to
7 practice medicine in the United States. The medical director
8 shall:

9 (1) be available at all times to address complaints,
10 clinical issues, and any quality improvement issues on behalf of
11 the network;

12 (2) be actively involved in all quality improvement
13 activities; and

14 (3) comply with the network's credentialing
15 requirements.

16 (d) The network shall establish one or more service areas
17 within this state. For each defined service area, the network must:

18 (1) demonstrate to the satisfaction of the department
19 the ability to provide continuity, accessibility, availability,
20 and quality of services;

21 (2) specify the counties and zip code areas, or any
22 parts of a county or zip code area, included in the service area;
23 and

24 (3) provide a complete provider directory to all
25 policyholders who have selected a network in the service area.

26 Sec. 1305.302. ACCESSIBILITY AND AVAILABILITY
27 REQUIREMENTS. (a) All services specified by this section must be

1 provided by a provider who holds an appropriate license, unless the
2 provider is exempt from license requirements.

3 (b) The network shall ensure that the network's provider
4 panel includes an adequate number of treating doctors and
5 specialists, who must be available and accessible to employees 24
6 hours a day, seven days a week, within the network's service area.
7 A network must include sufficient numbers and types of health care
8 providers to ensure choice, access, and quality of care to injured
9 employees. An adequate number of the treating doctors and
10 specialists must have admitting privileges at one or more network
11 hospitals located within the network's service area to ensure that
12 any necessary hospital admissions are made.

13 (c) Hospital services must be available and accessible 24
14 hours a day, seven days a week, within the network's service area.
15 The network shall provide for the necessary hospital services by
16 contracting with general, special, and psychiatric hospitals.

17 (d) Physical and occupational therapy services and
18 chiropractic services must be available and accessible within the
19 network's service area.

20 (e) Emergency care must be available and accessible 24 hours
21 a day, seven days a week, without restrictions as to where the
22 services are rendered.

23 (f) Except for emergencies, a network shall arrange for
24 services, including referrals to specialists, to be accessible to
25 employees on a timely basis on request, but not later than the last
26 day of the third week after the date of the request.

27 (g) Each network shall provide that network services are

1 sufficiently accessible and available as necessary to ensure that
2 the distance from any point in the network's service area to a point
3 of service by a treating doctor or general hospital is not greater
4 than 30 miles in nonrural areas and 60 miles in rural areas and that
5 the distance from any point in the network's service area to a point
6 of service by a specialist or specialty hospital is not greater than
7 75 miles in nonrural areas and 75 miles in rural areas. For
8 portions of the service area in which the network identifies
9 noncompliance with this subsection, the network must file an access
10 plan with the department in accordance with Subsection (h).

11 (h) The network shall submit an access plan, as required by
12 commissioner rules, to the department for approval at least 30 days
13 before implementation of the plan if any health care service or a
14 network provider is not available to an employee within the
15 distance specified by Subsection (g) because:

16 (1) providers are not located within that distance;

17 (2) the network is unable to obtain provider contracts
18 after good faith attempts; or

19 (3) providers meeting the network's minimum quality of
20 care and credentialing requirements are not located within that
21 distance.

22 (i) The network may make arrangements with providers
23 outside the service area to enable employees to receive a skill or
24 specialty not available within the network service area.

25 (j) The network may not be required to expand services
26 outside the network's service area to accommodate employees who
27 live outside the service area.

1 Sec. 1305.303. QUALITY OF CARE REQUIREMENTS. (a) A
2 network shall develop and maintain an ongoing quality improvement
3 program designed to objectively and systematically monitor and
4 evaluate the quality and appropriateness of care and services and
5 to pursue opportunities for improvement. The quality improvement
6 program must include return-to-work and medical case management
7 programs.

8 (b) The network's governing body is ultimately responsible
9 for the quality improvement program. The governing body shall:

10 (1) appoint a quality improvement committee that
11 includes network providers;

12 (2) approve the quality improvement program;

13 (3) approve an annual quality improvement plan;

14 (4) meet at least annually to receive and review
15 reports of the quality improvement committee or group of
16 committees, and take action as appropriate; and

17 (5) review the annual written report on the quality
18 improvement program.

19 (c) The quality improvement committee or committees shall
20 evaluate the overall effectiveness of the quality improvement
21 program as determined by commissioner rules.

22 (d) The quality improvement program must be continuous and
23 comprehensive and must address both the quality of clinical care
24 and the quality of services. The network shall dedicate adequate
25 resources, including adequate personnel and information systems,
26 to the quality improvement program.

27 (e) The network shall develop a written description of the

1 quality improvement program that outlines the organizational
2 structure of the program, the functional responsibilities of the
3 program, and the frequency of committee meetings.

4 (f) The network shall develop an annual quality improvement
5 work plan designed to reflect the type of services and the
6 populations served by the network in terms of age groups, disease or
7 injury categories, and special risk status, such as type of
8 industry.

9 (g) The network shall prepare an annual written report to
10 the department on the quality improvement program. The report must
11 include:

12 (1) completed activities;
13 (2) the trending of clinical and service goals;
14 (3) an analysis of program performance; and
15 (4) conclusions regarding the effectiveness of the
16 program.

17 (h) Each network shall implement a documented process for
18 the selection and retention of contracted providers, in accordance
19 with rules adopted by the commissioner.

20 (i) The quality improvement program must provide for a peer
21 review action procedure for providers, as described by Section
22 151.002, Occupations Code.

23 (j) The network shall have a medical case management program
24 with certified case managers. Case managers shall work with
25 treating doctors, referral providers, and employers to facilitate
26 cost-effective care and employee return-to-work.

27 Sec. 1305.304. GUIDELINES AND PROTOCOLS. Each network

1 shall adopt treatment guidelines, return-to-work guidelines, and
2 individual treatment protocols. The treatment guidelines and
3 individual treatment protocols must be evidence-based,
4 scientifically valid, and outcome-focused and be designed to reduce
5 inappropriate or unnecessary health care while safeguarding
6 necessary care. Treatment may not be denied solely on the basis
7 that the treatment for the compensable injury in question is not
8 specifically addressed by the treatment guidelines used by the
9 insurance carrier or network.

10 [Sections 1305.305-1305.350 reserved for expansion]

11 SUBCHAPTER H. UTILIZATION REVIEW; RETROSPECTIVE REVIEW

12 Sec. 1305.351. UTILIZATION REVIEW AND RETROSPECTIVE REVIEW
13 IN NETWORK. (a) The requirements of Article 21.58A apply to
14 utilization review conducted in relation to claims in a workers'
15 compensation health care network. In the event of a conflict
16 between Article 21.58A and this chapter, this chapter controls.

17 (b) Any screening criteria used for utilization review or
18 retrospective review related to a workers' compensation health care
19 network must be consistent with the network's treatment guidelines.

20 (c) The preauthorization requirements of Section 413.014,
21 Labor Code, and commissioner of workers' compensation rules adopted
22 under that section, do not apply to health care provided through a
23 workers' compensation network. If a network or carrier uses a
24 preauthorization process within a network, the requirements of this
25 subchapter and commissioner rules apply. A network or an insurance
26 carrier may not require preauthorization of treatments and services
27 for a medical emergency.

1 Sec. 1305.352. GENERAL STANDARDS FOR RETROSPECTIVE REVIEW.

2 (a) Retrospective review of a health care service shall be based
3 on written screening criteria established and periodically updated
4 with appropriate involvement from doctors, including actively
5 practicing doctors, and other health care providers.

6 (b) Retrospective review must be performed under the
7 direction of a physician.

8 Sec. 1305.353. NOTICE OF CERTAIN UTILIZATION REVIEW
9 DETERMINATIONS; PREAUTHORIZATION REQUIREMENTS. (a) The entity
10 performing utilization review or retrospective review shall notify
11 the employee or the employee's representative, if any, and the
12 requesting provider of a determination made in a utilization review
13 or retrospective review.

14 (b) Notification of an adverse determination must include:

15 (1) the principal reasons for the adverse
16 determination;

17 (2) the clinical basis for the adverse determination;

18 (3) a description of or the source of the screening
19 criteria that were used as guidelines in making the determination;

20 (4) a description of the procedure for the
21 reconsideration process; and

22 (5) notification of the availability of independent
23 review in the form prescribed by the commissioner.

24 (c) On receipt of a preauthorization request from a provider
25 for proposed services that require preauthorization, the
26 utilization review agent shall issue and transmit a determination
27 indicating whether the proposed health care services are

1 preauthorized. The utilization review agent shall respond to
2 requests for preauthorization within the periods prescribed by this
3 section.

4 (d) For services not described under Subsection (e) or (f),
5 the determination under Subsection (c) must be issued and
6 transmitted not later than the third calendar day after the date the
7 request is received.

8 (e) If the proposed services are for concurrent
9 hospitalization care, the utilization review agent shall, within 24
10 hours of receipt of the request, transmit a determination
11 indicating whether the proposed services are preauthorized.

12 (f) If the proposed health care services involve
13 poststabilization treatment or a life-threatening condition, the
14 utilization review agent shall transmit to the requesting provider
15 a determination indicating whether the proposed services are
16 preauthorized within the time appropriate to the circumstances
17 relating to the delivery of the services and the condition of the
18 patient, not to exceed one hour from receipt of the request. If the
19 utilization review agent issues an adverse determination in
20 response to a request for poststabilization treatment or a request
21 for treatment involving a life-threatening condition, the
22 utilization review agent shall provide to the employee or the
23 employee's representative, if any, and the employee's treating
24 provider the notification required under Subsection (a).

25 (g) For life-threatening conditions, the notification of
26 adverse determination must include notification of the
27 availability of independent review in the form prescribed by the

1 commissioner.

2 (h) Treatments and services for an emergency do not require
3 preauthorization.

4 Sec. 1305.354. RECONSIDERATION OF ADVERSE DETERMINATION.

5 (a) A utilization review agent shall maintain and make available a
6 written description of the reconsideration procedures involving an
7 adverse determination. The reconsideration procedures must be
8 reasonable and must include:

9 (1) a provision stating that reconsideration must be
10 performed by a provider other than the provider who made the
11 original adverse determination;

12 (2) a provision that an employee, a person acting on
13 behalf of the employee, or the employee's requesting provider may,
14 not later than the 30th day after the date of issuance of written
15 notification of an adverse determination, request reconsideration
16 of the adverse determination either orally or in writing;

17 (3) a provision that, not later than the fifth
18 calendar day after the date of receipt of the request, the network
19 shall send to the requesting party a letter acknowledging the date
20 of the receipt of the request that includes a reasonable list of
21 documents the requesting party is required to submit;

22 (4) a provision that, after completion of the review
23 of the request for reconsideration of the adverse determination,
24 the utilization review agent shall issue a response letter to the
25 employee or person acting on behalf of the employee, and the
26 employee's requesting provider, that:

27 (A) explains the resolution of the

1 reconsideration; and

2 (B) includes:

3 (i) a statement of the specific medical or
4 clinical reasons for the resolution;

5 (ii) the medical or clinical basis for the
6 decision;

7 (iii) the professional specialty of any
8 provider consulted; and

9 (iv) notice of the requesting party's right
10 to seek review of the denial by an independent review organization
11 and the procedures for obtaining that review; and

12 (5) written notification to the requesting party of
13 the determination of the request for reconsideration as soon as
14 practicable, but not later than the 30th day after the date the
15 utilization review agent received the request.

16 (b) In addition to the written request for reconsideration,
17 the reconsideration procedures must include a method for expedited
18 reconsideration procedures for denials of proposed health care
19 services involving poststabilization treatment or life-threatening
20 conditions, and for denials of continued stays for hospitalized
21 employees. The procedures must include a review by a provider who
22 has not previously reviewed the case and who is of the same or a
23 similar specialty as a provider who typically manages the
24 condition, procedure, or treatment under review. The period during
25 which that reconsideration must be completed shall be based on the
26 medical or clinical immediacy of the condition, procedure, or
27 treatment, but may not exceed one calendar day from the date of

1 receipt of all information necessary to complete the
2 reconsideration.

3 (c) Notwithstanding Subsection (a) or (b), an employee with
4 a life-threatening condition is entitled to an immediate review by
5 an independent review organization and is not required to comply
6 with the procedures for a reconsideration of an adverse
7 determination.

8 Sec. 1305.355. INDEPENDENT REVIEW OF ADVERSE
9 DETERMINATION. (a) The utilization review agent shall:

10 (1) permit the employee or person acting on behalf of
11 the employee and the employee's requesting provider whose
12 reconsideration of an adverse determination is denied to seek
13 review of that determination within the period prescribed by
14 Subsection (b) by an independent review organization assigned in
15 accordance with Article 21.58C and commissioner rules; and

16 (2) provide to the appropriate independent review
17 organization, not later than the third business day after the date
18 the utilization review agent receives notification of the
19 assignment of the request to an independent review organization:

20 (A) any medical records of the employee that are
21 relevant to the review;

22 (B) any documents used by the utilization review
23 agent in making the determination;

24 (C) the response letter described by Section
25 1305.354(a)(4);

26 (D) any documentation and written information
27 submitted in support of the request for reconsideration; and

1 (E) a list of the providers who provided care to
2 the employee and who may have medical records relevant to the
3 review.

4 (b) A request for independent review under Subsection (a)
5 must be timely filed by the requestor as follows:

6 (1) for a request for preauthorization or concurrent
7 review by an independent review organization, not later than the
8 45th day after the date of denial of a reconsideration for health
9 care requiring preauthorization or concurrent review; or

10 (2) for a request for retrospective medical necessity
11 review, not later than the 45th day after the denial of
12 reconsideration.

13 (c) The insurance carrier shall pay for the independent
14 review provided under this subchapter.

15 (d) The department shall assign the review request to an
16 independent review organization.

17 (e) A party to a medical dispute that remains unresolved
18 after a review under this section may seek judicial review of the
19 decision. The division of workers' compensation and the department
20 are not considered to be parties to the medical dispute.

21 (f) A determination of an independent review organization
22 related to a request for preauthorization or concurrent review is
23 binding during the pendency of any appeal, and the carrier and
24 network shall comply with the determination.

25 (g) If judicial review is not sought under this section, the
26 carrier and network shall comply with the independent review
27 organization's determination.

1 [Sections 1305.356-1305.400 reserved for expansion]

2 SUBCHAPTER I. COMPLAINT RESOLUTION

3 Sec. 1305.401. COMPLAINT SYSTEM REQUIRED. (a) Each
4 network shall implement and maintain a complaint system that
5 provides reasonable procedures to resolve an oral or written
6 complaint.

7 (b) The network may require a complainant to file the
8 complaint not later than the 90th day after the date of the event or
9 occurrence that is the basis for the complaint.

10 (c) The complaint system must include a process for the
11 notice and appeal of a complaint.

12 (d) The commissioner may adopt rules as necessary to
13 implement this section.

14 Sec. 1305.402. COMPLAINT INITIATION AND INITIAL RESPONSE;
15 DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant
16 notifies a network of a complaint, the network, not later than the
17 seventh calendar day after the date the network receives the
18 complaint, shall respond to the complainant, acknowledging the date
19 of receipt of the complaint and providing a description of the
20 network's complaint procedures and deadlines.

21 (b) The network shall investigate and resolve a complaint
22 not later than the 30th calendar day after the date the network
23 receives the complaint.

24 Sec. 1305.403. RECORD OF COMPLAINTS. (a) Each network
25 shall maintain a complaint and appeal log regarding each complaint.
26 The commissioner shall adopt rules designating the classification
27 of network complaints under this section.

1 (b) Each network shall maintain a record of and
2 documentation on each complaint, complaint proceeding, and action
3 taken on the complaint until the third anniversary of the date the
4 complaint was received.

5 (c) A complainant is entitled to a copy of the network's
6 record regarding the complaint and any proceeding relating to that
7 complaint.

8 (d) The department, during any investigation or examination
9 of a network, may review documentation maintained under this
10 subchapter, including original documentation, regarding a
11 complaint and action taken on the complaint.

12 Sec. 1305.404. RETALIATORY ACTION PROHIBITED. A network
13 may not engage in any retaliatory action against an employer or
14 employee because the employer or employee or a person acting on
15 behalf of the employer or employee has filed a complaint against the
16 network.

17 Sec. 1305.405. POSTING OF INFORMATION ON COMPLAINT PROCESS
18 REQUIRED. (a) A contract between a network and a provider must
19 require the provider to post, in the provider's office, a notice to
20 injured employees on the process for resolving complaints with the
21 network.

22 (b) The notice required under Subsection (a) must include
23 the department's toll-free telephone number for filing a complaint.

24 [Sections 1305.406-1305.450 reserved for expansion]

25 SUBCHAPTER J. EMPLOYEE INFORMATION AND RESPONSIBILITIES

26 Sec. 1305.451. EMPLOYEE INFORMATION; RESPONSIBILITIES OF
27 EMPLOYEE. (a) An insurance carrier that establishes or contracts

1 with a network shall provide to employers, and the employer shall
2 provide to its employees, an accurate written description of the
3 terms and conditions for obtaining health care within the network's
4 service area.

5 (b) The written description required under Subsection (a)
6 must be in English, Spanish, and any additional language common to
7 an employer's employees, must be in plain language and in a readable
8 and understandable format, and must include, in a clear, complete,
9 and accurate format:

10 (1) a statement that the entity providing health care
11 to employees is a workers' compensation health care network;

12 (2) the network's toll-free number and address for
13 obtaining additional information about the network, including
14 information about network providers;

15 (3) a statement that in the event of an injury, the
16 employee must select a treating doctor:

17 (A) from a list of all the network's treating
18 doctors who have contracts with the network in that service area; or

19 (B) as described by Section 1305.105;

20 (4) a statement that, except for emergency services,
21 the employee shall obtain all health care and specialist referrals
22 through the employee's treating doctor;

23 (5) an explanation that network providers have agreed
24 to look only to the network or insurance carrier and not to
25 employees for payment of providing health care, except as provided
26 by Subdivision (6);

27 (6) a statement that if the employee obtains health

1 care from non-network providers without network approval, except as
2 provided by Section 1305.006, the insurance carrier may not be
3 liable, and the employee may be liable, for payment for that health
4 care;

5 (7) information about how to obtain emergency care
6 services, including emergency care outside the service area, and
7 after-hours care;

8 (8) a list of the health care services for which the
9 insurance carrier or network requires preauthorization or
10 concurrent review;

11 (9) an explanation regarding continuity of treatment
12 in the event of the termination from the network of a treating
13 doctor;

14 (10) a description of the network's complaint system,
15 including a statement that the network is prohibited from
16 retaliating against:

17 (A) an employee if the employee files a complaint
18 against the network or appeals a decision of the network; or

19 (B) a provider if the provider, on behalf of an
20 employee, reasonably files a complaint against the network or
21 appeals a decision of the network;

22 (11) a summary of the insurance carrier's or network's
23 procedures relating to adverse determinations and the availability
24 of the independent review process;

25 (12) a list of network providers updated at least
26 quarterly, including:

27 (A) the names and addresses of the providers;

(B) a statement of limitations of accessibility and referrals to specialists; and

(C) a disclosure of which providers are accepting new patients; and

(13) a description of the network's service area.

(c) The network and the network's representatives and agents may not cause or knowingly permit the use or distribution to employees of information that is untrue or misleading.

(d) A network that contracts with an insurance carrier shall provide all the information necessary to allow the carrier to comply with this section.

[Sections 1305.452-1305.500 reserved for expansion]

SUBCHAPTER K. EVALUATION OF NETWORKS; CONSUMER REPORT CARD

Sec. 1305.501. EVALUATION OF NETWORKS. In accordance with the research duties assigned to the group under Chapter 405, Labor Code, the group shall, in accordance with the requirements adopted under Section 405.0025, Labor Code:

(1) objectively evaluate the impact of the workers' compensation health care networks certified under this chapter on the cost and quality of medical care provided to injured employees; and

(2) report the group's findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature not later than December 1 of each even-numbered year.

Sec. 1305.502. CONSUMER REPORT CARDS. (a) The group shall develop and issue an annual informational report card that

1 identifies and compares, on an objective basis, the quality, costs,
2 health care provider availability, and other analogous factors of
3 workers' compensation health care networks operating under the
4 workers' compensation system of this state with each other and with
5 medical care provided outside of networks.

6 (b) The group may procure services as necessary to produce
7 the report card. The report card must include a risk-adjusted
8 evaluation of:

- 9 (1) employee access to care;
10 (2) return-to-work outcomes;
11 (3) health-related outcomes;
12 (4) employee satisfaction with care; and
13 (5) health care costs and utilization of health care.

14 (c) The report cards may be based on information or data
15 from any person, agency, organization, or governmental entity that
16 the group considers reliable. The group may not endorse or
17 recommend a specific workers' compensation health care network or
18 plan, or subjectively rate or rank networks or plans, other than
19 through comparison and evaluation of objective criteria.

20 (d) The commissioner shall ensure that consumer report
21 cards issued by the group under this section are accessible to the
22 public on the department's Internet website and available to any
23 person on request. The commissioner by rule may set a reasonable
24 fee for obtaining a paper copy of report cards.

25 Sec. 1305.503. CONFIDENTIALITY REQUIREMENTS. (a) As
26 necessary to implement this subchapter, the department may access
27 information from an executive agency that is otherwise confidential

1 under any law of this state, including the Texas Workers'
2 Compensation Act.

3 (b) Confidential information provided to or obtained by the
4 department under this section remains confidential and is not
5 subject to disclosure under Chapter 552, Government Code. The
6 department may not release, and a person may not gain access to, any
7 information that:

8 (1) could reasonably be expected to reveal the
9 identity of an injured employee; or

10 (2) discloses provider discounts or differentials
11 between payments and billed charges for individual providers or
12 networks.

13 (c) Information that is in the possession of the department
14 and that relates to an individual injured employee, and any
15 compilation, report, or analysis produced from the information that
16 identifies an individual injured employee, are not:

17 (1) subject to discovery, subpoena, or other means of
18 legal compulsion for release to any person; or

19 (2) admissible in any civil, administrative, or
20 criminal proceeding.

21 [Sections 1305.504-1305.550 reserved for expansion]

22 SUBCHAPTER L. DISCIPLINARY ACTIONS

23 Sec. 1305.551. DETERMINATION OF VIOLATION; NOTICE. (a) If
24 the commissioner determines that a network, insurance carrier, or
25 any other person or third party operating under this chapter,
26 including a third party to which a network delegates a function, or
27 any third party with which a network contracts for management

1 services, is in violation of this chapter, rules adopted by the
2 commissioner under this chapter, or applicable provisions of the
3 Labor Code or rules adopted under that code, the commissioner or a
4 designated representative may notify the network, insurance
5 carrier, person, or third party of the alleged violation and may
6 compel the production of any documents or other information as
7 necessary to determine whether the violation occurred.

8 (b) The commissioner's designated representative may
9 initiate the proceedings under this section.

10 (c) A proceeding under this section is a contested case
11 under Chapter 2001, Government Code.

12 Sec. 1305.552. DISCIPLINARY ACTIONS. If under Section
13 1305.551 the commissioner determines that a network, insurance
14 carrier, or other person or third party described under Section
15 1305.551 has violated or is violating this chapter, rules adopted
16 by the commissioner under this chapter, or the Labor Code or rules
17 adopted under that code, the commissioner may:

18 (1) suspend or revoke a certificate issued under this
19 code;

20 (2) impose sanctions under Chapter 82;

21 (3) issue a cease and desist order under Chapter 83;

22 (4) impose administrative penalties under Chapter 84;

23 or

24 (5) take any combination of these actions.

25 ARTICLE 5. RATES AND UNDERWRITING REQUIREMENTS;

26 CONFORMING AMENDMENTS

27 SECTION 5.01. Section 1, Article 5.55, Insurance Code, is

amended by amending Subdivision (2) and adding Subdivision (2-a) to read as follows:

(2) "Insurer" means a person authorized and admitted by the department [~~Texas Department of Insurance~~] to engage in the [~~do insurance~~] business of insurance in this state under a certificate of authority that includes authorization to write workers' compensation insurance. The term includes:

(A) the Texas Mutual Insurance Company;

(B) a Lloyd's plan under Chapter 941 of this code; and

(C) a reciprocal and interinsurance exchange under Chapter 942 of this code.

(2-a) "Premium" means the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations.

SECTION 5.02. Subsections (b) and (d), Section 2, Article 5.55, Insurance Code, are amended to read as follows:

(b) In setting rates, an insurer shall consider:

(1) past and prospective loss cost experience;

(2) operation expenses;

(3) investment income;

(4) a reasonable margin for profit and contingencies;

[and]

(5) the effect on premiums of individual risk variations based on loss or expense considerations; and

(6) any other relevant factors.

1 (d) Rates and premiums established under this article may
2 not be excessive, inadequate, or unfairly discriminatory.

3 SECTION 5.03. Section 3, Article 5.55, Insurance Code, is
4 amended by adding Subsections (e) through (h) to read as follows:

5 (e) Not later than December 1 of each even-numbered year,
6 the commissioner shall report to the governor, lieutenant governor,
7 and speaker of the house of representatives regarding the impact
8 that legislation enacted during the regular session of the 79th
9 Legislature reforming the workers' compensation system of this
10 state has had on the affordability and availability of workers'
11 compensation insurance for the employers of this state. The report
12 must include an analysis of:

13 (1) the projected workers' compensation premium
14 savings realized by employers as a result of the reforms;

15 (2) the impact of the reforms on:

16 (A) the percentage of employers who provide
17 workers' compensation insurance coverage for their employees; and

18 (B) to the extent possible, economic development
19 and job creation;

20 (3) the effects of the reforms on market competition
21 and carrier financial solvency, including an analysis of how
22 carrier loss ratios, combined ratios, and use of individual risk
23 variations have changed since implementation of the reforms; and

24 (4) the extent of participation in workers'
25 compensation health care networks by small and medium-sized
26 employers.

27 (f) If the commissioner determines that workers'

1 compensation rate filings or premium levels analyzed by the
2 department do not appropriately reflect the savings associated with
3 the reforms described by Subsection (e) of this section, the
4 commissioner shall include in the report required under Subsection
5 (e) of this section any recommendations, including any recommended
6 legislative changes, necessary to identify the tools needed by the
7 department to more effectively regulate workers' compensation
8 rates.

9 (g) At the request of the department, each insurer shall
10 submit to the department all data and other information considered
11 necessary by the commissioner to generate the report required under
12 Subsection (e) of this section. Failure by an insurer to submit the
13 data and information in a timely fashion, as determined by
14 commissioner rule, constitutes grounds for sanctions under Chapter
15 82 of this code.

16 (h) In reviewing rates under this article, the commissioner
17 shall consider any state or federal legislation that has been
18 enacted and that may impact rates and premiums for workers'
19 compensation insurance coverage in this state.

20 SECTION 5.04. Subsection (b), Section 6, Article 5.55,
21 Insurance Code, is amended to read as follows:

22 (b) The disapproval order must be issued not later than the
23 15th day after the close of a hearing and must specify how the rate
24 fails to meet the requirements of this article. The disapproval
25 order must state the date on which the further use of that rate is
26 prohibited. ~~[A disapproval order does not affect a policy made or~~
27 ~~issued in accordance with this code before the expiration of the~~

1 ~~period established in the order.]~~

2 SECTION 5.05. Section 7, Article 5.55, Insurance Code, is
3 amended to read as follows:

4 Sec. 7. EFFECT OF DISAPPROVAL; PENALTY. (a) If a policy is
5 issued and the commissioner ~~[board]~~ subsequently disapproves the
6 rate or filing that governs the premium charged on the policy:

7 (1) the policyholder may continue the policy at the
8 original rate;

9 (2) the policyholder may cancel the policy without
10 penalty; or

11 (3) the policyholder and the insurer may agree to
12 amend the policy to reflect the premium that would have been charged
13 based on the insurer's most recently approved rate; the amendment
14 may not take effect before the date on which further use of the rate
15 is prohibited under the disapproval order.

16 (b) If a policy is issued and the commissioner subsequently
17 disapproves the rate or filing on which the premium is based, the
18 commissioner, after notice and the opportunity for a hearing, may:

19 (1) impose sanctions under Chapter 82 of this code;

20 (2) issue a cease and desist order under Chapter 83 of
21 this code;

22 (3) impose administrative penalties under Chapter 84
23 of this code; or

24 (4) take any combination of these actions ~~[If the~~
25 ~~board determines, based on a pattern of charges for premiums, that~~
26 ~~an insurer is consistently overcharging or undercharging, the board~~
27 ~~may assess an administrative penalty. The penalty shall be~~

~~assessed in accordance with Article 10, Texas Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes), and set by the board in an amount reasonable and necessary to deter the overcharging or undercharging of policyholders].~~

SECTION 5.055. Article 5.55, Insurance Code, is amended by adding Section 8 to read as follows:

Sec. 8. EXCLUSIVE JURISDICTION. The department has exclusive jurisdiction over all rates and premiums subject to this article.

SECTION 5.06. Subchapter D, Chapter 5, Insurance Code, is amended by adding Article 5.55A to read as follows:

Art. 5.55A. UNDERWRITING GUIDELINES

Sec. 1. DEFINITIONS. In this article:

(1) "Insurer" has the meaning assigned by Section 1(2), Article 5.55, of this code.

(2) "Underwriting guideline" means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or its agent to decide whether to accept or reject an application for coverage under a workers' compensation insurance policy or to determine how to classify those risks that are accepted for the purpose of determining a rate.

Sec. 2. UNDERWRITING GUIDELINES. Each underwriting guideline used by an insurer in writing workers' compensation insurance must be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk. An underwriting guideline may not be unfairly discriminatory.

Sec. 3. ENFORCEMENT. This article may be enforced in the

1 manner provided by Section 38.003(g) of this code.

2 Sec. 4. FILING REQUIREMENTS. Each insurer shall file with
3 the department a copy of the insurer's underwriting guidelines.
4 The insurer shall update its filing each time the underwriting
5 guidelines are changed. If a group of insurers files one set of
6 underwriting guidelines for the group, the group shall identify
7 which underwriting guidelines apply to each insurer in the group.

8 Sec. 5. APPLICABILITY OF SECTION 38.003. Section 38.003 of
9 this code applies to this article to the extent consistent with this
10 article.

11 SECTION 5.07. Subsection (b), Article 5.58, Insurance Code,
12 is amended to read as follows:

13 (b) Standards and Procedures. For purposes of Subsection
14 (c) of this article, the commissioner shall establish standards and
15 procedures for categorizing insurance and medical benefits
16 reported on each workers' compensation claim. The commissioner
17 shall consult with the commissioner of workers' compensation [~~Texas~~
18 ~~Workers' Compensation Commission and the Research and Oversight~~
19 ~~Council on Workers' Compensation~~] in establishing these standards
20 to ensure that the data collection methodology will also yield data
21 necessary for research and medical cost containment efforts.

22 SECTION 5.08. Article 5.60A, Insurance Code, is amended to
23 read as follows:

24 Art. 5.60A. RATE HEARINGS. (a) The commissioner [~~Board~~]
25 shall conduct a public [~~an annual~~] hearing each biennium, beginning
26 not later than December 1, 2008, to review rates to be charged for
27 workers' compensation insurance written in this state [~~under this~~]

1 ~~subchapter]. A public hearing under this article is not a contested~~
2 ~~case as defined by Section 2001.003, Government Code. [The hearing~~
3 ~~shall be conducted under the contested case provisions of the~~
4 ~~Administrative Procedure and Texas Register Act (Article 6252-13a,~~
5 ~~Vernon's Texas Civil Statutes).]~~

6 (b) Not later than the 30th day before the date of the public
7 hearing required under Subsection (a) of this article, each insurer
8 subject to this subchapter shall file the insurer's rates,
9 supporting information, and supplementary rating information with
10 the commissioner ~~[The Board shall conduct a hearing six months~~
11 ~~prior to the annual hearing to revise rates to establish the~~
12 ~~methodology and sources of data to be used in reviewing rates. The~~
13 ~~hearing shall be conducted under the Administrative Procedure and~~
14 ~~Texas Register Act (Article 6252-13a, Vernon's Texas Civil~~
15 ~~Statutes)].~~

16 (c) The commissioner shall review the information submitted
17 under Subsection (b) of this article to determine the positive or
18 negative impact of the enactment of workers' compensation reform
19 legislation enacted by the 79th Legislature, Regular Session, 2005,
20 on workers' compensation rates and premiums. The commissioner may
21 consider other factors, including relativities under Article 5.60
22 of this code, in determining whether a change in rates has impacted
23 the premium charged to policyholders ~~[To assist the Board in making~~
24 ~~rates and to provide additional information on certain trends that~~
25 ~~may affect the costs of workers' compensation insurance, the~~
26 ~~executive director of the Texas Workers' Compensation Commission or~~
27 ~~a person designated by that officer shall testify at any rate~~

1 ~~hearing conducted under this article. The testimony shall relate~~
2 ~~to trends in:~~

3 ~~[(1) claims resolution of workers' compensation cases,~~
4 ~~and~~

5 ~~[(2) cost components in workers' compensation cases].~~

6 (d) The commissioner shall implement rules as necessary to
7 mandate rate reductions or to modify the use of individual risk
8 variations if the commissioner determines that the rates or
9 premiums charged by insurers do not meet the rating standards as
10 defined in this code ~~[The testimony of the executive director or~~
11 ~~designee is subject to cross-examination by the Board and any party~~
12 ~~to the hearing].~~

13 (e) The commissioner shall adopt rules as necessary to
14 mandate rate or premium reductions by insurers for the use of
15 cost-containment strategies that result in savings to the workers'
16 compensation system, including use of a workers' compensation
17 health care network health care delivery system, as described by
18 Chapter 1305 of this code ~~[The Board shall consider changes in the~~
19 ~~workers' compensation laws when setting workers' compensation~~
20 ~~insurance rates].~~

21 ARTICLE 6. GENERAL CONFORMING AMENDMENTS

22 PART 1. CONFORMING AMENDMENTS--GOVERNMENT CODE

23 SECTION 6.001. Subsection (a), Section 23.101, Government
24 Code, is amended to read as follows:

25 (a) The trial courts of this state shall regularly and
26 frequently set hearings and trials of pending matters, giving
27 preference to hearings and trials of the following:

(1) temporary injunctions;
 (2) criminal actions, with the following actions given preference over other criminal actions:

(A) criminal actions against defendants who are detained in jail pending trial;

(B) criminal actions involving a charge that a person committed an act of family violence, as defined by Section 71.004, Family Code; and

(C) an offense under:

(i) Section 21.11, Penal Code;

(ii) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iii) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age; or

(iv) Section 25.06, Penal Code;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Subtitle B, Title 4, Family Code;

(5) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims [~~Workers' Compensation Commission~~] and claims under the Federal Employers' Liability Act and the Jones Act; and

(6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code.

SECTION 6.002. Subsection (c), Section 25.0003, Government

1 Code, is amended to read as follows:

2 (c) In addition to other jurisdiction provided by law, a
3 statutory county court exercising civil jurisdiction concurrent
4 with the constitutional jurisdiction of the county court has
5 concurrent jurisdiction with the district court in:

6 (1) civil cases in which the matter in controversy
7 exceeds \$500 but does not exceed \$100,000, excluding interest,
8 statutory or punitive damages and penalties, and attorney's fees
9 and costs, as alleged on the face of the petition; and

10 (2) appeals of final rulings and decisions of the
11 division of workers' compensation of the Texas Department of
12 Insurance regarding workers' compensation claims [~~Workers'~~
13 ~~Compensation Commission~~], regardless of the amount in controversy.

14 SECTION 6.003. Subsection (a), Section 25.0222, Government
15 Code, is amended to read as follows:

16 (a) In addition to the jurisdiction provided by Section
17 25.0003 and other law, a statutory county court in Brazoria County
18 has concurrent jurisdiction with the district court in:

19 (1) civil cases in which the matter in controversy
20 exceeds \$500 but does not exceed \$100,000, excluding interest,
21 statutory damages and penalties, and attorney's fees and costs, as
22 alleged on the face of the petition;

23 (2) appeals of final rulings and decisions of the
24 division of workers' compensation of the Texas Department of
25 Insurance regarding workers' compensation claims [~~Workers'~~
26 ~~Compensation Commission~~], regardless of the amount in controversy;
27 and

1 (3) family law cases and proceedings and juvenile
2 jurisdiction under Section 23.001.

3 SECTION 6.004. Subsection (i), Section 25.0862, Government
4 Code, is amended to read as follows:

5 (i) The clerk of the statutory county courts and statutory
6 probate court shall keep a separate docket for each court. The
7 clerk shall tax the official court reporter's fees as costs in civil
8 actions in the same manner as the fee is taxed in civil cases in the
9 district courts. The district clerk serves as clerk of the county
10 courts in a cause of action arising under the Family Code and an
11 appeal of a final ruling or decision of the division of workers'
12 compensation of the Texas Department of Insurance regarding
13 workers' compensation claims [~~Workers' Compensation Commission~~],
14 and the county clerk serves as clerk of the court in all other
15 cases.

16 SECTION 6.005. Subsection (b), Section 25.2222, Government
17 Code, as amended by Chapter 22, Acts of the 72nd Legislature,
18 Regular Session, 1991, is amended to read as follows:

19 (b) A county court at law has concurrent jurisdiction with
20 the district court in:

21 (1) civil cases in which the matter in controversy
22 exceeds \$500 and does not exceed \$100,000, excluding mandatory
23 damages and penalties, attorney's fees, interest, and costs;

24 (2) nonjury family law cases and proceedings;

25 (3) final rulings and decisions of the division of
26 workers' compensation of the Texas Department of Insurance
27 regarding workers' compensation claims [~~Workers' Compensation~~

~~Commission~~], regardless of the amount in controversy;

(4) eminent domain proceedings, both statutory and inverse, regardless of the amount in controversy;

(5) suits to decide the issue of title to real or personal property;

(6) suits to recover damages for slander or defamation of character;

(7) suits for the enforcement of a lien on real property;

(8) suits for the forfeiture of a corporate charter;

(9) suits for the trial of the right to property valued at \$200 or more that has been levied on under a writ of execution, sequestration, or attachment; and

(10) suits for the recovery of real property.

SECTION 6.006. Subsection (b), Section 551.044, Government Code, is amended to read as follows:

(b) Subsection (a) does not apply to:

(1) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation [~~Workers' Compensation Commission~~]; or

(2) the governing board of an institution of higher education.

SECTION 6.007. Subdivision (7), Section 2001.003, Government Code, is amended to read as follows:

(7) "State agency" means a state officer, board, commission, or department with statewide jurisdiction that makes

rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. The term does not include:

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation [~~Workers' Compensation Commission~~]; or

(E) an institution of higher education.

SECTION 6.008. Subdivision (3), Section 2002.001, Government Code, is amended to read as follows:

(3) "State agency" means a state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases other than:

(A) an agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation [~~Workers' Compensation Commission~~]; or

(E) an institution of higher education.

SECTION 6.009. Subdivision (4), Section 2003.001, Government Code, is amended to read as follows:

(4) "State agency" means:

(A) a state board, commission, department, or other agency that is subject to Chapter 2001; and

(B) to the extent provided by Title 5, Labor Code, the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation [~~Workers' Compensation Commission~~].

SECTION 6.010. Subsection (c), Section 2003.021, Government Code, is amended to read as follows:

(c) The office shall conduct hearings under Title 5, Labor Code, as provided by that title. In conducting hearings under Title 5, Labor Code, the office shall consider the applicable substantive rules and policies of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims [~~Workers' Compensation Commission~~]. The office and the Texas Department of Insurance [~~Workers' Compensation Commission~~] shall enter into an interagency contract under Chapter 771 to pay the costs incurred by the office in implementing this subsection.

SECTION 6.011. Subsection (c), Section 2054.021, Government Code, is amended to read as follows:

(c) Two groups each composed of three ex officio members serve on the board on a rotating basis. The ex officio members serve as nonvoting members of the board. Only one group serves at a time. The first group is composed of the commissioner of workers' compensation [~~executive director of the Texas Workers' Compensation Commission~~], the executive commissioner of the Health

1 and Human Services Commission [~~health and human services~~], and the
2 executive director of the Texas Department of Transportation.
3 Members of the first group serve for two-year terms that begin
4 February 1 of every other odd-numbered year and that expire on
5 February 1 of the next odd-numbered year. The second group is
6 composed of the commissioner of education, the executive director
7 of the Texas Department of Criminal Justice, and the executive
8 director of the Parks and Wildlife Department. Members of the
9 second group serve for two-year terms that begin February 1 of the
10 odd-numbered years in which the terms of members of the first group
11 expire and that expire on February 1 of the next odd-numbered year.

12 PART 2. CONFORMING AMENDMENTS--INSURANCE CODE

13 SECTION 6.051. Section 31.002, Insurance Code, is amended
14 to read as follows:

15 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other
16 duties required of the Texas Department of Insurance, the
17 department shall:

18 (1) regulate the business of insurance in this state;
19 [~~and~~]

20 (2) administer the workers' compensation system of
21 this state as provided by Title 5, Labor Code; and

22 (3) ensure that this code and other laws regarding
23 insurance and insurance companies are executed.

24 SECTION 6.052. Section 31.004, Insurance Code, is amended
25 to read as follows:

26 Sec. 31.004. SUNSET PROVISION. (a) The Texas Department of
27 Insurance is subject to Chapter 325, Government Code (Texas Sunset

1 Act). Unless continued in existence as provided by that chapter,
2 the department is abolished September 1, 2009 [~~2007~~].

3 (b) Unless continued as provided by Chapter 325, Government
4 Code, the duties of the division of workers' compensation of the
5 Texas Department of Insurance under Title 5, Labor Code, expire
6 September 1, 2009, or another date designated by the legislature.

7 SECTION 6.053. Subsection (b), Section 31.021, Insurance
8 Code, is amended to read as follows:

9 (b) The commissioner has the powers and duties vested in the
10 department by:

11 (1) this code and other insurance laws of this state;
12 and

13 (2) Title 5, Labor Code, and other workers'
14 compensation insurance laws of this state.

15 SECTION 6.054. Subsection (a), Section 33.007, Insurance
16 Code, is amended to read as follows:

17 (a) A person who served as the commissioner, the general
18 counsel to the commissioner, or the public insurance counsel, or as
19 an employee of the State Office of Administrative Hearings who was
20 involved in hearing cases under this code, ~~[or]~~ another insurance
21 law of this state, or Title 5, Labor Code, commits an offense if the
22 person represents another person in a matter before the department
23 or receives compensation for services performed on behalf of
24 another person regarding a matter pending before the department
25 during the one-year period after the date the person ceased to be
26 the commissioner, the general counsel to the commissioner, the
27 public insurance counsel, or an employee of the State Office of

1 Administrative Hearings.

2 SECTION 6.055. Section 36.104, Insurance Code, is amended
3 to read as follows:

4 Sec. 36.104. INFORMAL DISPOSITION OF CERTAIN CONTESTED
5 CASES [~~CASE~~]. (a) The commissioner may, on written agreement or
6 stipulation of each party and any intervenor, informally dispose of
7 a contested case in accordance with Section 2001.056, Government
8 Code, notwithstanding any provision of this code that requires a
9 hearing before the commissioner.

10 (b) This section does not apply to a contested case under
11 Title 5, Labor Code.

12 SECTION 6.056. Subchapter D, Chapter 36, Insurance Code, is
13 amended by adding Section 36.2015 to read as follows:

14 Sec. 36.2015. ACTIONS UNDER TITLE 5, LABOR CODE.
15 Notwithstanding Section 36.201, a decision, order, form, or
16 administrative or other rule of the commissioner of workers'
17 compensation under Title 5, Labor Code, or a rule adopted by the
18 commissioner of insurance under Title 5, Labor Code, is subject to
19 judicial review as provided by Title 5, Labor Code.

20 SECTION 6.057. Subsection (c), Section 40.003, Insurance
21 Code, is amended to read as follows:

22 (c) This chapter does not apply to a proceeding conducted
23 under Chapter 201 [~~Article 1.04D~~] or to a proceeding relating to:

24 (1) approving or reviewing rates or rating manuals
25 filed by an individual company, unless the rates or manuals are
26 contested;

27 (2) adopting a rule;

(3) adopting or approving a policy form or policy form endorsement;

(4) adopting or approving a plan of operation for an organization subject to the jurisdiction of the department; ~~[or]~~

(5) adopting a presumptive rate under Chapter 1153; or

(6) a workers' compensation claim brought under Title 5, Labor Code ~~[Article 3.53]~~.

SECTION 6.058. Subsection (c), Section 81.001, Insurance Code, is amended to read as follows:

(c) This section does not apply to conduct that is:

(1) a violation that is ongoing at the time the department seeks to impose the sanction, penalty, or fine; ~~[or]~~

(2) a violation of Subchapter A, Chapter 544 ~~[Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995]~~, or Section 541.057 ~~[4(7)(a), Article 21.21 of this code]~~, as those provisions relate to discrimination on the basis of race or color, regardless of the time the conduct occurs; or

(3) a violation of Title 5, Labor Code.

SECTION 6.059. Section 84.002, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) This chapter applies to a monetary penalty the department or the commissioner of workers' compensation imposes under Title 5, Labor Code, only as provided by that title.

SECTION 6.060. Section 843.101, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) A health maintenance organization may serve as a

1 workers' compensation health care network, as defined by Section
2 1305.004, in accordance with Chapter 1305.

3 SECTION 6.061. Subsection (b), Section 1301.056, Insurance
4 Code, as effective April 1, 2005, is amended to read as follows:

5 (b) A party to a preferred provider contract, including a
6 contract with a preferred provider organization, may not sell,
7 lease, or otherwise transfer information regarding the payment or
8 reimbursement terms of the contract without the express authority
9 of and prior adequate notification to the other contracting
10 parties. This subsection does not affect the authority of the
11 commissioner of insurance or the commissioner of workers'
12 compensation [~~or the Texas Workers' Compensation Commission~~] under
13 this code or Title 5, Labor Code, to request and obtain information.

14 SECTION 6.062. Section (a), Article 5.65A, Insurance Code,
15 is amended to read as follows:

16 (a) A company or association that writes workers'
17 compensation insurance in this state shall notify each policyholder
18 of any claim that is filed against the policy. Thereafter a company
19 shall notify the policyholder of any proposal to settle a claim or,
20 on receipt of a written request from the policyholder, of any
21 administrative or judicial proceeding relating to the resolution of
22 a claim[~~, including a benefit review conference conducted by the~~
23 ~~Texas Workers' Compensation Commission~~].

24 SECTION 6.063. Subsections (a), (e), (g)-(i), (k), and (l),
25 Section 8, Article 5.76-3, Insurance Code, are amended to read as
26 follows:

27 (a) The company may make and enforce requirements for the

1 prevention of injuries to employees of its policyholders or
2 applicants for insurance under this article. For this purpose,
3 representatives of the company[, ~~representatives of the~~
4 ~~commission~~] or representatives of the department on reasonable
5 notice shall be granted free access to the premises of each
6 policyholder or applicant during regular working hours.

7 (e) The policyholder shall obtain the safety consultation
8 not later than the 30th day after the effective date of the policy
9 and shall obtain the safety consultation from the division of
10 workers' compensation [~~health and safety~~] of the department
11 [~~commission~~], the company, or another professional source approved
12 for that purpose by the division of workers' compensation [~~health~~
13 ~~and safety~~]. The safety consultant shall file a written report with
14 the division [~~commission~~] and the policyholder setting out any
15 hazardous conditions or practices identified by the safety
16 consultation.

17 (g) The division of workers' compensation [~~health and~~
18 ~~safety~~] of the department [~~commission~~] may investigate accidents
19 occurring at the work sites of a policyholder for whom a plan has
20 been developed under Subsection (f) of this section, and the
21 division may otherwise monitor the implementation of the accident
22 prevention plan as it finds necessary.

23 (h) In accordance with rules adopted by the commissioner of
24 workers' compensation [~~commission~~], not earlier than 90 days or
25 later than six months after the development of an accident
26 prevention plan under Subsection (f) of this section, the division
27 of workers' compensation [~~health and safety~~] of the department

1 ~~[commission]~~ shall conduct a follow-up inspection of the
2 policyholder's premises. The division ~~[commission]~~ may require the
3 participation of the safety consultant who performed the initial
4 consultation and developed the safety plan. If the commissioner of
5 workers' compensation ~~[division]~~ determines that the policyholder
6 has complied with the terms of the accident prevention plan or has
7 implemented other accepted corrective measures, the commissioner
8 of workers' compensation ~~[division]~~ shall so certify. If a
9 policyholder fails or refuses to implement the accident prevention
10 plan or other suitable hazard abatement measures, the policyholder
11 may elect to cancel coverage not later than the 30th day after the
12 date of the ~~[division]~~ determination. If the policyholder does not
13 elect to cancel, the company may cancel the coverage or the
14 commissioner of workers' compensation ~~[commission]~~ may assess an
15 administrative penalty not to exceed \$5,000. Each day of
16 noncompliance constitutes a separate violation. Penalties
17 collected under this section shall be deposited in the general
18 revenue fund and may be appropriated ~~[to the credit of the~~
19 ~~commission or reappropriated]~~ to the division of workers'
20 compensation of the department ~~[commission]~~ to offset the costs of
21 implementing and administering this section.

22 (i) In assessing an administrative penalty, the
23 commissioner of workers' compensation ~~[commission]~~ may consider
24 any matter that justice may require and shall consider:

25 (1) the seriousness of the violation, including the
26 nature, circumstances, consequences, extent, and gravity of the
27 prohibited act;

1 (2) the history and extent of previous administrative
2 violations;

3 (3) the demonstrated good faith of the violator,
4 including actions taken to rectify the consequences of the
5 prohibited act;

6 (4) any economic benefit resulting from the prohibited
7 act; and

8 (5) the penalty necessary to deter future violations.

9 (k) The division of workers' compensation of the department
10 ~~[commission]~~ shall charge the policyholder for the reasonable cost
11 of services provided under Subsections (e), (f), and (h) of this
12 section. The fees for those services shall be set at a
13 cost-reimbursement level including a reasonable allocation of the
14 division's ~~[commission's]~~ administrative costs.

15 (1) The division of workers' compensation of the department
16 ~~[compliance and practices division of the commission]~~ shall enforce
17 compliance with this section through the administrative violation
18 proceedings under Chapter 415, Labor Code.

19 SECTION 6.064. Subsections (a), (b), and (e), Section 9,
20 Article 5.76-3, Insurance Code, are amended to read as follows:

21 (a) The company shall develop and implement a program to
22 identify and investigate fraud and violations of this code relating
23 to workers' compensation insurance by an applicant, policyholder,
24 claimant, agent, insurer, health care provider, or other person.
25 The company shall cooperate with the division of workers'
26 compensation of the department ~~[commission]~~ to compile and maintain
27 information necessary to detect practices or patterns of conduct

1 that violate this code relating to the workers' compensation
2 insurance or Subtitle A, Title 5, Labor Code (the Texas Workers'
3 Compensation Act).

4 (b) The company may conduct investigations of cases of
5 suspected fraud and violations of this code relating to workers'
6 compensation insurance. The company may:

7 (1) coordinate its investigations with those
8 conducted by the division of workers' compensation of the
9 department [~~commission~~] to avoid duplication of efforts; and

10 (2) refer cases that are not otherwise resolved by the
11 company to the division of workers' compensation of the department
12 [~~commission~~] to:

13 (A) perform any further investigations that are
14 necessary under the circumstances;

15 (B) conduct administrative violation
16 proceedings; and

17 (C) assess and collect penalties and
18 restitution.

19 (e) Penalties collected under Subsection (b) of this
20 section shall be deposited in the Texas Department of Insurance
21 operating account [~~general revenue fund to the credit of the~~
22 ~~commission~~] and shall be appropriated to the division of workers'
23 compensation of the department [~~commission~~] to offset the costs of
24 this program.

25 SECTION 6.065. Subsection (a), Section 10, Article 5.76-3,
26 Insurance Code, is amended to read as follows:

27 (a) Information maintained in the investigation files of

1 the company is confidential and may not be disclosed except:

2 (1) in a criminal proceeding;

3 (2) in a hearing conducted by the division of workers'
4 compensation of the department [~~commission~~];

5 (3) on a judicial determination of good cause; or

6 (4) to a governmental agency, political subdivision,
7 or regulatory body if the disclosure is necessary or proper for the
8 enforcement of the laws of this or another state or of the United
9 States.

10 SECTION 6.066. Subsection (e), Section 12, Article 5.76-3,
11 Insurance Code, is amended to read as follows:

12 (e) The company shall file annual statements with the
13 department [~~and the commission~~] in the same manner as required of
14 other workers' compensation insurance carriers, and the
15 commissioner shall include a report on the company's condition in
16 the commissioner's annual report under Section 32.021 of this code.

17 SECTION 6.067. Subsection (b), Section 16, Article 5.76-3,
18 Insurance Code, is amended to read as follows:

19 (b) The company shall file with the department [~~and the~~
20 ~~commission~~] all reports required of other workers' compensation
21 insurers.

22 SECTION 6.068. Subsections (a) and (c), Section 10, Article
23 5.76-5, Insurance Code, are amended to read as follows:

24 (a) A maintenance tax surcharge is assessed against:

25 (1) each insurance company writing workers'
26 compensation insurance in this state;

27 (2) each certified self-insurer under Chapter 407,

1 Labor Code [~~as provided in Chapter D, Article 3, Texas Workers'~~
2 ~~Compensation Act (Article 8308-3.51 et seq., Vernon's Texas Civil~~
3 ~~Statutes)]~~; and

4 (3) the fund.

5 (c) On determining [~~receiving notice of~~] the rate of
6 assessment [~~set by the Texas Workers' Compensation Commission~~]
7 under Section 403.003, Labor Code [~~2.23, Texas Workers'~~
8 ~~Compensation Act (Article 8308-2.23, Vernon's Texas Civil~~
9 ~~Statutes)]~~, the commissioner [~~State Board of Insurance~~] shall
10 increase the tax rate to a rate sufficient to pay all debt service
11 on the bonds subject to the maximum tax rate established by Section
12 403.002, Labor Code [~~2.22, Texas Workers' Compensation Act (Article~~
13 ~~8308-2.22, Vernon's Texas Civil Statutes)]~~. If the resulting tax
14 rate is insufficient to pay all costs for the department under this
15 article [~~Texas Workers' Compensation Commission~~] and all debt
16 service on the bonds, the commissioner [~~State Board of Insurance~~]
17 may assess an additional surcharge not to exceed one percent of
18 gross workers' compensation premiums to cover all debt service on
19 the bonds. In this code, the maintenance tax surcharge includes the
20 additional maintenance tax assessed under this subsection and the
21 surcharge assessed under this subsection to pay all debt service of
22 the bonds.

23 SECTION 6.069. Section 3A, Article 21.28, Insurance Code,
24 is amended to read as follows:

25 Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION [~~OF~~
26 ~~TEXAS WORKERS' COMPENSATION COMMISSION~~]. (a) The liquidator shall
27 notify the department [~~Texas Workers' Compensation Commission~~]

1 immediately upon a finding of insolvency or impairment upon any
2 insurance company which has in force any workers' compensation
3 coverage in Texas.

4 (b) The department [~~Texas Workers' Compensation Commission~~]
5 shall, upon said notice, submit to the liquidator a list of active
6 cases pending before the division of workers' compensation of the
7 department [~~Texas Workers' Compensation Commission~~] in which there
8 has been an acceptance of liability by the carrier, where it appears
9 that no bona fide dispute exists and where payments were commenced
10 prior to the finding of insolvency or impairment and where future or
11 past indemnity or medical payments are due.

12 (c) Notwithstanding the provisions of Section 3 of this
13 Article, the liquidator is authorized to commence or continue the
14 payment of claims based upon the list submitted in Subsection (b)
15 above.

16 (d) In order to avoid undue delay in the payment of covered
17 workers' compensation claims, the liquidator shall contract with
18 [~~the Texas Workers' Compensation Pool or~~] any [~~other~~] qualified
19 organization for claims adjusting. Files and information delivered
20 by the department [~~Texas Workers' Compensation Commission~~] to the
21 liquidator may be delivered to the [~~Texas Workers' Compensation~~
22 ~~Pool or any~~] organization with which the liquidator has contracted
23 for claims adjusting services.

24 [~~(e) The Texas Workers' Compensation Commission shall report~~
25 ~~to the State Board of Insurance any occasion when a workers'~~
26 ~~compensation insurer has committed acts that may indicate insurer~~
27 ~~financial impairment, delinquency or insolvency.~~]

1 SECTION 6.070. Subsection (d), Section 8, Article 21.28-C,
2 Insurance Code, is amended to read as follows:

3 (d) The association shall investigate and adjust,
4 compromise, settle, and pay covered claims to the extent of the
5 association's obligation and deny all other claims. The
6 association may review settlements, releases, and judgments to
7 which the impaired insurer or its insureds were parties to
8 determine the extent to which those settlements, releases, and
9 judgments may be properly contested. Any judgment taken before the
10 designation of impairment in which an insured under a liability
11 policy or the insurer failed to exhaust all appeals, any judgment
12 taken by default or consent against an insured or the impaired
13 insurer, and any settlement, release, or judgment entered into by
14 the insured or the impaired insurer, is not binding on the
15 association, and may not be considered as evidence of liability or
16 of damages in connection with any claim brought against the
17 association or any other party under this Act. Notwithstanding any
18 other provision of this Act, a covered claim shall not include any
19 claim filed with the guaranty association on a date that is later
20 than eighteen months after the date of the order of liquidation,
21 except that a claim for workers' compensation benefits is governed
22 by Title 5, Labor Code, and the applicable rules of the commissioner
23 of workers' compensation [~~Texas Workers' Compensation Commission~~].

24 SECTION 6.071. Subsection (1), Section 4, Article 21.58A,
25 Insurance Code, is amended to read as follows:

26 (1) Unless precluded or modified by contract, a utilization
27 review agent shall reimburse health care providers for the

1 reasonable costs for providing medical information in writing,
2 including copying and transmitting any requested patient records or
3 other documents. A health care provider's charges for providing
4 medical information to a utilization review agent shall not exceed
5 the cost of copying set by rule of the commissioner of workers'
6 compensation [~~Texas Workers' Compensation Commission~~] for records
7 regarding a workers' compensation claim and may not include any
8 costs that are otherwise recouped as a part of the charge for health
9 care.

10 SECTION 6.072. Subsection (c), Section 14, Article 21.58A,
11 Insurance Code, is amended to read as follows:

12 (c) Except as otherwise provided by this subsection, this
13 article applies to utilization review of health care services
14 provided to persons eligible for workers' compensation medical
15 benefits under Title 5, Labor Code. The commissioner of workers'
16 compensation shall regulate in the manner provided by this article
17 a person who performs review of a medical benefit provided under
18 Title 5 [~~Chapter 408~~], Labor Code. [~~This subsection does not affect~~
19 ~~the authority of the Texas Workers' Compensation Commission to~~
20 ~~exercise the powers granted to that commission under Title 5, Labor~~
21 ~~Code.~~] In the event of a conflict between this article and Title 5,
22 Labor Code, Title 5, Labor Code, prevails. The commissioner of
23 workers' compensation [~~and the Texas Workers' Compensation~~
24 ~~Commission~~] may adopt rules [~~and enter into memoranda of~~
25 ~~understanding~~] as necessary to implement this subsection.

26 PART 3. CONFORMING AMENDMENTS--OTHER CODES

27 SECTION 6.101. Section 92.009, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 92.009. COORDINATION WITH TEXAS DEPARTMENT OF
3 INSURANCE [~~WORKERS' COMPENSATION COMMISSION~~]. The department and
4 the Texas Department of Insurance [~~Workers' Compensation~~
5 ~~Commission~~] shall enter into a memorandum of understanding which
6 shall include the following:

7 (1) the department and the Texas Department of
8 Insurance [~~commission~~] shall exchange relevant injury data on an
9 ongoing basis notwithstanding Section 92.006;

10 (2) confidentiality of injury data provided to the
11 department by the Texas Department of Insurance [~~commission~~] is
12 governed by Subtitle A, Title 5, Labor Code;

13 (3) confidentiality of injury data provided to the
14 Texas Department of Insurance [~~commission~~] by the department is
15 governed by Section 92.006; and

16 (4) cooperation in conducting investigations of
17 work-related injuries.

18 SECTION 6.102. Subsection (a), Section 160.006,
19 Occupations Code, is amended to read as follows:

20 (a) A record, report, or other information received and
21 maintained by the board under this subchapter or Subchapter B,
22 including any material received or developed by the board during an
23 investigation or hearing and the identity of, and reports made by, a
24 physician performing or supervising compliance monitoring for the
25 board, is confidential. The board may disclose this information
26 only:

27 (1) in a disciplinary hearing before the board or in a

subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the division of workers' compensation of the Texas Department of Insurance [~~Workers' Compensation Commission~~] as provided by Section 413.0514, Labor Code.

ARTICLE 7. REPEALER

SECTION 7.01. The following laws are repealed:

(1) Subdivision (2), Section 1, Article 5.76-3, Insurance Code;

(2) Section 401.002, Labor Code;

(3) Section 402.0015, Labor Code;

(4) Section 402.003, Labor Code;

(5) Section 402.004, Labor Code;

(6) Section 402.005, Labor Code;

(7) Section 402.006, Labor Code;

(8) Section 402.007, Labor Code;

(9) Section 402.008, Labor Code;

(10) Section 402.009, Labor Code;

- (11) Section 402.010, Labor Code;
- (12) Section 402.011, Labor Code;
- (13) Section 402.012, Labor Code;
- (14) Section 402.025, Labor Code;
- (15) Subsection (b), Section 402.062, Labor Code;
- (16) Section 402.063, Labor Code;
- (17) Subdivision (2), Section 407.001, Labor Code;
- (18) Sections 407.021 and 407.022, Labor Code;
- (19) Subsection (c), Section 407.122, Labor Code;
- (20) Sections 408.0221, 408.0222, and 408.0223, Labor
Code;
- (21) Section 410.001, Labor Code;
- (22) Section 410.004, Labor Code;
- (23) Subdivision (1), Section 411.001, Labor Code;
- (24) Subchapters D and G, Chapter 411, Labor Code;
- (25) Section 411.062, Labor Code;
- (26) Subsection (b), Section 411.063, Labor Code;
- (27) Subsection (b), Section 411.067, Labor Code;
- (28) Subdivision (1), Section 411.102, Labor Code;
- (29) Section 413.001, Labor Code;
- (30) Section 413.005, Labor Code;
- (31) Section 414.001, Labor Code; and
- (32) Subdivision (1), Subsection (a), Section
505.001, Labor Code.

ARTICLE 8. TRANSITION; EFFECTIVE DATE

SECTION 8.001. ABOLITION OF TEXAS WORKERS' COMPENSATION
COMMISSION; GENERAL TRANSFER OF AUTHORITY TO TEXAS DEPARTMENT OF

1 INSURANCE; DIVISION OF WORKERS' COMPENSATION. (a) The Texas
2 Workers' Compensation Commission is abolished on the effective date
3 of this Act.

4 (b) Except as otherwise provided by this article, all
5 powers, duties, obligations, rights, contracts, funds, unspent
6 appropriations, records, real or personal property, and personnel
7 of the Texas Workers' Compensation Commission shall be transferred
8 to the division of workers' compensation of the Texas Department of
9 Insurance not later than February 28, 2006.

10 (c) The division of workers' compensation of the Texas
11 Department of Insurance created under Chapter 402, Labor Code, as
12 amended by this Act, is established September 1, 2005.

13 (d) The governor shall appoint the commissioner of workers'
14 compensation under Section 402.0018, Labor Code, as added by this
15 Act, not later than October 1, 2005.

16 SECTION 8.002. OFFICE OF INJURED EMPLOYEE COUNSEL. (a) The
17 office of injured employee counsel created under Chapter 404, Labor
18 Code, as added by this Act, is established September 1, 2005.

19 (b) The governor shall appoint the injured employee public
20 counsel of the office of injured employee counsel not later than
21 October 1, 2005.

22 (c) The injured employee public counsel of the office of
23 injured employee counsel shall adopt initial rules for the office
24 under Section 404.006, Labor Code, as added by this Act, not later
25 than March 1, 2006.

26 (d) The Texas Department of Insurance shall provide, in
27 Austin and in each regional office operated by the division of

1 workers' compensation of the department to administer Subtitle A,
2 Title 5, Labor Code, as amended by this Act, suitable office space,
3 personnel services, computer support, and other administrative
4 support to the office of injured employee counsel as required by
5 Chapter 404, Labor Code, as added by this Act. The department shall
6 provide the facilities and support not later than October 1, 2005.

7 (e) All powers, duties, obligations, rights, contracts,
8 funds, unspent appropriations, records, real or personal property,
9 and personnel of the Texas Workers' Compensation Commission
10 relating to the operation of the workers' compensation ombudsman
11 program under Subchapter C, Chapter 409, Labor Code, as that
12 subchapter existed before amendment by this Act, shall be
13 transferred to the office of injured employee counsel not later
14 than March 1, 2006. An ombudsman transferred to the office of
15 injured employee counsel under this section shall begin providing
16 services under Chapter 404, Labor Code, as added by this Act, not
17 later than March 1, 2006.

18 SECTION 8.003. INITIAL REPORT OF WORKERS' COMPENSATION
19 RESEARCH AND EVALUATION GROUP. The workers' compensation research
20 and evaluation group shall submit the initial report required under
21 Section 405.0025, Labor Code, as added by this Act, not later than
22 December 1, 2008.

23 SECTION 8.004. CONTINUATION OF CERTAIN POLICIES,
24 PROCEDURES, OR DECISIONS. (a) A policy, procedure, or decision of
25 the Texas Workers' Compensation Commission relating to a duty of
26 that commission that is transferred to the authority of the Texas
27 Department of Insurance under Subtitle A, Title 5, Labor Code, as

1 amended by this Act, continues in effect as a policy, procedure, or
2 decision of the commissioner of insurance or the commissioner of
3 workers' compensation until superseded by an act of the
4 commissioner of insurance or the commissioner of workers'
5 compensation.

6 (b) A policy, procedure, or decision of the Texas Workers'
7 Compensation Commission relating to a duty of that commission that
8 is transferred to the authority of the office of injured employee
9 counsel established under Chapter 404, Labor Code, as added by this
10 Act, continues in effect as a policy, procedure, or decision of the
11 office of injured employee counsel until superseded by an act of the
12 injured employee public counsel.

13 (c) Except as otherwise provided by this article, the
14 validity of a plan or procedure adopted, contract or acquisition
15 made, proceeding begun, grant or loan awarded, obligation incurred,
16 right accrued, or other action taken by or in connection with the
17 authority of the Texas Workers' Compensation Commission before that
18 commission is abolished under Section 8.001 of this article is not
19 affected by the abolishment.

20 SECTION 8.005. RULES. (a) The commissioner of insurance
21 and the commissioner of workers' compensation shall adopt rules
22 relating to the transfer of the workers' compensation programs
23 assigned to the Texas Department of Insurance under Subtitle A,
24 Title 5, Labor Code, as amended by this Act, not later than December
25 1, 2005.

26 (b) The injured employee public counsel of the office of
27 injured employee counsel established under Chapter 404, Labor Code,

1 as added by this Act, shall adopt rules relating to the transfer of
2 the programs assigned to the office of injured employee counsel
3 under Subtitle A, Title 5, Labor Code, as amended by this Act, not
4 later than March 1, 2006.

5 (c) A rule of the Texas Workers' Compensation Commission
6 relating to a duty of that commission that is transferred to the
7 authority of the division of workers' compensation of the Texas
8 Department of Insurance under Subtitle A, Title 5, Labor Code, as
9 amended by this Act, continues in effect as a rule of the
10 commissioner of workers' compensation until the date on which the
11 rule is superseded by a rule adopted by the commissioner of workers'
12 compensation.

13 (d) A rule of the Texas Workers' Compensation Commission
14 relating to a duty of that commission that is transferred to the
15 authority of the office of injured employee counsel under Subtitle
16 A, Title 5, Labor Code, as amended by this Act, continues in effect
17 as a rule of the injured employee public counsel of the office of
18 injured employee counsel until the date on which the rule is
19 superseded by a rule adopted by the injured employee public
20 counsel.

21 (e) The commissioner of insurance and the commissioner of
22 workers' compensation may identify rules required by the passage of
23 this Act that require adoption on an emergency basis, and may use
24 the procedures established under Section 2001.034, Government
25 Code, for adopting those rules. The commissioner of insurance and
26 the commissioner of workers' compensation are not required to make
27 the finding described by Subsection (a), Section 2001.034,

1 Government Code, to adopt emergency rules under this subsection.

2 SECTION 8.006. BUDGET EXECUTION AUTHORITY.

3 Notwithstanding Subsection (e), Section 317.005, Government Code,
4 the Legislative Budget Board may adopt an order under Section
5 317.005, Government Code, affecting any portion of the total
6 appropriation of the Texas Department of Insurance or office of
7 injured employee counsel if necessary to implement the provisions
8 of this Act. This section expires March 31, 2006.

9 SECTION 8.007. RULES REGARDING MEDICAL EXAMINATIONS. The
10 commissioner of workers' compensation shall adopt rules to
11 implement the changes in law made to Sections 408.004 and 408.0041,
12 Labor Code, as amended by this Act, on or before February 1, 2006.
13 The changes in law made to Sections 408.004 and 408.0041, Labor
14 Code, are effective on the date provided by commissioner rule.

15 SECTION 8.008. ELECTRONIC BILLING RULES. The commissioner
16 of workers' compensation shall adopt rules under Section 408.0251,
17 Labor Code, as added by this Act, not later than January 1, 2006.

18 SECTION 8.009. ACCRUAL OF RIGHT TO INCOME BENEFITS.
19 Sections 408.047 and 408.082, Labor Code, as amended by this Act,
20 apply only to a claim for workers' compensation benefits based on a
21 compensable injury that occurs on or after the effective date of
22 this Act. A claim based on a compensable injury that occurs before
23 that date is governed by the law in effect on the date that the
24 compensable injury occurred, and the former law is continued in
25 effect for that purpose.

26 SECTION 8.010. ELIGIBILITY FOR PILOT PROGRAM. The pilot
27 program established under Section 413.022, Labor Code, as added by

1 this Act, takes effect January 1, 2006.

2 SECTION 8.011. REPORTS. (a) Not later than October 1,
3 2006, the commissioner of workers' compensation shall report to the
4 governor, the lieutenant governor, the speaker of the house of
5 representatives, and the members of the 79th Legislature regarding
6 the implementation of Section 408.1225, Labor Code, as added by
7 this Act.

8 (b) Not later than October 1, 2008, the commissioner of
9 workers' compensation shall report to the governor, the lieutenant
10 governor, the speaker of the house of representatives, and the
11 members of the legislature regarding the implementation of the
12 pilot program established by Section 413.022, Labor Code, as added
13 by this Act, and the results of the pilot program. The report must
14 include any recommendations regarding the continuation of the pilot
15 program, including any changes required to enhance the
16 effectiveness of the program.

17 (c) The commissioner of insurance shall submit the initial
18 report required under Subsection (e), Section 3, Article 5.55,
19 Insurance Code, as added by this Act, not later than December 1,
20 2006.

21 (d) The commissioner of insurance shall submit to the
22 governor, the lieutenant governor, the speaker of the house of
23 representatives, and the members of the legislature the first
24 report under Section 1305.501, Insurance Code, as added by this
25 Act, not later than December 1, 2008.

26 SECTION 8.012. ABOLITION OF MEDICAL ADVISORY COMMITTEE.
27 The medical advisory committee established under Section 413.005,

1 Labor Code, as that section existed prior to repeal by this Act, is
2 abolished on the effective date of this Act.

3 SECTION 8.013. STATE OFFICE OF ADMINISTRATIVE HEARINGS
4 REVIEW. (a) This section applies to a hearing conducted by the
5 State Office of Administrative Hearings under Subsection (k),
6 Section 413.031, Labor Code, as that subsection existed prior to
7 amendment by this Act.

8 (b) Effective September 1, 2005, the State Office of
9 Administrative Hearings may not accept for hearing a medical
10 dispute that remains unresolved pursuant to Section 413.031, Labor
11 Code. A medical dispute that is not pending for a hearing by the
12 State Office of Administrative Hearings on or before August 31,
13 2005, is subject to Subsection (k), Section 413.031, Labor Code, as
14 amended by this Act, and is not subject to a hearing before the
15 State Office of Administrative Hearings.

16 SECTION 8.014. IMPLEMENTATION OF WORKERS' COMPENSATION
17 HEALTH CARE NETWORKS. (a) The commissioner of insurance shall
18 adopt rules as necessary to implement Chapter 1305, Insurance Code,
19 as added by this Act, not later than December 1, 2005. The Texas
20 Department of Insurance shall accept applications from a network
21 seeking certification under Chapter 1305, Insurance Code, as added
22 by this Act, beginning January 1, 2006.

23 (b) An insurance carrier may begin to offer workers'
24 compensation medical benefits through a network under Chapter 1305,
25 Insurance Code, as added by this Act, on certification of the
26 network by the commissioner of insurance.

27 SECTION 8.015. CONSUMER REPORT CARD. The Texas Department

1 of Insurance shall issue the first annual workers' compensation
2 consumer report card under Section 1305.502, Insurance Code, as
3 added by this Act, not later than 18 months after the date on which
4 that department certifies the first workers' compensation health
5 care network under Chapter 1305, Insurance Code, as added by this
6 Act.

7 SECTION 8.016. APPLICATION TO MEDICAL BENEFITS.

8 (a) Article 4 of this Act applies to a claim for workers'
9 compensation medical benefits based on a compensable injury
10 incurred by an employee whose employer elects to provide workers'
11 compensation insurance coverage if the insurance carrier of the
12 employer enters into a contract to provide workers' compensation
13 medical benefits through a network certified under Chapter 1305,
14 Insurance Code, as added by this Act.

15 (b) A claim for workers' compensation medical benefits
16 based on a compensable injury that occurs on or after the effective
17 date of a contract described by Subsection (a) of this section is
18 subject to the provisions of Chapter 1305, Insurance Code, as added
19 by this Act.

20 (c) Notwithstanding Subsection (a) of this section, an
21 injured employee who receives workers' compensation medical
22 benefits based on a compensable injury that occurs before the
23 effective date of this Act is subject to the provisions of Chapter
24 1305, Insurance Code, as added by this Act, and must receive
25 treatment through a network health care provider if the insurer
26 liable for the payment of benefits on that claim elects to use a
27 workers' compensation health care network to provide medical

1 benefits and the claimant lives in a network service area. The
2 insurer shall notify affected injured employees in writing of the
3 election.

4 SECTION 8.017. APPLICATION TO SANCTIONS AND VIOLATIONS.

5 (a) The changes in law made by this Act apply only to a penalty or
6 sanction for an offense or violation committed on or after the
7 effective date of this Act.

8 (b) For purposes of this section, an offense or violation is
9 committed before the effective date of this Act if any element of
10 the offense occurs before that date.

11 (c) An offense committed before the effective date of this
12 Act is governed by the law in effect when the offense was committed,
13 and the former law is continued in effect for that purpose.

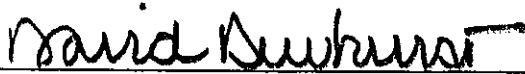
14 SECTION 8.018. EFFECT OF UPDATE ACT. To the extent of any
15 conflict, this Act prevails over another Act of the 79th
16 Legislature, Regular Session, 2005, relating to nonsubstantive
17 additions to and corrections in enacted codes (the General Code
18 Update bill).

19 SECTION 8.019. REFERENCES IN LAW. (a) A reference in law
20 to the Texas Workers' Compensation Commission means the division of
21 workers' compensation of the Texas Department of Insurance or the
22 office of injured employee counsel as consistent with the
23 respective duties of those state governmental entities under the
24 Labor Code, the Insurance Code, and other laws of this state, as
25 amended by this Act.

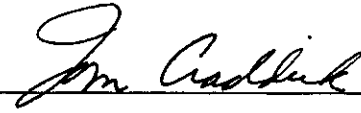
26 (b) A reference in Title 5, Labor Code, or any other law to
27 the division of workers' health and safety, the division of medical

1 review, the division of compliance and practices, the division of
2 hearings, and the division of self-insurance regulation of the
3 former Texas Workers' Compensation Commission means the division of
4 workers' compensation of the Texas Department of Insurance.

5 SECTION 8.020. EFFECTIVE DATE. Except as otherwise
6 provided by this article, this Act takes effect September 1, 2005.



President of the Senate



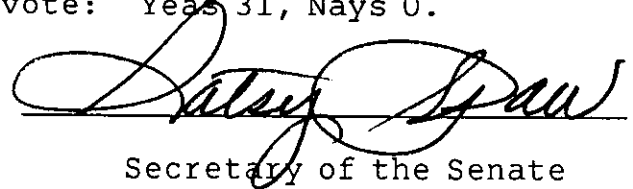
Speaker of the House

I certify that H.B. No. 7 was passed by the House on March 31, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 7 on May 19, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 7 on May 28, 2005, by a non-record vote.



Chief Clerk of the House

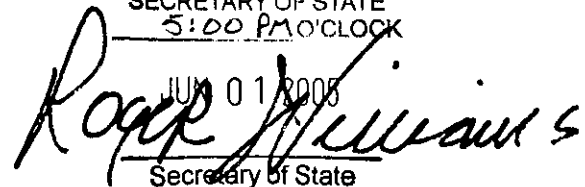
I certify that H.B. No. 7 was passed by the Senate, with amendments, on May 13, 2005, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 7 on May 29, 2005, by the following vote: Yeas 31, Nays 0.


Secretary of the Senate

APPROVED: 1 JUN 05
Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00 PM O'CLOCK


JUN 01 2005
Secretary of State