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H.B. No. 7

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and operation of the workers'
3 compensation system of this state and to the abolition of the Texas
4 Workers' Compensation Commission, the establishment of the office
5 of injured employee counsel, and the transfer of the powers and
6 duties of the Texas Workers' Compensation Commission to the Texas
7 Department of Insurance and the office of injured employee counsel;
8 providing administrative violations.

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

10 ARTICLE 1. AMENDMENTS TO SUBTITLE A, TITLE 5, LABOR CODE

11 PART 1. AMENDMENTS TO CHAPTER 401, LABOR CODE

12 SECTION 1.001. The heading to Subchapter A, Chapter 401,
13 Labor Code, is amended to read as follows:

14 SUBCHAPTER A. GENERAL PROVISIONS [~~SHORT TITLE, APPLICATION OF~~
15 ~~SUNSET ACT~~]

16 SECTION 1.002. Section 401.003(a), Labor Code, is amended
17 to read as follows:

18 (a) The department [~~commission~~] is subject to audit by the
19 state auditor in accordance with Chapter 321, Government Code. The
20 state auditor may audit the department's [~~commission's~~]:

21 (1) structure and internal controls;

22 (2) level and quality of service provided to
23 employers, injured employees, insurance carriers, self-insured
24 governmental entities, and other participants;

- 1 (3) implementation of statutory mandates;
- 2 (4) employee turnover;
- 3 (5) information management systems, including public
- 4 access to nonconfidential information;
- 5 (6) adoption and implementation of administrative
- 6 rules by the commissioner; and
- 7 (7) assessment of administrative violations and the
- 8 penalties for those violations.

9 SECTION 1.003. Section 401.011, Labor Code, is amended by
10 amending Subdivisions (1), (8), (14), (15), (19), (28), (30), (37),
11 (39), (42), and (44) and adding Subdivisions (2-a), (4-a), (5-a),
12 (5-b), (5-c), (11-a), (11-b), (12-a), (13-a), (16-a), (17-a),
13 (18-a), (25-a), (25-b), (29-a), (31-a), (31-b), (34-a), (34-b),
14 (34-c), (34-d), (35-a), (35-b), (35-c), (35-d), (38-a), (38-b),
15 (39-a), (39-b), (42-a), (42-b), (42-c), and (42-d) to read as
16 follows:

17 (1) "Adjuster" means a person licensed under Chapter
18 4101, Insurance Code [~~407, Acts of the 63rd Legislature, Regular~~
19 ~~Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code)~~].

20 (2-a) "Adverse determination" means a determination,
21 made through utilization review or retrospective review, that the
22 health care services furnished or proposed to be furnished to an
23 injured employee are not reasonable and necessary health care
24 services or are not appropriate.

25 (4-a) "Appeal process" means the formal process by
26 which an insurance carrier addresses adverse determinations.

27 (5-a) "Carrier-network contract" means a written

1 agreement between a provider network and an insurance carrier that
2 meets the requirements of Section 408B.152 and under which the
3 provider network:

4 (A) agrees to undertake to arrange for or to
5 provide, by itself or through subcontracts with one or more
6 entities, health care services on a non-capitated basis to
7 participants through participating providers; and

8 (B) accepts responsibility to perform certain
9 delegated functions on behalf of the insurance carrier.

10 (5-b) "Case management" means a collaborative process
11 of assessment, planning, facilitation, and advocacy for options and
12 services to meet an individual's health needs through communication
13 and application of available resources to promote quality,
14 cost-effective outcomes.

15 (5-c) "Certified provider network" means a network of
16 participating health care providers using care management
17 procedures that is certified by the department in accordance with
18 Subchapter C, Chapter 408B, and is used by an insurance carrier to
19 provide health care services to participants. A certified provider
20 network may include one or more provider networks and individual
21 providers.

22 (8) "Commissioner" ["Commission"] means the
23 commissioner of insurance [Texas Workers' Compensation
24 Commission].

25 (11-a) "Complainant" means a person who files a
26 complaint under this subtitle. The term includes:

27 (A) an employee;

- 1 (B) an employer;
2 (C) a health care provider; and
3 (D) another person designated to act on behalf of
4 an employee.

5 (11-b) "Complaint" means any dissatisfaction
6 expressed orally or in writing by a complainant regarding an
7 entity's operation or the manner in which a service is provided.

8 The term does not include:

9 (A) a misunderstanding or a problem of
10 misinformation that is resolved promptly by clearing up the
11 misunderstanding or supplying the appropriate information to the
12 satisfaction of the complainant;

13 (B) a medical dispute except for a fee dispute;
14 or

15 (C) a dispute under Chapter 410.

16 (12-a) "Credentialing" means the insurance carrier's
17 processes, established in accordance with Section 408B.301, for
18 review of qualifications and of other relevant information relating
19 to a health care provider who seeks a participating provider
20 contract.

21 (13-a) "Department" means the Texas Department of
22 Insurance.

23 (14) "Dependent" means an individual who receives a
24 regular or recurring economic benefit that contributes
25 substantially to the individual's welfare and livelihood if the
26 individual is eligible for distribution of benefits under this
27 subtitle [~~Chapter 408~~].

1 (15) "Designated doctor" means a doctor appointed by
2 ~~[mutual agreement of the parties or by]~~ the department ~~[commission]~~
3 to recommend a resolution of a dispute as to the medical condition
4 of an injured employee.

5 (16-a) "Dispute" means a disagreement relating to
6 issues that are subject to Chapter 410, or a disagreement that is
7 subject to the medical dispute resolution requirements of
8 Subchapter C, Chapter 413.

9 (17-a) "Emergency care" means either a medical or
10 mental health emergency as described below:

11 (A) a medical emergency consists of the sudden
12 onset of a medical condition manifesting itself by acute symptoms
13 of sufficient severity including severe pain that the absence of
14 immediate medical attention could reasonably be expected to result
15 in placing the patient's health and/or bodily functions in serious
16 jeopardy and/or serious dysfunction of any body organ or part;

17 (B) a mental health emergency is a condition that
18 could reasonably be expected to present danger to self or others.

19 (18-a) "Fee dispute" means a dispute over the amount
20 of payment due for health care services determined to be medically
21 necessary and appropriate for treatment of a compensable injury.

22 (19) "Health care" means only medically ~~[includes all~~
23 ~~reasonable and]~~ necessary medical aid, medical examinations,
24 medical treatments, medical diagnoses, medical evaluations, and
25 medical services. The term does not include vocational
26 rehabilitation. The term includes:

27 (A) medical, surgical, chiropractic, podiatric,

1 optometric, dental, nursing, occupational therapy, and physical
2 therapy services provided by or at the direction of, or that are the
3 subject of a referral by, a treating doctor;

4 (B) physical rehabilitation services performed
5 by a licensed [~~occupational~~] therapist and provided by or at the
6 direction of, or that are the subject of a referral by, a treating
7 doctor;

8 (C) psychological services provided by or at the
9 direction of, or that are the subject of a referral by, a treating
10 [~~prescribed by a~~] doctor;

11 (D) the services of a hospital or other health
12 care facility provided by or at the direction of, or that are the
13 subject of a referral by, a treating doctor;

14 (E) a prescription drug, medicine, or other
15 remedy provided by or at the direction of, or that is the subject of
16 a referral by, a treating doctor; and

17 (F) a medical or surgical supply, appliance,
18 brace, artificial member, or prosthesis, including training in the
19 use of the appliance, brace, member, or prosthesis, provided by or
20 at the direction of, or that is the subject of a referral by, a
21 treating doctor.

22 (25-a) "Independent review" means a system for final
23 administrative review by an independent review organization of the
24 medical necessity and appropriateness of health care services being
25 provided, proposed to be provided, or that have been provided to an
26 employee.

27 (25-b) "Independent review organization" means an

1 entity that is certified by the commissioner to conduct independent
2 review under Article 21.58C, Insurance Code, and rules adopted by
3 the commissioner.

4 (28) "Insurance company" means a person authorized and
5 admitted by the department [~~Texas Department of Insurance~~] to
6 engage in the business of [~~do~~] insurance [~~business~~] in this state
7 under a certificate of authority that includes authorization to
8 write workers' compensation insurance.

9 (29-a) "Life threatening" has the meaning assigned by
10 Section 2, Article 21.58A, Insurance Code.

11 (30) "Maximum medical improvement" means the earlier
12 of:

13 (A) the earliest date after which, based on
14 reasonable medical probability, further material recovery from or
15 lasting improvement to an injury can no longer reasonably be
16 anticipated;

17 (B) the expiration of 104 weeks from the date on
18 which income benefits begin to accrue; or

19 (C) the date determined as provided by Section
20 408D.054 [~~408.104~~].

21 (31-a) "Medical records" means the history of
22 diagnosis and treatment for an injury, including medical, dental,
23 and other health care records from each health care practitioner
24 who provides care to an injured employee.

25 (31-b) "Nurse" has the meaning assigned by Section 2,
26 Article 21.58A, Insurance Code.

27 (34-a) "Participating health care provider" and

1 "participating provider" mean a health care provider that:

2 (A) participates in a certified provider network
3 by entering into a participating provider contract to provide
4 health care services to injured employees in accordance with this
5 subtitle; and

6 (B) has been credentialed by the insurance
7 carrier or provider network in the manner described by Section
8 408B.301.

9 (34-b) "Participating provider contract" means the
10 written agreement entered into by a health care provider with an
11 insurance carrier or provider network under which the health care
12 provider agrees to, by itself or through subcontracts with one or
13 more entities, provide or arrange for health care services to
14 injured employees under Chapter 408B.

15 (34-c) "Pattern of practice of under-utilization or
16 over-utilization" means repetition of instances of
17 under-utilization or over-utilization within a specific medical
18 case or multiple cases by a participating health care provider.

19 (34-d) "Pattern of practice review" means an
20 evaluation, conducted by two or more health care providers licensed
21 under the same authority and with the same or similar specialty as
22 the participating provider under review, that includes an
23 evaluation of:

24 (A) the appropriateness of both the level and the
25 quality of health care services provided to an injured employee;

26 (B) the appropriateness of treatment,
27 hospitalization, or office visits consistent with nationally

1 recognized, scientifically valid, outcome-based treatment
2 standards and guidelines;

3 (C) utilization control; and

4 (D) the existence of a pattern of practice of
5 under-utilization or over-utilization.

6 (35-a) "Person" means any natural or artificial
7 person, including an individual, partnership, association,
8 corporation, organization, trust, hospital district, community
9 mental health center, mental retardation center, mental health and
10 mental retardation center, limited liability company, or limited
11 liability partnership.

12 (35-b) "Preauthorization" means the process required
13 to request approval to provide a specific treatment or service
14 before the treatment or service is provided.

15 (35-c) "Certified provider network" or "provider
16 network" means a network of participating health care providers
17 using case management procedures that is certified by the
18 department in accordance with Chapter 408B and is used by a carrier
19 to provide health care services to injured employees. A certified
20 provider network may be a preferred provider organization, a health
21 maintenance organization, a nonprofit health corporation certified
22 under Section 162.001, Occupations Code, or a network of providers
23 established by an insurance carrier that has been certified by the
24 department.

25 (35-d) "Quality improvement program" means a system
26 designed to continuously examine, monitor, and revise processes and
27 systems that support and improve administrative and clinical

1 functions in accordance with Section 408B.203.

2 (37) "Representative" means a person, including an
3 attorney, authorized by the department [~~commission~~] to assist or
4 represent an employee, a person claiming a death benefit, or an
5 insurance carrier in a matter arising under this subtitle that
6 relates to the payment of compensation.

7 (38-a) "Retrospective review" means the process of
8 reviewing whether services that have been provided to an injured
9 employee are reasonable and necessary services.

10 (38-b) "Rural area" means:

- 11 (A) a county with a population of 50,000 or less;
12 (B) an area that is not designated as an
13 urbanized area by the United States Census Bureau; or
14 (C) any other area designated as rural under
15 rules adopted by the commissioner.

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

21 (39-a) "Screening criteria" means the written
22 policies, decision rules, medical protocols, and treatment
23 guidelines used by a provider network as set forth in Section
24 408B.352(c) as part of utilization review and retrospective review.

25 (39-b) "Service area" means a geographic area within
26 which health care services from network providers are available and
27 accessible to employees who live within that geographic area.

1 (42) "Treating doctor" means the doctor who is
2 primarily responsible for the employee's health care for an injury.
3 Within a provider network, the term includes a participating
4 provider who is primarily responsible for:

5 (A) the efficient management of health care
6 services for an injured employee;

7 (B) return-to-work outcomes; and

8 (C) all referrals to other health care providers.

9 (42-a) "Utilization control" means a systematic
10 process of implementing measures that assure overall quality,
11 management and cost containment of services delivered, including
12 compliance with nationally recognized, scientifically valid,
13 outcome-based treatment standards and guidelines.

14 (42-b) "Utilization review" has the meaning assigned
15 by Section 2, Article 21.58A, Insurance Code.

16 (42-c) "Utilization review agent" means any entity
17 with which a provider network contracts or subcontracts to provide
18 utilization review under Article 21.58A, Insurance Code.

19 (42-d) "Utilization review plan" means the screening
20 criteria, retrospective review procedures, and utilization review
21 procedures of an insurance carrier, provider network, or
22 utilization review agent.

23 (44) "Workers' compensation insurance coverage" means
24 coverage to secure the payment of compensation provided through:

25 (A) an approved insurance policy [~~to secure the~~
26 ~~payment of compensation~~];

27 (B) [~~coverage to secure the payment of~~

1 ~~compensation through~~ self-insurance, as provided by this
2 subtitle; or

3 (C) ~~[coverage provided by]~~ a governmental
4 entity, as provided by Subtitle C ~~[to secure the payment of~~
5 ~~compensation]~~.

6 SECTION 1.004. Section 401.021, Labor Code, is amended to
7 read as follows:

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

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

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

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

17 (C) Sections 2001.056 through 2001.062; and

18 (D) Section 2001.141(c);

19 (2) a proceeding, hearing, judicial review, or
20 enforcement of a commissioner ~~[commissioner]~~ order, decision, or rule
21 under this title is governed by Subchapters A and B, Chapter 2002,
22 Government Code, excluding Sections 2002.001(3) ~~[2002.001(2)]~~ and
23 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 (B) [~~(C)~~ an appeals panel proceeding,
2 [~~(D)~~] arbitration; or
3 (C) [~~(E)~~] another proceeding involving a
4 determination on a workers' compensation claim; and

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

8 SECTION 1.005. Section 401.023(b), Labor Code, is amended
9 to read as follows:

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

18 SECTION 1.006. Sections 401.024(b)-(d), Labor Code, are
19 amended to read as follows:

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

1 prescribes the form, manner, or procedure for the transmission,
2 including standards adopted by the Department of Information
3 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 1.007. The following laws are repealed:

12 (1) Section 401.002, Labor Code; and

13 (2) Section 401.011(38), Labor Code.

14 PART 2. AMENDMENTS TO CHAPTER 402, LABOR CODE

15 SECTION 1.011. The heading to Chapter 402, Labor Code, is
16 amended to read as follows:

17 CHAPTER 402. OPERATION AND ADMINISTRATION OF [TEXAS]

18 WORKERS' COMPENSATION SYSTEM [COMMISSION]

19 SECTION 1.012. The heading to Subchapter A, Chapter 402,
20 Labor Code, is amended to read as follows:

21 SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM [ORGANIZATION]

22 SECTION 1.013. Section 402.001, Labor Code, is amended to
23 read as follows:

24 Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF
25 INSURANCE. Except as provided by Section 402.002, the Texas
26 Department of Insurance is the state agency designated to oversee
27 and operate the workers' compensation system of this state.

1 ~~[MEMBERSHIP REQUIREMENTS. (a) The Texas Workers' Compensation~~
2 ~~Commission is composed of six members appointed by the governor~~
3 ~~with the advice and consent of the senate.~~

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

8 ~~[(c) Three members of the commission must be employers of~~
9 ~~labor and three members of the commission must be wage earners. A~~
10 ~~person is not eligible for appointment as a member of the commission~~
11 ~~if the person provides services subject to regulation by the~~
12 ~~commission or charges fees that are subject to regulation by the~~
13 ~~commission.~~

14 ~~[(d) In making appointments to the commission, the governor~~
15 ~~shall attempt to reflect the social, geographic, and economic~~
16 ~~diversity of the state. To ensure balanced representation, the~~
17 ~~governor may consider:~~

18 ~~[(1) the geographic location of a prospective~~
19 ~~appointee's domicile,~~

20 ~~[(2) the prospective appointee's experience as an~~
21 ~~employer or wage earner,~~

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

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

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

1 ~~commission.~~

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

5 SECTION 1.014. Section 402.002, Labor Code, is amended to
6 read as follows:

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

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

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

18 SECTION 1.015. The heading to Subchapter B, Chapter 402,
19 Labor Code, is amended to read as follows:

20 SUBCHAPTER B. SYSTEM GOALS ~~[ADMINISTRATION]~~

21 SECTION 1.016. Section 402.021, Labor Code, is renumbered
22 as Section 402.051, Labor Code, and amended to read as follows:

23 Sec. 402.051 ~~[402.021]~~. GOALS; LEGISLATIVE INTENT. (a)
24 The basic goals of the workers' compensation system of this state
25 are as follows:

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

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

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

6 (4) each injured employee shall receive services to
7 facilitate the employee's return to employment as soon as it is
8 considered safe and appropriate by the employee's health care
9 provider.

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

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

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

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

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

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

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

26 (7) promptly detect and appropriately address acts or
27 practices of noncompliance with this subtitle and rules adopted

1 under this subtitle;

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

7 (9) take maximum advantage of technological advances
8 to provide the highest levels of service possible to system
9 participants and to promote communication among system
10 participants. [~~COMMISSION DIVISIONS. (a) The commission shall~~
11 ~~have:~~

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

16 [~~(b) In addition to the divisions listed by Subsection (a),~~
17 ~~the executive director, with the approval of the commission, may~~
18 ~~establish divisions within the commission for effective~~
19 ~~administration and performance of commission functions. The~~
20 ~~executive director may allocate and reallocate functions among the~~
21 ~~divisions.~~

22 [~~(c) The executive director shall appoint the directors of~~
23 ~~the divisions of the commission. The directors serve at the~~
24 ~~pleasure of the executive director.]~~

25 SECTION 1.017. Subchapter B, Chapter 402, Labor Code, is
26 amended by adding Section 402.052 to read as follows:

27 Sec. 402.052. GENERAL WORKERS' COMPENSATION MISSION OF

1 DEPARTMENT. As provided by this subtitle, the department shall
2 work to promote and help ensure the safe and timely return of
3 injured employees to productive roles in the workforce.

4 SECTION 1.018. The heading to Subchapter C, Chapter 402,
5 Labor Code, is amended to read as follows:

6 SUBCHAPTER C. DEPARTMENT WORKFORCE EDUCATION AND SAFETY

7 FUNCTIONS [~~EXECUTIVE DIRECTOR AND PERSONNEL~~]

8 SECTION 1.019. Subchapter C, Chapter 402, Labor Code, is
9 amended by adding Sections 402.101 and 402.102 to read as follows:

10 Sec. 402.101. GENERAL DUTIES; FUNDING. (a) The department
11 shall perform the workforce education and safety functions of the
12 workers' compensation system of this state.

13 (b) The operations of the department under this subtitle are
14 funded through the maintenance tax assessed under Section 403.002.

15 Sec. 402.102. EDUCATIONAL PROGRAMS. (a) The department
16 shall provide education on best practices for return-to-work
17 programs and workplace safety.

18 (b) The department shall evaluate and develop the most
19 efficient, cost-effective procedures for implementing this
20 section.

21 SECTION 1.020. Section 402.082, Labor Code, is transferred
22 to Subchapter C, Chapter 402, Labor Code, renumbered as Section
23 402.103, Labor Code, and amended to read as follows:

24 Sec. 402.103 [~~402.082~~]. INJURY INFORMATION MAINTAINED BY
25 DEPARTMENT [~~COMMISSION~~]. (a) The department [~~commission~~] shall
26 maintain information on every compensable injury as to the:

- 27 (1) race, ethnicity, and sex of the claimant;

- 1 (2) classification of the injury;
- 2 (3) amount of wages earned by the claimant before the
- 3 injury;
- 4 (4) identification of whether the claimant is
- 5 receiving medical care through a workers' compensation health care
- 6 network certified under Chapter 408B; and
- 7 (5) [~~4~~] amount of compensation received by the
- 8 claimant.

9 (b) The department shall provide information maintained

10 under Subsection (a) to the office of injured employee counsel. The

11 confidentiality requirements imposed under Section 402.202 apply

12 to injury information maintained by the department.

13 SECTION 1.021. The heading to Subchapter D, Chapter 402,

14 Labor Code, is amended to read as follows:

15 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSIONER AND

16 DEPARTMENT [~~COMMISSION~~]

17 SECTION 1.022. Section 402.042, Labor Code, is transferred

18 to Subchapter D, Chapter 402, Labor Code, renumbered as Section

19 402.151, Labor Code, and amended to read as follows:

20 Sec. 402.151 [~~402.042~~]. GENERAL POWERS AND DUTIES OF

21 COMMISSIONER AND DEPARTMENT [~~EXECUTIVE DIRECTOR~~]. (a) The

22 commissioner [~~executive director~~] shall conduct the [~~day-to-day~~]

23 operations of the department under this subtitle [~~commission in~~

24 ~~accordance with policies established by the commission and~~

25 ~~otherwise implement commission policy~~].

26 (b) The commissioner or the commissioner's designee, acting

27 under this subtitle, [~~executive director~~] may:

- 1 (1) investigate misconduct;
- 2 (2) hold hearings;
- 3 (3) issue subpoenas to compel the attendance of
4 witnesses and the production of documents in accordance with
5 Subchapter C, Chapter 36, Insurance Code;
- 6 (4) administer oaths;
- 7 (5) take testimony directly or by deposition or
8 interrogatory;
- 9 (6) assess and enforce penalties established under
10 this subtitle;
- 11 (7) enter appropriate orders as authorized by this
12 subtitle;
- 13 (8) correct clerical errors in the entry of orders;
- 14 (9) institute an action [~~in the commission's name~~] to
15 enjoin the violation of this subtitle;
- 16 (10) initiate an action under Section 410.254 to
17 intervene in a judicial proceeding;
- 18 (11) prescribe the form, manner, and procedure for
19 transmission of information to the department [~~commission~~]; and
- 20 (12) delegate all powers and duties as necessary.

21 (c) The commissioner [~~executive director~~] is the agent for
22 service of process under this subtitle on out-of-state employers.

23 (d) The department shall operate regional offices
24 throughout this state as necessary to implement the duties of the
25 department under this subtitle.

26 SECTION 1.023. Section 402.061, Labor Code, is renumbered
27 as Section 402.152, Labor Code, and amended to read as follows:

1 Sec. 402.152 [~~402.061~~]. ADOPTION OF RULES. The
2 commissioner [~~commission~~] shall adopt rules as necessary for the
3 implementation and enforcement of this subtitle.

4 SECTION 1.024. Section 402.062, Labor Code, is renumbered
5 as Section 402.153, Labor Code, and amended to read as follows:

6 Sec. 402.153 [~~402.062~~]. ACCEPTANCE OF CERTAIN GIFTS,
7 GRANTS, OR [~~AND~~] DONATIONS. [~~(a)~~] The department [~~commission~~] may
8 accept gifts, grants, or donations for the operation of this
9 subtitle as provided by rules adopted by the commissioner
10 [~~commission~~].

11 [~~(b) Notwithstanding Chapter 575, Government Code, the~~
12 ~~commission may accept a grant paid by the Texas Mutual Insurance~~
13 ~~Company established under Article 5.76-3, Insurance Code, to~~
14 ~~implement specific steps to control and lower medical costs in the~~
15 ~~workers' compensation system and to ensure the delivery of quality~~
16 ~~medical care. The commission must publish the name of the grantor~~
17 ~~and the purpose and conditions of the grant in the Texas Register~~
18 ~~and provide for a 20-day public comment period before the~~
19 ~~commission may accept the grant. The commission shall acknowledge~~
20 ~~acceptance of the grant at a public meeting. The minutes of the~~
21 ~~public meeting must include the name of the grantor, a description~~
22 ~~of the grant, and a general statement of the purposes for which the~~
23 ~~grant will be used.~~]

24 SECTION 1.025. Section 402.064, Labor Code, is renumbered
25 as Section 402.154, Labor Code, and amended to read as follows:

26 Sec. 402.154 [~~402.064~~]. FEES. In addition to fees
27 established by this subtitle, the commissioner [~~commission~~] shall

1 set reasonable fees for services provided to persons requesting
2 services from the department under this subtitle [~~commission~~],
3 including services provided under Subchapter E.

4 SECTION 1.026. Section 402.065, Labor Code, is renumbered
5 as Section 402.155, Labor Code, and amended to read as follows:

6 Sec. 402.155 [~~402.065~~]. EMPLOYMENT OF COUNSEL.
7 Notwithstanding Article 1.09-1, Insurance Code, or any other law,
8 the commissioner [~~The commission~~] may employ counsel to represent
9 the department [~~commission~~] in any legal action the department
10 [~~commission~~] is authorized to initiate under this subtitle.

11 SECTION 1.027. Section 402.066, Labor Code, is renumbered
12 as Section 402.156, Labor Code, and amended to read as follows:

13 Sec. 402.156 [~~402.066~~]. RECOMMENDATIONS TO LEGISLATURE.
14 (a) The commissioner [~~commission~~] shall consider and recommend to
15 the legislature changes to this subtitle, including any statutory
16 changes required by an evaluation conducted under Section 402.162.

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

20 SECTION 1.028. Section 402.067, Labor Code, is renumbered
21 as Section 402.157, Labor Code, and amended to read as follows:

22 Sec. 402.157 [~~402.067~~]. ADVISORY COMMITTEES. The
23 commissioner [~~commission~~] may appoint advisory committees under
24 this subtitle as the commissioner [~~it~~] considers necessary.

25 SECTION 1.029. Section 402.068, Labor Code, is renumbered
26 as Section 402.158, Labor Code, and amended to read as follows:

27 Sec. 402.158 [~~402.068~~]. DELEGATION OF RIGHTS AND DUTIES.

1 Except as expressly provided by this subchapter, the commissioner
2 [~~commission~~] may not delegate rulemaking and policy-making
3 functions [~~rights and duties~~] imposed on the commissioner and the
4 department [~~it~~] by this subchapter.

5 SECTION 1.030. Section 402.022, Labor Code, is transferred
6 to Subchapter D, Chapter 402, Labor Code, renumbered as Section
7 402.159, Labor Code, and amended to read as follows:

8 Sec. 402.159 [~~402.022~~]. PUBLIC INTEREST INFORMATION. (a)
9 The department [~~executive director~~] shall prepare information of
10 public interest describing the functions of the commissioner and
11 the department under this subtitle [~~commission~~] and the procedures
12 by which complaints are filed with and resolved by the department
13 under this subtitle [~~commission~~].

14 (b) The department [~~executive director~~] shall make the
15 information available to the public and appropriate state agencies.

16 (c) The commissioner by rule shall ensure that each
17 department form, standard letter, and brochure under this subtitle:

- 18 (1) is written in plain language;
19 (2) is in a readable and understandable format; and
20 (3) complies with all applicable requirements
21 relating to minimum readability requirements.

22 (d) The department shall make informational materials
23 described by this section available in English and Spanish.

24 SECTION 1.031. Section 402.023, Labor Code, is transferred
25 to Subchapter D, Chapter 402, Labor Code, renumbered as Section
26 402.160, Labor Code, and amended to read as follows:

27 Sec. 402.160 [~~402.023~~]. COMPLAINT INFORMATION. (a) The

1 commissioner shall:

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

5 (2) ensure that information regarding the complaint
6 process is available on the department's Internet website.

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

8 (1) ensure that the department clearly defines in rule
9 the method for filing a complaint; and

10 (2) define what constitutes a frivolous complaint
11 under this subtitle.

12 (c) The department shall develop and post on the
13 department's Internet website:

14 (1) a simple standardized form for filing complaints
15 under this subtitle; and

16 (2) information regarding the complaint filing
17 process.

18 (d) The department [~~executive director~~] shall keep an
19 information file about each written complaint filed with the
20 department under this subtitle [~~commission~~] that is unrelated to a
21 specific workers' compensation claim. The information must
22 include:

23 (1) the date the complaint is received;

24 (2) the name of the complainant;

25 (3) the subject matter of the complaint;

26 (4) a record of all persons contacted in relation to
27 the complaint;

1 (5) a summary of the results of the review or
2 investigation of the complaint; and

3 (6) for complaints for which the department
4 [~~commission~~] took no action, an explanation of the reason the
5 complaint was closed without action.

6 (e) [~~(b)~~] For each written complaint that is unrelated to a
7 specific workers' compensation claim that the department
8 [~~commission~~] has authority to resolve, the department [~~executive~~
9 ~~director~~] shall provide to the person filing the complaint and the
10 person about whom the complaint is made information about the
11 department's [~~commission's~~] policies and procedures under this
12 subtitle relating to complaint investigation and resolution. The
13 department [~~commission~~], at least quarterly and until final
14 disposition of the complaint, shall notify those persons about the
15 status of the complaint unless the notice would jeopardize an
16 undercover investigation.

17 SECTION 1.032. Subchapter D, Chapter 402, Labor Code, is
18 amended by adding Sections 402.161-402.166 to read as follows:

19 Sec. 402.161. PRIORITIES FOR COMPLAINT INVESTIGATIONS. (a)
20 The department shall assign priorities to complaint investigations
21 under this subtitle based on risk. In developing priorities under
22 this section, the department shall develop a formal, risk-based
23 complaint investigation system that considers:

- 24 (1) the severity of the alleged violation;
25 (2) whether the alleged violator showed continued or
26 wilful noncompliance; and
27 (3) whether a commissioner order has been violated.

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

3 Sec. 402.162. STRATEGIC MANAGEMENT; EVALUATION. (a) The
4 commissioner shall implement a strategic management plan that:

5 (1) requires the department to evaluate and analyze
6 the effectiveness of the department in implementing:

7 (A) the statutory goals adopted under Section
8 402.051, particularly goals established to encourage the safe and
9 timely return of injured employees to productive work roles; and

10 (B) the other standards and requirements adopted
11 under this code, the Insurance Code, and other applicable laws of
12 this state; and

13 (2) modifies the organizational structure and
14 programs of the department as necessary to address shortfalls in
15 the performance of the workers' compensation system of this state.

16 (b) The department shall conduct research regarding the
17 system as provided by Chapter 405 to obtain the necessary data and
18 analysis to perform the evaluations required by this section.

19 Sec. 402.163. INFORMATION TO EMPLOYERS. (a) The
20 department shall provide employers with information on methods to
21 enhance the ability of an injured employee to return to work. The
22 information may include access to available research and best
23 practice information regarding return-to-work programs for
24 employers.

25 (b) The department shall augment return-to-work program
26 information provided to employers to include information regarding
27 methods for an employer to appropriately assist an injured employee

1 to obtain access to doctors who:

2 (1) provide high-quality care; and

3 (2) use effective occupational medicine treatment
4 practices that lead to returning employees to productive work.

5 (c) The information provided to employers under this
6 section must help to foster:

7 (1) effective working relationships with local
8 doctors and with insurance carriers or provider networks to improve
9 return-to-work communication; and

10 (2) access to return-to-work coordination services
11 provided by insurance carriers and provider networks.

12 (d) The department shall develop and make available the
13 information described by this section.

14 Sec. 402.164. INFORMATION TO EMPLOYEES. The department
15 shall provide injured employees with information regarding the
16 benefits of early return to work. The information must include
17 information on how to receive assistance in accessing high-quality
18 medical care through the workers' compensation system.

19 Sec. 402.165. SINGLE POINT OF CONTACT. To the extent
20 determined feasible by the commissioner, the department shall
21 establish a single point of contact for injured employees receiving
22 services from the department.

23 Sec. 402.166. INCENTIVES; PERFORMANCE-BASED OVERSIGHT.

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

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

27 (2) emphasize performance-based oversight linked to

1 regulatory outcomes.

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

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

20 (d) Based on the performance assessment, the department
21 shall develop regulatory tiers that distinguish among insurance
22 carriers, provider networks, and health care providers who are poor
23 performers, who generally are average performers, and who are
24 consistently high performers. The department shall focus its
25 regulatory oversight on insurance carriers, provider networks, and
26 health care providers identified as poor performers.

27 (e) The commissioner by rule shall develop incentives

1 within each tier under Subsection (d) that promote greater overall
2 compliance and performance. The regulatory incentives may include
3 modified penalties, self-audits, or flexibility based on
4 performance.

5 (f) The department shall:

6 (1) ensure that high-performing entities are publicly
7 recognized; and

8 (2) allow those entities to use that designation as a
9 marketing tool.

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

17 SECTION 1.033. Section 402.071, Labor Code, is renumbered
18 as Section 402.167, Labor Code, and amended to read as follows:

19 Sec. 402.167 [~~402.071~~]. REPRESENTATIVES. (a) The
20 commissioner by rule [~~commission~~] shall establish qualifications
21 for a representative and shall adopt rules establishing procedures
22 for authorization of representatives.

23 (b) A representative may receive a fee for providing
24 representation under this subtitle only if the representative [~~is~~]:

25 (1) is an adjuster representing an insurance carrier;

26 or

27 (2) is licensed to practice law.

1 SECTION 1.034. Section 402.072, Labor Code, is renumbered
2 as Section 402.168, Labor Code, and amended to read as follows:

3 Sec. 402.168 [~~402.072~~]. SANCTIONS. (a) The department
4 may impose sanctions against any individual or entity monitored or
5 regulated by the department under this subtitle.

6 (b) The commissioner by rule shall establish criteria for
7 imposing sanctions pursuant to this subtitle. Rules adopted under
8 this section are in addition to, and do not affect, the rules
9 adopted under Section 415.023(b).

10 (c) The criteria for recommending or imposing sanctions may
11 include anything the commissioner considers relevant, including:

12 (1) a sanction of the doctor or other health care
13 provider by the department for a violation of Chapter 413 or Chapter
14 415;

15 (2) a sanction by the Medicare or Medicaid program
16 for:

17 (A) substandard medical care;

18 (B) overcharging;

19 (C) overutilization of medical services; or

20 (D) any other substantive noncompliance with
21 requirements of those programs regarding professional practice or
22 billing;

23 (3) evidence from the department's medical records
24 that the applicable insurance carrier's utilization review
25 practices or the doctor's or health care provider's charges, fees,
26 diagnoses, treatments, evaluations, or impairment ratings are
27 substantially different from those the department finds to be fair

1 and reasonable based on either a single determination or a pattern
2 of practice;

3 (4) a suspension or other relevant practice
4 restriction of the doctor's or other health care provider's license
5 by an appropriate licensing authority;

6 (5) professional failure to practice medicine or
7 provide health care, including chiropractic care, in an acceptable
8 manner consistent with the public health, safety, and welfare;

9 (6) findings of fact and conclusions of law made by a
10 court, an administrative law judge of the State Office of
11 Administrative Hearings, or a licensing or regulatory authority; or

12 (7) an initial criminal conviction, including a
13 pleading of guilty or nolo contendere, or agreeing to an order of
14 probation without adjudication of guilt under deferred
15 adjudication, without regard to whether a subsequent order allows a
16 withdrawal of a plea of guilty, sets aside a verdict of guilty, or
17 dismisses an information or indictment.

18 (d) The commissioner by rule shall establish procedures
19 under which an individual or entity may apply for restoration of
20 practice privileges removed by the commissioner based on sanctions
21 imposed under this subtitle.

22 (e) The department shall act on a recommendation by the
23 medical advisor selected under Section 413.0511 and, after notice
24 and the opportunity for a hearing, may impose sanctions under this
25 section on a doctor or other health care provider or an insurance
26 carrier or may recommend action regarding a utilization review
27 agent.

1 (f) Sanctions may include:

2 (1) a sanction that deprives a person of the right to
3 practice before the department under this subtitle or of the right
4 to receive remuneration under this subtitle;

5 (2) suspension or revocation of a certificate of
6 authority, license, certification, or permit required for practice
7 in the field of workers' compensation;

8 (3) authorizing increased or reduced utilization
9 review and preauthorization controls on a doctor or other health
10 care provider;

11 (4) reduction of allowable reimbursement;

12 (5) mandatory preauthorization of all or certain
13 health care services;

14 (6) required peer review monitoring, reporting, and
15 audit;

16 (7) deletion or suspension from the designated doctor
17 list;

18 (8) restrictions on appointment under this chapter;

19 (9) conditions or restrictions on an insurance carrier
20 regarding actions by insurance carriers under this subtitle in
21 accordance with the memorandum of understanding adopted between the
22 commission and the Texas Department of Insurance regarding Article
23 21.58A, Insurance Code;

24 (10) mandatory participation in training classes or
25 other courses as established or certified by the commission; and

26 (11) other appropriate sanction.

27 (g) Only the commissioner may impose:

1 (1) a sanction that deprives a person of the right to
2 practice before the department under this subtitle or of the right
3 to receive remuneration under this subtitle for a period exceeding
4 30 days; or

5 (2) another sanction suspending for more than 30 days
6 or revoking a certificate of authority, license, certification, or
7 permit required for practice in the field of workers' compensation.

8 (h) A sanction imposed by the department is binding pending
9 appeal. [Only the commission may impose:

10 ~~[(1) a sanction that deprives a person of the right to~~
11 ~~practice before the commission or of the right to receive~~
12 ~~remuneration under this subtitle for a period exceeding 30 days; or~~

13 ~~[(2) another sanction suspending for more than 30 days~~
14 ~~or revoking a license, certification, or permit required for~~
15 ~~practice in the field of workers' compensation.]~~

16 SECTION 1.035. Section 402.073, Labor Code, is renumbered
17 as Section 402.169, Labor Code, and amended to read as follows:

18 Sec. 402.169 [~~402.073~~]. COOPERATION WITH STATE OFFICE OF
19 ADMINISTRATIVE HEARINGS. (a) The commissioner [~~commission~~] and
20 the chief administrative law judge of the State Office of
21 Administrative Hearings by rule shall adopt a memorandum of
22 understanding governing administrative procedure law hearings
23 under this subtitle conducted by the State Office of Administrative
24 Hearings in the manner provided for a contested case hearing under
25 Chapter 2001, Government Code [~~(the administrative procedure~~
26 ~~law)~~].

27 (b) In a case in which a hearing is conducted by the State

1 Office of Administrative Hearings under Section 411.049,
2 [~~413.031,~~] 413.055, or 415.034, the administrative law judge who
3 conducts the hearing for the State Office of Administrative
4 Hearings shall enter the final decision in the case after
5 completion of the hearing.

6 (c) In a case in which a hearing is conducted in conjunction
7 with Section 402.168 or [~~402.072,~~] 407.046, [~~or 408.023,~~] and in
8 other cases under this subtitle other than cases subject to
9 Subchapter C, Chapter 413 [~~that are not subject to Subsection (b),~~],
10 the administrative law judge who conducts the hearing for the State
11 Office of Administrative Hearings shall propose a decision to the
12 commissioner [~~commission~~] for final consideration and decision by
13 the commissioner [~~commission~~].

14 SECTION 1.036. Section 402.081, Labor Code, is renumbered
15 as Section 402.201, Labor Code, and amended to read as follows:

16 Sec. 402.201 [~~402.081~~]. WORKERS' COMPENSATION [~~COMMISSION~~]
17 RECORDS. (a) The commissioner [~~executive director~~] is the
18 custodian of the department's [~~commission's~~] records under this
19 subtitle and shall perform the duties of a custodian required by
20 law, including providing copies and the certification of records.

21 (b) The department shall comply with records retention
22 schedules as provided by Section 441.185, Government Code
23 [~~executive director may destroy a record maintained by the~~
24 ~~commission pertaining to an injury after the 50th anniversary of~~
25 ~~the date of the injury to which the record refers unless benefits~~
26 ~~are being paid on the claim on that date].~~

27 (c) A record maintained by the department under this

1 subtitle [~~commission~~] may be preserved in any format permitted by
2 Chapter 441, Government Code, and rules adopted by the Texas State
3 Library and Archives Commission under that chapter.

4 (d) The department [~~commission~~] may charge a reasonable fee
5 for making available for inspection any of its information that
6 contains confidential information that must be redacted before the
7 information is made available. However, when a request for
8 information is for the inspection of 10 or fewer pages, and a copy
9 of the information is not requested, the department [~~commission~~]
10 may charge only the cost of making a copy of the page from which
11 confidential information must be redacted. The fee for access to
12 information under Chapter 552, Government Code, shall be in accord
13 with the rules of the Texas Building and Procurement [~~General~~
14 ~~Services~~] Commission that prescribe the method for computing the
15 charge for copies under that chapter.

16 SECTION 1.037. Section 402.083, Labor Code, is renumbered
17 as Section 402.202, Labor Code, and amended to read as follows:

18 Sec. 402.202 [~~402.083~~]. CONFIDENTIALITY OF INJURY
19 INFORMATION. (a) Information in or derived from a claim file
20 regarding an employee is confidential and may not be disclosed by
21 the department or the State Office of Risk Management [~~commission~~]
22 except as provided by this subtitle.

23 (b) Information concerning an employee who has been finally
24 adjudicated of wrongfully obtaining payment under Section 415.008
25 is not confidential.

26 SECTION 1.038. Section 402.084, Labor Code, is renumbered
27 as Section 402.203, Labor Code, and amended to read as follows:

1 Sec. 402.203 [~~402.084~~]. RECORD CHECK; RELEASE OF
2 INFORMATION. (a) The department [~~commission~~] shall perform and
3 release a record check on an employee, including current or prior
4 injury information, to the parties listed in Subsection (b) if:

5 (1) the claim is:

6 (A) open or pending before the department
7 [~~commission~~];

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

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

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

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

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

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

21 (3) the employer at the time of injury;

22 (4) the insurance carrier;

23 (5) the Texas Certified Self-Insurer Guaranty
24 Association established under Subchapter G, Chapter 407, if that
25 association has assumed the obligations of an impaired employer;

26 (6) the Texas Property and Casualty Insurance Guaranty
27 Association, if that association has assumed the obligations of an

1 impaired insurance company;

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

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

9 (c) The requirements of Subsection (a)(1) do not apply to a
10 request from a third-party litigant described by Subsection (b)(7).

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

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

25 (2) requirements regarding the maintenance of
26 electronic data in the possession of a subclaimant or the
27 subclaimant's representative.

1 SECTION 1.039. Section 402.085, Labor Code, is renumbered
2 as Section 402.204, Labor Code, and amended to read as follows:

3 Sec. 402.204 [~~402.085~~]. EXCEPTIONS TO CONFIDENTIALITY.

4 (a) The department [~~commission~~] shall release information on a
5 claim to:

6 (1) [~~the Texas Department of Insurance for any~~
7 ~~statutory or regulatory purpose,~~

8 [~~(2)~~] a legislative committee for legislative
9 purposes;

10 (2) [~~(3)~~] a state or federal elected official
11 requested in writing to provide assistance by a constituent who
12 qualifies to obtain injury information under Section 402.203(b)
13 [~~402.084(b)~~], if the request for assistance is provided to the
14 department [~~commission~~];

15 (3) [~~(4)~~] the workers' compensation research and
16 evaluation group [~~Research and Oversight Council on Workers'~~
17 ~~Compensation~~] for research purposes; [~~or~~]

18 (4) [~~(5)~~] the attorney general or another entity that
19 provides child support services under Part D, Title IV, Social
20 Security Act (42 U.S.C. Section 651 et seq.), relating to:

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

23 (B) locating an absent parent; or

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

27 (b) The department [~~commission~~] may release information on

1 a claim to a governmental agency, political subdivision, or
2 regulatory body to use to:

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

5 (2) provide:

6 (A) unemployment compensation benefits;

7 (B) crime victims compensation benefits;

8 (C) vocational rehabilitation services; or

9 (D) health care benefits;

10 (3) investigate occupational safety or health
11 violations;

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

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

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

18 (B) establish paternity;

19 (C) locate an absent parent; or

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

24 SECTION 1.040. Section 402.086, Labor Code, is renumbered
25 as Section 402.205, Labor Code, to read as follows:

26 Sec. 402.205 [~~402.086~~]. TRANSFER OF CONFIDENTIALITY. (a)
27 Information relating to a claim that is confidential under this

1 subtitle remains confidential when released to any person, except
2 when used in court for the purposes of an appeal.

3 (b) This section does not prohibit an employer from
4 releasing information about a former employee to another employer
5 with whom the employee has applied for employment, if that
6 information was lawfully acquired by the employer releasing the
7 information.

8 SECTION 1.041. Section 402.087, Labor Code, is renumbered
9 as Section 402.206, Labor Code, and amended to read as follows:

10 Sec. 402.206 [~~402.087~~]. INFORMATION AVAILABLE TO
11 [~~PROSPECTIVE~~] EMPLOYERS. (a) A prospective employer who has
12 workers' compensation insurance coverage and who complies with this
13 subchapter is entitled to obtain information from the department on
14 the prior injuries of an applicant for employment if the employer
15 obtains written authorization from the applicant before making the
16 request.

17 (b) A current employer who has workers' compensation
18 insurance and who complies with this subchapter is entitled to
19 obtain information from the department on the prior injuries of an
20 employee, if the employer obtains written authorization from the
21 employee before making the request, if the employer requests the
22 information from the department not later than the 30th day after
23 the date of hire of the employee. The employer may only use the
24 information obtained under this subsection to verify information
25 the employee has provided to the employer in an employment
26 application.

27 (c) The employer must make a [~~the~~] request for information

1 under Subsection (a) by telephone or file the request in writing not
2 later than the 14th day after the date on which the application for
3 employment is made.

4 (d) A [~~(c)~~—The] request under this section must include the
5 applicant's or employee's name, address, and social security
6 number.

7 (e) [~~(d)~~] If a [~~the~~] request under Subsection (a) is made in
8 writing, the authorization must be filed simultaneously. If the
9 request is made by telephone, the employer must file the
10 authorization not later than the 10th day after the date on which
11 the request is made.

12 (f) An employer may not use information obtained under this
13 section in a manner that violates the Americans with Disabilities
14 Act (42 U.S.C. Section 12101 et seq.).

15 SECTION 1.042. Section 402.088, Labor Code, is renumbered
16 as Section 402.207, Labor Code, and amended to read as follows:

17 Sec. 402.207 [~~402.088~~]. REPORT OF PRIOR INJURY. (a) In
18 this section, "general injury" means an injury other than an injury
19 limited to one or more of the following:

- 20 (1) an injury to a digit, limb, or member;
21 (2) an inguinal hernia; or
22 (3) vision or hearing loss.

23 (b) On receipt of a valid request made under and complying
24 with Section 402.206 [~~402.087~~], the department [~~commission~~] shall
25 review its records.

26 (c) [~~(b)~~] If the department [~~commission~~] finds that an
27 [~~the~~] applicant or an employee has made any [~~two or more~~] general

1 injury claims in the preceding five years, the department
2 [~~commission~~] shall release the date and description of each injury
3 regarding:

4 (1) the applicant, to the prospective employer; and

5 (2) the employee, to the current employer.

6 (d) [~~(c)~~] The information may be released in writing or by
7 telephone.

8 (e) [~~(d)~~] If a prospective [~~the~~] employer requests
9 information on three or more applicants at the same time, the
10 department [~~commission~~] may refuse to release information until it
11 receives the written authorization from each applicant.

12 [~~(c) In this section, "general injury" means an injury other~~
13 ~~than an injury limited to one or more of the following:~~

14 [~~(1) an injury to a digit, limb, or member;~~

15 [~~(2) an inguinal hernia; or~~

16 [~~(3) vision or hearing loss.~~]

17 SECTION 1.043. Section 402.089, Labor Code, is renumbered
18 as Section 402.208, Labor Code, and amended to read as follows:

19 Sec. 402.208 [~~402.089~~]. FAILURE TO FILE AUTHORIZATION;
20 ADMINISTRATIVE VIOLATION. (a) A prospective [~~An~~] employer who
21 receives information by telephone from the department [~~commission~~]
22 under Section 402.207 [~~402.088~~] and who fails to file the necessary
23 authorization in accordance with Section 402.206 [~~402.087~~] commits
24 a Class C administrative violation.

25 (b) Each failure to file an authorization is a separate
26 violation.

27 SECTION 1.044. Section 402.090, Labor Code, is renumbered

1 as Section 402.209, Labor Code, and amended to read as follows:

2 Sec. 402.209 [~~402.090~~]. STATISTICAL INFORMATION. The
3 department [~~commission~~], the workers' compensation research and
4 evaluation group [~~center~~], or any other governmental agency may
5 prepare and release statistical information if the identity of an
6 employee is not explicitly or implicitly disclosed.

7 SECTION 1.045. Section 402.091, Labor Code, is renumbered
8 as Section 402.210, Labor Code, and amended to read as follows:

9 Sec. 402.210 [~~402.091~~]. FAILURE TO MAINTAIN
10 CONFIDENTIALITY; OFFENSE; PENALTY. (a) A person commits an
11 offense if the person knowingly, intentionally, or recklessly
12 publishes, discloses, or distributes information that is
13 confidential under this subchapter to a person not authorized to
14 receive the information directly from the department [~~commission~~].

15 (b) A person commits an offense if the person knowingly,
16 intentionally, or recklessly receives information that is
17 confidential under this subchapter and that the person is not
18 authorized to receive.

19 (c) An offense under this section is a Class A misdemeanor.

20 (d) An offense under this section may be prosecuted in a
21 court in the county where the information was unlawfully received,
22 published, disclosed, or distributed.

23 (e) A district court in Travis County has jurisdiction to
24 enjoin the use, publication, disclosure, or distribution of
25 confidential information under this section.

26 SECTION 1.046. Section 402.092, Labor Code, is renumbered
27 as Section 402.211, Labor Code, and amended to read as follows:

1 Sec. 402.211 [~~402.092~~]. INVESTIGATION FILES CONFIDENTIAL;
2 DISCLOSURE OF CERTAIN INFORMATION. (a) In this section,
3 "investigation file" means any information compiled or maintained
4 by the department with respect to a department investigation
5 authorized under this subtitle or other workers' compensation law.
6 The term does not include information or material acquired by the
7 department that is relevant to an investigation by the insurance
8 fraud unit and subject to Section 701.151, Insurance Code.

9 (b) Information maintained in the investigation files of
10 the department [~~commission~~] is confidential and may not be
11 disclosed except:

- 12 (1) in a criminal proceeding;
- 13 (2) in a hearing conducted by the department
14 [~~commission~~];
- 15 (3) on a judicial determination of good cause; [~~or~~]
- 16 (4) to a governmental agency, political subdivision,
17 or regulatory body if the disclosure is necessary or proper for the
18 enforcement of the laws of this or another state or of the United
19 States; or
- 20 (5) to an insurance carrier if the investigation file
21 relates directly to a felony regarding workers' compensation or to
22 a claim in which restitution is required to be paid to the insurance
23 carrier.

24 (c) Department [~~(b) Commission~~] investigation files are
25 not open records for purposes of Chapter 552, Government Code.

26 (d) [~~(c)~~] Information in an investigation file that is
27 information in or derived from a claim file, or an employer injury

1 report or occupational disease report, is governed by the
2 confidentiality provisions relating to that information.

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

6 (e) The department ~~[commission]~~, upon request, shall
7 disclose the identity of a complainant under this section if the
8 department ~~[commission]~~ finds:

9 (1) the complaint was groundless or made in bad faith;

10 ~~[or]~~

11 (2) the complaint lacks any basis in fact or evidence;

12 ~~[or]~~

13 (3) the complaint is frivolous; or

14 (4) the complaint is done specifically for competitive
15 or economic advantage.

16 (f) Upon completion of an investigation in which ~~[where]~~ the
17 department ~~[commission]~~ determines a complaint is described by
18 Subsection (e), ~~[groundless, frivolous, made in bad faith, or is~~
19 ~~not supported by evidence or is done specifically for competitive~~
20 ~~or economic advantage]~~ the department ~~[commission]~~ shall notify the
21 person who was the subject of the complaint of its finding and the
22 identity of the complainant.

23 SECTION 1.047. Chapter 402, Labor Code, is amended by
24 adding Subchapter F to read as follows:

25 SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

26 Sec. 402.251. COOPERATION; FACILITIES. (a) The department
27 shall cooperate with the office of injured employee counsel in

1 providing services to claimants under this subtitle.

2 (b) The department shall provide facilities to the office of
3 injured employee counsel in each regional department office
4 operated to administer the duties of the department under this
5 subtitle.

6 SECTION 1.048. Effective March 1, 2006, the following laws
7 are repealed:

- 8 (1) Section 402.0015, Labor Code;
- 9 (2) Sections 402.003-402.012, Labor Code;
- 10 (3) Sections 402.024 and 402.025, Labor Code;
- 11 (4) Section 402.041, Labor Code;
- 12 (5) Sections 402.043-402.045, Labor Code;
- 13 (6) Section 402.063, Labor Code;
- 14 (7) Section 402.0665, Labor Code; and
- 15 (8) Sections 402.069 and 402.070, Labor Code.

16 SECTION 1.049. (a) The commissioner of insurance shall
17 conduct a review of the rules, policies, and practices of the Texas
18 Department of Insurance regarding the operation of the workers'
19 compensation system of this state. The review must include
20 analysis of the rules, policies, and practices of the Texas
21 Workers' Compensation Commission, as that commission existed
22 before abolishment under this Act, that are continued as rules,
23 policies, and practices of the Texas Department of Insurance until
24 replaced by the commissioner of insurance. In the review, the
25 commissioner shall:

- 26 (1) analyze the effectiveness of the rules, policies,
27 and practices in implementing the goals of the workers'

1 compensation system as described by Section 402.051, Labor Code, as
2 added by this Act, especially the return-to-work goals; and

3 (2) evaluate the existence of any statutory barriers
4 to the implementation of those goals.

5 (b) The commissioner of insurance shall report the results
6 of the review, together with any recommendations for statutory
7 changes, to the governor, the lieutenant governor, the speaker of
8 the house of representatives, and the members of the 80th
9 Legislature not later than December 1, 2006.

10 PART 3. AMENDMENTS TO CHAPTER 403, LABOR CODE

11 SECTION 1.051. The heading to Chapter 403, Labor Code, is
12 amended to read as follows:

13 CHAPTER 403. [~~COMMISSION~~] FINANCING OF
14 WORKERS' COMPENSATION SYSTEM

15 SECTION 1.052. Section 403.001, Labor Code, is amended to
16 read as follows:

17 Sec. 403.001. [~~COMMISSION~~] FUNDS. (a) Except as provided
18 by Sections 403.006 and 403.007 or as otherwise provided by law,
19 money collected under this subtitle, including administrative
20 penalties and advance deposits for purchase of services, shall be
21 deposited in the general revenue fund of the state treasury to the
22 credit of the Texas Department of Insurance operating account.
23 Notwithstanding Section 202.101, Insurance Code, or any other law,
24 money deposited in the account under this section may be
25 appropriated only for the use and benefit of the department and the
26 office of injured employee counsel as provided by the General
27 Appropriations Act to pay salaries and other expenses arising from

1 and in connection with the duties under this title of the department
2 and the office [~~commission~~].

3 (b) The money may be spent as authorized by legislative
4 appropriation on warrants issued by the comptroller under
5 requisitions made by the commissioner [~~commission~~].

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

9 SECTION 1.053. Section 403.003, Labor Code, is amended to
10 read as follows:

11 Sec. 403.003. RATE OF ASSESSMENT. (a) The commissioner
12 [~~commission~~] shall set and certify to the comptroller the rate of
13 maintenance tax assessment not later than October 31 of each year,
14 taking into account:

15 (1) any expenditure projected as necessary for the
16 department [~~commission~~] to:

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

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

21 (2) projected employee benefits paid from general
22 revenues;

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

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

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

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

5 (1) the State Office of Risk Management;

6 (2) the workers' compensation research and evaluation
7 group [~~oversight council on workers' compensation~~]; or

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

10 SECTION 1.054. Section 403.004, Labor Code, is amended to
11 read as follows:

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

17 SECTION 1.055. Section 403.005, Labor Code, is amended to
18 read as follows:

19 Sec. 403.005. TAX RATE SURPLUS OR DEFICIT. (a) If the tax
20 rate set by the commissioner [~~commission~~] for a year does not
21 produce sufficient revenue to make all expenditures authorized by
22 legislative appropriation, the deficit shall be paid from the
23 general revenue fund.

24 (b) If the tax rate set by the commissioner [~~commission~~] for
25 a year produces revenue that exceeds the amount required to make all
26 expenditures authorized by the legislature, the excess shall be
27 deposited in the general revenue fund to the credit of the Texas

1 Department of Insurance operating account. Notwithstanding Section
2 202.101, Insurance Code, or any other law, money deposited in the
3 account under this section may be appropriated only for the use and
4 benefit of the department as provided by the General Appropriations
5 Act to pay salaries and other expenses arising from and in
6 connection with the department's duties under this title
7 [commission].

8 SECTION 1.056. Section 403.006, Labor Code, as amended by
9 Chapters 211 and 1296, Acts of the 78th Legislature, Regular
10 Session, 2003, is reenacted and amended to read as follows:

11 Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent
12 injury fund is a dedicated [~~general revenue~~] account in the general
13 revenue fund [~~in the state treasury~~]. Money in the account may be
14 appropriated only for the purposes of this section or as provided by
15 other law. The subsequent injury fund is not subject to any
16 provision of law that makes dedicated revenue available for general
17 governmental purposes and available for the purpose of
18 certification under Section 403.121, Government Code. [Section
19 403.095, Government Code, does not apply to the subsequent injury
20 fund.]

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

22 (1) the payment of compensation as provided by Section
23 408D.202 [~~408.162~~];

24 (2) reimbursement of insurance carrier claims of
25 overpayment of benefits made under an interlocutory order or
26 decision of the commissioner [~~commission~~] as provided by this
27 subtitle, consistent with the priorities established by rule by the

1 commissioner [~~commission~~]; and

2 (3) reimbursement of insurance carrier claims as
3 provided by Sections 408.042 and 413.0141, consistent with the
4 priorities established by rule by the commissioner [~~commission~~; and
5 [~~(4) the payment of an assessment of feasibility and~~
6 ~~the development of regional networks established under Section~~
7 ~~408.0221~~].

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

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

14 SECTION 1.057. Section 403.007, Labor Code, is amended to
15 read as follows:

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

22 (b) The insurance carrier may elect or the commissioner
23 [~~commission~~] may order that death benefits payable to the fund be
24 commuted on written approval of the commissioner [~~executive~~
25 ~~director~~]. The commutation may be discounted for present payment
26 at the rate established in Section 401.023, compounded annually.

27 (c) If a claim for death benefits is not filed with the

1 department [~~commission~~] by a legal beneficiary on or before the
2 first anniversary of the date of the death of the employee, it is
3 presumed, for purposes of this section only, that no legal
4 beneficiary survived the deceased employee. The presumption does
5 not apply against a minor beneficiary or an incompetent beneficiary
6 for whom a guardian has not been appointed.

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

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

24 (f) The department's [~~commission's~~] actuary or financial
25 advisor shall report biannually to the workers' compensation
26 research and evaluation group [~~Research and Oversight Council on~~
27 ~~Workers' Compensation~~] on the financial condition and projected

1 assets and liabilities of the subsequent injury fund. The
2 department [~~commission~~] shall make the reports available to members
3 of the legislature and the public. The department [~~commission~~] may
4 purchase annuities to provide for payments due to claimants under
5 this subtitle if the commissioner [~~commission~~] determines that the
6 purchase of annuities is financially prudent for the administration
7 of the fund.

8 PART 4. ADOPTION OF CHAPTER 404, LABOR CODE

9 SECTION 1.061. Subtitle A, Title 5, Labor Code, is amended
10 by adding Chapter 404 to read as follows:

11 CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

12 SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

13 Sec. 404.001. DEFINITIONS. In this chapter:

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

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

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

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

25 (c) The department shall provide the staff and facilities
26 necessary to enable the office to perform the duties of the office
27 under this subtitle, including:

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

3 (2) personnel services; and

4 (3) computer equipment and support.

5 (d) The public counsel and the commissioner may enter into
6 interagency contracts and other agreements as necessary to
7 implement this chapter.

8 Sec. 404.003. SUNSET PROVISION. The office of injured
9 employee counsel is subject to Chapter 325, Government Code (Texas
10 Sunset Act). Unless continued in existence as provided by that
11 chapter, the office is abolished and this chapter expires September
12 1, 2019.

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

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

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

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

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

26 (b) Rulemaking under this section is subject to Chapter
27 2001, Government Code.

1 [Sections 404.007-404.050 reserved for expansion]

2 SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

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

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

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

12 (d) In appointing the public counsel, the governor shall
13 consider recommendations made by groups that represent wage
14 earners.

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

17 (1) be licensed to practice law in this state;

18 (2) have demonstrated a strong commitment to and
19 involvement in efforts to safeguard the rights of the working
20 public;

21 (3) have management experience;

22 (4) possess knowledge and experience with the workers'
23 compensation system; and

24 (5) have experience with legislative procedures and
25 administrative law.

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

27 (a) A person is not eligible for appointment as public counsel if

1 the person or the person's spouse:

2 (1) is employed by or participates in the management
3 of a business entity or other organization that holds a license,
4 certificate of authority, or other authorization from the
5 department or that receives funds from the department;

6 (2) owns or controls, directly or indirectly, more
7 than a 10 percent interest in a business entity or other
8 organization receiving funds from the department or the office; or

9 (3) uses or receives a substantial amount of tangible
10 goods or funds from the department or the office, other than
11 compensation or reimbursement authorized by law.

12 (b) A person is not eligible for appointment as public
13 counsel if the person or the person's spouse has been an employee of
14 an insurance company in the two years preceding the date of
15 appointment.

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

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

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

26 (2) violates a prohibition established by Section
27 404.053, 404.054, 404.056, or 404.057; or

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

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

7 Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. (a)
8 A former public counsel may not make any communication to or
9 appearance before the department, the commissioner, or an employee
10 of the department before the second anniversary of the date the
11 person ceases to serve as public counsel if the communication or
12 appearance is made:

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

15 (2) with the intent to influence a commissioner
16 decision or action, unless the person is acting on the person's own
17 behalf and without remuneration.

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

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

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

26 (1) be employed by an insurance carrier regarding a
27 matter that was in the scope of the employee's official

1 responsibility while the employee was associated with the office;
2 or

3 (2) represent a person before the department or a
4 court in a matter:

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

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

9 (e) The prohibition of Subsection (d)(1) applies until the
10 first anniversary of the date the employee's employment with the
11 office ceases.

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

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

21 (b) A person may not serve as public counsel if the person
22 is:

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

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

1 [Sections 404.058-404.100 reserved for expansion]

2 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

3 Sec. 404.101. GENERAL DUTIES. (a) The office shall:

4 (1) provide representation and assistance to workers'
5 compensation claimants as provided by this subtitle; and

6 (2) advocate on behalf of injured employees as a class
7 regarding rulemaking by the commissioner relating to workers'
8 compensation.

9 (b) The office shall accept or reject cases for
10 representation and assistance in disputes subject to Chapter 410 or
11 413 based on standards set by department policy.

12 (c) To the extent determined feasible by the public counsel,
13 the office shall establish a single point of contact for injured
14 employees receiving services from the office.

15 (d) The office:

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

19 (2) shall:

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

23 (B) assist injured employees with the resolution
24 of complaints against system participants, including state
25 regulatory agencies;

26 (C) provide assistance to injured workers in the
27 administrative dispute resolution system; and

1 (D) advocate in the office's own name positions
2 determined by the public counsel to be most advantageous to a
3 substantial number of injured workers.

4 Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL.
5 The public counsel shall administer and enforce this chapter,
6 including preparing and submitting to the legislature a budget for
7 the office and approving expenditures for professional services,
8 travel, per diem, and other actual and necessary expenses incurred
9 in administering the office.

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

12 (b) The office shall coordinate services provided by the
13 ombudsman program with services provided by the Department of
14 Assistive and Rehabilitative Services.

15 Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public
16 counsel:

17 (1) may appear or intervene, as a party or otherwise,
18 as a matter of right before the commissioner or department on behalf
19 of injured employees as a class in matters involving rules and forms
20 affecting workers' compensation insurance for which the
21 commissioner adopts or approves rules or forms;

22 (2) may intervene on behalf of injured employees as a
23 class as a matter of right or otherwise appear in a judicial
24 proceeding involving or arising from an action taken by an
25 administrative agency in a proceeding in which the public counsel
26 previously appeared under the authority granted by this chapter;

27 (3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of injured employees as a class in any
2 proceeding in which the public counsel determines that injured
3 employees are in need of representation, except that the public
4 counsel may not intervene in an enforcement or parens patriae
5 proceeding brought by the attorney general; and

6 (4) may appear or intervene before the commissioner or
7 department, as a party or otherwise, on behalf of injured employees
8 as a class in a matter involving rules or forms affecting injured
9 employees as a class in any proceeding in which the public counsel
10 determines that injured employees are in need of representation.

11 Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN
12 ADMINISTRATIVE PROCEDURES. (a) The office may appear before the
13 commissioner or department on behalf of an individual injured
14 employee during an administrative dispute resolution process.

15 (b) The office may represent injured employees either
16 through attorney representation or by an ombudsman whose assistance
17 will be under the direction of an attorney.

18 (c) The public counsel shall adopt rules and policies for
19 representation and assistance of individual injured employees
20 before the department. The rules must include a process for
21 determining which cases need direct attorney involvement, taking
22 into consideration the complexity of the case and the issue or
23 issues in dispute.

24 (d) A determination of an injured employee's need for direct
25 attorney representation does not constitute a fact determination on
26 the validity of the claim.

27 (e) The office is prohibited from representing an injured

1 employee in:

2 (1) an informal dispute resolution process before an
3 insurance carrier or certified provider network;

4 (2) a judicial review; or

5 (3) a hearing before the department alleging an
6 administrative violation or fraud.

7 Sec. 404.106. RESOLUTION OF COMPLAINTS. (a) The office
8 shall receive and attempt to resolve complaints from injured
9 employees against system participants, including state agencies.

10 The office shall:

11 (1) work with various state agencies to assist in
12 resolving complaints, including coordination of communications
13 among various state agencies;

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

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

21 (b) The office, at least quarterly and until final
22 disposition of the complaint, shall notify the injured employee of
23 the status of the complaint unless the notice would jeopardize an
24 investigation by law enforcement or the fraud units of an
25 individual insurance company or a state or federal regulatory body.

26 Sec. 404.107. LEGISLATIVE REPORT. (a) The office shall
27 report to the governor, lieutenant governor, speaker of the house

1 of representatives, and the chairs of the legislative committees
2 with appropriate jurisdiction not later than December 31 of each
3 even-numbered year. The report must include:

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

5 (2) identification of any problems in the workers'
6 compensation system from the perspective of injured employees as
7 considered by the public counsel, with recommendations for
8 regulatory and legislative action; and

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

12 (b) The office shall coordinate with the workers'
13 compensation research and evaluation group to obtain needed
14 information and data to make the evaluations required for the
15 report.

16 (c) The office shall publish and disseminate the
17 legislative report to interested persons, and may charge a fee for
18 the publication as necessary to achieve optimal dissemination.

19 Sec. 404.108. ACCESS TO INFORMATION BY PUBLIC COUNSEL. The
20 public counsel:

21 (1) is entitled to the same access as a party, other
22 than department staff, to department records available in a
23 proceeding before the commissioner or department under the
24 authority granted to the public counsel by this chapter; and

25 (2) is entitled to obtain discovery under Chapter
26 2001, Government Code, of any non-privileged matter that is
27 relevant to the subject matter involved in a proceeding or

1 submission before the commissioner or department as authorized by
2 this chapter.

3 Sec. 404.109. LEGISLATIVE RECOMMENDATIONS. The public
4 counsel may recommend proposed legislation to the legislature that
5 the public counsel determines would positively affect the interests
6 of injured employees.

7 Sec. 404.110. INJURED EMPLOYEE RIGHTS; NOTICE. The public
8 counsel shall submit to the department for adoption by the
9 commissioner a notice of injured employee rights and
10 responsibilities to be distributed as provided by commissioner
11 rules on first report of injury.

12 Sec. 404.111. PROHIBITED INTERVENTIONS OR APPEARANCES. The
13 public counsel may not intervene or appear in:

14 (1) any proceeding or hearing before the commissioner
15 or department, or any other proceeding, that relates to approval or
16 consideration of an individual charter, license, certificate of
17 authority, acquisition, merger, or examination; or

18 (2) any proceeding concerning the solvency of an
19 individual insurer, a financial issue, a policy form, advertising,
20 or another regulatory issue affecting an individual insurer or
21 agent.

22 Sec. 404.112. APPLICABILITY OF CONFIDENTIALITY
23 REQUIREMENTS. Confidentiality requirements applicable to
24 examination reports under Article 1.18, Insurance Code, and to the
25 commissioner under Section 3A, Article 21.28-A, Insurance Code,
26 apply to the public counsel.

27 Sec. 404.113. ACCESS TO INFORMATION. (a) The office is

1 entitled to information that is otherwise confidential under a law
2 of this state, including information made confidential under:

3 (1) Section 843.006, Insurance Code;

4 (2) Chapter 108, Health and Safety Code; and

5 (3) Chapter 552, Government Code.

6 (b) On request by the public counsel, the department and the
7 Department of Assistive and Rehabilitative Services, Texas
8 Workforce Commission, Health and Human Services Commission, and any
9 other state agency with relevant information shall provide any
10 information or data requested by the office in furtherance of the
11 duties of the office under this chapter.

12 (c) The office shall use information collected or received
13 under this chapter for the benefit of the public.

14 Sec. 404.114. CONFIDENTIALITY AND USE OF INFORMATION. (a)
15 Except as provided by this section, information collected under
16 this subchapter is subject to Chapter 552, Government Code. The
17 office shall make determinations on requests for information in
18 favor of access.

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

25 (1) could reasonably be expected to reveal the
26 identity of a doctor, a health care provider, or an injured
27 employee;

1 (2) reveals the zip code of the address at which an
2 injured employee lives;

3 (3) discloses a provider discount or a differential
4 between a payment and a billed charge; or

5 (4) relates to an actual payment made by a payer to an
6 identified provider.

7 (c) Information collected or used by the office under this
8 chapter is subject to the confidentiality provisions and criminal
9 penalties of:

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

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

12 (3) Chapter 159, Occupations Code.

13 (d) Information on doctors, health care providers, and
14 injured employees that is in the possession of the office, and any
15 compilation, report, or analysis produced from the information that
16 identifies doctors, health care providers, and injured employees is
17 not:

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

20 (2) admissible in any civil, administrative, or
21 criminal proceeding.

22 (e) Notwithstanding Subsection (b)(2), the office may use
23 zip code information to analyze information on a geographical
24 basis.

25 Sec. 404.115. LITERACY AND BASIC SKILLS CURRICULUM. (a)
26 The office shall coordinate with the Texas Workforce Commission and
27 local workforce development boards to develop a workplace literacy

1 and basic skills curriculum designed to eliminate the skills gap
2 between employees and current and emerging jobs.

3 (b) The public counsel may enter into memoranda of
4 understanding or other agreements with the Texas Workforce
5 Commission and local workforce development boards as necessary to
6 implement Subsection (a).

7 SECTION 1.062. Subchapter C, Chapter 409, Labor Code, is
8 redesignated as Subchapter D, Chapter 404, Labor Code, and Sections
9 409.041-409.044, Labor Code, are renumbered as Sections
10 404.151-404.154, Labor Code, and amended to read as follows:

11 SUBCHAPTER D [~~C~~]. OMBUDSMAN PROGRAM

12 Sec. 404.151 [~~409.041~~]. OMBUDSMAN PROGRAM. (a) The office
13 [~~commission~~] shall maintain an ombudsman program as provided by
14 this subchapter to assist injured employees [~~workers~~] and persons
15 claiming death benefits in obtaining benefits under this subtitle.

16 (b) An ombudsman shall:

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

19 (2) investigate complaints;

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

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

25 (5) meet with an unrepresented claimant privately for
26 a minimum of 15 minutes prior to any prehearing conference
27 [~~informal~~] or formal hearing.

1 Sec. 404.152 [~~409.042~~]. DESIGNATION AS OMBUDSMAN;
2 ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION
3 REQUIREMENTS. (a) At least one specially qualified employee in
4 each department workers' compensation [~~commission~~] office shall be
5 an ombudsman designated by the office [~~an ombudsman~~] who shall
6 perform the duties under this subchapter [~~section~~] as the person's
7 primary responsibility.

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

10 (1) demonstrate satisfactory knowledge of the
11 requirements of:

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

14 (B) other laws relating to workers'
15 compensation; and

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

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

20 (3) possess strong interpersonal skills; and

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

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

26 (1) include education regarding this subtitle and[~~7~~]
27 rules adopted under this subtitle, [~~and appeals panel decisions,~~]

1 with emphasis on benefits and the dispute resolution process; and

2 (2) require an ombudsman undergoing training to be
3 observed and monitored by an experienced ombudsman during daily
4 activities conducted under this subchapter.

5 Sec. 404.153 [~~409.043~~]. EMPLOYER NOTIFICATION;
6 ADMINISTRATIVE VIOLATION. (a) Each employer shall notify its
7 employees of the ombudsman program in the [~~a~~] manner prescribed by
8 the office [~~commission~~].

9 (b) An employer commits a violation if the employer fails to
10 comply with this section. A violation under this section is a Class
11 C administrative violation.

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

15 SECTION 1.063. The ombudsman program operated by the office
16 of injured employee counsel under Subchapter D, Chapter 404, Labor
17 Code, as added by this Act, shall begin providing services under
18 that subchapter not later than March 1, 2006.

19 PART 5. AMENDMENTS TO CHAPTER 405, LABOR CODE

20 SECTION 1.071. Section 405.001, Labor Code, is amended to
21 read as follows:

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

25 SECTION 1.072. Section 405.002, Labor Code, is amended to
26 read as follows:

27 Sec. 405.002. WORKERS' COMPENSATION RESEARCH DUTIES OF

1 DEPARTMENT; RESEARCH AND EVALUATION GROUP. (a) The workers'
2 compensation research and evaluation group is located within the
3 department and serves as a resource for the commissioner on
4 workers' compensation issues [~~shall conduct professional studies~~
5 ~~and research related to:~~

6 [~~(1) the delivery of benefits;~~

7 [~~(2) litigation and controversy related to workers'~~
8 ~~compensation;~~

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

10 [~~(4) rehabilitation and reemployment of injured~~
11 ~~workers;~~

12 [~~(5) workplace health and safety issues;~~

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

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

16 (b) The department may apply for and spend grant funds to
17 implement this chapter.

18 (c) The department shall ensure that all research reports
19 prepared under this chapter or by the former Research and Oversight
20 Council on Workers' Compensation are accessible to the public
21 through the Internet to the extent practicable.

22 SECTION 1.073. Chapter 405, Labor Code, is amended by
23 adding Sections 405.0025, 405.0026, and 405.0027 to read as
24 follows:

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

27 (1) the delivery of benefits;

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

12 (b) The group shall:

- 13 (1) objectively evaluate the impact of the workers'
14 compensation health care networks certified under this subtitle on
15 the cost and the quality of medical care provided to injured
16 employees; and
- 17 (2) report the group's findings to the governor, the
18 lieutenant governor, the speaker of the house of representatives,
19 and the members of the legislature not later than December 1 of each
20 even-numbered year.

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

- 24 (1) the average medical and indemnity cost per claim;
- 25 (2) access and utilization of health care;
- 26 (3) injured employee return-to-work outcomes;
- 27 (4) injured employee, health care provider, and

1 insurance carrier satisfaction;

2 (5) injured employee health-related functional
3 outcomes;

4 (6) the frequency, duration, and outcome of
5 complaints; and

6 (7) the frequency, duration, and outcome of disputes
7 regarding medical benefits.

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

12 (b) The commissioner shall:

13 (1) accept public comments on the research agenda; and

14 (2) hold a public hearing on the proposed research
15 agenda if a hearing is requested by interested persons.

16 Sec. 405.0027. REPORT CARD. (a) The group shall develop
17 and issue an annual informational report card that identifies and
18 compares, on an objective basis, the quality, costs, provider
19 availability, and other analogous factors of provider networks
20 operating under the workers' compensation system of this state.

21 (b) The group may procure services as necessary to produce
22 the report card. The report card must include a risk-adjusted
23 evaluation of:

24 (1) employee access to care;

25 (2) return-to-work outcomes;

26 (3) health-related outcomes;

27 (4) employee satisfaction with care; and

1 (5) health care costs and utilization of health care.

2 (c) The report cards may be based on information or data
3 from any person, agency, organization, or governmental entity that
4 the group considers reliable. The group may not endorse or
5 recommend a specific provider network or plan, or subjectively rate
6 or rank provider networks or plans, other than through comparison
7 and evaluation of objective criteria.

8 (d) The commissioner shall ensure that consumer report
9 cards issued by the group under this section are accessible to the
10 public on the department's Internet website and available to any
11 person on request. The commissioner by rule may set a reasonable
12 fee for obtaining a paper copy of report cards.

13 SECTION 1.074. Sections 405.003(a) and (e), Labor Code, are
14 amended to read as follows:

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

20 (e) Amounts received under this section shall be deposited
21 in the general revenue fund [~~state treasury~~] in accordance with
22 Section 251.004 [~~Article 5.68(e)~~], Insurance Code, to be used:

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

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

27 SECTION 1.075. Section 405.004, Labor Code, is amended by

1 amending Subsections (a), (b), and (d) and adding Subsections (e)
2 and (f) to read as follows:

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

- 6 (1) [~~the commission,~~
7 [~~2~~] the Texas Workforce Commission;
8 (2) [~~3~~] the [~~Texas~~] Department of Assistive and
9 Rehabilitative [~~Human~~] Services;
10 (3) the office of injured employee counsel;
11 (4) the State Office of Risk Management; and
12 (5) other appropriate state agencies.

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

15 (d) Except as provided by this subsection, the [~~The~~]
16 identity of an individual or entity selected to participate in a
17 [~~department~~] survey conducted by the group or who participates in
18 such a survey is confidential and is not subject to public
19 disclosure under Chapter 552, Government Code. This subsection
20 does not prohibit the identification of a provider network in a
21 report card issued under Section 405.0027, provided that the report
22 card may not identify any injured employee or other individual.

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

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

6 PART 6. AMENDMENTS TO CHAPTER 406, LABOR CODE

7 SECTION 1.081. Section 406.005(c), Labor Code, is amended
8 to read as follows:

9 (c) Each employer shall post a notice of whether the
10 employer has workers' compensation insurance coverage at
11 conspicuous locations at the employer's place of business as
12 necessary to provide reasonable notice to the employees. The
13 commissioner [~~commission~~] may adopt rules relating to the form and
14 content of the notice. The employer shall revise the notice when
15 the information contained in the notice is changed. An employer who
16 has workers' compensation insurance coverage and who employs
17 part-time employees must include in the notice required under this
18 subsection a statement that the coverage applies to the part-time
19 employees.

20 SECTION 1.082. Sections 406.006(a)-(c), Labor Code, are
21 amended to read as follows:

22 (a) An insurance company from which an employer has obtained
23 workers' compensation insurance coverage, a certified
24 self-insurer, and a political subdivision shall file notice of the
25 coverage and claim administration contact information with the
26 department [~~commission~~] not later than the 10th day after the date
27 on which the coverage or claim administration agreement takes

1 effect, unless the commissioner [~~commission~~] adopts a rule
2 establishing a later date for filing. Coverage takes effect on the
3 date on which a binder is issued, a later date and time agreed to by
4 the parties, on the date provided by the certificate of
5 self-insurance, or on the date provided in an interlocal agreement
6 that provides for self-insurance. The commissioner [~~commission~~]
7 may adopt rules that establish the coverage and claim
8 administration contact information required under this subsection.

9 (b) The notice required under this section shall be filed
10 with the department [~~commission~~] in accordance with Section
11 406.009.

12 (c) An insurance company, certified self-insurer, or
13 political subdivision commits a violation if the person fails to
14 file notice with the department [~~commission~~] as provided by this
15 section. A violation under this subsection is a Class C
16 administrative violation. Each day of noncompliance constitutes a
17 separate violation.

18 SECTION 1.083. Sections 406.007(a)-(c), Labor Code, are
19 amended to read as follows:

20 (a) An employer who terminates workers' compensation
21 insurance coverage obtained under this subtitle shall file a
22 written notice with the department [~~commission~~] by certified mail
23 not later than the 10th day after the date on which the employer
24 notified the insurance carrier to terminate the coverage. The
25 notice must include a statement certifying the date that notice was
26 provided or will be provided to affected employees under Section
27 406.005.

1 (b) The notice required under this section shall be filed
2 with the department [~~commission~~] in accordance with Section
3 406.009.

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

5 (1) the 30th day after the date of filing of notice
6 with the department [~~commission~~] under Subsection (a); or

7 (2) the cancellation date of the policy.

8 SECTION 1.084. Section 406.008, Labor Code, is amended to
9 read as follows:

10 Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY
11 INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels a
12 policy of workers' compensation insurance or that does not renew
13 the policy by the anniversary date of the policy shall deliver
14 notice of the cancellation or nonrenewal by certified mail or in
15 person to the employer and the department [~~commission~~] not later
16 than:

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

19 (2) the 10th day before the date on which the
20 cancellation or nonrenewal takes effect if the insurance company
21 cancels or does not renew because of:

22 (A) fraud in obtaining coverage;

23 (B) misrepresentation of the amount of payroll
24 for purposes of premium calculation;

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

26 (D) an increase in the hazard for which the
27 employer seeks coverage that results from an act or omission of the

1 employer and that would produce an increase in the rate, including
2 an increase because of a failure to comply with:

3 (i) reasonable recommendations for loss
4 control; or

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

7 (E) a determination made by the commissioner [~~of~~
8 ~~insurance~~] that the continuation of the policy would place the
9 insurer in violation of the law or would be hazardous to the
10 interest of subscribers, creditors, or the general public.

11 (b) The notice required under this section shall be filed
12 with the department [~~commission~~].

13 (c) Failure of the insurance company to give notice as
14 required by this section extends the policy until the date on which
15 the required notice is provided to the employer and the department
16 [~~commission~~].

17 SECTION 1.085. Sections 406.009(a)-(d), Labor Code, are
18 amended to read as follows:

19 (a) The department [~~commission~~] shall collect and maintain
20 the information required under this subchapter and shall monitor
21 compliance with the requirements of this subchapter.

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

24 (c) The commissioner [~~commission~~] may:

25 (1) designate a data collection agent, implement an
26 electronic reporting and public information access program, and
27 adopt rules as necessary to implement the data collection

1 requirements of this subchapter; and

2 (2) [~~. The executive director may~~] establish the
3 form, manner, and procedure for the transmission of information to
4 the department [~~commission as authorized by Section~~
5 ~~402.042(b)(11)~~].

6 (d) The commissioner [~~commission~~] may require an employer
7 or insurance carrier subject to this subtitle to identify or
8 confirm an employer's coverage status and claim administration
9 contact information as necessary to achieve the purposes of this
10 subtitle.

11 SECTION 1.086. Section 406.010(c), Labor Code, is amended
12 to read as follows:

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

15 SECTION 1.087. Section 406.011(a), Labor Code, is amended
16 to read as follows:

17 (a) The commissioner [~~commission~~] by rule may require an
18 insurance carrier to designate a representative in Austin to act as
19 the insurance carrier's agent before the department [~~commission~~] in
20 Austin. Notice to the designated representative [~~agent~~]
21 constitutes notice under this subtitle or the Insurance Code to the
22 insurance carrier.

23 SECTION 1.088. Section 406.012, Labor Code, is amended to
24 read as follows:

25 Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The department
26 [~~commission~~] shall enforce the administrative penalties
27 established under this subchapter in accordance with Chapter 415.

1 SECTION 1.089. Sections 406.051(b) and (c), Labor Code, are
2 amended to read as follows:

3 (b) The contract for coverage must be written on a policy
4 and endorsements approved by the department [~~Texas Department of~~
5 ~~Insurance~~].

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 1.090. Section 406.053, Labor Code, is amended to
18 read as follows:

19 Sec. 406.053. ALL STATES COVERAGE. The department [~~Texas~~
20 ~~Department of Insurance~~] shall coordinate with the appropriate
21 agencies of other states to:

22 (1) share information regarding an employer who
23 obtains all states coverage; and

24 (2) ensure that the department has knowledge of an
25 employer who obtains all states coverage in another state but fails
26 to file notice with the department.

27 SECTION 1.091. Section 406.073(b), Labor Code, is amended

1 to read as follows:

2 (b) The employer shall file the agreement with the
3 department [~~executive director~~] on request.

4 SECTION 1.092. Sections 406.074(a) and (b), Labor Code, are
5 amended to read as follows:

6 (a) The commissioner [~~executive director~~] may enter into an
7 agreement with an appropriate agency of another jurisdiction with
8 respect to:

9 (1) conflicts of jurisdiction;

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

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

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

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

21 SECTION 1.093. Section 406.093(b), Labor Code, is amended
22 to read as follows:

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

26 SECTION 1.094. Section 406.095(b), Labor Code, is amended
27 to read as follows:

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

3 SECTION 1.095. Section 406.098(c), Labor Code, is amended
4 to read as follows:

5 (c) The commissioner [~~Texas Department of Insurance~~] shall
6 adopt rules governing the method of calculating premiums for
7 workers' compensation insurance coverage for volunteer members who
8 are covered pursuant to this section.

9 SECTION 1.096. Section 406.123(f), Labor Code, is amended
10 to read as follows:

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

17 SECTION 1.097. Sections 406.144(c) and (d), Labor Code, are
18 amended to read as follows:

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

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

27 SECTION 1.098. Sections 406.145(a)-(d) and (f), Labor Code,

1 are amended to read as follows:

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

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

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

21 (d) The department [~~commission~~] shall maintain a system for
22 accepting and maintaining the joint agreements.

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

1 SECTION 1.099. Section 406.004, Labor Code, is repealed.

2 PART 7. AMENDMENTS TO CHAPTER 407, LABOR CODE

3 SECTION 1.101. Sections 407.001(3) and (5), Labor Code, are
4 amended to read as follows:

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

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

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

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

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

15 (5) "Qualified claims servicing contractor" means a
16 person who provides claims service for a certified self-insurer,
17 who is a separate business entity from the affected certified
18 self-insurer, and who is:

19 (A) an insurance company authorized by the
20 department [~~Texas Department of Insurance~~] to write workers'
21 compensation insurance;

22 (B) a subsidiary of an insurance company that
23 provides claims service under contract; or

24 (C) a third-party administrator that has on its
25 staff an individual licensed under Chapter 4101, Insurance Code
26 [~~407, Acts of the 63rd Legislature, Regular Session, 1973 (Article~~
27 ~~21.07-4, Vernon's Texas Insurance Code)~~].

1 SECTION 1.102. Subchapter A, Chapter 407, Labor Code, is
2 amended by adding Section 407.002 to read as follows:

3 Sec. 407.002. CLAIM; SUIT. (a) A claim or suit brought by a
4 claimant or a certified self-insurer shall be styled "in re: [name
5 of employee] and [name of certified self-insurer]."

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

10 SECTION 1.103. Sections 407.041(a)-(c), Labor Code, are
11 amended to read as follows:

12 (a) An employer who desires to self-insure under this
13 chapter must submit an application to the department [~~commission~~]
14 for 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 1.104. Section 407.042, Labor Code, is amended to
25 read as follows:

26 Sec. 407.042. ISSUANCE OF CERTIFICATE OF AUTHORITY. With
27 the approval of the Texas Certified Self-Insurer Guaranty

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

5 SECTION 1.105. 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 department [~~commission~~] shall
11 notify the applicant in writing of the [~~its~~] determination, stating
12 the specific reasons for the denial and the conditions to be met
13 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 1.106. 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 department [~~division~~].

27 SECTION 1.107. 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 department [~~commission~~] the
14 certificate of authority to self-insure.

15 SECTION 1.108. Sections 407.046(a), (b), and (d), Labor
16 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 hearing
26 to determine if the certificate should be revoked. The hearing
27 shall be conducted in the manner provided for a contested case

1 hearing under Chapter 2001, Government Code [~~(the administrative~~
2 ~~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 1.109. Section 407.047(b), Labor Code, is amended
7 to read as follows:

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

13 SECTION 1.110. Sections 407.061(a), (c), (e), and (f),
14 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 department
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 department [~~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 1.111. 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 department [~~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 considers [~~commission finds~~]
26 appropriate; and

27 (8) any other information considered appropriate by

1 the commissioner [~~commission~~].

2 SECTION 1.112. Section 407.063(a), Labor Code, is amended
3 to read as follows:

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

10 SECTION 1.113. Sections 407.064(a), (b), and (e), Labor
11 Code, are amended to read as follows:

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

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

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

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

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

1 original letter of credit.

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

7 SECTION 1.114. Sections 407.065(b)-(f), Labor Code, are
8 amended to read as follows:

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

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

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

1 (1) the acceptance by the commissioner [~~director~~] of a
2 surety bond or irrevocable letter of credit for the full amount of
3 the incurred liabilities for compensation; or

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

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

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

20 SECTION 1.115. Sections 407.066(a) and (b), Labor Code, are
21 amended to read as follows:

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

1 legal fees, that arises among:

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

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

12 SECTION 1.116. Sections 407.067(a)-(c), Labor Code, are
13 amended to read as follows:

14 (a) Each applicant shall obtain excess insurance or
15 reinsurance to cover liability for losses not paid by the
16 self-insurer in an amount not less than the amount required by the
17 commissioner [~~director~~].

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

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

26 SECTION 1.117. Sections 407.081(a)-(d), (f), and (g), Labor
27 Code, are amended to read as follows:

1 (a) Each certified self-insurer shall file an annual report
2 with the department [~~commission~~]. The commissioner [~~commission~~]
3 shall prescribe the form of the report and shall furnish blank forms
4 for the preparation of the report to each certified self-insurer.

5 (b) The report must:

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

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

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

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

19 (d) The commissioner [~~commission~~] may require that the
20 report include additional financial and statistical information.

21 (f) The report must include an estimate of future liability
22 for compensation. The estimate must be signed and sworn to by a
23 certified casualty actuary every third year, or more frequently if
24 required by the commissioner [~~commission~~].

25 (g) If the commissioner [~~commission~~] considers it
26 necessary, the commissioner [~~it~~] may order a certified self-insurer
27 whose financial condition or claims record warrants closer

1 supervision to report as provided by this section more often than
2 annually.

3 SECTION 1.118. Sections 407.082(a), (c), and (d), Labor
4 Code, are amended to read as follows:

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

9 (c) The material maintained by the certified self-insurer
10 shall be open to examination by an authorized agent or
11 representative of the department [~~commission~~] at reasonable times
12 to ascertain the correctness of the information.

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

19 SECTION 1.119. Section 407.101(b), Labor Code, is amended
20 to read as follows:

21 (b) The department [~~commission~~] shall deposit the
22 application fee for a certificate of authority to self-insure in
23 the state treasury to the credit of the workers' compensation
24 self-insurance fund.

25 SECTION 1.120. Section 407.102, Labor Code, is amended to
26 read as follows:

27 Sec. 407.102. REGULATORY FEE. (a) Each certified

1 self-insurer shall pay an annual fee to cover the administrative
2 costs incurred by the department [~~commission~~] in implementing this
3 chapter.

4 (b) The department [~~commission~~] shall base the fee on the
5 total amount of income benefit payments made in the preceding
6 calendar year. The department [~~commission~~] shall assess each
7 certified self-insurer a pro rata share based on the ratio that the
8 total amount of income benefit payments made by that certified
9 self-insurer bears to the total amount of income benefit payments
10 made by all certified self-insurers.

11 SECTION 1.121. Sections 407.103(a), (b), and (d), Labor
12 Code, are amended to read as follows:

13 (a) Each certified self-insurer shall pay a self-insurer
14 maintenance tax for the administration of the department
15 [~~commission~~] and to support the prosecution of workers'
16 compensation insurance fraud in this state. Not more than two
17 percent of the total tax base of all certified self-insurers, as
18 computed under Subsection (b), may be assessed for a maintenance
19 tax under this section.

20 (b) To determine the tax base of a certified self-insurer
21 for purposes of this chapter, the department [~~director~~] shall
22 multiply the amount of the certified self-insurer's liabilities for
23 workers' compensation claims incurred in the previous year,
24 including claims incurred but not reported, plus the amount of
25 expense incurred by the certified self-insurer in the previous year
26 for administration of self-insurance, including legal costs, by
27 1.02.

1 (d) In setting the rate of maintenance tax assessment for
2 insurance companies, the department [~~commission~~] may not consider
3 revenue or expenditures related to the operation of the
4 self-insurer program under this chapter [~~division~~].

5 SECTION 1.122. Sections 407.104(b), (c), and (e), Labor
6 Code, are amended to read as follows:

7 (b) The department [~~commission~~] shall compute the fee and
8 taxes of a certified self-insurer and notify the certified
9 self-insurer of the amounts due. The taxes and fees shall be
10 remitted to the department [~~commission~~].

11 (c) The regulatory fee imposed under Section 407.102 shall
12 be deposited in the state treasury to the credit of the workers'
13 compensation self-insurance fund. The self-insurer maintenance
14 tax shall be deposited in the state treasury to the credit of the
15 Texas Department of Insurance operating account. Notwithstanding
16 Section 202.101, Insurance Code, or any other law, money deposited
17 in the account under this section may be appropriated only for the
18 use and benefit of the department as provided by the General
19 Appropriations Act to pay salaries and other expenses arising from
20 and in connection with the department's duties under this title
21 [~~commission~~].

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

27 SECTION 1.123. Section 407.122(b), Labor Code, is amended

1 to read as follows:

2 (b) The board of directors is composed of the following
3 voting members:

4 (1) four [~~three~~] certified self-insurers;

5 (2) the commissioner [~~one commission member~~
6 ~~representing wage earners,~~

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

8 and

9 (3) [~~(4)~~] the public counsel of the office of public
10 insurance counsel.

11 SECTION 1.124. Section 407.123(b), Labor Code, is amended
12 to read as follows:

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

15 SECTION 1.125. Section 407.124, Labor Code, is amended to
16 read as follows:

17 Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. (a) On
18 determination by the department [~~commission~~] that a certified
19 self-insurer has become an impaired employer, the commissioner
20 [~~director~~] shall secure release of the security deposit required by
21 this chapter and shall promptly estimate:

22 (1) the amount of additional funds needed to
23 supplement the security deposit;

24 (2) the available assets of the impaired employer for
25 the purpose of making payment of all incurred liabilities for
26 compensation; and

27 (3) the funds maintained by the association for the

1 emergency payment of compensation liabilities.

2 (b) The commissioner [~~director~~] shall advise the board of
3 directors of the association of the estimate of necessary
4 additional funds, and the board shall promptly assess each
5 certified self-insurer to collect the required funds. An
6 assessment against a certified self-insurer shall be made in
7 proportion to the ratio that the total paid income benefit payment
8 for the preceding reported calendar year for that self-insurer
9 bears to the total paid income benefit payment by all certified
10 self-insurers, except impaired employers, in this state in that
11 calendar year.

12 (c) A certified self-insurer designated as an impaired
13 employer is exempt from assessments beginning on the date of the
14 designation until the department [~~commission~~] determines that the
15 employer is no longer impaired.

16 SECTION 1.126. Section 407.125, Labor Code, is amended to
17 read as follows:

18 Sec. 407.125. PAYMENT OF ASSESSMENTS. Each certified
19 self-insurer shall pay the amount of its assessment to the
20 association not later than the 30th day after the date on which the
21 department [~~division~~] notifies the self-insurer of the assessment.
22 A delinquent assessment may be collected on behalf of the
23 association through suit. Venue is in Travis County.

24 SECTION 1.127. Section 407.126(d), Labor Code, is amended
25 to read as follows:

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

1 SECTION 1.128. Section 407.127(a), Labor Code, is amended
2 to read as follows:

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

9 SECTION 1.129. Section 407.128, Labor Code, is amended to
10 read as follows:

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

18 SECTION 1.130. Section 407.132, Labor Code, is amended to
19 read as follows:

20 Sec. 407.132. SPECIAL FUND. Funds advanced by the
21 association under this subchapter do not become assets of the
22 impaired employer but are a special fund advanced to the
23 commissioner [~~director~~], trustee in bankruptcy, receiver, or other
24 lawful conservator only for the payment of compensation
25 liabilities, including the costs of claims administration and legal
26 costs.

27 SECTION 1.131. Section 407.133(a), Labor Code, is amended

1 to read as follows:

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

7 SECTION 1.132. The following laws are repealed:

8 (1) Section 407.001(2), Labor Code;

9 (2) Section 407.122(c), Labor Code; and

10 (3) Subchapter B, Chapter 407, Labor Code.

11 PART 8. AMENDMENTS TO CHAPTER 407A, LABOR CODE

12 SECTION 1.141. Section 407A.053(d), Labor Code, is amended
13 to read as follows:

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

21 SECTION 1.142. Section 407A.201(c), Labor Code, is amended
22 to read as follows:

23 (c) The membership of an individual member of a group is
24 subject to cancellation by the group as provided by the bylaws of
25 the group. An individual member may also elect to terminate
26 participation in the group. The group shall notify the
27 commissioner [~~and the commission~~] of the cancellation or

1 termination of a membership not later than the 10th day after the
2 date on which the cancellation or termination takes effect and
3 shall maintain coverage of each canceled or terminated member until
4 the 30th day after the date of the notice, at the terminating
5 member's expense, unless before that date the commissioner
6 [~~commission~~] notifies the group that the canceled or terminated
7 member has:

- 8 (1) obtained workers' compensation insurance
9 coverage;
10 (2) become a certified self-insurer; or
11 (3) become a member of another group.

12 SECTION 1.143. The heading to Section 407A.301, Labor Code,
13 is amended to read as follows:

14 Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT [~~COMMISSION~~]
15 AND WORKERS' COMPENSATION RESEARCH AND EVALUATION GROUP [~~OVERSIGHT~~
16 ~~COUNCIL~~].

17 SECTION 1.144. Sections 407A.301(a) and (c), Labor Code,
18 are amended to read as follows:

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

- 21 (1) the administration of the department
22 [~~commission~~];
23 (2) the prosecution of workers' compensation insurance
24 fraud in this state; and
25 (3) the workers' compensation research and evaluation
26 group [~~Research and Oversight Council on Workers' Compensation~~].

27 (c) The tax liability of a group under Subsection (a)(3) is

1 based on gross premium for the group's retention multiplied by the
2 rate assessed insurance carriers under Section 405.003 [~~404.003~~].

3 SECTION 1.145. Section 407A.303(c), Labor Code, is amended
4 to read as follows:

5 (c) If the certificate of approval of a group is terminated,
6 the commissioner [~~or the executive director of the commission~~]
7 shall immediately notify the comptroller to collect taxes as
8 directed under Sections 407A.301 and 407A.302.

9 SECTION 1.146. Section 407A.357(b), Labor Code, is amended
10 to read as follows:

11 (b) The guaranty association advisory committee is composed
12 of the following voting members:

13 (1) three members who represent different groups under
14 this chapter, subject to Subsection (c);

15 (2) one [~~commission~~] member, designated by the
16 commissioner, who represents wage earners;

17 (3) one member, designated by the commissioner, who
18 represents employers; and

19 (4) the public counsel of the office of public
20 insurance counsel.

21 PART 9. AMENDMENTS TO CHAPTER 408, LABOR CODE

22 SECTION 1.151. The heading to Chapter 408, Labor Code, is
23 amended to read as follows:

24 CHAPTER 408. WORKERS' COMPENSATION BENEFITS: GENERAL PROVISIONS

25 SECTION 1.152. Section 408.001, Labor Code, is amended by
26 adding Subsection (d) to read as follows:

27 (d) A determination under Section 406.032, 409.002, or

1 409.004 that a work-related injury is noncompensable does not
2 adversely affect the exclusive remedy provisions under Subsection
3 (a).

4 SECTION 1.153. Sections 408.003(b) and (c), Labor Code, are
5 amended to read as follows:

6 (b) If an injury is found to be compensable and an insurance
7 carrier initiates compensation, the insurance carrier shall
8 reimburse the employer for the amount of benefits paid by the
9 employer to which the employee was entitled under this subtitle.
10 Payments that are not reimbursed or reimbursable under this section
11 may be reimbursed under Section 408D.107 [~~408.127~~].

12 (c) The employer shall notify the department [~~commission~~]
13 and the insurance carrier on forms prescribed by the commissioner
14 [~~commission~~] of the initiation of and amount of payments made under
15 this section.

16 SECTION 1.154. Sections 408.005(a)-(g), Labor Code, are
17 amended to read as follows:

18 (a) A settlement may not provide for payment of benefits in
19 a lump sum except as provided by Section 408D.108 [~~408.128~~].

20 (b) An employee's right to medical benefits as provided by
21 Section 408A.001 [~~408.021~~] may not be limited or terminated.

22 (c) A settlement or agreement resolving an issue of
23 impairment:

24 (1) may not be made before the employee reaches
25 maximum medical improvement; and

26 (2) must adopt an impairment rating using the
27 impairment rating guidelines described by Section 408D.104

1 [408.124].

2 (d) A settlement must be signed by the commissioner
3 [~~director of the division of hearings~~] and all parties to the
4 dispute.

5 (e) The commissioner [~~director of the division of hearings~~]
6 shall approve a settlement if the commissioner [~~director~~] is
7 satisfied that:

8 (1) the settlement accurately reflects the agreement
9 between the parties;

10 (2) the settlement reflects adherence to all
11 appropriate provisions of law and the policies of the department
12 [~~commission~~]; and

13 (3) under the law and facts, the settlement is in the
14 best interest of the claimant.

15 (f) A settlement that is not approved or rejected before the
16 16th day after the date the settlement is submitted to the
17 commissioner [~~director of the division of hearings~~] is considered
18 to be approved by the commissioner [~~director~~] on that date.

19 (g) A settlement takes effect on the date it is approved by
20 the commissioner [~~director of the division of hearings~~].

21 SECTION 1.155. Section 413.021, Labor Code, is transferred
22 to Subchapter A, Chapter 408, Labor Code, renumbered as Section
23 408.009, Labor Code, and amended to read as follows:

24 Sec. 408.009 [~~413.021~~]. RETURN-TO-WORK COORDINATION
25 SERVICES. (a) An insurance carrier shall, with the agreement of a
26 participating employer, provide each [~~the~~] employer with
27 return-to-work coordination services as necessary to facilitate an

1 injured employee's return to employment.

2 **(b)** The insurance carrier shall notify the employer of the
3 availability of return-to-work coordination services. In offering
4 the services, insurance carriers and the department [~~commission~~]
5 shall target employers without return-to-work programs and shall
6 focus return-to-work efforts on workers who begin to receive
7 temporary income benefits. The carrier shall evaluate a
8 compensable injury in which the injured employee sustains an injury
9 that could potentially result in lost time from employment as early
10 as practicable to determine if skilled case management is necessary
11 for the injured employee's case. Where necessary, case managers who
12 are appropriately licensed to practice in the State of Texas shall
13 be used. Claims adjusters shall not be used as case managers.

14 **(c)** These services may be offered by insurance carriers in
15 conjunction with the accident prevention services provided under
16 Section 411.061. Nothing in this section:

17 **(1)** supersedes the provisions of a collective
18 bargaining agreement between an employer and the employer's
19 employees; or

20 **(2)** [~~, and nothing in this section~~] authorizes or
21 requires an employer to engage in conduct that would otherwise be a
22 violation of the employer's obligations under the National Labor
23 Relations Act (29 U.S.C. Section 151 et seq.) [~~, and its subsequent~~
24 ~~amendments~~].

25 **(d)** [~~(b)~~] Return-to-work coordination services under this
26 section may include:

27 (1) job analysis to identify the physical demands of a

1 job;

2 (2) job modification and restructuring assessments as
3 necessary to match job requirements with the functional capacity of
4 an employee; and

5 (3) medical or vocational case management to
6 coordinate the efforts of the employer, the treating doctor, and
7 the injured employee to achieve timely return to work.

8 (e) [~~(c)~~] An insurance carrier is not required to provide
9 physical workplace modifications under this section and is not
10 liable for the cost of modifications made under this section to
11 facilitate an employee's return to employment.

12 (f) [~~(d)~~] The department [~~commission~~] shall use certified
13 rehabilitation counselors or other appropriately trained or
14 credentialed specialists to provide training to department
15 [~~commission~~] staff regarding the coordination of return-to-work
16 services under this section.

17 (g) [~~(e)~~] The commissioner [~~commission~~] shall adopt rules
18 necessary to collect data on return-to-work outcomes to allow full
19 evaluations of successes and of barriers to achieving timely return
20 to work after an injury.

21 SECTION 1.156. Section 408.041(c), Labor Code, is amended
22 to read as follows:

23 (c) If Subsection (a) or (b) cannot reasonably be applied
24 because the employee's employment has been irregular or because the
25 employee has lost time from work during the 13-week period
26 immediately preceding the injury because of illness, weather, or
27 another cause beyond the control of the employee, the department

1 ~~[commission]~~ may determine the employee's average weekly wage by
2 any method that the commissioner ~~[commission]~~ considers fair, just,
3 and reasonable to all parties and consistent with the methods
4 established under this section.

5 SECTION 1.157. Sections 408.042(d), (f), and (g), Labor
6 Code, are amended to read as follows:

7 (d) The commissioner ~~[commission]~~ shall:

8 (1) prescribe a form to collect information regarding
9 the wages of employees with multiple employment; and

10 (2) by rule, determine the manner by which the
11 department ~~[commission]~~ collects and distributes wage information
12 to implement this section.

13 (f) If the department ~~[commission]~~ determines that
14 computing the average weekly wage for an employee as provided by
15 Subsection (c) is impractical or unreasonable, the department
16 ~~[commission]~~ shall set the average weekly wage in a manner that more
17 fairly reflects the employee's average weekly wage and that is fair
18 and just to both parties or is in the manner agreed to by the
19 parties. The commissioner ~~[commission]~~ by rule may define methods
20 to determine a fair and just average weekly wage consistent with
21 this section.

22 (g) An insurance carrier is entitled to apply for and
23 receive reimbursement at least annually from the subsequent injury
24 fund for the amount of income benefits paid to a worker under this
25 section that are based on employment other than the employment
26 during which the compensable injury occurred. The commissioner
27 ~~[commission]~~ may adopt rules that govern the documentation,

1 application process, and other administrative requirements
2 necessary to implement this subsection.

3 SECTION 1.158. Section 408.043(c), Labor Code, is amended
4 to read as follows:

5 (c) If, for good reason, the commissioner [~~commission~~]
6 determines that computing the average weekly wage for a seasonal
7 employee as provided by this section is impractical, the department
8 [~~commission~~] shall compute the average weekly wage as of the time of
9 the injury in a manner that is fair and just to both parties.

10 SECTION 1.159. Section 408.0445, Labor Code, is amended to
11 read as follows:

12 Sec. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF STATE
13 MILITARY FORCES AND TEXAS TASK FORCE 1. (a) For purposes of
14 computing income benefits or death benefits under Section 431.104,
15 Government Code, the average weekly wage of a member of the state
16 military forces as defined by Section 431.001, Government Code, who
17 is engaged in authorized training or duty is an amount equal to the
18 sum of the member's regular weekly wage at any employment the member
19 holds in addition to serving as a member of the state military
20 forces, disregarding any period during which the member is not
21 fully compensated for that employment because the member is engaged
22 in authorized military training or duty, and the member's regular
23 weekly wage as a member of the state military forces, except that
24 the amount may not exceed 100 percent of the state average weekly
25 wage as determined under Section 408.047.

26 (b) For purposes of computing income benefits or death
27 benefits under Section 88.303, Education Code, the average weekly

1 wage of a Texas Task Force 1 member, as defined by Section 88.301,
2 Education Code, who is engaged in authorized training or duty is an
3 amount equal to the sum of the member's regular weekly wage at any
4 employment, including self-employment, that the member holds in
5 addition to serving as a member of Texas Task Force 1, except that
6 the amount may not exceed 100 percent of the state average weekly
7 wage as determined under Section 408.047. A member for whom an
8 average weekly wage cannot be computed shall be paid the minimum
9 weekly benefit established by the department [~~commission~~].

10 SECTION 1.160. Sections 408.0446(d) and (e), Labor Code,
11 are amended to read as follows:

12 (d) If the department [~~commission~~] determines that
13 computing the average weekly wage of a school district employee as
14 provided by this section is impractical because the employee did
15 not earn wages during the 12 months immediately preceding the date
16 of the injury, the department [~~commission~~] shall compute the
17 average weekly wage in a manner that is fair and just to both
18 parties.

19 (e) The commissioner [~~commission~~] shall adopt rules as
20 necessary to implement this section.

21 SECTION 1.161. Section 408.045, Labor Code, is amended to
22 read as follows:

23 Sec. 408.045. NONPECUNIARY WAGES. The department
24 [~~commission~~] may not include nonpecuniary wages in computing an
25 employee's average weekly wage during a period in which the
26 employer continues to provide the nonpecuniary wages.

27 SECTION 1.162. Section 408.047, Labor Code, is amended to

1 read as follows:

2 Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On or after
3 October 1, 2005, the [~~The~~] state average weekly wage is the amount
4 computed by the Texas Workforce Commission under Section 207.002 as
5 the average weekly wage in covered employment in this state [~~for the~~
6 ~~fiscal year beginning September 1, 2003, and ending August 31,~~
7 ~~2004, is \$537, and for the fiscal year beginning September 1, 2004,~~
8 ~~and ending August 31, 2005, is \$539]~~.

9 (b) The state average weekly wage for the period beginning
10 September 1, 2005, and ending September 30, 2005, is \$539. This
11 subsection expires October 1, 2005.

12 SECTION 1.163. Sections 408.061(a), (b), (c), (d), (e), and
13 (f), Labor Code, are amended to read as follows:

14 (a) A weekly temporary income benefit may not exceed 130
15 [~~100~~] percent of the state average weekly wage under Section
16 408.047 rounded to the nearest whole dollar.

17 (b) A weekly impairment income benefit may not exceed 100
18 [~~70~~] percent of the state average weekly wage rounded to the nearest
19 whole dollar.

20 (c) A weekly supplemental income benefit may not exceed 100
21 [~~70~~] percent of the state average weekly wage rounded to the nearest
22 whole dollar.

23 (d) A weekly death benefit may not exceed 130 [~~100~~] percent
24 of the state average weekly wage rounded to the nearest whole
25 dollar.

26 (e) A weekly lifetime income benefit may not exceed 130
27 [~~100~~] percent of the state average weekly wage rounded to the

1 nearest whole dollar.

2 (f) The department [~~commission~~] shall compute the maximum
3 weekly income benefits for each state fiscal year not later than
4 October [~~September~~] 1 of each year.

5 SECTION 1.164. Section 408.062(b), Labor Code, is amended
6 to read as follows:

7 (b) The department [~~commission~~] shall compute the minimum
8 weekly income benefit for each state fiscal year not later than
9 October [~~September~~] 1 of each year.

10 SECTION 1.165. Section 408.063(a), Labor Code, is amended
11 to read as follows:

12 (a) To expedite the payment of income benefits, the
13 commissioner [~~commission~~] may by rule establish reasonable
14 presumptions relating to the wages earned by an employee, including
15 the presumption that an employee's last paycheck accurately
16 reflects the employee's usual wage.

17 SECTION 1.166. Section 408.202, Labor Code, is amended to
18 read as follows:

19 Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not
20 assignable, except a legal beneficiary may, with department
21 [~~commission~~] approval, assign the right to death benefits.

22 SECTION 1.167. Section 408.221, Labor Code, is amended by
23 amending Subsections (a), (b), (d)-(g), and (i) and adding
24 Subsection (c) to read as follows:

25 (a) An attorney's fee, including a contingency fee, for
26 representing a claimant before the department [~~commission~~] or court
27 under this subtitle must be approved by the department [~~commission~~]

1 or court.

2 (b) Except as otherwise provided, an attorney's fee under
3 this section is based on the attorney's time and expenses according
4 to written evidence presented to the department [~~commission~~] or
5 court. Except as provided by Subsection (c) or Section 408D.159(c)
6 [~~408.147(c)~~], the attorney's fee shall be paid from the claimant's
7 recovery.

8 (c) An insurance carrier that seeks judicial review under
9 Subchapter G, Chapter 410, of a final decision of a commission
10 appeals panel regarding compensability or eligibility for, or the
11 amount of, income or death benefits is liable for reasonable and
12 necessary attorney's fees as provided by Subsection (d) incurred by
13 the claimant as a result of the insurance carrier's appeal if the
14 claimant prevails on an issue on which judicial review is sought by
15 the insurance carrier in accordance with the limitation of issues
16 contained in Section 410.302. If the carrier appeals multiple
17 issues and the claimant prevails on some, but not all, of the issues
18 appealed, the court shall apportion and award fees to the
19 claimant's attorney only for the issues on which the claimant
20 prevails. In making that apportionment, the court shall consider
21 the factors prescribed by Subsection (d). This subsection does not
22 apply to attorney's fees for which an insurance carrier may be
23 liable under Section 408.147. An award of attorney's fees under
24 this subsection is not subject to commission rules adopted under
25 Subsection (f).

26 (d) In approving an attorney's fee under this section, the
27 department [~~commission~~] or court shall consider:

- 1 (1) the time and labor required;
- 2 (2) the novelty and difficulty of the questions
3 involved;
- 4 (3) the skill required to perform the legal services
5 properly;
- 6 (4) the fee customarily charged in the locality for
7 similar legal services;
- 8 (5) the amount involved in the controversy;
- 9 (6) the benefits to the claimant that the attorney is
10 responsible for securing; and
- 11 (7) the experience and ability of the attorney
12 performing the services.

13 (e) The commissioner [~~commission~~] by rule or the court may
14 provide for the commutation of an attorney's fee, except that the
15 attorney's fee shall be paid in periodic payments in a claim
16 involving death benefits if the only dispute is as to the proper
17 beneficiary or beneficiaries.

18 (f) The commissioner [~~commission~~] by rule shall provide
19 guidelines for maximum attorney's fees for specific services in
20 accordance with this section.

21 (g) An attorney's fee may not be allowed in a case involving
22 a fatal injury or lifetime income benefit if the insurance carrier
23 admits liability on all issues and tenders payment of maximum
24 benefits in writing under this subtitle while the claim is pending
25 before the department [~~commission~~].

26 (i) Except as provided by Subsection (c) or Section
27 408D.159(c) [~~408.147(c)~~], an attorney's fee may not exceed 25

1 percent of the claimant's recovery.

2 SECTION 1.168. Section 408.222, Labor Code, is amended to
3 read as follows:

4 Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a)
5 The amount of an attorney's fee for defending an insurance carrier
6 in a workers' compensation action brought under this subtitle must
7 be approved by the department [~~commission~~] or court and determined
8 by the department [~~commission~~] or court to be reasonable and
9 necessary.

10 (b) In determining whether a fee is reasonable under this
11 section, the department [~~commission~~] or court shall consider issues
12 analogous to those listed under Section 408.221(d). The defense
13 counsel shall present written evidence to the department
14 [~~commission~~] or court relating to:

15 (1) the time spent and expenses incurred in defending
16 the case; and

17 (2) other evidence considered necessary by the
18 department [~~commission~~] or court in making a determination under
19 this section.

20 PART 10. ADOPTION OF CHAPTERS 408A, 408B, AND 408C, LABOR CODE

21 SECTION 1.201. The heading to Subchapter B, Chapter 408,
22 Labor Code, and Sections 408.004, 408.0041, 408.006-408.008,
23 408.021, 408.026, and 408.028-408.030, Labor Code, are designated
24 as Chapter 408A, Labor Code, and that chapter is amended to read as
25 follows:

1 CHAPTER 408A. WORKERS' COMPENSATION

2 [~~SUBCHAPTER B. MEDICAL~~] BENEFITS: GENERAL PROVISIONS REGARDING

3 MEDICAL BENEFITS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 408A.001 [~~408.021~~]. ENTITLEMENT TO MEDICAL BENEFITS.

6 (a) An employee who sustains a compensable injury is entitled to
7 all health care reasonably required by the nature of the injury as
8 and when needed. The employee is specifically entitled to health
9 care that:

10 (1) cures or relieves the effects naturally resulting
11 from the compensable injury;

12 (2) promotes recovery; or

13 (3) enhances the ability of the employee to return to
14 or retain employment.

15 (b) Medical benefits are payable from the date of the
16 compensable injury.

17 (c) Except in an emergency, all health care must be approved
18 or recommended by the employee's treating doctor.

19 (d) An insurance carrier's liability for medical benefits
20 may not be limited or terminated by agreement or settlement.

21 Sec. 408A.002 [~~408.004~~]. REQUIRED MEDICAL EXAMINATIONS;
22 ADMINISTRATIVE VIOLATION. (a) The commissioner [~~commission~~] may
23 require an employee to submit to medical examinations to resolve
24 any question about:

25 (1) the appropriateness of the health care received by
26 the employee; or

27 (2) similar issues.

1 (b) The commissioner [~~commission~~] may require an employee
2 to submit to a medical examination at the request of the insurance
3 carrier, but only after the insurance carrier has attempted and
4 failed to receive the permission and concurrence of the employee
5 for the examination. Except as otherwise provided by this
6 subsection, the insurance carrier is entitled to the examination
7 only once in a 180-day period. The commissioner [~~commission~~] may
8 adopt rules that require an employee to submit to not more than
9 three medical examinations in a 180-day period under specified
10 circumstances, including to determine whether there has been a
11 change in the employee's condition, whether it is necessary to
12 change the employee's diagnosis, and whether treatment should be
13 extended to another body part or system. The commissioner
14 [~~commission~~] by rule shall adopt a system for monitoring requests
15 made under this subsection by insurance carriers. That system must
16 ensure that good cause exists for any additional medical
17 examination allowed under this subsection that is not requested by
18 the employee. A subsequent examination must be performed by the
19 same doctor unless otherwise approved by the commissioner
20 [~~commission~~].

21 (c) The insurance carrier shall pay for:

22 (1) an examination required under Subsection (a) or
23 (b); and

24 (2) the reasonable expenses incident to the employee
25 in submitting to the examination.

26 (d) An injured employee is entitled to have a doctor of the
27 employee's choice present at an examination required by the

1 commissioner [~~commission~~] at the request of an insurance carrier.
2 The insurance carrier shall pay a fee set by the commissioner
3 [~~commission~~] to the doctor selected by the employee.

4 (e) An employee who, without good cause as determined by the
5 commissioner [~~commission~~], fails or refuses to appear at the time
6 scheduled for an examination under Subsection (a) or (b) commits a
7 violation. A violation under this subsection is a Class D
8 administrative violation. An employee is not entitled to temporary
9 income benefits, and an insurance carrier may suspend the payment
10 of temporary income benefits, during and for a period in which the
11 employee fails to submit to an examination under Subsection (a) or
12 (b) unless the commissioner [~~commission~~] determines that the
13 employee had good cause for the failure to submit to the
14 examination. The commissioner [~~commission~~] may order temporary
15 income benefits to be paid for the period that the commissioner
16 [~~commission~~] determines the employee had good cause. The
17 commissioner [~~commission~~] by rule shall ensure that an employee
18 receives reasonable notice of an examination and of the insurance
19 carrier's basis for suspension of payment, and that the employee is
20 provided a reasonable opportunity to reschedule an examination
21 missed by the employee for good cause.

22 (f) If the report of a doctor selected by an insurance
23 carrier indicates that an employee can return to work immediately
24 or has reached maximum medical improvement, the insurance carrier
25 may suspend or reduce the payment of temporary income benefits on
26 the 14th day after the date on which the insurance carrier files a
27 notice of suspension with the department [~~commission~~] as provided

1 by this subsection. ~~[The commission shall hold an expedited~~
2 ~~benefit review conference, by personal appearance or by telephone,~~
3 ~~not later than the 10th day after the date on which the commission~~
4 ~~receives the insurance carrier's notice of suspension. If a~~
5 ~~benefit review conference is not held by the 14th day after the date~~
6 ~~on which the commission receives the insurance carrier's notice of~~
7 ~~suspension, an interlocutory order, effective from the date of the~~
8 ~~report certifying maximum medical improvement, is automatically~~
9 ~~entered for the continuation of temporary income benefits until a~~
10 ~~benefit review conference is held, and the insurance carrier is~~
11 ~~eligible for reimbursement for any overpayment of benefits as~~
12 ~~provided by Chapter 410. The commission is not required to~~
13 ~~automatically schedule a contested case hearing as required by~~
14 ~~Section 410.025(b) if a benefit review conference is scheduled~~
15 ~~under this subsection. If a benefit review conference is held not~~
16 ~~later than the 14th day, the commission may enter an interlocutory~~
17 ~~order for the continuation of benefits, and the insurance carrier~~
18 ~~is eligible for reimbursement for any overpayments of benefits as~~
19 ~~provided by Chapter 410.] The commissioner [~~commission~~] shall
20 adopt rules as necessary to implement this subsection under which:~~

21 (1) an insurance carrier is required to notify the
22 employee and the treating doctor of the suspension of benefits
23 under this subsection by certified mail or another verifiable
24 delivery method;

25 (2) the department [~~commission~~] makes a reasonable
26 attempt to obtain the treating doctor's opinion before the
27 commissioner or a hearings officer [~~commission~~] makes a

1 determination regarding the entry of an interlocutory order under
2 this subtitle requiring continuation of benefits; and

3 (3) the commissioner [~~commission~~] may allow
4 abbreviated contested case hearings by personal appearance or
5 telephone to consider issues relating to overpayment of benefits
6 under this section.

7 (g) An insurance carrier who unreasonably requests a
8 medical examination under Subsection (b) commits a violation. A
9 violation under this subsection is a Class B administrative
10 violation.

11 Sec. 408A.003 [~~408.0041~~]. DESIGNATED DOCTOR EXAMINATION.

12 (a) At the request of an insurance carrier or an employee, the
13 commissioner [~~commission~~] shall order a medical examination to
14 resolve any question about:

15 (1) the impairment caused by the compensable injury;

16 or

17 (2) the attainment of maximum medical improvement.

18 (b) A medical examination requested under Subsection (a)
19 shall be performed by the next available doctor on the department's
20 [~~commission's~~] list of designated doctors whose credentials are
21 appropriate for the issue in question and the injured employee's
22 medical condition. The designated doctor doing the review must be
23 trained and experienced with the treatment and procedures used by
24 the doctor treating the patient's medical condition, and the
25 treatment and procedures performed must be within the scope of
26 practice of the designated doctor. The department [~~commission~~]
27 shall assign a designated doctor not later than the 10th day after

1 the date on which the request under Subsection (a) is received, and
2 the examination must be conducted not later than the 21st day after
3 the date on which the department [~~commission~~] issues the order
4 under Subsection (a). An examination under this section may not be
5 conducted more frequently than every 60 days, unless good cause for
6 more frequent examinations exists, as defined by commissioner
7 [~~commission~~] rules.

8 (c) The treating doctor and the insurance carrier are both
9 responsible for sending to the designated doctor all of the injured
10 employee's medical records relating to the issue to be evaluated by
11 the designated doctor that are in their possession. The treating
12 doctor and insurance carrier may send the records without a signed
13 release from the employee. The designated doctor is authorized to
14 receive the employee's confidential medical records to assist in
15 the resolution of disputes. The treating doctor and insurance
16 carrier may also send the designated doctor an analysis of the
17 injured employee's medical condition, functional abilities, and
18 return-to-work opportunities.

19 (d) To avoid undue influence on a person selected as a
20 designated doctor under this section, and except as provided by
21 Subsection (c), only the injured employee or an appropriate member
22 of the staff of the department [~~commission~~] may communicate with
23 the designated doctor about the case regarding the injured
24 employee's medical condition or history before the examination of
25 the injured employee by the designated doctor. After that
26 examination is completed, communication with the designated doctor
27 regarding the injured employee's medical condition or history may

1 be made only through appropriate department [~~commission~~] staff
2 members. The designated doctor may initiate communication with any
3 doctor or health care provider who has previously treated or
4 examined the injured employee for the work-related injury or with
5 peer reviewers identified by the insurance carrier.

6 (e) The designated doctor shall report to the department
7 [~~commission~~]. The report of the designated doctor has presumptive
8 weight unless the great weight of the evidence is to the contrary.
9 An employer may make a bona fide offer of employment subject to
10 Sections 408D.053(e) [~~408.103(e)~~] and 408D.156(c) [~~408.144(c)~~]
11 based on the designated doctor's report.

12 (f) If an insurance carrier is not satisfied with the
13 opinion rendered by a designated doctor under this section, the
14 insurance carrier may request the commissioner [~~commission~~] to
15 order an employee to attend an examination by a doctor selected by
16 the insurance carrier. The commissioner [~~commission~~] shall allow
17 the insurance carrier reasonable time to obtain and present the
18 opinion of the doctor selected under this subsection before the
19 commissioner [~~commission~~] makes a decision on the merits of the
20 issue in question.

21 (g) The insurance carrier shall pay for:

22 (1) an examination required under Subsection (a) or
23 (f); and

24 (2) the reasonable expenses incident to the employee
25 in submitting to the examination.

26 (h) An employee is not entitled to compensation, and an
27 insurance carrier is authorized to suspend the payment of temporary

1 income benefits, during and for a period in which the employee fails
2 to submit to an examination required by this chapter unless the
3 commissioner [~~commission~~] determines that the employee had good
4 cause for the failure to submit to the examination. The
5 commissioner [~~commission~~] may order temporary income benefits to be
6 paid for the period for which the commissioner [~~commission~~]
7 determined that the employee had good cause. The commissioner
8 [~~commission~~] by rule shall ensure that:

9 (1) an employee receives reasonable notice of an
10 examination and the insurance carrier's basis for suspension; and

11 (2) the employee is provided a reasonable opportunity
12 to reschedule an examination for good cause.

13 (i) If the report of a designated doctor indicates that an
14 employee has reached maximum medical improvement, the insurance
15 carrier may suspend or reduce the payment of temporary income
16 benefits immediately upon written notice to the employee. The
17 written notice shall include a clear statement of the employee's
18 right to appeal the determination of the designated doctor.

19 Sec. 408A.004 [~~408.006~~]. MENTAL TRAUMA INJURIES. (a) It
20 is the express intent of the legislature that nothing in this
21 subtitle shall be construed to limit or expand recovery in cases of
22 mental trauma injuries.

23 (b) A mental or emotional injury that arises principally
24 from a legitimate personnel action, including a transfer,
25 promotion, demotion, or termination, is not a compensable injury
26 under this subtitle.

27 Sec. 408A.005 [~~408.007~~]. DATE OF INJURY FOR OCCUPATIONAL

1 DISEASE. For purposes of this subtitle, the date of injury for an
2 occupational disease is the date on which the employee knew or
3 should have known that the disease may be related to the employment.

4 Sec. 408A.006 [~~408.008~~]. COMPENSABILITY OF HEART ATTACKS.

5 A heart attack is a compensable injury under this subtitle only if:

6 (1) the attack can be identified as:

7 (A) occurring at a definite time and place; and

8 (B) caused by a specific event occurring in the
9 course and scope of the employee's employment;

10 (2) the preponderance of the medical evidence
11 regarding the attack indicates that the employee's work rather than
12 the natural progression of a preexisting heart condition or disease
13 was a substantial contributing factor of the attack; and

14 (3) the attack was not triggered solely by emotional
15 or mental stress factors, unless it was precipitated by a sudden
16 stimulus.

17 Sec. 408A.007 [~~408.028~~]. PHARMACEUTICAL SERVICES. (a) A
18 physician providing care to an injured employee under this subtitle
19 [~~subchapter~~] shall prescribe for the employee any necessary
20 prescription drugs, and order over-the-counter alternatives to
21 prescription medications as clinically appropriate and applicable,
22 in accordance with applicable state law and as provided by
23 Subsection (b). A doctor providing care may order over-the-counter
24 alternatives to prescription medications, when clinically
25 appropriate, in accordance with applicable state law and as
26 provided by Subsection (b).

27 (b) The commissioner [~~commission~~] by rule shall develop a

1 closed [~~an open~~] formulary under Section 413.011 that requires the
2 use of generic pharmaceutical medications and clinically
3 appropriate over-the-counter alternatives to prescription
4 medications unless otherwise specified by the prescribing doctor,
5 in accordance with applicable state law.

6 (c) Except as otherwise provided by this subtitle, an
7 insurance carrier may not require an injured employee to use
8 pharmaceutical services designated by the carrier.

9 (d) The commissioner [~~commission~~] shall adopt rules to
10 allow an injured employee to purchase over-the-counter
11 alternatives to prescription medications prescribed or ordered
12 under Subsection (a) or (b) and to obtain reimbursement from the
13 insurance carrier for those medications.

14 (e) Notwithstanding Subsection (b), the commissioner
15 [~~commission~~] by rule shall allow an injured employee to purchase a
16 brand name drug rather than a generic pharmaceutical medication or
17 over-the-counter alternative to a prescription medication if a
18 health care provider prescribes a generic pharmaceutical
19 medication or an over-the-counter alternative to a prescription
20 medication. The employee shall be responsible for paying the
21 difference between the cost of the brand name drug and the cost of
22 the generic pharmaceutical medication or of an over-the-counter
23 alternative to a prescription medication. The employee may not
24 seek reimbursement for the difference in cost from an insurance
25 carrier and is not entitled to use the medical dispute resolution
26 provisions of Chapter 413 with regard to the prescription. A
27 payment described by this subsection by an employee to a health care

1 provider does not violate Section 413.042. This subsection does
2 not affect the duty of a health care provider to comply with the
3 requirements of Subsection (b) when prescribing medications or
4 ordering over-the-counter alternatives to prescription
5 medications.

6 Sec. 408A.0071. FEE SCHEDULE FOR PHARMACY AND
7 PHARMACEUTICAL SERVICES. (a) Notwithstanding any other provision
8 of this title, the department by rule shall adopt a fee schedule for
9 pharmacy and pharmaceutical services which will:

10 (1) provide reimbursement rates that are fair and
11 reasonable;

12 (2) assure adequate access to medications and services
13 for injured employees;

14 (3) minimize costs to employees and insurance
15 carriers; and

16 (4) prospectively resolve uncertainty existing upon
17 the effective date of this amendment regarding the application of
18 the requirements of this title to fees for medications and pharmacy
19 services, including whether and how to apply the requirements of
20 Sections 413.011, 413.043, and 415.005.

21 (b) Insurance carriers and health care provider networks
22 must reimburse for pharmacy benefits and services using the fee
23 schedule as developed by this section, or at rates negotiated in
24 advance by contract.

25 Sec. 408A.008 [408.029]. NURSE FIRST ASSISTANT SERVICES.
26 An insurance carrier may not refuse to reimburse a health care
27 practitioner solely because that practitioner is a nurse first

1 assistant, as defined by Section 301.1525, Occupations Code, for a
2 covered service that a physician providing health care services
3 under this subtitle has requested the nurse first assistant to
4 perform.

5 Sec. 408A.009 [~~408.030~~]. REPORTS OF PHYSICIAN VIOLATIONS.
6 If the department [~~commission~~] discovers an act or omission by a
7 physician that may constitute a felony, a misdemeanor involving
8 moral turpitude, a violation of a state or federal narcotics or
9 controlled substance law, an offense involving fraud or abuse under
10 the Medicare or Medicaid program, or a violation of this subtitle,
11 the commissioner [~~commission~~] shall immediately report that act or
12 omission to the Texas State Board of Medical Examiners.

13 Sec. 408A.010 [~~408.026~~]. SPINAL SURGERY. Except in a
14 medical emergency, an insurance carrier is liable for medical costs
15 related to spinal surgery only as provided by Section 413.014 and
16 commissioner [~~commission~~] rules.

17 Sec. 408A.011. UNDERSERVED AREAS. The commissioner by rule
18 shall identify areas of this state in which access to health care
19 providers is less available and shall adopt appropriate standards
20 and guidelines regarding health care, including any use of provider
21 networks, in those areas.

22 Sec. 408A.012. ELECTRONIC BILLING REQUIREMENTS. (a) The
23 commissioner by rule shall establish requirements regarding the
24 electronic submission and processing of medical bills by health
25 care providers to insurance carriers.

26 (b) Insurance carriers shall accept medical bills submitted
27 electronically by health care providers in accordance with

1 commissioner rule.

2 (c) The commissioner shall by rule establish criteria for
3 granting exceptions to insurance carriers and health care providers
4 who are not able to accept medical bills electronically.

5 (d) The commissioner may adopt rules, but not before January
6 1, 2008, regarding the electronic payment of medical bills by
7 insurance carriers to health care providers upon sufficient
8 evidence that such payments can be made without undue burden to
9 carriers.

10 Sec. 408A.013. PEER REVIEW. (a) The commissioner shall
11 adopt rules regarding doctors who perform peer review functions for
12 insurance carriers. Those rules may include standards for peer
13 review, imposition of sanctions on doctors performing peer review
14 functions, including restriction, suspension, or removal of the
15 doctor's ability to perform peer review on behalf of insurance
16 carriers in the workers' compensation system, and other issues
17 important to the quality of peer review, as determined by the
18 commissioner.

19 (b) A doctor who performs peer review under this section
20 must hold the appropriate professional license issued by this
21 state.

22 SUBCHAPTER B. PAYMENT OF CLAIMS TO HEALTH CARE PROVIDERS

23 Sec. 408A.051. CARRIER NOTICE. (a) An insurance carrier
24 shall simultaneously notify the department, the injured employee,
25 any representative of the injured employee, and the injured
26 employee's treating doctor, and all other known health care
27 providers providing direct services to the employee, of any

1 disputes regarding compensability or extent of injury.

2 (b) An insurance carrier may not deny payment on the ground
3 of compensability for health care services provided before the date
4 of the notification required under Subsection (a).

5 (c) If the insurance carrier successfully contests
6 compensability, the carrier is liable for health care provided
7 before the notice in Subsection (a) up to a maximum of \$7,000.

8 Sec. 408A.052. RECOVERY FROM HEALTH INSURER. (a) If the
9 injury is finally determined to be noncompensable, the health care
10 provider is entitled to recover from the injured employee's group
11 health insurance company, if any, to the extent covered under the
12 employee's health benefit plan.

13 (b) A health care provider may not file a claim with the
14 injured employee's group health insurance company plan until final
15 adjudication under the workers' compensation system of the
16 compensability under Subtitle A of the services provided by the
17 health care provider.

18 (c) If an accident or health insurance carrier or other
19 person obligated for the cost of health care services has paid for
20 health care services for an employee for an injury for which a
21 workers' compensation insurance carrier denies compensability, and
22 the injury is later determined to be compensable, the accident or
23 health insurance carrier or other person may recover the amounts
24 paid for such services from the workers' compensation insurance
25 carrier.

26 Sec. 408A.053. SUBMISSION OF CLAIM BY PROVIDER. (a) A
27 health care provider must submit a claim for payment to the

1 insurance carrier not later than the 95th day after the date on
2 which the health care services are provided to the injured
3 employee. Failure by the health care provider to timely remit a
4 claim constitutes a forfeiture of the provider's right to
5 reimbursement on the claim.

6 (b) The insurance carrier shall review the provider's claim
7 not later than the 65th day after the date on which the claim is
8 received by the carrier. The carrier may request further
9 documentation necessary to clarify the provider's charges at any
10 time during the 65-day period. If the insurance carrier requests
11 clarification under this subsection, the provider must provide the
12 requested clarification not later than the 15th day after the date
13 of receipt of the carrier's request.

14 Sec. 408A.054. DEADLINE FOR CARRIER ACTION. (a) The
15 insurance carrier must pay, reduce, deny, or determine to audit the
16 health care provider's claim not later than the 65th day after the
17 date of receipt by the carrier of the provider's claim.

18 (b) If the insurance carrier elects to audit the claim, the
19 carrier must complete the audit not later than the 160th day after
20 the date of receipt by the carrier of the provider's claim, and, not
21 later than the 160th day after the receipt of the claim, must make a
22 determination regarding:

23 (1) the relationship of the health care services
24 provided to the compensable injury;

25 (2) the extent of the injury; and

26 (3) the medical necessity of the services provided.

27 (c) If the insurance carrier chooses to audit the claim, the

1 insurance carrier must pay to the health care provider 85 percent
2 of:

3 (1) if the health care service is not provided through
4 a provider network under Chapter 408B, the amount for the health
5 care service established under the fee guidelines; or

6 (2) if the health care service is provided through a
7 provider network under Chapter 408B, the amount of the contracted
8 rate for that health care service.

9 (d) If the health care services provided are determined to
10 be appropriate, the insurance carrier shall pay the health care
11 provider the remaining 15 percent of the claim not later than the
12 160th day after the receipt of the claim.

13 (e) The failure of the insurance carrier under Subsection
14 (a) to pay, reduce, deny, or notify the health care provider of the
15 intent to audit the claim by the 65th day after the date of receipt
16 by the carrier of the provider's claim constitutes a Class C
17 administrative violation.

18 (f) The failure of the insurance carrier under Subsection
19 (b) to pay, reduce, or deny an audited claim by the 160th day after
20 the date of receipt of the claim constitutes a Class C
21 administrative violation.

22 Sec. 408A.055. REIMBURSEMENT BY HEALTH CARE PROVIDER. (a)
23 If the health care services provided are determined to be
24 inappropriate, the insurance carrier shall:

25 (1) notify the health care provider in writing of the
26 carrier's decision; and

27 (2) demand a refund by the provider of the portion of

1 payment on the claim that was received by the provider for the
2 inappropriate services.

3 (b) The health care provider may appeal the insurance
4 carrier's determination under Subsection (a). The provider must
5 file an appeal under this subsection with the insurance carrier not
6 later than the 45th day after the date of the insurance carrier's
7 request for the refund. The insurance carrier must act on the
8 appeal not later than the 45th day after the date on which the
9 provider files the appeal.

10 (c) A health care provider must reimburse the insurance
11 carrier for payments received by the provider for inappropriate
12 charges not later than the 65th day after the date of the carrier's
13 notice. The failure by the health care provider to timely remit
14 payment to the carrier constitutes a Class D administrative
15 violation.

16 Sec. 408A.056. MEDICAL EXAMINATION BY TREATING DOCTOR TO
17 DEFINE COMPENSABLE INJURY. (a) The department shall require an
18 injured employee to submit to a single medical examination to
19 define the compensable injury on request by the insurance carrier.

20 (b) A medical examination under this section shall be
21 performed by the employee's treating doctor. The insurance carrier
22 shall pay the costs of the examination.

23 (c) After the medical examination is performed, the
24 treating doctor shall submit to the insurance carrier a report that
25 details all injuries and diagnoses related to the compensable
26 injury, on receipt of which the insurance carrier shall accept all
27 injuries and diagnoses as related to the compensable injury or

1 shall dispute the determination of specific injuries and 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 SECTION 1.202. Subtitle A, Title 5, Labor Code, is amended
19 by adding Chapters 408B and 408C, transferring Sections 408.022 and
20 408.025, Labor Code, to Chapter 408C, renumbering those sections as
21 Sections 408C.002 and 408C.004, respectively, and amending those
22 sections to read as follows:

23 CHAPTER 408B. WORKERS' COMPENSATION BENEFITS: REQUIREMENTS

24 FOR INSURANCE CARRIERS THAT USE PROVIDER NETWORKS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 408B.001. USE OF PROVIDER NETWORK: GENERAL

27 REQUIREMENTS FOR INSURANCE CARRIER. (a) An insurance carrier may

1 arrange for health care services for injured employees through a
2 provider network certified under this chapter. The obligations and
3 requirements imposed under this chapter apply only to:

4 (1) an insurance carrier that arranges for health care
5 services for injured employees through a certified provider
6 network; and

7 (2) services provided for compensable injuries for
8 which the insurance carrier is liable under this chapter.

9 (b) A person may not operate a provider network in this
10 state unless the person holds a certificate issued under this
11 chapter and under rules adopted by the commissioner.

12 (c) A person may not perform any act of a provider network
13 except in accordance with the specific authorization of this
14 chapter or rules adopted by the commissioner.

15 Sec. 408B.002. USE OF PROVIDER NETWORK PROVIDERS. (a)
16 Except for emergency care, or network-approved referrals, if an
17 insurance carrier elects to use a certified provider network, an
18 injured employee who is covered by that insurance carrier is
19 required to obtain treatment for a compensable injury within the
20 provider network if the injured employee lives within the provider
21 network's service area.

22 (b) Except for emergencies and out-of-network referrals, a
23 provider network shall provide or arrange for health care services
24 only through providers or provider groups that are under contract
25 with or are employed by the provider network.

26 (c) Notwithstanding Subsections (a) and (b), a carrier
27 shall provide and shall reimburse under department rule health care

1 related to the compensable injury for an injured employee who is
2 covered by a network but lives outside the service area in
3 accordance with all provisions of this code, except this chapter.

4 (d) A network provider who has treated an employee may not
5 serve as a designated doctor or perform a required medical
6 examination for that employee for the compensable injury for which
7 the provider provided treatment.

8 (e) Notwithstanding any other provision of this chapter,
9 prescription medication or services, as defined by Section
10 401.011(19)(E), may not be delivered through a workers'
11 compensation health care network. Prescription medication and
12 services shall be reimbursed as provided by the Texas Workers'
13 Compensation Act and applicable rules of the department.

14 Sec. 408B.003. GENERAL PROVIDER NETWORK REQUIREMENTS. (a)
15 Each provider network certified under this chapter must be a
16 fee-for-service network designed to improve the quality and reduce
17 the cost of health care provided to injured employees.

18 (b) Insurance carriers and the provider networks are
19 prohibited from using capitation as a form of payment for
20 contracted providers.

21 (c) A provider network is not an insurer and may not use in
22 the provider network's name, contracts, or informational
23 literature the word "insurance," "casualty," "surety," or "mutual"
24 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. 408B.004. INSURANCE CARRIER LIABILITY FOR
4 OUT-OF-NETWORK HEALTH CARE. (a) An insurance carrier that
5 establishes or contracts with a provider network is not liable for
6 all or part of the cost of a health care service related to the
7 compensable injury, other than emergency services, if the employee
8 lives within a service area of any network established by the
9 insurance carrier or with which the insurance carrier has a
10 contract and obtains the health care service without provider
11 network approval from:

12 (1) a network provider other than the employee's
13 treating doctor or a specialist to whom the employee is referred by
14 the treating doctor; or

15 (2) a non-network provider.

16 (b) An insurance carrier that establishes or contracts with
17 a provider network is liable for health care services related to a
18 compensable injury provided by non-network providers to an injured
19 employee who does not live within the geographical service area.
20 Health care provided by a non-network provider is not subject to the
21 provisions of this chapter other than this section, and is subject
22 to all other provisions of this code.

23 Sec. 408B.005. RESTRAINT OF TRADE. (a) A provider network
24 that contracts with a provider or providers practicing individually
25 or as a group is not, because of the contract or arrangement,
26 considered to have entered into a conspiracy in restraint of trade
27 in violation of Chapter 15, Business & Commerce Code.

1 (b) Notwithstanding any other law, a person who contracts
2 under this chapter with one or more providers in the process of
3 conducting activities that are permitted by law but that do not
4 require a certificate of authority or other authorization under
5 this code or the Insurance Code is not, because of the contract,
6 considered to have entered into a conspiracy in restraint of trade
7 in violation of Chapter 15, Business & Commerce Code.

8 Sec. 408B.006. AUTHORITY OF COMMISSIONER. Except as
9 expressly provided by this chapter, the powers and duties created
10 by Chapter 36, Insurance Code, Article 21.58D, Insurance Code, and
11 Sections 843.080, 843.082, 843.102, and 843.151, Insurance Code, do
12 not apply to this chapter.

13 Sec. 408B.007. RULES. The commissioner may adopt rules as
14 necessary to implement this chapter.

15 SUBCHAPTER B. GENERAL POWERS AND DUTIES OF
16 INSURANCE CARRIER AND PROVIDER NETWORK

17 Sec. 408B.051. NOTICE TO EMPLOYEES REQUIRED. (a) An
18 insurance carrier that uses a certified provider network shall
19 provide to the employer, and shall ensure that the employer
20 provides to the employer's employees, notice of the provider
21 network requirements, including all information required by
22 Section 408B.052. The insurance carrier shall require the employer
23 to:

24 (1) obtain a signed acknowledgment from each employee,
25 written in English, Spanish, and any other language common to the
26 employer's employees, that the employee has received information
27 concerning the provider network and the provider network's

1 requirements; and

2 (2) post notice of the provider network's requirements
3 at each place of employment.

4 (b) The insurance carrier shall ensure that an employer
5 provides to each employee hired after the date notice is given under
6 Subsection (a) the notice and information required under that
7 subsection not later than the third day after the date of hire.

8 (c) The insurance carrier shall require the employer to
9 notify an injured employee of the provider network requirements at
10 the time the employer receives actual or constructive notice of an
11 injury.

12 (d) An injured employee is not required to comply with the
13 provider network requirements until the employee receives the
14 notice required under Subsection (a).

15 (e) Each self-insured employer, employer group, and
16 governmental entity that qualifies as an insurance carrier and
17 establishes or contracts with a certified provider network shall
18 also comply with the notice obligations established under
19 Subsection (a).

20 Sec. 408B.052. CONTENTS OF NOTICE. (a) The written notice
21 required under Section 408B.051(a) must be written in plain
22 language and in a readable and understandable format, and must be
23 provided in English, Spanish, and any additional language common to
24 an employer's employees.

25 (b) The notice must include, in a clear, complete, and
26 accurate format:

27 (1) a statement that, for workers' compensation

1 purposes, the employer participates in a certified provider network
2 and that employees must receive health care services through the
3 certified provider network;

4 (2) the insurance carrier's toll-free telephone number
5 and address for obtaining additional information about the
6 certified provider network, including information about
7 participating providers;

8 (3) a statement that in the event of an injury, an
9 employee must select a treating doctor from a list of all the
10 treating doctors within the certified provider network that are
11 located within the service area;

12 (4) a statement that, except for emergency services,
13 an employee must obtain all health care and specialist referrals
14 through the employee's treating doctor;

15 (5) an explanation that participating providers have
16 agreed to look only to the insurance carrier and not to employees
17 for payment of health care services related to the compensable
18 injury;

19 (6) a statement that, if an employee lives within a
20 service area of any network established by the insurance carrier or
21 with which the insurance carrier has a contract, the employee may be
22 liable for health care related to the compensable injury obtained
23 from a non-participating provider, except for emergency care,
24 health care obtained pursuant to a referral from the employee's
25 treating doctor and prior to network approval, or health care
26 provided pursuant to Section 408B.054;

27 (7) information about how to obtain emergency

1 services, including emergency care outside the certified provider
2 network's service area, and after-hours care;

3 (8) an explanation regarding continuity of care in the
4 event of the termination of a treating doctor from participation in
5 the certified provider network;

6 (9) a description of the complaint system, including a
7 statement that the insurance carrier is prohibited from retaliating
8 against:

9 (A) an employee if the employee files a complaint
10 against the carrier or appeals a decision of the carrier; or

11 (B) a health care provider if the provider, on
12 behalf of an employee, reasonably filed a complaint against the
13 carrier or appeals a decision of the carrier;

14 (10) a summary of the insurance carrier's procedures
15 relating to adverse determinations and the availability of the
16 independent review process;

17 (11) a description of where and how to obtain a list of
18 participating providers that includes:

19 (A) the names and addresses of the participating
20 providers;

21 (B) a statement of limitations of accessibility
22 and referrals to specialists; and

23 (C) a disclosure of which treating doctors are
24 accepting new patients; and

25 (12) a description of the certified provider network's
26 service area.

27 (c) Nothing in this title shall prohibit an insurance

1 carrier that uses a certified provider network to provide to each
2 covered employee a workers' compensation coverage identification
3 card.

4 Sec. 408B.053. ACCESS TO CARE; APPLICABILITY TO CLAIMS.

5 (a) If the insurance carrier has opted to offer workers'
6 compensation benefits through a certified provider network, all
7 claims, including claims with a date of injury before, on, or after
8 September 1, 2005, shall be administered under the provisions of
9 this subchapter.

10 (b) Except as provided by Section 408B.054, if the insurance
11 carrier is responsible for a claim and provides benefits through a
12 certified provider network, the carrier shall notify an injured
13 employee at the time a claim is filed that the injured employee must
14 select a treating doctor and obtain health care services from
15 participating providers in accordance with the requirements of
16 Subchapter G.

17 (c) Except as provided by Section 408B.054, if the insurance
18 carrier responsible for the claim does not arrange for health care
19 services through a certified provider network on the date of
20 injury, but arranges for health care services through a certified
21 provider network at a later date, the carrier shall notify the
22 injured employee that, not later than the 30th day after the date on
23 which the notice is sent, the injured employee must select a
24 treating doctor and obtain health care services from participating
25 providers in accordance with the requirements of Subchapter G. If
26 the injured employee fails to select a treating doctor on or before
27 the 30th day after the date of receipt of the notice, the carrier

1 may assign the injured employee a treating doctor within the
2 certified provider network.

3 Sec. 408B.054. PRE-EXISTING RELATIONSHIPS; CONTINUITY OF
4 CARE. (a) In this section:

5 (1) "Acute condition" means a medical condition that:

6 (A) involves a sudden onset of symptoms because
7 of an illness, injury, or other medical problem that requires
8 prompt medical attention; and

9 (B) has a duration of, and corresponding
10 treatment for, not more than 30 days.

11 (2) "Terminal illness" means an incurable or
12 irreversible condition that has a high probability of causing death
13 within one year or less.

14 (b) This section applies to medical benefits regarding an
15 existing claim in which:

16 (1) the insurance carrier has decided to offer
17 coverage solely through a workers' compensation certified provider
18 network; or

19 (2) treatment is being provided by the insurance
20 carrier through a workers' compensation certified provider network
21 and the network contract with the injured employee's treating
22 doctor is being terminated.

23 (c) The insurance carrier shall provide for completion of
24 treatment by non-participating providers for injured employees who
25 are being treated by a treating doctor for:

26 (1) an acute condition;

27 (2) a terminal illness; or

1 (3) performance of a surgical procedure or other
2 procedure that:

3 (A) is authorized by the insurance carrier as
4 part of a documented course of treatment; and

5 (B) has been recommended and documented by the
6 health care provider to occur not later than the 30th day after the
7 date the carrier begins to arrange for health care services through
8 a certified provider network.

9 (d) Completion of treatment shall be provided for the
10 duration of a terminal illness.

11 (e) Following the determination of the injured employee's
12 medical condition in accordance with Subsection (c), the insurance
13 carrier shall notify the injured worker of the determination
14 regarding the completion of treatment. The notification must be
15 sent to the address at which the employee lives, with a copy of the
16 letter sent to the non-participating provider.

17 (f) If the injured employee disputes the medical
18 determination under Subsection (c), the injured employee shall
19 request a report from the injured employee's non-participating
20 provider that addresses whether the injured employee falls within
21 any of the conditions set forth in Subsection (c).

22 (g) If the employer or injured employee objects to the
23 medical determination by the non-participating provider, the
24 dispute regarding the medical determination made by the
25 non-participating provider shall be resolved by use of the
26 carrier's internal reconsideration process, to be followed, if
27 necessary, by review by an independent review organization. The

1 non-participating provider shall have the burden of proving that
2 one of the conditions set forth in Subsection (c) exists.

3 (h) The independent review organization shall order
4 transfer of the care to a treating doctor and other participating
5 providers in accordance with Subchapter G if the documented
6 evidence fails to establish that one of the conditions set forth in
7 Subsection (c) exists.

8 (i) If the non-participating provider agrees with the
9 carrier's determination that the injured employee's medical
10 condition does not meet the conditions set forth in Subsection (c),
11 the transfer of care shall go forward during the dispute resolution
12 process.

13 (j) If the non-participating provider does not agree with
14 the carrier's determination that the injured employee's medical
15 condition does not meet the conditions set forth in Subsection (c),
16 the transfer of care may not go forward until the dispute is
17 resolved. The non-participating provider's performed and
18 prescribed medical services are subject to carrier
19 preauthorization while the dispute is pending.

20 Sec. 408B.0545. TREATMENT BY PRIMARY CARE PHYSICIAN UNDER
21 CHAPTERS 843 AND 1301, INSURANCE CODE. (a) Notwithstanding any
22 other provision of this chapter, the commissioner shall adopt rules
23 to allow an injured employee required to receive health care
24 services within a network to select a physician who, at the time of
25 the employee's work-related injury, was:

26 (1) the employee's primary care provider under Chapter
27 843, Insurance Code; or

1 (2) a member of the preferred panel of a group health
2 network under Chapter 1301, Insurance Code, under the terms of the
3 employee's group health insurance plan.

4 (b) A physician selected by an employee under this section
5 must:

6 (1) agree to comply with the terms and conditions of
7 the workers' compensation network;

8 (2) agree to make all referrals within the workers'
9 compensation network; and

10 (3) comply with the provisions of this chapter.

11 (c) Health care services provided by a physician under this
12 section are considered to be network services and are subject to the
13 provisions of this chapter.

14 (d) Any change of treating doctor requested by an injured
15 employee being treated by a physician under this section shall be to
16 a network doctor and is subject to the requirements of this chapter.

17 Sec. 408B.055. ACCESSIBILITY AND AVAILABILITY
18 REQUIREMENTS. (a) All services provided under this chapter must be
19 provided by a provider who holds an appropriate license, unless the
20 provider is exempt from license requirements. Each provider
21 network shall ensure that the provider network's provider panel
22 includes a broad choice of health care providers, including an
23 adequate number of treating doctors and specialists, who must be
24 available and accessible to employees 24 hours a day, seven days a
25 week, within the provider network's service area. An adequate
26 number of the treating doctors and specialists must have admitting
27 privileges at one or more provider network hospitals located within

1 the provider network's service area to ensure that any necessary
2 hospital admissions are made.

3 (b) Hospital services must be available and accessible 24
4 hours a day, seven days a week, within the provider network's
5 service area. The provider network shall provide for the necessary
6 hospital services by contracting with general, special, and
7 psychiatric hospitals.

8 (c) Emergency care must be available and accessible 24 hours
9 a day, seven days a week, without restrictions as to where the
10 services are rendered.

11 (d) Except for emergencies, a provider network shall
12 arrange for services, including referrals to specialists, to be
13 accessible to employees on a timely basis on request, but not later
14 than the 10th day after the date of the request.

15 (e) Each provider network shall provide that provider
16 network services are sufficiently accessible and available as
17 necessary to ensure that the distance from any point in the provider
18 network's service area to a point of service by a treating doctor or
19 general hospital is not greater than 30 miles in nonrural areas and
20 60 miles in rural areas. For portions of the service area in which
21 the provider network identifies noncompliance with this
22 subsection, the provider network must file an access plan with the
23 department in accordance with Subsection (f).

24 (f) The provider network shall submit an access plan, as
25 required by commissioner rules, to the department for approval at
26 least 30 days before implementation of the plan if any health care
27 service or a provider network provider is not available to an

1 employee within the distance specified by Subsection (e) because:

2 (1) providers are not located within that distance;

3 (2) the provider network is unable to obtain provider
4 contracts after good faith attempts; or

5 (3) providers meeting the provider network's minimum
6 quality of care and credentialing requirements are not located
7 within that distance.

8 (g) The provider network may make arrangements with
9 providers outside the service area to enable employees to receive a
10 higher level of skill or specialty not available within the
11 provider network service area. The commissioner shall establish by
12 rule what constitutes a higher level of skill necessary for a
13 carrier to use providers outside the geographic service area. The
14 rules shall include a required adequacy review by the commissioner.

15 (h) The provider network may not be required to expand
16 services outside the provider network's service area to accommodate
17 employees who live outside the service area.

18 Sec. 408B.056. TELEPHONE ACCESS. (a) Each provider
19 network shall have appropriate personnel reasonably available
20 through a toll-free telephone service at least 40 hours per week
21 during normal business hours, in both time zones in this state if
22 applicable, to discuss an employee's care and to allow response to
23 requests for information, including information regarding adverse
24 determinations.

25 (b) A provider network must have a telephone system capable
26 of accepting, recording, or providing instructions to incoming
27 calls during other than normal business hours. The provider

1 network shall respond to those calls not later than two business
2 days after the date:

- 3 (1) the call was received by the provider network; or
4 (2) the details necessary to respond were received by
5 the provider network from the caller.

6 SUBCHAPTER C. CERTIFICATION OF PROVIDER NETWORKS

7 Sec. 408B.101. APPLICATION FOR CERTIFICATION. (a) An
8 insurance carrier that seeks to offer workers' compensation
9 benefits through a certified provider network shall apply to the
10 department for a certificate to determine the adequacy of the
11 provider network to provide benefits under this subtitle.

12 (b) A certificate application must be:

- 13 (1) filed with the department in the form prescribed
14 by the commissioner;
15 (2) verified by an authorized agent of the insurance
16 carrier; and
17 (3) accompanied by a nonrefundable fee set by
18 commissioner rule.

19 Sec. 408B.102. CONTENTS OF APPLICATION. Each certificate
20 application must include:

- 21 (1) a description and a map of the insurance carrier's
22 service area or areas, with key and scale, that identifies each
23 county or part of a county to be served;
24 (2) a list of all contracted provider network
25 providers that demonstrates the adequacy of the provider network to
26 provide comprehensive health care services sufficient to serve the
27 population of injured employees within the service area, and maps

1 that demonstrate that the access and availability standards are
2 met;

3 (3) a description of the types of compensation
4 arrangements made or to be made between the provider network and its
5 contracted providers in exchange for the provision of, or an
6 arrangement to provide, health care services to employees;

7 (4) a description of programs and procedures to be
8 used, including:

9 (A) a complaint system, as required under
10 Subchapter I; and

11 (B) a quality improvement program, as required
12 under Section 408B.203; and

13 (5) any other information determined to be necessary
14 by the commissioner to establish the adequacy and economic
15 stability of the provider network.

16 Sec. 408B.103. COMMISSIONER ACTION ON APPLICATION. (a)
17 The commissioner shall approve or disapprove an application for
18 certification of a provider network not later than the 60th day
19 after the date the completed application is received by the
20 department. An application is considered complete on receipt of
21 all information required by this chapter and any commissioner
22 rules, including receipt of any additional information requested by
23 the commissioner as needed to make the determination.

24 (b) Additional information requested by the commissioner
25 under Subsection (a) may include information derived from an
26 on-site quality-of-care examination.

27 (c) The department shall notify the applicant of any

1 deficiencies in the application and may allow the applicant to
2 request additional time to revise the application, in which case
3 the 60-day period for approval or disapproval is tolled. The
4 commissioner may grant or deny requests for additional time at the
5 commissioner's discretion.

6 (d) An order issued by the commissioner disapproving an
7 application must specify in what respects the application does not
8 comply with applicable statutes and rules. An applicant whose
9 application is disapproved may request a hearing not later than the
10 30th day after the date of the commissioner's disapproval order.
11 The hearing is a contested case hearing under Chapter 2001,
12 Government Code.

13 Sec. 408B.104. TERM OF CERTIFICATE. A certificate issued
14 under this subchapter is valid until revoked or suspended by the
15 commissioner.

16 SUBCHAPTER D. GENERAL REQUIREMENTS RELATING TO CONTRACTS

17 Sec. 408B.151. GENERAL CONTRACT REQUIREMENTS. (a) Each
18 carrier-network contract or participating provider contract must
19 comply with this subchapter, as applicable.

20 (b) Before entering into a carrier-network contract, an
21 insurance carrier shall make a reasonable effort to evaluate the
22 provider network's current and prospective ability to provide or
23 arrange for health care services through participating providers,
24 and to perform any functions delegated to the provider network in
25 accordance with the provisions of this section.

26 (c) An insurance carrier and a provider network may
27 negotiate the functions to be delegated to the provider network. A

1 carrier may not, through a contract with a provider network,
2 transfer risk.

3 (d) A provider network is not required to accept an
4 application for participation in the provider network from a health
5 care provider who otherwise meets the requirements specified in
6 this chapter for participation if the provider network determines
7 that the provider network has contracted with a sufficient number
8 of qualified health care providers.

9 (e) An insurance carrier or certified provider network is
10 not liable for any damages or losses alleged by the health care
11 provider arising from a decision to withhold designation as a
12 participating provider. No cause of action related to a refusal to
13 include a provider in a certified provider network may be
14 maintained against an insurance carrier or the certified provider
15 network.

16 (f) A provider network that employs health care providers
17 shall obtain from each participating provider network provider a
18 written agreement that the provider acknowledges and agrees to the
19 contractual provisions under this subchapter.

20 Sec. 408B.152. CARRIER-NETWORK CONTRACT REQUIREMENTS. A
21 carrier-network contract must include:

22 (1) a statement that the provider network's role is to
23 provide the services described under this chapter that have been
24 delegated by the carrier, subject to the carrier's oversight and
25 monitoring of the provider network's performance;

26 (2) a description of the functions that the carrier
27 delegates to the provider network, consistent with the requirements

1 of this chapter, and the reporting requirements for each function;

2 (3) to the extent the carrier delegates one or more of
3 the functions to the provider network, a statement that the
4 provider network will perform the obligations of the carrier in:

5 (A) arranging for the provision of health care
6 through participating provider contracts that comply with the
7 requirements of this section;

8 (B) managing the selection of treating doctors in
9 accordance with the requirements of Section 408B.302;

10 (C) complying with the requirements related to
11 termination of provider contracts under Section 408B.306;

12 (D) operating a utilization review plan in
13 accordance with Subchapter H;

14 (E) operating a quality improvement program in
15 accordance with the requirements of Section 408B.203; and

16 (F) performing credentialing functions in
17 accordance with the requirements of Section 408B.301;

18 (4) a provision that requires the provider network to
19 make available to the carrier participating provider contracts;

20 (5) a statement that the provider network and any
21 third party to which the provider network subdelegates any function
22 delegated by the carrier to the provider network will perform
23 delegated functions in compliance with the requirements of this
24 subtitle;

25 (6) a statement that the carrier retains ultimate
26 responsibility for ensuring that all delegated functions are
27 performed in accordance with this subchapter and that the contract

1 may not be construed to limit in any way the carrier's
2 responsibility to comply with applicable statutory and regulatory
3 requirements;

4 (7) a contingency plan under which the carrier would,
5 in the event of termination of the carrier-network contract or a
6 failure to perform, reassume one or more functions of the provider
7 network under the contract, including functions related to:

8 (A) notification to employees;

9 (B) quality of care; and

10 (C) continuity of care, including a plan for
11 identifying and transitioning injured employees to new providers;

12 (8) a provision that requires that any agreement by
13 which the provider network subdelegates to a third party any
14 function delegated by the carrier to the provider network be in
15 writing and be approved by the carrier, and that such an agreement
16 require the delegated third party to be subject to all the
17 requirements of this subchapter;

18 (9) a provision that requires the provider network to
19 provide to the department the license number of any delegated third
20 party who performs a function that requires a license as a
21 utilization review agent under Article 21.58A, Insurance Code, or
22 any other license under the Insurance Code or another insurance law
23 of this state;

24 (10) an acknowledgment that:

25 (A) any third party to which a provider network
26 subdelegates any function delegated by the carrier to the provider
27 network must perform in compliance with this subchapter, and that

1 the third party is subject to the carrier's and the provider
2 network's oversight and monitoring of its performance; and

3 (B) if the third party fails to meet monitoring
4 standards established to ensure that functions delegated to the
5 third party under the delegation contract are in full compliance
6 with all statutory and regulatory requirements, the carrier or the
7 provider network may cancel the delegation of one or more delegated
8 functions; and

9 (11) a provision for a quality improvement committee
10 that shall have the responsibility of:

11 (A) promoting the delivery of health care
12 services for employees;

13 (B) developing and overseeing the implementation
14 of programs aimed at promoting participating providers'
15 understanding and application of nationally recognized,
16 scientifically valid, outcome-based treatment and disability
17 standards and guidelines applicable to the treatment of injuries;

18 (C) recommending specific actions, including
19 provider education and training, for improving the quality of care
20 provided to employees; and

21 (D) complying with Section 408B.203.

22 Sec. 408B.153. CONTRACTS WITH PARTICIPATING PROVIDERS. A
23 carrier-network contract and a participating provider contract
24 must include:

25 (1) a provision that the insurance carrier shall
26 monitor the acts of the provider network or participating provider
27 through a monitoring plan that must contain, at a minimum, the

1 requirements set forth in Section 408B.201;

2 (2) a provision that the insurance carrier shall
3 provide to participating providers the source of the treatment
4 guidelines and standards utilized to perform a pattern of practice
5 review;

6 (3) a provision that the contract:

7 (A) may not be terminated without cause by either
8 party without 90 days' prior written notice; and

9 (B) may be terminated immediately if cause
10 exists;

11 (4) requirements related to termination of, and appeal
12 rights of, participating providers in accordance with Section
13 408B.306;

14 (5) a continuity of care clause that states that if a
15 health care provider's status as a participating provider
16 terminates, the carrier is obligated to continue to reimburse the
17 provider at the contracted rate for care of an employee with a
18 life-threatening condition or an acute condition for which
19 disruption of care would harm the employee if the provider requests
20 continued care;

21 (6) billing and reimbursement provisions in
22 accordance with Sections 408B.154-408B.156;

23 (7) utilization review requirements in accordance
24 with Subchapter H;

25 (8) if the carrier uses a preauthorization process, a
26 list of health care services that require preauthorization and
27 information concerning the preauthorization process;

1 (9) a hold-harmless clause stating that participating
2 providers may not under any circumstances bill or attempt to
3 collect any amounts from employees for health care services
4 rendered for a compensable injury, including the insolvency of the
5 carrier, except if an employee obtains services from a
6 participating provider that is not the employee's treating doctor
7 without a referral from the treating doctor, or a non-participating
8 provider without approval from the carrier, or the carrier is not
9 liable for the cost of services because they do not qualify as
10 compensable benefits under this subtitle;

11 (10) a statement that the participating provider
12 agrees to follow treatment guidelines, return-to-work guidelines,
13 and individual treatment protocols adopted by the insurance carrier
14 under this subtitle, as applicable to an employee's injury;

15 (11) a requirement that the participating provider or
16 provider network provide all necessary information to allow the
17 insurance carrier or the employer to provide information to
18 employees as required by Sections 408B.051 and 408B.052;

19 (12) a requirement that the participating provider or
20 provider network provide the carrier, in a form usable for audit
21 purposes, the data necessary for the carrier to comply with
22 regulatory reporting requirements with respect to any services
23 provided under the contract;

24 (13) a provision that any failure by the provider
25 network or participating provider to comply with this subchapter or
26 monitoring standards shall allow the carrier to terminate all or
27 any part of the carrier-network contract or participating provider

1 contract;

2 (14) a provision that requires the provider network or
3 participating provider to provide documentation, except for
4 information, documents, and deliberations related to peer review
5 for credentialing purposes that are confidential or privileged
6 under state or federal law, that relates to:

7 (A) any regulatory agency's inquiry or
8 investigation of the provider network or participating provider
9 that relates to an employee covered by the carrier's workers'
10 compensation policy; and

11 (B) the final resolution of any regulatory
12 agency's inquiry or investigation;

13 (15) a provision relating to complaints that requires
14 the provider network or participating provider to ensure that on
15 receipt of a complaint, a copy of the complaint shall be sent to the
16 carrier and the department within two business days, except that in
17 a case in which a complaint involves emergency care, the provider
18 network or participating provider shall forward the complaint
19 immediately to the carrier, and provided that nothing in this
20 paragraph prohibits the provider network or participating provider
21 from attempting to resolve a complaint;

22 (16) a statement that a carrier may not engage in
23 retaliatory action, including limiting coverage, against an
24 employee because the employee or a person acting on behalf of the
25 employee has filed a complaint against the carrier or appealed a
26 decision of the carrier, and a carrier may not engage in retaliatory
27 action, including refusal to renew or termination of a contract,

1 against a participating provider because the provider has, on
2 behalf of an employee, reasonably filed a complaint against the
3 carrier or appealed a decision of the carrier;

4 (17) a requirement that a complaint notice be posted
5 in accordance with Section 408B.405;

6 (18) a mechanism for the resolution of complaints
7 initiated by complainants that complies with Subchapter I;

8 (19) a statement that a provider network or
9 participating provider may not engage in any of the prohibited
10 practices listed under Subchapter J;

11 (20) a statement that the carrier may not use any
12 financial incentive or make a payment to a health care provider or
13 certified provider network that acts directly or indirectly as an
14 inducement to limit medically necessary services;

15 (21) a clause regarding appeal by the provider of
16 termination of provider status and applicable written notification
17 to employees regarding such a termination, including any provisions
18 required by the commissioner; and

19 (22) any other provisions required by the commissioner
20 by rule.

21 Sec. 408B.154. APPLICATION OF PROMPT PAY REQUIREMENTS. The
22 prompt payment of health care services provided by the carrier or
23 certified provider network is subject to Subchapter B, Chapter
24 408A.

25 Sec. 408B.155. REIMBURSEMENT. (a) The amount of
26 reimbursement for services provided by a provider network provider
27 is determined by the contract between the provider network and the

1 provider or group of providers.

2 (b) If a provider network has preauthorized a health care
3 service, or if care was provided as a result of an emergency, the
4 insurance carrier or provider network or the provider network's
5 agent or other representative may not deny payment to a provider
6 except for reasons other than medical necessity.

7 (c) A carrier shall reimburse out-of-network providers who
8 provide health care related to a compensable injury to an injured
9 employee who does not live within a service area of any network
10 established by the insurance carrier or with which the insurance
11 carrier has a contract, who provide emergency care, or whose
12 referral by a provider network provider has been approved by the
13 provider network either at a rate that is agreed to by both the
14 provider network and the out-of-network provider, or in accordance
15 with Section 413.011.

16 (d) Subject to Subsection (a), billing by, and
17 reimbursement to, contracted and out-of-network providers is
18 subject to standard reimbursement requirements as provided by this
19 subtitle and applicable rules of the commissioner, as consistent
20 with this subtitle. This subsection may not be construed to require
21 application of rules of the commissioner regarding reimbursement if
22 application of those rules would negate reimbursement amounts
23 negotiated by the provider network.

24 (e) An insurance carrier shall notify in writing a provider
25 network provider if the carrier contests the compensability of the
26 injury for which the provider provides health care services. A
27 carrier may not deny payment for health care services provided by a

1 provider network provider before that notification on the grounds
2 that the injury was not compensable. The carrier is liable for a
3 maximum of \$7,000 for health care services that were provided
4 before the notice required in this subsection was given.

5 (f) If the carrier contests compensability of an injury and
6 the injury is determined not to be compensable, the carrier may
7 recover the amounts paid for health care services from the
8 employee's accident or health insurance carrier or any other person
9 who may be obligated for the cost of the health services.

10 (g) If an accident or health insurance carrier or other
11 person obligated for the cost of health care services has paid for
12 health care services for an employee for an injury for which a
13 workers' compensation insurance carrier denies compensability, and
14 the injury is later determined to be compensable, the accident or
15 health insurance carrier or other person may recover the amounts
16 paid for such services from the workers' compensation insurance
17 carrier.

18 Sec. 408B.156. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT.

19 (a) An insurance carrier or third-party administrator may not
20 reimburse a doctor or other health care practitioner, an
21 institutional provider, or an organization of doctors and health
22 care providers on a discounted fee basis for services that are
23 provided to an injured employee unless:

24 (1) the carrier or third-party administrator has
25 contracted with either:

26 (A) the doctor or other practitioner,
27 institutional provider, or organization of doctors and health care

1 providers; or

2 (B) a provider network that has contracted with
3 the doctor or other practitioner, institutional provider, or
4 organization of doctors and health care providers;

5 (2) the doctor or other practitioner, institutional
6 provider, or organization of doctors and health care providers has
7 agreed to the contract and has agreed to provide health care
8 services under the terms of the contract; and

9 (3) the carrier or third-party administrator has
10 agreed to provide coverage for those health care services under
11 this chapter.

12 (b) A party to a carrier-network contract may not sell,
13 lease, or otherwise transfer information regarding the payment or
14 reimbursement terms of the contract without the express authority
15 of and prior adequate notification to the other contracting
16 parties. This subsection does not affect the authority of the
17 commissioner under this code to request and obtain information.

18 (c) An insurance carrier or third-party administrator who
19 violates this section:

20 (1) commits an unfair claim settlement practice in
21 violation of Subchapter A, Chapter 542, Insurance Code; and

22 (2) is subject to administrative penalties under
23 Chapters 82 and 84, Insurance Code.

24 SUBCHAPTER E. MONITORING PLAN; QUALITY IMPROVEMENT

25 Sec. 408B.201. MONITORING PLAN REQUIRED. (a) Each
26 insurance carrier, or entity contracting with a carrier, that
27 enters into carrier-network contracts or participating provider

1 contracts shall monitor the acts of provider networks and
2 participating providers through a monitoring plan.

3 (b) The monitoring plan must be set forth in each
4 carrier-network contract and participating provider contract, and
5 must contain, at a minimum:

6 (1) requirements for review of the provider network's
7 compliance with the requirements for participating provider
8 contracts as set forth in Subchapter D;

9 (2) provisions for review of the provider network's or
10 participating provider's compliance with the terms of the
11 carrier-network contract or participating provider contract,
12 respectively, as well as with this chapter affecting the functions
13 delegated by the carrier under the carrier-network contract;

14 (3) provisions for review of the provider network's
15 and participating provider's compliance with the process for
16 terminating contracts with participating providers, as described
17 by Section 408B.306;

18 (4) provisions for review of the provider network's
19 and participating provider's compliance with the utilization
20 review processes set forth in Subchapter H;

21 (5) periodic certification by the provider network on
22 request by the carrier that the quality improvement program of the
23 provider network and any third parties contracted with the provider
24 network to perform quality improvement complies with the standards
25 under Section 408B.203 to the extent delegated to the provider
26 network by the carrier;

27 (6) periodic signed statements provided by the

1 provider network on request from the carrier, certifying that the
2 credentialing standards of the provider network and any third
3 parties contracted with the provider network to perform delegated
4 credentialing functions comply with the standards under Section
5 408B.301 to the extent delegated to the provider network by the
6 carrier;

7 (7) a process to objectively evaluate the cost of
8 health care services provided to employees by participating
9 providers under this chapter;

10 (8) policies and procedures for conducting a pattern
11 of practice review;

12 (9) processes to provide the carrier, in a standard
13 electronic format agreed to by the parties, the following
14 information:

15 (A) the average medical cost per claim for health
16 care services provided by a participating provider to employees;

17 (B) the utilization by employees of health care
18 services provided by a participating provider;

19 (C) employee release to return-to-work outcomes;

20 (D) employee satisfaction and health-related
21 functional outcomes;

22 (E) the frequency, duration, and outcome of
23 complaints; and

24 (F) the frequency, duration, and outcome of
25 disputes regarding medical benefits;

26 (10) a program of education and training aimed at
27 ensuring that participating providers are knowledgeable and

1 skilled in the treatment of occupational injuries and illnesses and
2 the use of disability guidelines, and familiar with the
3 requirements and procedures of the workers' compensation system;
4 and

5 (11) policies and procedures for protecting the
6 privacy and confidentiality of patient information.

7 Sec. 408B.202. COMPLIANCE WITH MONITORING PLAN. (a) An
8 insurance carrier that becomes aware of any information that
9 indicates that a provider network or participating provider, or any
10 third party to which the provider network or participating provider
11 delegates a function, is not operating in accordance with the
12 monitoring plan as described by Section 408B.201 or is operating in
13 a condition that renders the continuance of the carrier's
14 relationship with the provider network or participating provider
15 hazardous to employees shall:

16 (1) notify the provider network or participating
17 provider in writing of those findings; and

18 (2) request in writing a written explanation, with
19 documentation supporting the explanation, of:

20 (A) the provider network's or participating
21 provider's apparent noncompliance with the contract; or

22 (B) the existence of the condition that
23 apparently renders the continuance of the carrier's relationship
24 with the provider network or participating provider hazardous to
25 employees.

26 (b) A provider network or participating provider shall
27 respond to a request from a carrier under Subsection (a) in writing

1 not later than the 30th day after the date the request is received.
2 The carrier shall reasonably assist the participating provider or
3 provider network in its efforts to correct any failure to comply
4 with the monitoring plan or any hazardous condition that forms the
5 basis of the carrier's findings.

6 (c) If a carrier does not believe that a provider network or
7 participating provider has corrected its failure to comply with the
8 monitoring plan or any hazardous condition by the 90th day after the
9 date the request under Subsection (a) is received, the carrier
10 shall notify the commissioner and provide the department with
11 copies of all notices and requests submitted to the provider
12 network or participating provider and the responses and other
13 documentation the carrier generates or receives in response to the
14 notices and requests.

15 (d) On receipt of a notice under Subsection (c), or on
16 receipt of a complaint filed with the department only, the
17 commissioner or the commissioner's designated representative shall
18 examine the matters contained in the notice or complaint, as well as
19 any other matter relating to the provider network's or
20 participating provider's ability to meet its responsibilities in
21 connection with any function performed by the provider network or
22 participating provider.

23 (e) On completion of the examination, the department shall
24 report to the provider network or participating provider and the
25 carrier the results of the examination and any action the
26 department determines is necessary to ensure that the carrier and
27 provider network or participating provider meets its

1 responsibilities under this chapter, and that the provider network
2 can meet its responsibilities in connection with any function
3 delegated by the carrier or performed by the provider network or any
4 third party to which the provider network delegates a function.

5 (f) The carrier shall respond to the department's report and
6 submit a corrective plan to the department not later than the 30th
7 day after the date of receipt of the report.

8 (g) In connection with an examination and report as
9 described by Subsections (d)-(f), the commissioner may order a
10 carrier to take any action the commissioner determines is necessary
11 to ensure that the carrier can provide health care services under a
12 workers' compensation insurance policy, including:

13 (1) reassuming the functions performed by or delegated
14 to the provider network;

15 (2) temporarily or permanently ceasing arranging for
16 services to employees through the noncompliant provider network;

17 (3) complying with the contingency plan required by
18 Section 408B.152; or

19 (4) terminating the carrier's contract with the
20 provider network or participating provider.

21 (h) A carrier-network contract or participating provider
22 contract that is provided to the department in connection with an
23 examination under this section is confidential and is not subject
24 to disclosure as public information under Chapter 552, Government
25 Code.

26 Sec. 408B.203. QUALITY IMPROVEMENT PROGRAM. (a) A carrier
27 shall develop and maintain an ongoing quality improvement program

1 designed to objectively and systematically monitor and evaluate the
2 quality and appropriateness of care and services and to pursue
3 opportunities for improvement. The quality improvement program
4 must include return-to-work and medical case management programs.

5 (b) The carrier is ultimately responsible for the quality
6 improvement program. The carrier shall:

7 (1) appoint a quality improvement committee that
8 includes participating providers;

9 (2) approve the quality improvement program;

10 (3) approve an annual quality improvement plan;

11 (4) meet at least annually to receive and review
12 reports of the quality improvement committee or group of
13 committees, and take action as appropriate;

14 (5) review the annual written report on the quality
15 improvement program; and

16 (6) report the results of the quality improvement
17 program to the department.

18 (c) The quality improvement committee or committees shall
19 evaluate the overall effectiveness of the quality improvement
20 program.

21 (d) The quality improvement program must be continuous and
22 comprehensive and must address both the quality of clinical care
23 and the quality of services. The carrier shall dedicate adequate
24 resources, including adequate personnel and information systems,
25 to the quality improvement program.

26 (e) The carrier shall develop a written description of the
27 quality improvement program that outlines the organizational

1 structure of the program, including functional responsibilities
2 and design.

3 (f) Each carrier shall implement a documented process for
4 the credentialing of participating providers, in accordance with
5 Section 408B.301.

6 (g) The quality improvement program must provide for an
7 effective peer review procedure for participating providers.

8 SUBCHAPTER F. EXAMINATIONS

9 Sec. 408B.251. EXAMINATION OF PROVIDER NETWORK. (a) As
10 often as the commissioner considers necessary, the commissioner or
11 the commissioner's designated representative may review the
12 operations of a provider network to determine compliance with this
13 chapter. The review may include on-site visits to the provider
14 network's premises.

15 (b) During on-site visits, the provider network shall make
16 available to the department all records relating to the provider
17 network's operations.

18 Sec. 408B.252. EXAMINATION OF PROVIDER OR THIRD PARTY. If
19 requested by the commissioner or the commissioner's
20 representative, each provider, provider group, or third party with
21 which the provider network has contracted to provide health care
22 services or any other services delegated to the provider network by
23 an insurance carrier shall make available for examination by the
24 department that portion of the books and records of the provider,
25 provider group, or third party that is relevant to the relationship
26 with the provider network of the provider, provider group, or third
27 party.

1 SUBCHAPTER G. NETWORK PROVIDERS

2 Sec. 408B.301. CREDENTIALING. Each insurance carrier shall
3 have processes for credentialing participating providers that
4 appropriately assess and validate the qualifications and other
5 relevant information relating to the providers.

6 Sec. 408B.302. TREATING DOCTORS. (a) An insurance carrier
7 shall, by contract, require treating doctors to provide, at a
8 minimum, the functions and services for employees described by this
9 section.

10 (b) For each injury, an injured employee shall notify the
11 employee's employer or carrier under Section 408B.053 of the
12 employee's selection of a treating doctor from the list of treating
13 doctors within the certified provider network that are located
14 within the provider network's service area.

15 (c) The following doctors do not constitute an initial
16 choice of treating doctor:

17 (1) a doctor salaried by the employer;

18 (2) a doctor recommended by the insurance carrier or
19 the employer;

20 (3) any doctor who provides care before the employee
21 is enrolled in the provider network; or

22 (4) a doctor providing emergency care.

23 (d) The participating employer, or the injured employee in a
24 claim described under Section 408B.053, shall provide notice to the
25 carrier or the carrier's designee of the selection of a treating
26 doctor not later than the fifth business day after the date of the
27 employee's selection.

1 (e) A treating doctor shall participate in the medical case
2 management process as required by the carrier or provider network,
3 including participation in return-to-work planning.

4 Sec. 408B.303. CHANGE IN TREATING DOCTOR. (a) An employee
5 who is dissatisfied with the initial choice of a treating doctor is
6 entitled to select an alternate treating doctor from the provider
7 network's list of treating doctors whose practice is located within
8 30 miles of where the employee lives if the employee lives in an
9 urban area or within 60 miles of where the employee lives if the
10 employee lives in a rural area. The provider network may not deny
11 an initial selection of an alternate treating doctor.

12 (b) If the employee is dissatisfied with the employee's
13 second choice of treating doctor, the employee may notify the
14 carrier and request permission to select an alternate treating
15 doctor.

16 (c) The carrier shall establish procedures and criteria to
17 be used in authorizing an employee to select an alternate treating
18 doctor. The criteria must include, at a minimum, whether:

19 (1) treatment by the current treating doctor is
20 medically inappropriate;

21 (2) a conflict exists between the employee and the
22 current treating doctor to the extent that the doctor-patient
23 relationship is jeopardized or impaired; or

24 (3) the employee is receiving appropriate medical care
25 to reach maximum medical improvement in accordance with the
26 carrier's or provider network's treatment guidelines.

27 (d) A change of treating doctor may not be made to secure a

1 new impairment rating or medical report.

2 (e) Denial of a request for a change of treating doctor is
3 subject to the appeal process for a dispute filed under Subchapter
4 C, Chapter 413.

5 (f) For purposes of this section, the following does not
6 constitute the selection of an alternate treating doctor:

7 (1) a referral made by the treating doctor for health
8 care services;

9 (2) the receipt of services ancillary to surgery;

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

12 (4) the selection of a new treating doctor because the
13 original treating doctor:

14 (A) dies;

15 (B) retires;

16 (C) changes location outside the service area
17 distance requirements, as described by Section 408B.055(e); or

18 (D) terminates the doctor's contract with the
19 carrier or provider network; or

20 (5) a change of treating doctor required because of a
21 change of address by the employee to a location outside the service
22 area distance requirements, as described by Section 408B.055(e).

23 Sec. 408B.304. DESIGNATION OF SPECIALIST AS TREATING
24 DOCTOR. (a) A provider network shall ensure that an injured
25 employee with a chronic life-threatening condition or chronic pain
26 related to a compensable injury may apply to the network's medical
27 director to use a non-primary care specialist who is a

1 participating health care provider as the injured employee's
2 treating doctor.

3 (b) The application must:

4 (1) include information specified by the provider
5 network, including certification of the medical need for care by a
6 specialist; and

7 (2) be signed by the injured employee and the
8 non-primary care specialist interested in serving as the injured
9 employee's treating doctor.

10 (c) To be eligible to serve as the injured employee's
11 treating doctor, a specialist doctor must:

12 (1) meet the provider network's requirements for
13 participation; and

14 (2) agree to accept the responsibility to coordinate
15 all of the injured employee's health care needs.

16 (d) If a provider network denies a request under this
17 section, the injured employee may appeal the decision through the
18 network's established complaint and appeals process.

19 Sec. 408B.305. REFERRALS. (a) A treating doctor shall
20 provide health care services to an injured employee for the
21 employee's compensable injury and shall make referrals to other
22 participating providers, or request from the carrier referrals to
23 non-participating providers if a health care service is not
24 available within the certified provider network.

25 (b) If a medically necessary health care service is not
26 available within the certified provider network, a carrier shall
27 allow referral to a non-participating provider on the request of

1 the treating doctor and within the time appropriate to the
2 circumstances related to the delivery of the services and the
3 condition of the employee, but not later than the seventh day after
4 the date of the treating doctor's request.

5 (c) Health care services by a non-participating provider
6 must be arranged by the carrier or certified provider network.

7 (d) Health care services by a non-participating provider
8 must be preauthorized by the carrier or certified provider network
9 and may not be retrospectively reviewed for medical necessity.

10 (e) If the provider network denies the referral request, the
11 employee may appeal the decision to an independent review
12 organization as provided by this subtitle.

13 Sec. 408B.306. TERMINATION OF CONTRACT. (a) A certified
14 provider network may decline to renew a contract with a
15 participating provider for any reason. Before terminating a
16 participating provider contract, a carrier must provide to the
17 participating provider 90 days' prior written notice of the
18 termination.

19 (b) A certified provider network may terminate a contract
20 with a participating provider for cause in the case of imminent harm
21 to patient health, an action taken against the provider's license
22 to practice, or reasonable cause to suspect fraud or malfeasance,
23 in which case termination may be immediate.

24 (c) On request, before the effective date of the termination
25 and within a period not later than the 60th day after the date the
26 carrier gave written notice under Subsection (a), a participating
27 provider is entitled to a review by an advisory review panel of the

1 carrier's proposed termination, except in a case involving:

2 (1) imminent harm to patient health;

3 (2) an action by a state medical or dental board,
4 another medical or dental licensing board, or another licensing
5 board or government agency that effectively impairs the
6 participating provider's ability to provide health care services;
7 or

8 (3) reasonable cause to suspect fraud or malfeasance.

9 (d) On request by the health care provider whose
10 participation in a certified provider network is being terminated
11 or who is deselected, the health care provider is entitled to an
12 expedited review process by the carrier.

13 Sec. 408B.307. ADVISORY REVIEW PANEL. (a) An advisory
14 review panel must:

15 (1) be composed of participating providers who are
16 appointed to serve on the standing quality improvement committee or
17 utilization review committee of the carrier; and

18 (2) include, if available, at least one representative
19 of the participating provider's specialty or a similar specialty.

20 (b) The carrier must consider, but is not bound by, the
21 recommendation of the advisory review panel.

22 (c) On request, the carrier shall provide to the affected
23 participating provider a copy of the recommendation of the advisory
24 review panel and the carrier determination.

25 Sec. 408B.308. NOTIFICATION OF INJURED EMPLOYEE. (a)
26 Except as provided by Subsection (b), the carrier must provide
27 notification of the termination of a participating provider to each

1 injured employee currently receiving care from the provider being
2 terminated at least 30 days before the effective date of the
3 termination.

4 (b) Notification of termination of a participating provider
5 for reasons related to imminent harm may be given immediately.

6 SUBCHAPTER H. UTILIZATION REVIEW

7 Sec. 408B.351. UTILIZATION REVIEW AGENT. An entity
8 performing utilization review, including an insurance carrier or a
9 certified provider network, must be a certified utilization review
10 agent under Article 21.58A, Insurance Code.

11 Sec. 408B.352. GENERAL STANDARDS FOR UTILIZATION REVIEW;
12 UTILIZATION REVIEW PLAN; SCREENING CRITERIA. (a) An entity
13 performing utilization review shall use a utilization review plan.
14 The plan must be reviewed and approved by a physician and be
15 conducted in accordance with standards developed with input from
16 appropriate providers, including doctors engaged in active
17 practice.

18 (b) The utilization review plan must include:

19 (1) a list of the health care services that require
20 preauthorization in addition to those in Section 413.014; and

21 (2) written procedures for:

22 (A) identification of injured employees whose
23 injuries or circumstances may not fit the screening criteria and
24 who thus may require flexibility in the application of screening
25 criteria through utilization review decisions;

26 (B) notification of the provider network's
27 determinations provided in accordance with Section 408B.355;

1 (C) informing appropriate parties of the process
2 for reconsideration of an adverse determination, as required by
3 Section 408B.356;

4 (D) receiving or redirecting toll-free normal
5 business hours and after-hours telephone calls, either in person or
6 by recording, and assurance that a toll-free telephone number is
7 maintained 40 hours a week during normal business hours;

8 (E) review, including review of any form used
9 during the review process and the time frames that must be met
10 during the review;

11 (F) ensuring that providers used by the provider
12 network to perform utilization review:

13 (i) meet the provider network's
14 credentialing standards; and

15 (ii) are appropriately trained to perform
16 utilization review in accordance with Section 408B.354;

17 (G) ensuring that any employee-specific
18 information obtained during the process of utilization review is
19 kept confidential in accordance with applicable federal and state
20 laws; and

21 (H) screening criteria that meet the
22 requirements of Subsection (c).

23 (c) Each provider network shall use written medically
24 acceptable screening criteria and review procedures that are
25 established and periodically evaluated and updated with
26 appropriate involvement from providers, including providers
27 engaged in active practice. Utilization review decisions must be

1 made in accordance with currently accepted medical or health care
2 practices, taking into account any special circumstances of a case
3 that may require deviation from the norm stated in the screening
4 criteria. The screening criteria may be used only to determine
5 whether to approve the requested treatment and must be:

6 (1) objective;

7 (2) clinically valid;

8 (3) compatible with established principles of health
9 care; and

10 (4) flexible enough to allow deviations from the norm
11 when justified on a case-by-case basis.

12 (d) The utilization review plan must provide that denials of
13 care be referred to an appropriate doctor to determine whether
14 health care is medically reasonable and necessary. Treatment may
15 not be denied solely on the basis that the treatment for the
16 indication in question is not specifically addressed by the
17 treatment guideline used by the carrier.

18 (e) The written screening criteria and review procedures
19 must be available for review and inspection as determined necessary
20 by the commissioner or the commissioner's designated
21 representative. However, any information obtained or acquired
22 under the authority of this subtitle related to the screening
23 criteria and the utilization review plan is confidential and
24 privileged and is not subject to disclosure under Chapter 552,
25 Government Code, or to subpoena except to the extent necessary for
26 the commissioner to enforce this chapter.

27 Sec. 408B.353. GENERAL STANDARDS FOR RETROSPECTIVE REVIEW;

1 SCREENING CRITERIA. An entity performing retrospective review
2 shall use written screening criteria established and periodically
3 updated with appropriate involvement from physicians, including
4 practicing physicians, and other health care providers. Except as
5 provided by this subtitle, the insurance carrier or provider
6 network's system for retrospective review must be under the
7 direction of a physician.

8 Sec. 408B.354. PERSONNEL. (a) Personnel employed by or
9 under contract with a carrier or a certified provider network to
10 perform utilization review or retrospective review must be
11 appropriately trained and qualified and, if applicable,
12 appropriately licensed in the State of Texas. Personnel who obtain
13 information regarding an injured employee's specific medical
14 condition, diagnosis, and treatment options or protocols directly
15 from the treating doctor or other health care provider, either
16 orally or in writing, and who are not doctors must be nurses,
17 physician assistants, or other health care providers qualified to
18 provide the service requested by the provider. This subsection may
19 not be interpreted to require personnel who perform only clerical
20 or administrative tasks to have the qualifications prescribed by
21 this subsection.

22 (b) A carrier or a provider network may not permit or
23 provide compensation or any thing of value to an employee or agent
24 of the carrier or provider network, condition employment of a
25 carrier or provider network employee or agent evaluation, or set
26 the carrier or provider network's employee or agent performance
27 standards based, in a manner inconsistent with the requirements of

1 this subchapter, on:

2 (1) the amount or volume of adverse determinations;

3 (2) reductions in or limitations on lengths of stay,
4 duration of treatment, medical benefits, services, or charges; or

5 (3) the number or frequency of telephone calls or
6 other contacts with health care providers or injured employees.

7 (c) Notwithstanding Section 4(h), Article 21.58A, Insurance
8 Code, a utilization review agent that uses doctors to perform
9 reviews of health care services provided under this subtitle shall
10 use doctors appropriately licensed in this state to perform those
11 reviews. The physician may be employed by or under contract to the
12 carrier or provider network.

13 Sec. 408B.355. NOTICE OF ADVERSE DETERMINATIONS;
14 PREAUTHORIZATION REQUIREMENTS. (a) Each carrier, or provider
15 network if the carrier has delegated utilization review or
16 retrospective review functions to the provider network, shall
17 notify the employee or the employee's representative, if any, and
18 the requesting provider of a determination made in a utilization
19 review or retrospective review.

20 (b) Notification of an adverse determination by the
21 provider network must include:

22 (1) the principal reasons for the adverse
23 determination;

24 (2) the clinical basis for the adverse determination;

25 (3) a description, source, and specific location and
26 citation of the screening criteria that were used as guidelines in
27 making the determination;

1 (4) a description of the procedure for the
2 reconsideration process; and

3 (5) notification of the availability of independent
4 review in the form prescribed by the commissioner.

5 (c) The insurance carrier, or the provider network if the
6 carrier has delegated utilization review functions to the provider
7 network, shall specify which health care treatments or services
8 provided in the provider network require preauthorization or
9 concurrent review by the insurance carrier or the provider network.
10 At a minimum, those treatments must include the preauthorization
11 requirements in Section 413.014. Treatments and services for a
12 medical emergency do not require preauthorization. On receipt of a
13 preauthorization request from a provider for proposed services that
14 require preauthorization, the carrier, or the provider network if
15 utilization review functions have been delegated to the provider
16 network, shall issue and transmit a determination indicating
17 whether the proposed health care services are preauthorized. The
18 provider network shall respond to requests for preauthorization
19 within the periods prescribed by this section.

20 (d) For services not described by Subsection (e) or (f), the
21 determination under Subsection (c) must be issued and transmitted
22 not later than the third calendar day after the date the request is
23 received by the provider network.

24 (e) If the proposed services are for concurrent
25 hospitalization care, the carrier or the provider network shall,
26 within 24 hours of receipt of the request, transmit a determination
27 indicating whether the proposed services are preauthorized.

1 (f) If the proposed health care services involve
2 poststabilization treatment or a life-threatening condition, the
3 carrier or the provider network shall transmit to the requesting
4 provider a determination indicating whether the proposed services
5 are preauthorized within the time appropriate to the circumstances
6 relating to the delivery of the services and the condition of the
7 patient, not to exceed one hour from receipt of the request. If the
8 carrier or the provider network issues an adverse determination in
9 response to a request for poststabilization treatment or a request
10 for treatment involving a life-threatening condition, the carrier
11 or the provider network shall provide to the employee or the
12 employee's representative, if any, and the employee's treating
13 provider the notification required under Subsection (a).

14 (g) For life-threatening conditions, the notification of
15 adverse determination must include notification of the
16 availability of independent review in the form prescribed by the
17 commissioner.

18 Sec. 408B.356. RECONSIDERATION OF ADVERSE DETERMINATION.

19 (a) Each carrier, or provider network if the carrier has delegated
20 utilization review or retrospective review functions to the
21 provider network, shall maintain and make available a written
22 description of the carrier's or provider network's reconsideration
23 procedures involving an adverse determination. The
24 reconsideration procedures must be reasonable and must include:

25 (1) a provision stating that reconsideration shall be
26 performed by a provider other than the provider who made the
27 original adverse determination;

1 (2) a provision that an employee, a person acting on
2 behalf of the employee, or the employee's requesting provider may,
3 not later than the 30th day after the date of issuance of written
4 notification of an adverse determination, request reconsideration
5 of the adverse determination either orally or in writing;

6 (3) a provision that, not later than the fifth
7 calendar day after the date of receipt of the request, the provider
8 network shall send to the requesting party a letter acknowledging
9 the date of the receipt of the request and that includes a
10 reasonable list of documents the requesting party is required to
11 submit;

12 (4) a provision that, after the carrier or provider
13 network completes the review of the request for reconsideration of
14 the adverse determination, the carrier or provider network agent
15 shall issue a response letter to the employee or person acting on
16 behalf of the employee and the employee's requesting provider,
17 that:

18 (A) explains the resolution of the
19 reconsideration; and

20 (B) includes:

21 (i) a statement of the specific medical or
22 clinical reasons for the resolution;

23 (ii) the medical or clinical basis for the
24 decision;

25 (iii) the professional specialty of any
26 provider consulted; and

27 (iv) notice of the requesting party's right

1 to seek review of the denial by an independent review organization
2 and the procedures for obtaining that review; and

3 (5) written notification to the requesting party of
4 the determination of the request for reconsideration as soon as
5 practicable, but not later than the 30th day after the date the
6 utilization review agent received the request.

7 (b) In addition to the written request for reconsideration,
8 the reconsideration procedures must include a method for expedited
9 reconsideration procedures for denials of proposed health care
10 services involving poststabilization treatment or life-threatening
11 conditions, and for denials of continued stays for hospitalized
12 employees. The procedures must include a review by a provider who
13 has not previously reviewed the case and who is of the same or a
14 similar specialty as a provider who typically manages the
15 condition, procedure, or treatment under review. The period during
16 which that reconsideration must be completed must be based on the
17 medical or clinical immediacy of the condition, procedure, or
18 treatment, but may not exceed one calendar day from the date of
19 receipt of all information necessary to complete the
20 reconsideration.

21 (c) Notwithstanding Subsection (a) or (b), an employee with
22 a life-threatening condition is entitled to an immediate review by
23 an independent review organization and is not required to comply
24 with the procedures for a reconsideration of an adverse
25 determination.

26 Sec. 408B.357. DISPUTE RESOLUTION. Fee disputes are
27 subject to the provider network complaint process under Subchapter

1 I. Disputes regarding medical necessity are subject to Subchapter
2 C, Chapter 413.

3 SUBCHAPTER I. COMPLAINT RESOLUTION

4 Sec. 408B.401. COMPLAINT SYSTEM REQUIRED. (a) Each
5 provider network shall implement and maintain a complaint system
6 that provides reasonable procedures to resolve an oral or written
7 complaint.

8 (b) The provider network may require a complainant to file
9 the complaint not later than the 90th day after the date of the
10 event or occurrence that is the basis for the complaint.

11 (c) The complaint system must include a process for the
12 notice and appeal of a complaint.

13 (d) The commissioner may adopt rules as necessary to
14 implement this section.

15 Sec. 408B.402. COMPLAINT INITIATION AND INITIAL RESPONSE;
16 DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant
17 notifies a provider network of a complaint, the provider network,
18 not later than the fifth business day after the date the provider
19 network receives the complaint, shall respond to the complainant,
20 acknowledging the date of receipt of the complaint and providing a
21 description of the provider network's complaint procedures and
22 deadlines.

23 (b) The provider network shall investigate and resolve a
24 complaint not later than the 30th calendar day after the date the
25 provider network receives the complaint.

26 Sec. 408B.403. RECORD OF COMPLAINTS. (a) Each provider
27 network shall maintain a complaint and appeal log regarding each

1 complaint. The commissioner shall adopt rules designating the
2 classification of provider network complaints under this section.

3 (b) Each provider network shall maintain a record of and
4 documentation on each complaint, complaint proceeding, and action
5 taken on the complaint until the third anniversary of the date the
6 complaint was received.

7 (c) A complainant is entitled to a copy of the provider
8 network's record regarding the complaint and any proceeding
9 relating to that complaint.

10 (d) The department, during any investigation or examination
11 of a provider network, may review documentation maintained under
12 this subchapter, including original documentation, regarding a
13 complaint and action taken on the complaint.

14 Sec. 408B.404. RETALIATORY ACTION PROHIBITED. A provider
15 network may not engage in any retaliatory action against an
16 employer or employee because the employer or employee or a person
17 acting on behalf of the employer or employee has filed a complaint
18 against the provider network.

19 Sec. 408B.405. POSTING OF INFORMATION ON COMPLAINT PROCESS
20 REQUIRED. (a) A contract between a provider network and a provider
21 must require the provider to post, in the provider's office, a
22 notice to injured employees on the process for resolving complaints
23 with the provider network.

24 (b) The notice required under Subsection (a) must include
25 the department's toll-free telephone number for filing a complaint.

26 SUBCHAPTER J. PROHIBITED PRACTICES

27 Sec. 408B.451. NO INDUCEMENT TO LIMIT SERVICES. An

1 insurance carrier may not use any financial incentive or make a
2 payment to a health care provider that acts directly or indirectly
3 as an inducement to limit services.

4 Sec. 408B.452. INDEMNIFICATION; LIABILITY. (a) An
5 insurance carrier may not require participating providers, by
6 contract or otherwise, to indemnify the carrier for any liability
7 in tort resulting from an act or omission of the carrier.

8 (b) A carrier-network contract or participating provider
9 contract may not transfer liability for acts of one or more parties
10 to any other parties. Each entity shall only be responsible for its
11 own acts, omissions, and decisions relative to the providing of
12 health care services to employees.

13 Sec. 408B.453. NO LIMITATION ON PROVIDER COMMUNICATION. An
14 insurance carrier may not, as a condition of contract with a
15 participating provider, or in any other manner, prohibit, attempt
16 to prohibit, or discourage a participating provider from discussing
17 with or communicating to an employee under the participating
18 provider's care, information or opinions regarding that employee's
19 medical condition or treatment options.

20 Sec. 408B.454. MISLEADING INFORMATION. An employer,
21 insurance carrier, health care provider, employee, or agent or
22 representative of an employer or carrier may not cause or permit the
23 use or distribution to employees of information that is
24 intentionally untrue or intentionally misleading.

25 SUBCHAPTER K. DISCIPLINARY ACTIONS

26 Sec. 408B.501. DETERMINATION OF VIOLATION; NOTICE. (a) If
27 the commissioner determines that a provider network, insurance

1 carrier, or any other person or third party operating under this
2 chapter, including a third party to which a provider network
3 delegates a function, is in violation of this chapter, rules
4 adopted by the commissioner under this chapter, or applicable
5 provisions of the Insurance Code or rules adopted under that code,
6 the commissioner or a designated representative may notify the
7 provider network, insurance carrier, person, or third party of the
8 alleged violation and may compel the production of any documents or
9 other information as necessary to determine whether the violation
10 occurred.

11 (b) The commissioner's designated representative may
12 initiate the proceedings under this section.

13 (c) A proceeding under this section is a contested case
14 under Chapter 2001, Government Code.

15 Sec. 408B.502. DISCIPLINARY ACTIONS. If under Section
16 408B.501 the commissioner determines that a provider network,
17 insurance carrier, or other person or third party described under
18 Section 408B.501 has violated or is violating this chapter, rules
19 adopted by the commissioner under this chapter, or the Insurance
20 Code or rules adopted under that code, the commissioner may:

21 (1) suspend or revoke a certificate issued under this
22 subtitle;

23 (2) impose sanctions under Chapter 82, Insurance Code;

24 (3) issue a cease and desist order under Chapter 83,
25 Insurance Code; or

26 (4) impose administrative penalties under Chapter 84,
27 Insurance Code.

1 to be used by the department [~~commission~~] in granting the employee
2 authority to select an alternate doctor. The criteria may include:

3 (1) whether treatment by the current doctor is
4 medically inappropriate;

5 (2) the professional reputation of the doctor;

6 (3) whether the employee is receiving appropriate
7 medical care to reach maximum medical improvement; and

8 (4) whether a conflict exists between the employee and
9 the doctor to the extent that the doctor-patient relationship is
10 jeopardized or impaired.

11 (d) A change of doctor may not be made to secure a new
12 impairment rating or medical report.

13 (e) For purposes of this section, the following is not a
14 selection of an alternate doctor:

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

17 (2) the receipt of services ancillary to surgery;

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

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

22 (A) dies;

23 (B) retires; or

24 (C) becomes unavailable or unable to provide
25 medical care to the employee; or

26 (5) a change of doctors required because of a change of
27 address [~~residence~~] by the employee.

1 (f) Notwithstanding the repeal by this Act of Sections
2 408.023 and 408.0231, Labor Code, there may be no direct or indirect
3 provision of health care under the workers' compensation Act and
4 rules, and no direct or indirect receipt of remuneration under the
5 Act and rules by a doctor who:

6 (1) before the effective date of this Act:

7 (A) was removed or deleted from the list of
8 approved doctors either by action of the Texas Workers'
9 Compensation Commission or by agreement with the doctor; or

10 (B) was not admitted to the list of approved
11 doctors either by action of the Texas Workers' Compensation
12 Commission or by agreement with the doctor;

13 (C) was suspended from the list of approved
14 doctors either by action of the Texas Workers' Compensation
15 Commission or by agreement with the doctor; or

16 (D) had the license to practice suspended by the
17 appropriate licensing board including those whose suspension was
18 stayed, deferred, or probated, or voluntarily relinquished the
19 license to practice; and

20 (2) was not reinstated or restored by the Texas
21 Workers' Compensation Commission to the list of approved doctors
22 prior to the effective date of this Act.

23 Sec. 408C.003. TREATING DOCTOR DUTIES. (a) The injured
24 employee's treating doctor is responsible for the efficient
25 management of medical care as required by Section 408C.004(c) and
26 commissioner rules. The department shall collect information
27 regarding:

1 (1) return-to-work outcomes;
2 (2) patient satisfaction; and
3 (3) cost and utilization of health care provided or
4 authorized by a treating doctor.

5 (b) The commissioner may adopt rules to define the role of
6 the treating doctor and to specify outcome information to be
7 collected for a treating doctor.

8 (c) A doctor who provides health care services under this
9 chapter may perform only those procedures that are within the scope
10 of the practice for which the doctor is licensed.

11 Sec. 408C.004 [~~408.025~~]. REPORTS AND RECORDS REQUIRED FROM
12 HEALTH CARE PROVIDERS. (a) The commissioner [~~commission~~] by rule
13 shall adopt requirements for reports and records that are required
14 to be filed with the department [~~commission~~] or provided to the
15 injured employee, the employee's attorney, or the insurance carrier
16 by a health care provider.

17 (b) The commissioner [~~commission~~] by rule shall adopt
18 requirements for reports and records that are to be made available
19 by a health care provider to another health care provider to prevent
20 unnecessary duplication of tests and examinations.

21 (c) The treating doctor is responsible for maintaining
22 efficient utilization of health care.

23 (d) On the request of an injured employee, the employee's
24 attorney, or the insurance carrier, a health care provider shall
25 furnish records relating to treatment or hospitalization for which
26 compensation is being sought. The department [~~commission~~] may
27 regulate the charge for furnishing a report or record, but the

1 charge may not be less than the fair and reasonable charge for
2 furnishing the report or record. A health care provider may
3 disclose to the insurance carrier of an affected employer records
4 relating to the diagnosis or treatment of the injured employee
5 without the authorization of the injured employee to determine the
6 amount of payment or the entitlement to payment.

7 Sec. 408C.005. PREAUTHORIZATION; UTILIZATION REVIEW FOR
8 OUT-OF-NETWORK CARE. (a) The preauthorization requirements of
9 Section 413.014 apply to out-of-network care.

10 (b) For out-of-network care, an insurance carrier may:

11 (1) perform utilization review itself if the carrier
12 is a certified utilization review agent under Article 21.58A,
13 Insurance Code; or

14 (2) contract for utilization review services with a
15 certified utilization review agent.

16 Sec. 408C.006. DISPUTE RESOLUTION FOR OUT-OF-NETWORK CARE.
17 The medical dispute resolution requirements of Subchapter C,
18 Chapter 413, apply to a dispute regarding out-of-network care.

19 SECTION 1.203. The following laws are repealed:

20 (1) Sections 408.0221-408.0223, Labor Code;

21 (2) Section 408.023, Labor Code;

22 (3) Section 408.0231, Labor Code; and

23 (4) Section 408.024, Labor Code.

24 PART 11. ADOPTION OF CHAPTERS 408D AND 408E, LABOR CODE

25 SECTION 1.251. Subchapters E, F, G, H, and I, Chapter 408,
26 Labor Code, are redesignated as Chapter 408D, Labor Code, and that
27 chapter is amended to read as follows:

1 CHAPTER 408D. WORKERS' COMPENSATION BENEFITS: INCOME BENEFITS

2 SUBCHAPTER A [~~E~~]. INCOME BENEFITS: [~~IN~~] GENERAL PROVISIONS

3 Sec. 408D.001 [~~408.081~~]. INCOME BENEFITS. (a) An employee
4 is entitled to income benefits as provided by [~~in~~] this subtitle
5 [~~chapter~~].

6 (b) Except as otherwise provided by this section or this
7 subtitle, income benefits shall be paid as required under Section
8 409.021(a) weekly as and when they accrue without order from the
9 commissioner [~~commission~~]. Interest on accrued but unpaid benefits
10 shall be paid, without order of the commissioner [~~commission~~], at
11 the time the accrued benefits are paid.

12 (c) The commissioner [~~commission~~] by rule shall establish
13 requirements for agreements under which income benefits may be paid
14 monthly. Income benefits may be paid monthly only:

15 (1) on the request of the employee and the agreement of
16 the employee and the insurance carrier; and

17 (2) in compliance with the requirements adopted by the
18 commissioner [~~commission~~].

19 (d) An employee's entitlement to income benefits under this
20 chapter terminates on the death of the employee. An interest in
21 future income benefits does not survive after the employee's death.

22 Sec. 408D.002 [~~408.082~~]. ACCRUAL OF RIGHT TO INCOME
23 BENEFITS. (a) Income benefits may not be paid under this subtitle
24 for an injury that does not result in disability for at least one
25 week.

26 (b) If the disability continues for longer than one week,
27 weekly income benefits begin to accrue on the eighth day after the

1 date of the injury. If the disability does not begin at once after
2 the injury occurs or within eight days of the occurrence but does
3 result subsequently, weekly income benefits accrue on the eighth
4 day after the date on which the disability began.

5 (c) If the disability continues for 14 days [~~four weeks~~] or
6 longer after the date the disability [~~it~~] begins, compensation
7 shall be computed from the date the disability begins.

8 (d) This section does not preclude the recovery of medical
9 benefits as provided by this subtitle [~~Subchapter B~~].

10 Sec. 408D.003 [~~408.083~~]. TERMINATION OF RIGHT TO TEMPORARY
11 INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. (a)
12 Except as provided by Subsection (b), an employee's eligibility for
13 temporary income benefits, impairment income benefits, and
14 supplemental income benefits terminates on the expiration of 401
15 weeks after the date of injury.

16 (b) If an employee incurs an occupational disease, the
17 employee's eligibility for temporary income benefits, impairment
18 income benefits, and supplemental income benefits terminates on the
19 expiration of 401 weeks after the date on which benefits began to
20 accrue.

21 Sec. 408D.004 [~~408.084~~]. CONTRIBUTING INJURY. (a) At the
22 request of the insurance carrier, the commissioner [~~commission~~] may
23 order that impairment income benefits and supplemental income
24 benefits be reduced in a proportion equal to the proportion of a
25 documented impairment that resulted from earlier compensable
26 injuries.

27 (b) The department [~~commission~~] shall consider the

1 cumulative impact of the compensable injuries on the employee's
2 overall impairment in determining a reduction under this section.

3 (c) If the combination of the compensable injuries results
4 in an injury compensable under Section 408D.201 [~~408.161~~], the
5 benefits for that injury shall be paid as provided by Section
6 408D.202 [~~408.162~~].

7 Sec. 408D.005 [~~408.085~~]. ADVANCE OF BENEFITS FOR HARDSHIP.

8 (a) If there is a likelihood that income benefits will be paid, the
9 department [~~commission~~] may grant an employee suffering financial
10 hardship advances as provided by this subtitle against the amount
11 of income benefits to which the employee may be entitled. An
12 advance may be ordered before or after the employee attains maximum
13 medical improvement. An insurance carrier shall pay the advance
14 ordered.

15 (b) An employee must apply to the department [~~commission~~]
16 for an advance on a form prescribed by the commissioner
17 [~~commission~~]. The application must describe the hardship that is
18 the grounds for the advance.

19 (c) An advance under this section may not exceed an amount
20 equal to four times the maximum weekly benefit for temporary income
21 benefits as computed under [~~in~~] Section 408.061. The department
22 [~~commission~~] may not grant more than three advances to a particular
23 employee based on the same injury.

24 (d) The department [~~commission~~] may not grant an advance to
25 an employee who is receiving, on the date of the application under
26 Subsection (b), at least 90 percent of the employee's net preinjury
27 wages under Section 408.003 or 408D.109 [~~408.129~~].

1 Sec. 408D.053 [~~408.103~~]. AMOUNT OF TEMPORARY INCOME
2 BENEFITS. (a) Subject to Sections 408.061 and 408.062, the amount
3 of a temporary income benefit is equal to:

4 (1) 70 percent of the amount computed by subtracting
5 the employee's weekly earnings after the injury from the employee's
6 average weekly wage; or

7 (2) for the first 26 weeks, 75 percent of the amount
8 computed by subtracting the employee's weekly earnings after the
9 injury from the employee's average weekly wage if the employee
10 earns less than \$8.50 an hour.

11 (b) A temporary income benefit under Subsection (a)(2) may
12 not exceed the employee's actual earnings for the previous year. It
13 is presumed that the employee's actual earnings for the previous
14 year are equal to:

15 (1) the sum of the employee's wages as reported in the
16 most recent four quarterly wage reports to the Texas Workforce
17 [~~Employment~~] Commission divided by 52;

18 (2) the employee's wages in the single quarter of the
19 most recent four quarters in which the employee's earnings were
20 highest, divided by 13, if the department [~~commission~~] finds that
21 the employee's most recent four quarters' earnings reported in the
22 Texas Workforce [~~Employment~~] Commission wage reports are not
23 representative of the employee's usual earnings; or

24 (3) the amount the department [~~commission~~] determines
25 from other credible evidence to be the actual earnings for the
26 previous year if the Texas Workforce [~~Employment~~] Commission does
27 not have a wage report reflecting at least one quarter's earnings

1 because the employee worked outside the state during the previous
2 year.

3 (c) A presumption under Subsection (b) may be rebutted by
4 other credible evidence of the employee's actual earnings.

5 (d) The Texas Workforce [~~Employment~~] Commission shall
6 provide information required under this section in the manner most
7 efficient for transferring the information.

8 (e) For purposes of Subsection (a), if an employee is
9 offered a bona fide position of employment that the employee is
10 reasonably capable of performing, given the physical condition of
11 the employee and the geographic accessibility of the position to
12 the employee, the employee's weekly earnings after the injury are
13 equal to the weekly wage for the position offered to the employee.

14 Sec. 408D.054 [~~408.104~~]. MAXIMUM MEDICAL IMPROVEMENT AFTER
15 SPINAL SURGERY. (a) On application by either the employee or the
16 insurance carrier, the commissioner [~~commission~~] by order may
17 extend the 104-week period described by Section 401.011(30)(B) if
18 the employee has had spinal surgery, or has been approved for spinal
19 surgery under Section 408A.010 [~~408.026~~] and commissioner
20 [~~commission~~] rules, within 12 weeks before the expiration of the
21 104-week period. If an order is issued under this section, the
22 order shall extend the statutory period for maximum medical
23 improvement to a date certain, based on medical evidence presented
24 to the department [~~commission~~].

25 (b) Either the employee or the insurance carrier may dispute
26 an application for extension made under this section. A dispute
27 under this subsection is subject to Chapter 410.

1 (c) The commissioner [~~commission~~] shall adopt rules to
2 implement this section, including rules establishing procedures
3 for requesting and disputing an extension.

4 Sec. 408D.055 [~~408.105~~]. SALARY CONTINUATION IN LIEU OF
5 TEMPORARY INCOME BENEFITS. (a) In lieu of payment of temporary
6 income benefits under this subchapter, an employer may continue to
7 pay the salary of an employee who sustains a compensable injury
8 under a contractual obligation between the employer and employee,
9 such as a collective bargaining agreement, written agreement, or
10 policy.

11 (b) Salary continuation may include wage supplementation
12 if:

13 (1) employer reimbursement is not sought from the
14 carrier as provided by Section 408D.107 [~~408.127~~]; and

15 (2) the supplementation does not affect the employee's
16 eligibility for any future income benefits.

17 SUBCHAPTER C [~~G~~]. IMPAIRMENT INCOME BENEFITS

18 Sec. 408D.101 [~~408.121~~]. IMPAIRMENT INCOME BENEFITS. (a)
19 An employee's entitlement to impairment income benefits begins on
20 the day after the date the employee reaches maximum medical
21 improvement and ends on the earlier of:

22 (1) the date of expiration of a period computed at the
23 rate of three weeks for each percentage point of impairment; or

24 (2) the date of the employee's death.

25 (b) The insurance carrier shall begin to pay impairment
26 income benefits not later than the fifth day after the date on which
27 the insurance carrier receives the doctor's report certifying

1 maximum medical improvement. Impairment income benefits shall be
2 paid for a period based on the impairment rating, unless that rating
3 is disputed under Subsection (c).

4 (c) If the insurance carrier disputes the impairment rating
5 used under Subsection (a), the carrier shall pay the employee
6 impairment income benefits for a period based on the carrier's
7 reasonable assessment of the correct rating.

8 Sec. 408D.102 [~~408.122~~]. ELIGIBILITY FOR IMPAIRMENT INCOME
9 BENEFITS; DESIGNATED DOCTOR. (a) A claimant may not recover
10 impairment income benefits unless evidence of impairment based on
11 an objective clinical or laboratory finding exists. If the finding
12 of impairment is made by a doctor chosen by the claimant and the
13 finding is contested, a designated doctor or a doctor selected by
14 the insurance carrier must be able to confirm the objective
15 clinical or laboratory finding on which the finding of impairment
16 is based.

17 (b) To be eligible to serve as a designated doctor, a doctor
18 must meet specific qualifications, including training in the
19 determination of impairment ratings. The department [~~executive~~
20 ~~director~~] shall develop qualification standards and administrative
21 policies to implement this subsection, and the commissioner
22 [~~commission~~] may adopt rules as necessary. If medical benefits are
23 provided through a certified provider network, the designated
24 doctor shall not be a health care practitioner under the certified
25 provider network. The designated doctor doing the review must be
26 trained and experienced with the treatment and procedures used by
27 the doctor treating the patient's medical condition, and the

1 treatment and procedures performed must be within the scope of
2 practice of the designated doctor. A designated doctor's
3 credentials must be appropriate for the issue in question and the
4 injured employee's medical condition.

5 (c) The report of the designated doctor has presumptive
6 weight, and the department [~~commission~~] shall base its
7 determination of whether the employee has reached maximum medical
8 improvement on the report unless the great weight of the other
9 medical evidence is to the contrary.

10 Sec. 408D.103 [~~408.123~~]. CERTIFICATION OF MAXIMUM MEDICAL
11 IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an
12 employee has been certified by a doctor as having reached maximum
13 medical improvement, the certifying doctor shall evaluate the
14 condition of the employee and assign an impairment rating using the
15 impairment rating guidelines described by Section 408D.104
16 [~~408.124~~]. If the certification and evaluation are performed by a
17 doctor other than the employee's treating doctor, the certification
18 and evaluation shall be submitted to the treating doctor, and the
19 treating doctor shall indicate agreement or disagreement with the
20 certification and evaluation.

21 (b) A certifying doctor shall issue a written report
22 certifying that maximum medical improvement has been reached,
23 stating the employee's impairment rating, and providing any other
24 information required by the department [~~commission~~] to:

25 (1) the department [~~commission~~];

26 (2) the employee; and

27 (3) the insurance carrier.

1 (c) If an employee is not certified as having reached
2 maximum medical improvement before the expiration of 102 weeks
3 after the date income benefits begin to accrue, the department
4 [~~commission~~] shall notify the treating doctor of the requirements
5 of this subchapter.

6 (d) Except as otherwise provided by this section, an
7 employee's first valid certification of maximum medical
8 improvement and first valid assignment of an impairment rating is
9 final if the certification or assignment is not disputed before the
10 91st day after the date written notification of the certification
11 or assignment is provided to the employee and the carrier by
12 verifiable means.

13 (e) An employee's first certification of maximum medical
14 improvement or assignment of an impairment rating may be disputed
15 after the period described by Subsection (d) if:

16 (1) compelling medical evidence exists of:

17 (A) a significant error by the certifying doctor
18 in applying the appropriate American Medical Association
19 guidelines or in calculating the impairment rating;

20 (B) a clearly mistaken diagnosis or a previously
21 undiagnosed medical condition; or

22 (C) improper or inadequate treatment of the
23 injury before the date of the certification or assignment that
24 would render the certification or assignment invalid; or

25 (2) other compelling circumstances exist as
26 prescribed by commissioner [~~commission~~] rule.

27 (f) If an employee has not been certified as having reached

1 maximum medical improvement before the expiration of 104 weeks
2 after the date income benefits begin to accrue or the expiration
3 date of any extension of benefits under Section 408D.054 [~~408.104~~],
4 the impairment rating assigned after the expiration of either of
5 those periods is final if the impairment rating is not disputed
6 before the 91st day after the date written notification of the
7 certification or assignment is provided to the employee and the
8 carrier by verifiable means. A certification or assignment may be
9 disputed after the 90th day only as provided by Subsection (e).

10 (g) If an employee's disputed certification of maximum
11 medical improvement or assignment of impairment rating is finally
12 modified, overturned, or withdrawn, the first certification or
13 assignment made after the date of the modification, overturning, or
14 withdrawal becomes final if the certification or assignment is not
15 disputed before the 91st day after the date notification of the
16 certification or assignment is provided to the employee and the
17 carrier by verifiable means. A certification or assignment may be
18 disputed after the 90th day only as provided by Subsection (e).

19 Sec. 408D.104 [~~408.124~~]. IMPAIRMENT RATING GUIDELINES.

20 (a) An award of an impairment income benefit, whether by the
21 department [~~commission~~] or a court, must be based [~~shall be made~~] on
22 an impairment rating determined using the impairment rating
23 guidelines described by [~~in~~] this section.

24 (b) For determining the existence and degree of an
25 employee's impairment, the department [~~commission~~] shall use
26 "Guides to the Evaluation of Permanent Impairment," third edition,
27 second printing, dated February 1989, published by the American

1 Medical Association.

2 (c) Notwithstanding Subsection (b), the commissioner
3 [~~commission~~] by rule may adopt the fourth edition of the "Guides to
4 the Evaluation of Permanent Impairment," published by the American
5 Medical Association, or a subsequent edition of those guides, for
6 determining the existence and degree of an employee's impairment.

7 Sec. 408D.105 [~~408.125~~]. DISPUTE AS TO IMPAIRMENT RATING;
8 ADMINISTRATIVE VIOLATION. (a) If an impairment rating is
9 disputed, the department [~~commission~~] shall direct the employee to
10 the next available doctor on the department's [~~commission's~~] list
11 of designated doctors, as provided by Section 408.0041.

12 (b) The designated doctor shall report in writing to the
13 department [~~commission~~].

14 (c) The report of the designated doctor shall have
15 presumptive weight, and the department [~~commission~~] shall base the
16 impairment rating on that report unless the great weight of the
17 other medical evidence is to the contrary. If the great weight of
18 the medical evidence contradicts the impairment rating contained in
19 the report of the designated doctor chosen by the department
20 [~~commission~~], the department [~~commission~~] shall adopt the
21 impairment rating of one of the other doctors.

22 (d) To avoid undue influence on a person selected as a
23 designated doctor under this section, only the injured employee or
24 an appropriate member of the staff of the department [~~commission~~]
25 may communicate with the designated doctor about the case regarding
26 the injured employee's medical condition or history before the
27 examination of the injured employee by the designated doctor.

1 After that examination is completed, communication with the
2 designated doctor regarding the injured employee's medical
3 condition or history may be made only through appropriate
4 department [~~commission~~] staff members. The designated doctor may
5 initiate communication with any doctor who has previously treated
6 or examined the injured employee for the work-related injury.

7 (e) Notwithstanding Subsection (d), the treating doctor and
8 the insurance carrier are both responsible for sending to the
9 designated doctor all the injured employee's medical records that
10 are in their possession and that relate to the issue to be evaluated
11 by the designated doctor. The treating doctor and the insurance
12 carrier may send the records without a signed release from the
13 employee. The designated doctor is authorized to receive the
14 employee's confidential medical records to assist in the resolution
15 of disputes. The treating doctor and the insurance carrier may also
16 send the designated doctor an analysis of the injured employee's
17 medical condition, functional abilities, and return-to-work
18 opportunities.

19 (f) A violation of Subsection (d) is a Class C
20 administrative violation.

21 Sec. 408D.106 [~~408.126~~]. AMOUNT OF IMPAIRMENT INCOME
22 BENEFITS. Subject to Sections 408.061 and 408.062, an impairment
23 income benefit is equal to 70 percent of the employee's average
24 weekly wage.

25 Sec. 408D.107 [~~408.127~~]. REDUCTION OF IMPAIRMENT INCOME
26 BENEFITS. (a) An insurance carrier shall reduce impairment income
27 benefits to an employee by an amount equal to employer payments made

1 under Section 408.003 that are not reimbursed or reimbursable under
2 that section.

3 (b) The insurance carrier shall remit the amount of a
4 reduction under this section to the employer who made the payments.

5 (c) The commissioner [~~commission~~] shall adopt rules and
6 forms to ensure the full reporting and the accuracy of reductions
7 and reimbursements made under this section.

8 Sec. 408D.108 [~~408.128~~]. COMMUTATION OF IMPAIRMENT INCOME
9 BENEFITS. (a) An employee may elect to commute the remainder of
10 the impairment income benefits to which the employee is entitled if
11 the employee has returned to work for at least three months, earning
12 at least 80 percent of the employee's average weekly wage.

13 (b) An employee who elects to commute impairment income
14 benefits is not entitled to additional income benefits for the
15 compensable injury.

16 Sec. 408D.109 [~~408.129~~]. ACCELERATION OF IMPAIRMENT INCOME
17 BENEFITS. (a) On approval by the commissioner [~~commission~~] of a
18 written request received from an employee, an insurance carrier
19 shall accelerate the payment of impairment income benefits to the
20 employee. The accelerated payment may not exceed a rate of payment
21 equal to that of the employee's net preinjury wage.

22 (b) The commissioner [~~commission~~] shall approve the request
23 and order the acceleration of the benefits if the commissioner
24 [~~commission~~] determines that the acceleration is:

- 25 (1) required to relieve hardship; and
26 (2) in the overall best interest of the employee.

27 (c) The duration of the impairment income benefits to which

1 the employee is entitled shall be reduced to offset the increased
2 payments caused by the acceleration taking into consideration the
3 discount for present payment computed at the rate provided under
4 Section 401.023.

5 (d) The commissioner [~~commission~~] may prescribe forms
6 necessary to implement this section.

7 SUBCHAPTER D [~~H~~]. SUPPLEMENTAL INCOME BENEFITS

8 Sec. 408D.151 [~~408.141~~]. AWARD OF SUPPLEMENTAL INCOME
9 BENEFITS. An award of a supplemental income benefit, whether by the
10 department [~~commission~~] or a court, shall be made in accordance
11 with this subchapter.

12 Sec. 408D.152 [~~408.142~~]. SUPPLEMENTAL INCOME BENEFITS.

13 (a) An employee is entitled to supplemental income benefits if on
14 the expiration of the impairment income benefit period computed
15 under Section 408D.101(a)(1) [~~408.121(a)(1)~~] the employee:

16 (1) has an impairment rating of 15 percent or more as
17 determined by this subtitle from the compensable injury;

18 (2) has not returned to work or has returned to work
19 earning less than 80 percent of the employee's average weekly wage
20 as a direct result of the employee's impairment;

21 (3) has not elected to commute a portion of the
22 impairment income benefit under Section 408D.108 [~~408.128~~]; and

23 (4) has complied with the requirements adopted under
24 Section 408D.153 [~~attempted in good faith to obtain employment~~
25 ~~commensurate with the employee's ability to work~~].

26 (b) If an employee is not entitled to supplemental income
27 benefits at the time of payment of the final impairment income

1 benefit because the employee is earning at least 80 percent of the
2 employee's average weekly wage, the employee may become entitled to
3 supplemental income benefits at any time within one year after the
4 date the impairment income benefit period ends if:

5 (1) the employee earns wages for at least 90 days that
6 are less than 80 percent of the employee's average weekly wage;

7 (2) the employee meets the requirements of Subsections
8 (a)(1), (3), and (4); and

9 (3) the decrease in earnings is a direct result of the
10 employee's impairment from the compensable injury.

11 Sec. 408D.153. WORK SEARCH COMPLIANCE STANDARDS. (a) The
12 commissioner by rule shall adopt compliance standards for
13 supplemental income benefit recipients that require each recipient
14 to demonstrate an active effort to obtain employment. To be
15 eligible to receive supplemental income benefits under this
16 chapter, a recipient must provide evidence satisfactory to the
17 department of:

18 (1) active participation in a vocational
19 rehabilitation program conducted by the Department of Assistive and
20 Rehabilitative Services or a private vocational rehabilitation
21 provider;

22 (2) active participation in work search efforts
23 conducted through the Texas Workforce Commission; or

24 (3) active work search efforts documented by job
25 applications submitted by the recipient.

26 (b) In adopting rules under this section, the commissioner
27 shall:

1 (1) establish the level of activity that a recipient
2 should have with the Texas Workforce Commission and the Department
3 of Assistive and Rehabilitative Services;

4 (2) define the number of job applications required to
5 be submitted by a recipient to satisfy the work search
6 requirements; and

7 (3) consider factors affecting the availability and
8 suitability of employment, including recognition of access to
9 employment in rural areas, economic conditions, and other
10 appropriate employment availability factors.

11 (c) The commissioner may consult with the Texas Workforce
12 Commission, the Department of Assistive and Rehabilitative
13 Services, and other appropriate entities in adopting rules under
14 this section.

15 Sec. 408D.154. RETURN-TO-WORK GOALS AND ASSISTANCE. (a)
16 The department shall assist recipients of income benefits to return
17 to the workforce. The department shall develop improved data
18 sharing, within the standards of federal privacy requirements, with
19 all appropriate state agencies and workforce programs to inform the
20 department of changes needed to assist income benefit recipients to
21 successfully reenter the workforce.

22 (b) The department shall train staff dealing with income
23 benefits to respond to questions and assist injured employees in
24 their effort to return to the workforce. If the department
25 determines that an injured employee is unable to ever return to the
26 workforce, the department shall inform the employee of possible
27 eligibility for other forms of benefits, such as social security

1 disability income benefits.

2 (c) As necessary to implement the requirements of this
3 section, the department shall:

4 (1) attempt to remove any barriers to successful
5 employment that are identified at the department, the Texas
6 Workforce Commission, the Department of Assistive and
7 Rehabilitative Services, and private vocational rehabilitation
8 programs;

9 (2) ensure that data is tracked among the department,
10 the Texas Workforce Commission, the Department of Assistive and
11 Rehabilitative Services, and insurance carriers, including outcome
12 data;

13 (3) establish a mechanism to refer income benefit
14 recipients to the Texas Workforce Commission and local workforce
15 development centers for employment opportunities; and

16 (4) develop a mechanism to promote employment success
17 that includes post-referral contacts by the department with income
18 benefit recipients.

19 Sec. 408D.155 [~~408.143~~]. EMPLOYEE STATEMENT. (a) After
20 the department's [~~commission's~~] initial determination of
21 supplemental income benefits, the employee must file a statement
22 with the insurance carrier stating:

23 (1) that the employee has earned less than 80 percent
24 of the employee's average weekly wage as a direct result of the
25 employee's impairment;

26 (2) the amount of wages the employee earned in the
27 filing period provided by Subsection (b); and

1 (3) that the employee has complied with the
2 requirements adopted under Section 408D.153 [~~in good faith sought~~
3 ~~employment commensurate with the employee's ability to work~~].

4 (b) The statement required under this section must be filed
5 quarterly on a form and in the manner provided by the department
6 [~~commission~~]. The department [~~commission~~] may modify the filing
7 period as appropriate to an individual case.

8 (c) Failure to file a statement under this section relieves
9 the insurance carrier of liability for supplemental income benefits
10 for the period during which a statement is not filed.

11 Sec. 408D.156 [~~408.144~~]. COMPUTATION OF SUPPLEMENTAL
12 INCOME BENEFITS. (a) Supplemental income benefits are calculated
13 quarterly and paid monthly.

14 (b) Subject to Section 408.061, the amount of a supplemental
15 income benefit for a week is equal to 80 percent of the amount
16 computed by subtracting the weekly wage the employee earned during
17 the reporting period provided by Section 408D.155(b) [~~408.143(b)~~]
18 from 80 percent of the employee's average weekly wage determined
19 under Section 408.041, 408.042, 408.043, [~~or~~] 408.044, 408.0445, or
20 408.0446.

21 (c) For the purposes of this subchapter, if an employee is
22 offered a bona fide position of employment that the employee is
23 capable of performing, given the physical condition of the employee
24 and the geographic accessibility of the position to the employee,
25 the employee's weekly wages are considered to be equal to the weekly
26 wages for the position offered to the employee.

27 Sec. 408D.157 [~~408.145~~]. PAYMENT OF SUPPLEMENTAL INCOME

1 BENEFITS. An insurance carrier shall pay supplemental income
2 benefits beginning not later than the seventh day after the
3 expiration date of the employee's impairment income benefit period
4 and shall continue to pay the benefits in a timely manner.

5 Sec. 408D.158 [~~408.146~~]. TERMINATION OF SUPPLEMENTAL
6 INCOME BENEFITS; REINITIATION. (a) If an employee earns wages that
7 are at least 80 percent of the employee's average weekly wage for at
8 least 90 days during a time that the employee receives supplemental
9 income benefits, the employee ceases to be entitled to supplemental
10 income benefits for the filing period.

11 (b) Supplemental income benefits terminated under this
12 section shall be reinitiated when the employee:

13 (1) satisfies the conditions of Section 408D.152(b)
14 [~~408.142(b)~~]; and

15 (2) files the statement required under Section
16 408D.155 [~~408.143~~].

17 (c) Notwithstanding any other provision of this section, an
18 employee who is not entitled to supplemental income benefits for 12
19 consecutive months ceases to be entitled to any additional income
20 benefits for the compensable injury.

21 Sec. 408D.159 [~~408.147~~]. CONTEST OF SUPPLEMENTAL INCOME
22 BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. (a) An insurance
23 carrier may request a contested case hearing [~~benefit review~~
24 ~~conference~~] to contest an employee's entitlement to supplemental
25 income benefits or the amount of supplemental income benefits.

26 (b) If an insurance carrier fails to [~~make a~~] request [~~for~~]
27 a contested case hearing [~~benefit review conference~~] within 10 days

1 after the date of the expiration of the impairment income benefit
2 period or within 10 days after receipt of the employee's statement,
3 the insurance carrier waives the right to contest entitlement to
4 supplemental income benefits and the amount of supplemental income
5 benefits for that period of supplemental income benefits.

6 (c) If an insurance carrier disputes a department
7 [~~commission~~] determination that an employee is entitled to
8 supplemental income benefits or the amount of supplemental income
9 benefits due and the employee prevails on any disputed issue, the
10 insurance carrier is liable for reasonable and necessary attorney's
11 fees incurred by the employee as a result of the insurance carrier's
12 dispute and for supplemental income benefits accrued but not paid
13 and interest on that amount, according to Section 408.064.
14 Attorney's fees awarded under this subsection are not subject to
15 Sections 408.221(b), (f), and (i).

16 Sec. 408D.160 [~~408.148~~]. EMPLOYEE DISCHARGE AFTER
17 TERMINATION. The department [~~commission~~] may reinstate
18 supplemental income benefits to an employee who is discharged
19 within 12 months of the date of losing entitlement to supplemental
20 income benefits under Section 408D.158(c) [~~408.146(c)~~] if the
21 department [~~commission~~] finds that the employee was discharged at
22 that time with the intent to deprive the employee of supplemental
23 income benefits.

24 Sec. 408D.161 [~~408.149~~]. STATUS REVIEW; HEARING [~~BENEFIT~~
25 ~~REVIEW CONFERENCE~~]. (a) Not more than once in each period of 12
26 calendar months, an employee and an insurance carrier each may
27 request the department [~~commission~~] to review the status of the

1 employee and determine whether the employee's unemployment or
2 underemployment is a direct result of impairment from the
3 compensable injury. The department shall conduct the review not
4 later than the 10th day after the date on which the department
5 receives the request.

6 (b) Either party may request a contested case hearing
7 [~~benefit review conference~~] to contest a determination of the
8 department [~~commission~~] at any time, subject only to the limits
9 placed on the insurance carrier by Section 408D.159 [~~408.147~~].

10 Sec. 408D.162 [~~408.150~~]. VOCATIONAL REHABILITATION. (a)
11 The department [~~commission~~] shall refer an employee to the
12 Department of Assistive and Rehabilitative Services [~~Texas~~
13 ~~Rehabilitation Commission~~] with a recommendation for appropriate
14 services if the department [~~commission~~] determines that an employee
15 [~~entitled to supplemental income benefits~~] could be materially
16 assisted by vocational rehabilitation or training in returning to
17 employment or returning to employment more nearly approximating the
18 employee's preinjury employment. The department [~~commission~~]
19 shall also notify insurance carriers of the need for vocational
20 rehabilitation or training services. The insurance carrier may
21 provide services through a private provider of vocational
22 rehabilitation services under Section 409.012.

23 (b) An employee who refuses services or refuses to cooperate
24 with services provided under this section by the Department of
25 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
26 ~~Commission~~] or a private provider loses entitlement to supplemental
27 income benefits.

1 Sec. 408D.163 [~~408.151~~]. MEDICAL EXAMINATIONS FOR
2 SUPPLEMENTAL INCOME BENEFITS. (a) On or after the second
3 anniversary of the date the department [~~commission~~] makes the
4 initial award of supplemental income benefits, an insurance carrier
5 may not require an employee who is receiving supplemental income
6 benefits to submit to a medical examination more than annually if,
7 in the preceding year, the employee's medical condition resulting
8 from the compensable injury has not improved sufficiently to allow
9 the employee to return to work.

10 (b) If a dispute exists as to whether the employee's medical
11 condition has improved sufficiently to allow the employee to return
12 to work, the department [~~commission~~] shall direct the employee to
13 be examined by a designated doctor chosen by the department
14 [~~commission~~]. The designated doctor shall report to the department
15 [~~commission~~]. The report of the designated doctor has presumptive
16 weight, and the department [~~commission~~] shall base its
17 determination of whether the employee's medical condition has
18 improved sufficiently to allow the employee to return to work on
19 that report unless the great weight of the other medical evidence is
20 to the contrary.

21 (c) The department [~~commission~~] may require an employee to
22 whom Subsection (a) applies to submit to a medical examination
23 under Section 408A.002 [~~408.004~~] only to determine whether the
24 employee's medical condition is a direct result of impairment from
25 a compensable injury.

26 SUBCHAPTER E [~~F~~]. LIFETIME INCOME BENEFITS

27 Sec. 408D.201 [~~408.161~~]. LIFETIME INCOME BENEFITS. (a)

1 Lifetime income benefits are paid until the death of the employee
2 for:

3 (1) total and permanent loss of sight in both eyes;
4 (2) loss of both feet at or above the ankle;
5 (3) loss of both hands at or above the wrist;
6 (4) loss of one foot at or above the ankle and the loss
7 of one hand at or above the wrist;

8 (5) an injury to the spine that results in permanent
9 and complete paralysis of both arms, both legs, or one arm and one
10 leg;

11 (6) a physically traumatic injury to the brain
12 resulting in an incurable insanity or imbecility; or

13 (7) third degree burns that cover at least 40 percent
14 of the body and require grafting, or third degree burns covering the
15 majority of either both hands or one hand and the face.

16 (b) For purposes of Subsection (a), the total and permanent
17 loss of use of a body part is the loss of that body part.

18 (c) Subject to Section 408.061, the amount of lifetime
19 income benefits is equal to 75 percent of the employee's average
20 weekly wage. Benefits being paid shall be increased at a rate of
21 three percent a year notwithstanding Section 408.061.

22 (d) An insurance carrier may pay lifetime income benefits
23 through an annuity if the annuity agreement meets the terms and
24 conditions for annuity agreements adopted by the commissioner
25 [~~commission~~] by rule. The establishment of an annuity under this
26 subsection does not relieve the insurance carrier of the liability
27 under this title for ensuring that the lifetime income benefits are

1 paid.

2 Sec. 408D.202 [~~408.162~~]. SUBSEQUENT INJURY FUND BENEFITS.

3 (a) If a subsequent compensable injury, with the effects of a
4 previous injury, results in a condition for which the injured
5 employee is entitled to lifetime income benefits, the insurance
6 carrier is liable for the payment of benefits for the subsequent
7 injury only to the extent that the subsequent injury would have
8 entitled the employee to benefits had the previous injury not
9 existed.

10 (b) The subsequent injury fund shall compensate the
11 employee for the remainder of the lifetime income benefits to which
12 the employee is entitled.

13 SECTION 1.252. Subchapter J, Chapter 408, Labor Code, is
14 redesignated as Chapter 408E, Labor Code, and amended to read as
15 follows:

16 CHAPTER 408E. WORKERS' COMPENSATION BENEFITS:

17 [~~SUBCHAPTER J.~~] DEATH AND BURIAL BENEFITS

18 Sec. 408E.001 [~~408.181~~]. DEATH BENEFITS. (a) An insurance
19 carrier shall pay death benefits to the legal beneficiary if a
20 compensable injury to the employee results in death.

21 (b) Subject to Section 408.061, the amount of a death
22 benefit is equal to 75 percent of the employee's average weekly
23 wage.

24 (c) The commissioner [~~commission~~] by rule shall establish
25 requirements for agreements under which death benefits may be paid
26 monthly. Death benefits may be paid monthly only:

27 (1) on the request of the legal beneficiary and the

1 agreement of the legal beneficiary and the insurance carrier; and

2 (2) in compliance with the requirements adopted by the
3 commissioner [~~commission~~].

4 (d) An insurance carrier may pay death benefits through an
5 annuity if the annuity agreement meets the terms and conditions for
6 annuity agreements adopted by the commissioner [~~commission~~] by
7 rule. The establishment of an annuity under this subsection does
8 not relieve the insurance carrier of the liability under this title
9 for ensuring that the death benefits are paid.

10 Sec. 408E.002 [~~408.182~~]. DISTRIBUTION OF DEATH BENEFITS.

11 (a) In this section:

12 (1) "Eligible child" means a child of a deceased
13 employee if the child:

14 (A) is a minor;

15 (B) is enrolled as a full-time student in an
16 accredited educational institution and is less than 25 years of
17 age; or

18 (C) is a dependent of the deceased employee at
19 the time of the employee's death.

20 (2) "Eligible grandchild" means a grandchild of a
21 deceased employee who is a dependent of the deceased employee and
22 whose parent is not an eligible child.

23 (3) "Eligible spouse" means the surviving spouse of a
24 deceased employee unless the spouse abandoned the employee for
25 longer than the year preceding the death without good cause, as
26 determined by the department.

27 (b) If there is an eligible child or grandchild and an

1 eligible spouse, half of the death benefits shall be paid to the
2 eligible spouse and half shall be paid in equal shares to the
3 eligible children. If an eligible child has predeceased the
4 employee, death benefits that would have been paid to that child
5 shall be paid in equal shares per stirpes to the children of the
6 deceased child.

7 (c) [~~(b)~~] If there is an eligible spouse and no eligible
8 child or grandchild, all the death benefits shall be paid to the
9 eligible spouse.

10 (d) [~~(c)~~] If there is an eligible child or grandchild and no
11 eligible spouse, the death benefits shall be paid to the eligible
12 children or grandchildren.

13 (e) [~~(d)~~] If there is no eligible spouse, no eligible child,
14 and no eligible grandchild, the death benefits shall be paid in
15 equal shares to surviving dependents of the deceased employee who
16 are parents, stepparents, siblings, or grandparents of the
17 deceased.

18 (f) [~~(e)~~] If an employee is not survived by legal
19 beneficiaries, the death benefits shall be paid to the subsequent
20 injury fund under Section 403.007.

21 [~~(f)~~ ~~In this section:~~

22 [~~(1)~~ ~~"Eligible child" means a child of a deceased~~
23 ~~employee if the child is:~~

24 [~~(A)~~ ~~a minor,~~

25 [~~(B)~~ ~~enrolled as a full-time student in an~~
26 ~~accredited educational institution and is less than 25 years of~~
27 ~~age, or~~

1 [~~(C) a dependent of the deceased employee at the~~
2 ~~time of the employee's death.~~

3 [~~(2) "Eligible grandchild" means a grandchild of a~~
4 ~~deceased employee who is a dependent of the deceased employee and~~
5 ~~whose parent is not an eligible child.~~

6 [~~(3) "Eligible spouse" means the surviving spouse of a~~
7 ~~deceased employee unless the spouse abandoned the employee for~~
8 ~~longer than the year immediately preceding the death without good~~
9 ~~cause, as determined by the commission.]~~

10 Sec. 408E.003 [~~408.183~~]. DURATION OF DEATH BENEFITS. (a)
11 Entitlement to death benefits begins on the day after the date of an
12 employee's death.

13 (b) An eligible spouse is entitled to receive death benefits
14 for life or until remarriage. On remarriage, the eligible spouse is
15 entitled to receive 104 weeks of death benefits, commuted as
16 provided by commissioner [~~commission~~] rule.

17 (c) A child who is eligible for death benefits because the
18 child is a minor on the date of the employee's death is entitled to
19 receive benefits until the child attains the age of 18.

20 (d) A child eligible for death benefits under Subsection (c)
21 who at age 18 is enrolled as a full-time student in an accredited
22 educational institution or a child who is eligible for death
23 benefits because on the date of the employee's death the child is
24 enrolled as a full-time student in an accredited educational
25 institution is entitled to receive or to continue to receive, as
26 appropriate, benefits until the earliest of:

27 (1) the date the child ceases, for a second

1 consecutive semester, to be enrolled as a full-time student in an
2 accredited educational institution;

3 (2) the date the child attains the age of 25; or

4 (3) the date the child dies.

5 (e) A child who is eligible for death benefits because the
6 child is a dependent of the deceased employee on the date of the
7 employee's death is entitled to receive benefits until the earlier
8 of:

9 (1) the date the child dies; or

10 (2) if the child is dependent:

11 (A) because the child is an individual with a
12 physical or mental disability, the date the child no longer has the
13 disability; or

14 (B) because of a reason other than a physical or
15 mental disability, the date of the expiration of 364 weeks of death
16 benefit payments.

17 (f) An eligible grandchild is entitled to receive death
18 benefits until the earlier of:

19 (1) the date the grandchild dies; or

20 (2) if the grandchild is:

21 (A) a minor at the time of the employee's death,
22 the date the grandchild ceases to be a minor; or

23 (B) not a minor at the time of the employee's
24 death, the date of the expiration of 364 weeks of death benefit
25 payments.

26 (g) Any other person entitled to death benefits is entitled
27 to receive death benefits until the earlier of:

1 (1) the date the person dies; or

2 (2) the date of the expiration of 364 weeks of death
3 benefit payments.

4 (h) Section 401.011(16) does not apply to the use of the
5 term "disability" in this section.

6 Sec. 408E.004 [~~408.184~~]. REDISTRIBUTION OF DEATH BENEFITS.

7 (a) If a legal beneficiary dies or otherwise becomes ineligible for
8 death benefits, benefits shall be redistributed to the remaining
9 legal beneficiaries as provided by Sections 408E.002 [~~408.182~~] and
10 408E.003 [~~408.183~~].

11 (b) If a spouse ceases to be eligible because of remarriage,
12 the benefits payable to the remaining legal beneficiaries remain
13 constant for 104 weeks. After the 104th week, the spouse's share of
14 benefits shall be redistributed as provided by Sections 408E.002
15 [~~408.182~~] and 408E.003 [~~408.183~~].

16 (c) If all legal beneficiaries, other than the subsequent
17 injury fund, cease to be eligible and the insurance carrier has not
18 made 364 weeks of full death benefit payments, including the
19 remarriage payment, the insurance carrier shall pay to the
20 subsequent injury fund an amount computed by subtracting the total
21 amount paid from the amount that would be paid for 364 weeks of
22 death benefits.

23 Sec. 408E.005 [~~408.185~~]. EFFECT OF BENEFICIARY DISPUTE;
24 ATTORNEY'S FEES. On settlement of a case in which the insurance
25 carrier admits liability for death benefits but a dispute exists as
26 to the proper beneficiary or beneficiaries, the settlement shall be
27 paid in periodic payments as provided by law, with a reasonable

1 attorney's fee not to exceed 25 percent of the settlement, paid
2 periodically, and based on time and expenses.

3 Sec. 408E.006 [~~408.186~~]. BURIAL BENEFITS. (a) If the
4 death of an employee results from a compensable injury, the
5 insurance carrier shall pay to the person who incurred liability
6 for the costs of burial the lesser of:

7 (1) the actual costs incurred for reasonable burial
8 expenses; or

9 (2) \$6,000.

10 (b) If the employee died away from the employee's usual
11 place of employment, the insurance carrier shall pay the reasonable
12 cost of transporting the body, not to exceed the cost of
13 transporting the body to the employee's usual place of employment.

14 Sec. 408E.007 [~~408.187~~]. AUTOPSY. (a) If in a claim for
15 death benefits based on an occupational disease an autopsy is
16 necessary to determine the cause of death, the department
17 [~~commission~~] may, after opportunity for hearing, order the legal
18 beneficiaries of a deceased employee to permit an autopsy.

19 (b) A legal beneficiary is entitled to have a representative
20 present at an autopsy ordered under this section.

21 (c) The department [~~commission~~] shall require the insurance
22 carrier to pay the costs of a procedure ordered under this section.

23 PART 12. AMENDMENTS TO CHAPTER 409, LABOR CODE

24 SECTION 1.301. Section 409.002, Labor Code, is amended to
25 read as follows:

26 Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to
27 notify an employer as required by Section 409.001(a) relieves the

1 employer and the employer's insurance carrier of liability under
2 this subtitle unless:

3 (1) the employer, a person eligible to receive notice
4 under Section 409.001(b), or the employer's insurance carrier has
5 actual knowledge of the employee's injury;

6 (2) the department [~~commission~~] determines that good
7 cause exists for failure to provide notice in a timely manner; or

8 (3) the employer or the employer's insurance carrier
9 does not contest the claim.

10 SECTION 1.302. Section 409.003, Labor Code, is amended to
11 read as follows:

12 Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a
13 person acting on the employee's behalf shall file with the
14 department [~~commission~~] a claim for compensation for an injury not
15 later than one year after the date on which:

16 (1) the injury occurred; or

17 (2) if the injury is an occupational disease, the
18 employee knew or should have known that the disease was related to
19 the employee's employment.

20 SECTION 1.303. Section 409.004, Labor Code, is amended to
21 read as follows:

22 Sec. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR
23 COMPENSATION. Failure to file a claim for compensation with the
24 department [~~commission~~] as required under Section 409.003 relieves
25 the employer and the employer's insurance carrier of liability
26 under this subtitle unless:

27 (1) good cause exists for failure to file a claim in a

1 timely manner; or

2 (2) the employer or the employer's insurance carrier
3 does not contest the claim.

4 SECTION 1.304. Sections 409.005(d)-(f) and (h)-(k), Labor
5 Code, are amended to read as follows:

6 (d) The insurance carrier shall file the report of the
7 injury on behalf of the policyholder. Except as provided by
8 Subsection (e), the insurance carrier must electronically file the
9 report with the department [~~commission~~] not later than the seventh
10 day after the date on which the carrier receives the report from the
11 employer.

12 (e) The commissioner [~~executive director~~] may waive the
13 electronic filing requirement under Subsection (d) and allow an
14 insurance carrier to mail or deliver the report to the department
15 [~~commission~~] not later than the seventh day after the date on which
16 the carrier receives the report from the employer.

17 (f) A report required under this section may not be
18 considered to be an admission by or evidence against an employer or
19 an insurance carrier in a proceeding before the department
20 [~~commission~~] or a court in which the facts set out in the report are
21 contradicted by the employer or insurance carrier.

22 (h) The commissioner [~~commission~~] may adopt rules relating
23 to:

24 (1) the information that must be contained in a report
25 required under this section, including the summary of rights and
26 responsibilities required under Subsection (g); and

27 (2) the development and implementation of an

1 electronic filing system for injury reports under this section.

2 (i) An employer and insurance carrier shall file subsequent
3 reports as required by commissioner [~~commission~~] rule.

4 (j) The employer shall, on the written request of the
5 employee, a doctor, the insurance carrier, or the department
6 [~~commission~~], notify the employee, the employee's treating doctor
7 if known to the employer, and the insurance carrier of the existence
8 or absence of opportunities for modified duty or a modified duty
9 return-to-work program available through the employer. If those
10 opportunities or that program exists, the employer shall identify
11 the employer's contact person and provide other information to
12 assist the doctor, the employee, and the insurance carrier to
13 assess modified duty or return-to-work options.

14 (k) This section does not prohibit the commissioner
15 [~~commission~~] from imposing requirements relating to return-to-work
16 under other authority granted to the department [~~commission~~] in
17 this subtitle.

18 SECTION 1.305. Sections 409.006(b) and (c), Labor Code, are
19 amended to read as follows:

20 (b) The record shall be available to the department
21 [~~commission~~] at reasonable times and under conditions prescribed by
22 the commissioner [~~commission~~].

23 (c) The commissioner [~~commission~~] may adopt rules relating
24 to the information that must be contained in an employer record
25 under this section.

26 SECTION 1.306. Section 409.007(a), Labor Code, is amended
27 to read as follows:

1 (a) A person must file a claim for death benefits with the
2 department [~~commission~~] not later than the first anniversary of the
3 date of the employee's death.

4 SECTION 1.307. Section 409.009, Labor Code, is amended to
5 read as follows:

6 Sec. 409.009. SUBCLAIMS. A person may file a written claim
7 with the department [~~commission~~] as a subclaimant if the person
8 has:

9 (1) provided compensation, including health care
10 provided by a health care insurer, directly or indirectly, to or for
11 an employee or legal beneficiary; and

12 (2) sought and been refused reimbursement from the
13 insurance carrier.

14 SECTION 1.308. Section 409.010, Labor Code, is amended to
15 read as follows:

16 Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL
17 BENEFICIARY. Immediately on receiving notice of an injury or death
18 from any person, the department [~~commission~~] shall mail to the
19 employee or legal beneficiary a clear and concise description of:

20 (1) the services provided by:

21 (A) the department; and

22 (B) the office of injured employee counsel
23 [~~commission~~], including the services of the ombudsman program;

24 (2) the department's [~~commission's~~] procedures under
25 this subtitle; and

26 (3) the person's rights and responsibilities under
27 this subtitle.

1 SECTION 1.309. Sections 409.011(a) and (c), Labor Code, are
2 amended to read as follows:

3 (a) Immediately on receiving notice of an injury or death
4 from any person, the department [~~commission~~] shall mail to the
5 employer a description of:

6 (1) the services provided by the department and the
7 office of injured employee counsel [~~commission~~];

8 (2) the department's [~~commission's~~] procedures under
9 this subtitle; and

10 (3) the employer's rights and responsibilities under
11 this subtitle.

12 (c) The department [~~commission~~] is not required to provide
13 the information to an employer more than once during a calendar
14 year.

15 SECTION 1.310. Section 409.012, Labor Code, is amended to
16 read as follows:

17 Sec. 409.012. SKILLED CASE MANAGEMENT; VOCATIONAL
18 REHABILITATION [~~INFORMATION~~]. (a) The department shall require an
19 insurance carrier to evaluate a compensable injury in which the
20 injured employee sustains an injury that could possibly result in
21 lost time from employment as early as is practicable to determine if
22 skilled case management is necessary for the injured employee's
23 case and, if so, to provide skilled case management, in accordance
24 with commissioner rules.

25 (b) The department [~~commission~~] shall analyze each report
26 of injury received from an employer under this chapter to determine
27 whether the injured employee would be assisted by vocational

1 rehabilitation. ~~[(b)]~~ If the department ~~[commission]~~ determines
2 that an injured employee would be assisted by vocational
3 rehabilitation, the department ~~[commission]~~ shall notify:

4 (1) the injured employee in writing of the services
5 and facilities available through the Department of Assistive and
6 Rehabilitative Services ~~[Texas Rehabilitation Commission]~~ and
7 private providers of vocational rehabilitation; and

8 (2) ~~[-. The commission shall notify]~~ the Department of
9 Assistive and Rehabilitative Services ~~[Texas Rehabilitation~~
10 ~~Commission]~~ and the affected insurance carrier that the injured
11 employee has been identified as one who could be assisted by
12 vocational rehabilitation.

13 (c) The department ~~[commission]~~ shall cooperate with the
14 office of injured employee counsel, the Department of Assistive and
15 Rehabilitative Services, ~~[Texas Rehabilitation Commission]~~ and
16 private providers of vocational rehabilitation in the provision of
17 services and facilities to employees by the Department of Assistive
18 and Rehabilitative Services ~~[Texas Rehabilitation Commission]~~.

19 (d) A private provider of vocational rehabilitation
20 services may register with the department ~~[commission]~~.

21 (e) The commissioner ~~[commission]~~ by rule may require that a
22 private provider of vocational rehabilitation services maintain
23 certain credentials and qualifications in order to provide services
24 in connection with a workers' compensation insurance claim.

25 SECTION 1.311. 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 department [~~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 department [~~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 department [~~commission~~] for public dissemination
12 that relates to the employee's situation, such as information
13 relating to back injuries or occupational diseases.

14 SECTION 1.312. Section 409.021, Labor Code, is amended to
15 read as follows:

16 Sec. 409.021. INITIATION OF BENEFITS; DUTIES OF INSURANCE
17 CARRIER [~~CARRIER'S REFUSAL~~]; ADMINISTRATIVE VIOLATION. (a) An
18 insurance carrier shall initiate compensation under this subtitle
19 promptly. Not later than the 15th day after the date on which an
20 insurance carrier receives written notice of an injury, the
21 insurance carrier shall:

22 (1) begin the payment of benefits as required by this
23 subtitle; or

24 (2) notify the department [~~commission~~] and the
25 employee in writing of its refusal to pay and advise the employee
26 of:

27 (A) the right to request a contested case hearing

1 ~~[benefit review conference]~~; and

2 (B) the means to obtain additional information
3 from the department ~~[commission]~~.

4 (b) ~~[(a-1)]~~ An insurance carrier that fails to comply with
5 Subsection (a) does not waive the carrier's right to contest the
6 compensability of the injury as provided by Subsection (e) ~~[(e)]~~
7 but commits an administrative violation subject to Subsection (g)
8 ~~[(e)]~~.

9 (c) ~~[(a-2)]~~ An insurance carrier is not required to comply
10 with Subsection (a) if the insurance carrier has accepted the claim
11 as a compensable injury and income or death benefits have not yet
12 accrued but will be paid by the insurance carrier when the benefits
13 accrue and are due.

14 (d) ~~[(b)]~~ An insurance carrier shall notify the department
15 ~~[commission]~~ in writing of the initiation of income or death
16 benefit payments in the manner prescribed by commissioner
17 ~~[commission]~~ rules.

18 (e) ~~[(e)]~~ If an insurance carrier does not contest the
19 compensability of an injury on or before the 60th day after the date
20 on which the insurance carrier is notified of the injury, the
21 insurance carrier waives its right to contest compensability. The
22 initiation of payments by an insurance carrier does not affect the
23 right of the insurance carrier to continue to investigate or deny
24 the compensability of an injury during the 60-day period.

25 (f) ~~[(d)]~~ An insurance carrier may reopen the issue of the
26 compensability of an injury if there is a finding of evidence that
27 could not reasonably have been discovered earlier.

1 (g) [~~(e)~~] An insurance carrier commits a violation if the
2 insurance carrier does not initiate payments or file a notice of
3 refusal as required by this section. A violation under this
4 subsection shall be assessed at \$500 if the carrier initiates
5 compensation or files a notice of refusal within five working days
6 of the date required by Subsection (a), \$1,500 if the carrier
7 initiates compensation or files a notice of refusal more than five
8 and less than 16 working days of the date required by Subsection
9 (a), \$2,500 if the carrier initiates compensation or files a notice
10 of refusal more than 15 and less than 31 working days of the date
11 required by Subsection (a), or \$5,000 if the carrier initiates
12 compensation or files a notice of refusal more than 30 days after
13 the date required by Subsection (a). The administrative penalties
14 are not cumulative.

15 (h) [~~(f)~~] For purposes of this section, "written notice" to
16 a certified self-insurer occurs only on written notice to the
17 qualified claims servicing contractor designated by the certified
18 self-insurer under Section 407.061(c).

19 (i) [~~(f)~~] For purposes of this section:

20 (1) a certified self-insurer receives notice on the
21 date the qualified claims servicing contractor designated by the
22 certified self-insurer under Section 407.061(c) receives notice;
23 and

24 (2) a political subdivision that self-insures under
25 Section 504.011, either individually or through an interlocal
26 agreement with other political subdivisions, receives notice on the
27 date the intergovernmental risk pool or other entity responsible

1 for administering the claim for the political subdivision receives
2 notice.

3 (j) Each insurance carrier shall establish a single point of
4 contact in the carrier's office for an injured employee for whom the
5 carrier receives a notice of injury.

6 SECTION 1.313. Section 409.023(a), Labor Code, is amended
7 to read as follows:

8 (a) An insurance carrier shall continue to pay benefits
9 promptly as and when the benefits accrue without a final decision,
10 order, or other action of the commissioner [~~commission~~], except as
11 otherwise provided.

12 SECTION 1.314. Section 409.0231(b), Labor Code, is amended
13 to read as follows:

14 (b) The commissioner [~~commission~~] shall adopt rules in
15 consultation with the [~~Texas~~] Department of Information Resources
16 as necessary to implement this section, including rules prescribing
17 a period of benefits that is of sufficient duration to allow payment
18 by electronic funds transfer.

19 SECTION 1.315. Section 409.024, Labor Code, is amended to
20 read as follows:

21 Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE;
22 ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file
23 with the department [~~commission~~] a notice of termination or
24 reduction of benefits, including the reasons for the termination or
25 reduction, not later than the 10th day after the date on which
26 benefits are terminated or reduced.

27 (b) An insurance carrier commits a violation if the

1 insurance carrier does not have reasonable grounds to terminate or
2 reduce benefits, as determined by the department [~~commission~~]. A
3 violation under this subsection is a Class B administrative
4 violation.

5 PART 13. AMENDMENTS TO CHAPTER 410, LABOR CODE

6 SECTION 1.351. Section 410.002, Labor Code, is amended to
7 read as follows:

8 Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A
9 proceeding before the department [~~commission~~] to determine the
10 liability of an insurance carrier for compensation for an injury or
11 death under this subtitle is governed by this chapter.

12 SECTION 1.352. Section 410.005, Labor Code, is amended by
13 amending Subsections (a) and (c) and adding Subsection (d) to read
14 as follows:

15 (a) Unless the department [~~commission~~] determines that good
16 cause exists for the selection of a different location, a
17 prehearing [~~benefit review~~] conference or a contested case hearing
18 may not be conducted at a site more than 75 miles from the
19 claimant's residence at the time of the injury.

20 (c) An injured employee who is a party to a prehearing
21 conference may select the department field office at which the
22 prehearing conference [~~All appeals panel proceedings~~] shall be
23 conducted [~~in Travis County~~].

24 (d) Notwithstanding Subsections (a) and (c), if determined
25 appropriate by the commissioner, the department may conduct a
26 prehearing conference telephonically on agreement by the injured
27 employee.

1 SECTION 1.353. Section 410.006(a), Labor Code, is amended
2 to read as follows:

3 (a) A claimant may be represented at a prehearing [~~benefit~~
4 ~~review~~] conference, a contested case hearing, or arbitration by an
5 attorney or may be assisted by an individual of the claimant's
6 choice who does not work for an attorney or receive a fee. An
7 employee of an attorney may represent a claimant if that employee:

8 (1) is a relative of the claimant; and

9 (2) does not receive a fee.

10 SECTION 1.354. Subchapter A, Chapter 410, Labor Code, is
11 amended by adding Sections 410.007 and 410.008 to read as follows:

12 Sec. 410.007. INFORMATION LIST. (a) The department shall
13 determine the type of information that is most useful to parties to
14 help resolve disputes regarding income benefits. That information
15 may include:

16 (1) reports regarding the compensable injury;

17 (2) medical information regarding the injured
18 employee; and

19 (3) wage records.

20 (b) The department shall publish a list developed of the
21 information under Subsection (a) in appropriate media, including
22 the department's Internet website, to provide guidance to parties
23 to a dispute on the type of information they should have available
24 at a prehearing conference or a contested case hearing.

25 (c) At the time a prehearing conference is scheduled, the
26 department shall provide a copy of the list under Subsection (b) to
27 each party to the dispute.

1 Sec. 410.008. PRECEDENT MANUAL. (a) The commissioner by
2 rule shall adopt a precedent manual for workers' compensation
3 disputes to establish better and more consistent decisions at each
4 level of the dispute resolution process. In developing the
5 precedent manual, the commissioner shall use as a model the
6 precedent manual developed by the Texas Workforce Commission for
7 appealed unemployment insurance cases.

8 (b) The commissioner may adopt key contested case decisions
9 and court decisions as precedent decisions.

10 (c) The department shall:

11 (1) publish the decisions adopted under Subsection (b)
12 in the precedent manual by subject areas; and

13 (2) make the precedent manual available on the
14 department's Internet website.

15 (d) The department shall instruct each department employee
16 involved in dispute resolution under this subtitle in the use of the
17 manual and ensure that decisions at each stage of the dispute
18 resolution process are made based on the precedents, as
19 appropriate.

20 SECTION 1.355. The heading to Subchapter B, Chapter 410,
21 Labor Code, is amended to read as follows:

22 SUBCHAPTER B. INITIAL DISPUTE RESOLUTION

23 ~~[BENEFIT REVIEW CONFERENCE]~~

24 SECTION 1.356. Subchapter B, Chapter 410, Labor Code, is
25 amended by adding Sections 410.051, 410.052, and 410.053 to read as
26 follows:

27 Sec. 410.051. INFORMAL BENEFIT DISPUTE RESOLUTION. (a)

1 Before filing a dispute under this chapter with the department, the
2 parties to the dispute, including the claimant, employer, and
3 insurance carrier, must demonstrate a good faith effort to resolve
4 the dispute among themselves.

5 (b) The commissioner shall adopt rules that specify:

6 (1) the requirements for documentation of attempts
7 under Subsection (a) to resolve the dispute, including
8 documentation of telephone calls or written correspondence; and

9 (2) the standards by which an insurance carrier is
10 required to reconsider the issue being disputed by the claimant,
11 including:

12 (A) the identification of additional information
13 or explanations necessary to resolve the dispute;

14 (B) the name of the insurance carrier and
15 information as to how to contact the insurance carrier
16 representative who has the authority to resolve disputes
17 informally; and

18 (C) the time frame and method by which the
19 insurance carrier representative will contact the claimant to
20 discuss a possible resolution of the dispute.

21 (c) If a claimant notifies an insurance carrier of an issue
22 requiring dispute resolution under this subchapter, the carrier,
23 not later than the fifth business day after the date of receipt of
24 the notice, shall notify the claimant acknowledging receipt of the
25 request for reconsideration.

26 (d) An insurance carrier shall acknowledge, investigate,
27 and resolve a request for reconsideration under this section not

1 later than the 15th calendar day after the date on which the carrier
2 receives notice of the request for reconsideration from the
3 claimant.

4 (e) A claimant may request a contested case hearing under
5 this subchapter if the claimant has requested reconsideration and:

6 (1) after reconsideration, the claimant is
7 dissatisfied with the insurance carrier's proposed resolution; or

8 (2) the claimant has not received the insurance
9 carrier's response to the request for reconsideration by the 15th
10 calendar day after the date the insurance carrier received notice
11 of the request for reconsideration.

12 (f) Failure to comply with the requirements of this section
13 and rules adopted by the commissioner may result, after notice and
14 hearing, in the determination of an administrative violation and
15 imposition of sanctions and administrative penalties as provided by
16 Chapters 82 and 84, Insurance Code.

17 Sec. 410.052. REQUEST FOR ARBITRATION OR CONTESTED CASE
18 HEARING. If the parties are unable to timely resolve a dispute
19 through the informal dispute resolution process required under
20 Section 410.051, the claimant may file with the department a
21 request for:

22 (1) arbitration under Subchapter C; or

23 (2) a contested case hearing under Subchapter D.

24 Sec. 410.053. PAYMENT OF BENEFITS UNDER INTERLOCUTORY
25 ORDER. If the parties to a dispute have filed a request with the
26 department under Section 410.052, the commissioner may issue an
27 interlocutory order for the payment of all or part of medical

1 benefits or income benefits during the pendency of the dispute. The
2 order may address accrued benefits, future benefits, or both
3 accrued benefits and future benefits.

4 SECTION 1.357. Section 410.102, Labor Code, is amended to
5 read as follows:

6 Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An
7 arbitrator must be an employee of the department [~~commission~~],
8 except that the department [~~commission~~] may contract with qualified
9 arbitrators on a determination of special need.

10 (b) An arbitrator must:

11 (1) be a member of the National Academy of
12 Arbitrators;

13 (2) be on an approved list of the American Arbitration
14 Association or Federal Mediation and Conciliation Service; or

15 (3) meet qualifications established by the
16 commissioner [~~commission~~] by rule [~~and be approved by an~~
17 ~~affirmative vote of at least two commission members representing~~
18 ~~employers of labor and at least two commission members representing~~
19 ~~wage earners~~].

20 (c) The department [~~commission~~] shall require that each
21 arbitrator have appropriate training in the workers' compensation
22 laws of this state. The commissioner by rule [~~commission~~] shall
23 establish procedures to carry out this subsection.

24 SECTION 1.358. Section 410.103, Labor Code, is amended to
25 read as follows:

26 Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

27 (1) protect the interests of all parties;

1 (2) ensure that all relevant evidence has been
2 disclosed to the arbitrator and to all parties; and

3 (3) render an award consistent with this subtitle and
4 the policies of the department [~~commission~~].

5 SECTION 1.359. Section 410.104, Labor Code, is amended to
6 read as follows:

7 Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. (a) If
8 issues remain unresolved after the informal dispute resolution
9 process required under Section 410.051 [~~a benefit review~~
10 ~~conference~~], the parties, by agreement, may elect to engage in
11 arbitration in the manner provided by this subchapter. Arbitration
12 may be used only to resolve disputed benefit issues and is an
13 alternative to a contested case hearing. [~~A contested case hearing~~
14 ~~scheduled under Section 410.025(b) is canceled by an election under~~
15 ~~this subchapter.~~]

16 (b) To elect arbitration, the parties must file the election
17 with the department on a form prescribed by the commissioner
18 [~~commissioner~~] not later than the 20th day after the date the
19 insurance carrier is required to resolve the dispute under Section
20 410.051(d) [~~last day of the benefit review conference. The~~
21 ~~commission shall prescribe a form for that purpose~~].

22 (c) An election to engage in arbitration under this
23 subchapter is irrevocable and binding on all parties for the
24 resolution of all disputes under this chapter arising out of the
25 claims that are under the jurisdiction of the department
26 [~~commission~~].

27 (d) An agreement to elect arbitration binds the parties to

1 the provisions of Chapters 408-408E [~~Chapter 408~~] relating to
2 benefits, and any award, agreement, or settlement after arbitration
3 is elected must comply with those chapters [~~that chapter~~].

4 SECTION 1.360. Section 410.105, Labor Code, is amended to
5 read as follows:

6 Sec. 410.105. LISTS OF ARBITRATORS. (a) The department
7 [~~commission~~] shall establish regional lists of arbitrators who meet
8 the qualifications prescribed under Sections 410.102(a) and (b).
9 Each regional list shall be initially prepared in a random name
10 order, and subsequent additions to a list shall be added
11 chronologically.

12 (b) The department [~~commission~~] shall review the lists of
13 arbitrators annually and determine if each arbitrator is fair and
14 impartial and makes awards that are consistent with and in
15 accordance with this subtitle and the rules of the commissioner
16 [~~commission~~]. The commissioner [~~commission~~] shall remove an
17 arbitrator if, after the review, the commissioner determines that
18 the arbitrator is not fair and impartial or does not make awards
19 consistent with this subtitle and the commissioner's rules
20 [~~arbitrator does not receive an affirmative vote of at least two~~
21 ~~commission members representing employers of labor and at least two~~
22 ~~commission members representing wage earners~~].

23 (c) The department's [~~commission's~~] lists are confidential
24 and are not subject to disclosure under Chapter 552, Government
25 Code. The lists may not be revealed by any department [~~commission~~]
26 employee to any person who is not a department [~~commission~~]
27 employee. The lists are exempt from discovery in civil litigation

1 unless the party seeking the discovery establishes reasonable cause
2 to believe that a violation of the requirements of this section or
3 Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that
4 the violation is relevant to the issues in dispute.

5 SECTION 1.361. Section 410.106, Labor Code, is amended to
6 read as follows:

7 Sec. 410.106. SELECTION OF ARBITRATOR. (a) The department
8 [~~commission~~] shall assign the arbitrator for a particular case by
9 selecting the next name after the previous case's selection in
10 consecutive order.

11 (b) The department [~~commission~~] may not change the order of
12 names once the order is established under this subchapter, except
13 that once each arbitrator on the list has been assigned to a case,
14 the names shall be randomly reordered.

15 SECTION 1.362. Section 410.107(a), Labor Code, is amended
16 to read as follows:

17 (a) The department [~~commission~~] shall assign an arbitrator
18 to a pending case not later than the 30th day after the date on which
19 the election for arbitration is filed with the department
20 [~~commission~~].

21 SECTION 1.363. Section 410.108(a), Labor Code, is amended
22 to read as follows:

23 (a) Each party is entitled, in its sole discretion, to one
24 rejection of the arbitrator in each case. If a party rejects the
25 arbitrator, the department [~~commission~~] shall assign another
26 arbitrator as provided by Section 410.106.

27 SECTION 1.364. Section 410.109, Labor Code, is amended to

1 read as follows:

2 Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The
3 arbitrator shall schedule arbitration to be held not later than the
4 30th day after the date of the arbitrator's assignment and shall
5 notify the parties and the department [~~commission~~] of the scheduled
6 date.

7 (b) If an arbitrator is unable to schedule arbitration in
8 accordance with Subsection (a), the department [~~commission~~] shall
9 appoint the next arbitrator on the applicable list. Each party is
10 entitled to reject the arbitrator appointed under this subsection
11 in the manner provided under Section 410.108.

12 SECTION 1.365. Section 410.110, Labor Code, is amended to
13 read as follows:

14 Sec. 410.110. CONTINUANCE. (a) A request by a party for a
15 continuance of the arbitration to another date must be directed to
16 the department [~~director~~]. The department [~~director~~] may grant a
17 continuance only if the department [~~director~~] determines, giving
18 due regard to the availability of the arbitrator, that good cause
19 for the continuance exists.

20 (b) If the department [~~director~~] grants a continuance under
21 this section, the rescheduled date may not be later than the 30th
22 day after the original date of the arbitration.

23 (c) Without regard to whether good cause exists, the
24 department [~~director~~] may not grant more than one continuance to
25 each party.

26 SECTION 1.366. Section 410.111, Labor Code, is amended to
27 read as follows:

1 Sec. 410.111. RULES. The commissioner [~~commission~~] shall
2 adopt rules for arbitration consistent with generally recognized
3 arbitration principles and procedures.

4 SECTION 1.367. Section 410.114(b), Labor Code, is amended
5 to read as follows:

6 (b) The department [~~commission~~] shall make an electronic
7 recording of the proceeding.

8 SECTION 1.368. Section 410.118(d), Labor Code, is amended
9 to read as follows:

10 (d) The arbitrator shall file a copy of the award as part of
11 the permanent claim file at the department [~~commission~~] and shall
12 notify the parties in writing of the decision.

13 SECTION 1.369. Section 410.119(b), Labor Code, is amended
14 to read as follows:

15 (b) An arbitrator's award is a final order of the
16 commissioner [~~commission~~].

17 SECTION 1.370. Sections 410.121(a) and (b), Labor Code, are
18 amended to read as follows:

19 (a) On application of an aggrieved party, a court of
20 competent jurisdiction shall vacate an arbitrator's award on a
21 finding that:

22 (1) the award was procured by corruption, fraud, or
23 misrepresentation;

24 (2) the decision of the arbitrator was arbitrary and
25 capricious; or

26 (3) the award was outside the jurisdiction of the
27 department [~~commission~~].

1 (b) If an award is vacated, the case shall be remanded to the
2 department [~~commission~~] for another arbitration proceeding.

3 SECTION 1.371. Section 410.151, Labor Code, is amended to
4 read as follows:

5 Sec. 410.151. CONTESTED CASE HEARING; PREHEARING
6 CONFERENCE REQUIRED [~~SCOPE~~]. (a) If arbitration is not elected
7 under Section 410.104, a party to a claim [~~for which a benefit~~
8 ~~review conference is held or a party eligible to proceed directly to~~
9 ~~a contested case hearing as provided by Section 410.024]~~ is
10 entitled to obtain a contested case hearing by filing a request with
11 the department in the manner prescribed by the commissioner by rule
12 not later than the 90th day after the date the insurance carrier is
13 required to resolve the dispute under Section 410.051(d).

14 (b) On receipt of a request for a contested case hearing,
15 the department shall:

16 (1) direct the parties to meet in a prehearing
17 conference to establish the disputed issues involved in the claim;

18 (2) schedule the prehearing conference to be held not
19 later than the 30th day after the date of receipt of the claimant's
20 request;

21 (3) schedule the contested case hearing to be held not
22 later than the 60th day after the date of receipt of the claimant's
23 request; and

24 (4) notify the office of injured employee counsel that
25 a request for administrative resolution of the dispute has been
26 filed with the department.

27 (c) The department shall send written notice of the

1 prehearing conference and the contested case hearing to the parties
2 to the claim.

3 (d) An issue that was not raised at a prehearing [~~benefit~~
4 ~~review~~] conference [~~or that was resolved at a benefit review~~
5 ~~conference~~] may not be considered at a contested case hearing under
6 this subchapter unless:

7 (1) the parties consent; or

8 (2) [~~if the issue was not raised,~~] the department
9 [~~commissioner~~] determines that good cause existed for not raising the
10 issue at the conference.

11 (e) Notwithstanding Subsection (a), the department may
12 extend the 90-day period for filing a request for a contested case
13 hearing if the party to the claim applies for an extension in the
14 manner prescribed by the commissioner and presents evidence
15 satisfactory to the department of good cause for the failure to
16 comply with the 90-day requirement.

17 SECTION 1.372. Section 410.153, Labor Code, is amended to
18 read as follows:

19 Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.
20 Chapter 2001, Government Code, applies to a contested case hearing
21 to the extent that the commissioner determines [~~commission finds~~]
22 appropriate, except that the following do not apply:

23 (1) Section 2001.054;

24 (2) Sections 2001.061 and 2001.062;

25 (3) Section 2001.202; and

26 (4) Subchapters F, G, I, and Z, except for Section
27 2001.141(c).

1 SECTION 1.373. Section 410.154, Labor Code, is amended to
2 read as follows:

3 Sec. 410.154. SCHEDULING OF HEARING. The department
4 [~~commission~~] shall schedule a contested case hearing in accordance
5 with Section 410.151 [~~410.024 or 410.025(b)~~].

6 SECTION 1.374. Section 410.155, Labor Code, is amended to
7 read as follows:

8 Sec. 410.155. CONTINUANCE. (a) A written request by a
9 party for a continuance of a contested case hearing to another date
10 must be directed to the department [~~commission~~].

11 (b) The department [~~commission~~] may grant a continuance
12 only if the department [~~commission~~] determines that there is good
13 cause for the continuance.

14 SECTION 1.375. Section 410.157, Labor Code, is amended to
15 read as follows:

16 Sec. 410.157. RULES. The commissioner [~~commission~~] shall
17 adopt rules governing procedures under which contested case
18 hearings are conducted.

19 SECTION 1.376. Section 410.158(a), Labor Code, is amended
20 to read as follows:

21 (a) Except as provided by Section 410.162, discovery is
22 limited to:

23 (1) depositions on written questions to any health
24 care provider;

25 (2) depositions of other witnesses as permitted by the
26 hearing officer for good cause shown; and

27 (3) interrogatories as prescribed by the commissioner

1 ~~[commissioner]~~.

2 SECTION 1.377. Section 410.159, Labor Code, is amended to
3 read as follows:

4 Sec. 410.159. STANDARD INTERROGATORIES. (a) The
5 commissioner ~~[commissioner]~~ by rule shall prescribe standard form
6 sets of interrogatories to elicit information from claimants and
7 insurance carriers.

8 (b) Standard interrogatories shall be answered by each
9 party and served on the opposing party within the time prescribed by
10 commissioner ~~[commissioner]~~ rule, unless the parties agree
11 otherwise.

12 SECTION 1.378. Section 410.160, Labor Code, is amended to
13 read as follows:

14 Sec. 410.160. EXCHANGE OF INFORMATION. Within the time
15 prescribed by commissioner ~~[commissioner]~~ rule, the parties shall
16 exchange:

17 (1) all medical reports and reports of expert
18 witnesses who will be called to testify at the hearing;

19 (2) all medical records;

20 (3) any witness statements;

21 (4) the identity and location of any witness known to
22 the parties to have knowledge of relevant facts; and

23 (5) all photographs or other documents that a party
24 intends to offer into evidence at the hearing.

25 SECTION 1.379. Section 410.161, Labor Code, is amended to
26 read as follows:

27 Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who

1 fails to disclose information known to the party or documents that
2 are in the party's possession, custody, or control at the time
3 disclosure is required by Sections 410.158-410.160 may not
4 introduce the evidence at any subsequent proceeding before the
5 department [~~commission~~] or in court on the claim unless good cause
6 is shown for not having disclosed the information or documents
7 under those sections.

8 SECTION 1.380. Sections 410.168(c)-(f), Labor Code, are
9 amended to read as follows:

10 (c) The hearing officer may enter an interlocutory order for
11 the payment of all or part of medical benefits or income benefits.
12 The order may address accrued benefits, future benefits, or both
13 accrued benefits and future benefits. The order is binding during
14 the pendency of a judicial review as provided by this chapter [~~an~~
15 ~~appeal to the appeals panel~~].

16 (d) On a form prescribed by rule by the commissioner [~~that~~
17 ~~the commission by rule prescribes~~], the hearing officer shall issue
18 a separate written decision regarding attorney's fees and any
19 matter related to attorney's fees. The decision regarding
20 attorney's fees and the form may not be made known to a jury in a
21 judicial review of an award, including an appeal.

22 (e) The commissioner [~~commission~~] by rule shall prescribe
23 the times within which the hearing officer shall [~~must~~] file the
24 decisions with the department after the date the contested case
25 hearing is concluded. The commissioner may issue an order for
26 payment of benefits on receipt of the decision [~~division~~].

27 (f) The department [~~division~~] shall send a copy of the

1 decision to each party.

2 SECTION 1.381. Section 410.169, Labor Code, is amended to
3 read as follows:

4 Sec. 410.169. EFFECT OF DECISION. A decision of a hearing
5 officer regarding benefits is final in the absence of a timely
6 appeal by a party and is binding during the pendency of a judicial
7 review as provided by this chapter [~~an appeal to the appeals panel~~].

8 SECTION 1.382. Subchapter D, Chapter 410, Labor Code, is
9 amended by adding Sections 410.170-410.173 to read as follows:

10 Sec. 410.170. CLERICAL ERROR. The commissioner may revise
11 a decision in a contested case hearing on a finding of clerical
12 error.

13 Sec. 410.171. CONTINUATION OF DEPARTMENT JURISDICTION.
14 During judicial review of a hearing officer's decision on any
15 disputed issue relating to a workers' compensation claim, the
16 department retains jurisdiction of all other issues related to the
17 claim.

18 Sec. 410.172. JUDICIAL ENFORCEMENT OF ORDER OR DECISION;
19 ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to
20 comply with an interlocutory order, final order, or decision of the
21 department under this subtitle, the department may bring suit in
22 Travis County to enforce the order or decision.

23 (b) If an insurance carrier refuses or fails to comply with
24 an interlocutory order, final order, or decision of the department
25 under this subtitle, the claimant may bring suit in the county of
26 the claimant's residence at the time of injury or death, if the
27 employee is deceased, or in the case of an occupational disease, in

1 the county where the employee resided on the date disability began
2 or any county agreed to by the parties.

3 (c) If the department brings suit to enforce an
4 interlocutory order, final order, or decision, the department is
5 entitled to reasonable attorney's fees and costs for the
6 prosecution and collection of the claim, in addition to a judgment
7 enforcing the order or decision and any other remedy provided by
8 law.

9 (d) A claimant who brings suit to enforce an interlocutory
10 order, final order, or decision of the department under this
11 subtitle is entitled to a penalty equal to 12 percent of the amount
12 of benefits recovered in the judgment, interest, and reasonable
13 attorney's fees for the prosecution and collection of the claim, in
14 addition to a judgment enforcing the order or decision.

15 (e) A person commits a violation if the person fails or
16 refuses to comply with an interlocutory order, final order, or
17 decision of the department before the 21st day after the date the
18 order or decision becomes final. A violation under this subsection
19 is a Class A administrative violation.

20 Sec. 410.173. REIMBURSEMENT FOR CERTAIN OVERPAYMENTS. The
21 subsequent injury fund shall reimburse an insurance carrier for any
22 overpayment of benefits made under an interlocutory order or
23 decision if that order or decision is reversed or modified by final
24 arbitration, order, or decision of the commissioner or a court.

25 SECTION 1.383. Section 410.251, Labor Code, is amended to
26 read as follows:

27 Sec. 410.251. EXHAUSTION OF REMEDIES. A party that has

1 exhausted the party's [~~its~~] administrative remedies under this
2 subtitle and that is aggrieved by a final decision of the department
3 [~~appeals panel~~] may seek judicial review under this subchapter and
4 Subchapter G, if applicable.

5 SECTION 1.384. Section 410.252, Labor Code, is amended by
6 amending Subsections (a) and (b) and adding Subsection (e) to read
7 as follows:

8 (a) A party may seek judicial review by filing suit not
9 later than the 40th day after the date on which the decision of the
10 hearings officer [~~appeals panel~~] was filed with the department
11 [~~division~~].

12 (b) The party bringing suit to appeal the decision must file
13 a petition in district [~~with the appropriate~~] court in:

14 (1) the county where the employee lived [~~resided~~] at
15 the time of the injury or death, if the employee is deceased; or

16 (2) in the case of an occupational disease, in the
17 county where the employee lived [~~resided~~] on the date disability
18 began or any county agreed to by the parties.

19 (e) A district court described by Subsection (b) has
20 exclusive jurisdiction of a suit described by this section.

21 SECTION 1.385. Section 410.253, Labor Code, is amended to
22 read as follows:

23 Sec. 410.253. SERVICE; NOTICE. (a) A party seeking
24 judicial review shall simultaneously:

25 (1) file a copy of the party's petition with the court;

26 (2) serve any opposing party to the suit; and

27 (3) provide written notice of the suit or notice of

1 appeal to the department [~~commission~~].

2 (b) A party may not seek judicial review under Section
3 410.251 unless the party has provided written notice of the suit to
4 the department [~~commission~~] as required by this section.

5 SECTION 1.386. Section 410.254, Labor Code, is amended to
6 read as follows:

7 Sec. 410.254. DEPARTMENT [~~COMMISSION~~] INTERVENTION. On
8 timely motion initiated by the commissioner [~~executive director~~],
9 the department may [~~commission shall be permitted to~~] intervene in
10 any judicial proceeding under this subchapter or Subchapter G.

11 SECTION 1.387. Sections 410.256(a), (c), (d), and (f),
12 Labor Code, are amended to read as follows:

13 (a) A claim or issue may not be settled contrary to the
14 provisions of the contested case hearing [~~an appeals panel~~]
15 decision issued on the claim or issue unless a party to the
16 proceeding has filed for judicial review under this subchapter or
17 Subchapter G. The trial court must approve a settlement made by the
18 parties after judicial review of an award is sought and before the
19 court enters judgment.

20 (c) A settlement may not provide for:

21 (1) payment of any benefits in a lump sum except as
22 provided by Section 408D.108 [~~408.128~~]; or

23 (2) limitation or termination of the claimant's right
24 to medical benefits under Section 408A.001 [~~408.021~~].

25 (d) A settlement or agreement that resolves an issue of
26 impairment may not be made before the claimant reaches maximum
27 medical improvement and must adopt one of the impairment ratings

1 under Subchapter C [~~G~~], Chapter 408D [~~408~~].

2 (f) Settlement of a claim or issue under this section does
3 not constitute a modification or reversal of the decision awarding
4 benefits for the purpose of Section 410.173 [~~410.209~~].

5 SECTION 1.388. Sections 410.257(a), (b), (c), and (e),
6 Labor Code, are amended to read as follows:

7 (a) A judgment entered by a court on judicial review of a [~~an~~
8 ~~appeals panel~~] decision of a hearing officer under this subchapter
9 or Subchapter G must comply with all appropriate provisions of the
10 law.

11 (b) A judgment under this section may not provide for:

12 (1) payment of benefits in a lump sum except as
13 provided by Section 408D.108 [~~408.128~~]; or

14 (2) the limitation or termination of the claimant's
15 right to medical benefits under Section 408A.001 [~~408.021~~].

16 (c) A judgment that resolves an issue of impairment may not
17 be entered before the date the claimant reaches maximum medical
18 improvement. The judgment must adopt an impairment rating under
19 Subchapter C [~~G~~], Chapter 408D [~~408~~], except to the extent Section
20 410.307 applies.

21 (e) A judgment under this section based on default or on an
22 agreement of the parties does not constitute a modification or
23 reversal of a decision awarding benefits for the purpose of Section
24 410.173 [~~410.209~~].

25 SECTION 1.389. The heading to Section 410.258, Labor Code,
26 is amended to read as follows:

27 Sec. 410.258. NOTIFICATION OF DEPARTMENT [~~COMMISSION~~] OF

1 PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

2 SECTION 1.390. Sections 410.258(a)-(e), Labor Code, are
3 amended to read as follows:

4 (a) The party who initiated a proceeding under this
5 subchapter or Subchapter G must file any proposed judgment or
6 settlement made by the parties to the proceeding, including a
7 proposed default judgment, with the department [~~executive director~~
8 ~~of the commission~~] not later than the 30th day before the date on
9 which the court is scheduled to enter the judgment or approve the
10 settlement. The proposed judgment or settlement must be mailed to
11 the commissioner [~~executive director~~] by certified mail, return
12 receipt requested.

13 (b) The department [~~commission~~] may intervene in a
14 proceeding under Subsection (a) not later than the 30th day after
15 the date of receipt of the proposed judgment or settlement.

16 (c) The commissioner [~~commission~~] shall review the proposed
17 judgment or settlement to determine compliance with all appropriate
18 provisions of the law. If the commissioner [~~commission~~] determines
19 that the proposal is not in compliance with the law, the department
20 [~~commission~~] may intervene as a matter of right in the proceeding
21 not later than the 30th day after the date of receipt of the
22 proposed judgment or settlement. The court may limit the extent of
23 the department's [~~commission's~~] intervention to providing the
24 information described by Subsection (e).

25 (d) If the department [~~commission~~] does not intervene
26 before the 31st day after the date of receipt of the proposed
27 judgment or settlement, the court shall enter the judgment or

1 approve the settlement if the court determines that the proposed
2 judgment or settlement is in compliance with all appropriate
3 provisions of the law.

4 (e) If the department [~~commission~~] intervenes in the
5 proceeding, the commissioner [~~commission~~] shall inform the court of
6 each reason the commissioner [~~commission~~] believes the proposed
7 judgment or settlement is not in compliance with the law. The court
8 shall give full consideration to the information provided by the
9 commissioner [~~commission~~] before entering a judgment or approving a
10 settlement.

11 SECTION 1.3905. Section 410.301(a), Labor Code, is amended
12 to read as follows:

13 (a) Judicial review [~~of a final decision of a commission~~
14 ~~appeals panel~~] regarding compensability or eligibility for or the
15 amount of income or death benefits shall be conducted as provided by
16 this subchapter.

17 SECTION 1.391. Section 410.302, Labor Code, is amended to
18 read as follows:

19 Sec. 410.302. ADMISSIBILITY OF RECORDS; LIMITATION OF
20 ISSUES. (a) The records of a prehearing conference or contested
21 case hearing conducted under this chapter are admissible in a trial
22 under this subchapter in accordance with the Texas Rules of
23 Evidence.

24 (b) A trial under this subchapter is limited to issues
25 decided by the hearing officer at the contested case hearing
26 [~~commission appeals panel~~] and on which judicial review is sought.
27 The pleadings must specifically set forth the determinations of the

1 hearing officer [~~appeals panel~~] by which the party is aggrieved.

2 SECTION 1.392. Section 410.304, Labor Code, is amended to
3 read as follows:

4 Sec. 410.304. CONSIDERATION OF [~~APPEALS PANEL~~] DECISION.

5 (a) In a jury trial, the court, before submitting the case to the
6 jury, shall inform the jury in the court's instructions, charge, or
7 questions to the jury of the hearing officer's [~~commission appeals~~
8 ~~panel~~] decision on each disputed issue described by Section
9 410.301(a) that is submitted to the jury.

10 (b) In a trial to the court without a jury, the court in
11 rendering its judgment on an issue described by Section 410.301(a)
12 shall consider the decision of the hearing officer [~~commission~~
13 ~~appeals panel~~].

14 SECTION 1.393. Sections 410.306(b) and (c), Labor Code, are
15 amended to read as follows:

16 (b) The department [~~commission~~] on payment of a reasonable
17 fee shall make available to the parties a certified copy of the
18 department's [~~commission's~~] record. All facts and evidence the
19 record contains are admissible to the extent allowed under the
20 Texas Rules of [~~Civil~~] Evidence.

21 (c) Except as provided by Section 410.307, evidence of
22 extent of impairment shall be limited to that presented to the
23 department [~~commission~~]. The court or jury, in its determination
24 of the extent of impairment, shall adopt one of the impairment
25 ratings under Subchapter C [~~G~~], Chapter 408D [~~408~~].

26 SECTION 1.394. Sections 410.307(a) and (d), Labor Code, are
27 amended to read as follows:

1 (a) Evidence of the extent of impairment is not limited to
2 that presented to the department [~~commission~~] if the court, after a
3 hearing, finds that there is a substantial change of condition. The
4 court's finding of a substantial change of condition may be based
5 only on:

6 (1) medical evidence from the same doctor or doctors
7 whose testimony or opinion was presented to the department
8 [~~commission~~];

9 (2) evidence that has come to the party's knowledge
10 since the contested case hearing;

11 (3) evidence that could not have been discovered
12 earlier with due diligence by the party; and

13 (4) evidence that would probably produce a different
14 result if it is admitted into evidence at the trial.

15 (d) If the court finds a substantial change of condition
16 under this section, new medical evidence of the extent of
17 impairment must be from and is limited to the same doctor or doctors
18 who made impairment ratings [~~before the commission~~] under Section
19 408C.103 [~~408.123~~].

20 SECTION 1.395. Section 410.308(a), Labor Code, is amended
21 to read as follows:

22 (a) The department [~~commission or the Texas Department of~~
23 ~~Insurance~~] shall furnish any interested party in the claim with a
24 certified copy of the notice of the employer securing compensation
25 with the insurance carrier, filed with the department [~~commission~~].

26 SECTION 1.396. The following laws are repealed:

27 (1) Section 410.001, Labor Code;

- (2) Section 410.004, Labor Code;
- (3) Sections 410.021-410.034, Labor Code; and
- (4) Subchapter E, Chapter 410, Labor Code.

PART 14. AMENDMENTS TO CHAPTER 411, LABOR CODE

SECTION 1.401. Section 411.003(a), Labor Code, is amended to read as follows:

(a) An insurance company, the agent, servant, or employee of the insurance company, or a safety consultant who performs a safety consultation under this chapter [~~Subchapter D or E~~] has no liability for an accident, injury, or occupational disease based on an allegation that the accident, injury, or occupational disease was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company for the prevention of accidents in connection with operations of the employer.

SECTION 1.402. Section 411.011, Labor Code, is amended to read as follows:

Sec. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS AND RULES. The department [~~division~~] shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

SECTION 1.403. Section 411.012, Labor Code, is amended to read as follows:

Sec. 411.012. COLLECTION AND ANALYSIS OF INFORMATION. (a) The department [~~division~~] shall collect and serve as a repository for statistical information on workers' health and safety. The department [~~division~~] shall analyze and use that information to:

1 (1) identify and assign priorities to safety needs;
2 and

3 (2) better coordinate the safety services provided by
4 public or private organizations, including insurance carriers.

5 (b) The department [~~division~~] shall coordinate or supervise
6 the collection by state or federal entities of information relating
7 to job safety, including information collected for the
8 supplementary data system and the annual survey of the Bureau of
9 Labor Statistics of the United States Department of Labor.

10 SECTION 1.404. Section 411.013, Labor Code, is amended to
11 read as follows:

12 Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. The
13 department [~~With the approval of the commission, the division~~] may:

14 (1) enter into contracts with the federal government
15 to perform occupational safety projects; and

16 (2) apply for federal funds through any federal
17 program relating to occupational safety.

18 SECTION 1.405. Section 411.014, Labor Code, is amended to
19 read as follows:

20 Sec. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER
21 ENTITIES. (a) The department [~~division~~] shall promote workers'
22 health and safety through educational and other innovative programs
23 developed by the department or other state agencies [~~division~~].

24 (b) The department [~~division~~] shall cooperate with other
25 entities in the development and approval of safety courses, safety
26 plans, and safety programs.

27 (c) The department [~~division~~] shall cooperate with business

1 and industry trade associations, labor organizations, and other
2 entities to develop means and methods of educating employees and
3 employers concerning workplace safety.

4 SECTION 1.406. Sections 411.015(a), (d), and (e), Labor
5 Code, are amended to read as follows:

6 (a) The department [~~division~~] shall publish or procure and
7 issue educational books, pamphlets, brochures, films, videotapes,
8 and other informational and educational material.

9 (d) The department [~~division~~] shall make specific decisions
10 regarding the issues and problems to be addressed by the
11 educational materials after assigning appropriate priorities based
12 on frequency of injuries, degree of hazard, severity of injuries,
13 and similar considerations.

14 (e) The educational materials provided under this section
15 must include specific references to:

16 (1) the requirements of state and federal laws and
17 regulations;

18 (2) recommendations and practices of business,
19 industry, and trade associations; and

20 (3) if needed, recommended work practices based on
21 recommendations made by the department [~~division~~] for the
22 prevention of injury.

23 SECTION 1.407. Section 411.016, Labor Code, is amended to
24 read as follows:

25 Sec. 411.016. PEER REVIEW SAFETY PROGRAM. The department
26 [~~division~~] shall certify safe employers to provide peer review
27 safety programs.

1 SECTION 1.408. Section 411.017, Labor Code, is amended to
2 read as follows:

3 Sec. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS. The
4 department [~~division~~] shall advise insurance carrier loss control
5 service organizations of safety needs and priorities developed by
6 the department [~~division~~] and of:

7 (1) hazard classifications, specific employers,
8 industries, occupations, or geographic regions to which loss
9 control services should be directed; or

10 (2) the identity and types of injuries or occupational
11 diseases and means and methods for prevention of those injuries or
12 diseases to which loss control services should be directed.

13 SECTION 1.409. Section 411.018, Labor Code, is amended to
14 read as follows:

15 Sec. 411.018. FEDERAL OSHA COMPLIANCE. In accordance with
16 Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C.
17 Section 656), the department [~~division~~] shall:

18 (1) consult with employers regarding compliance with
19 federal occupational safety laws and rules; and

20 (2) collect information relating to occupational
21 safety as required by federal laws, rules, or agreements.

22 SECTION 1.410. Section 411.031, Labor Code, is amended to
23 read as follows:

24 Sec. 411.031. JOB SAFETY INFORMATION SYSTEM; COOPERATION
25 WITH OTHER AGENCIES. (a) The department [~~division~~] shall maintain
26 a job safety information system.

27 (b) The department [~~division~~] shall obtain from any

1 appropriate state agency, including the Texas Workforce Commission
2 [~~Department of Insurance~~], the [Texas] Department of State Health
3 Services, and the Department of Assistive and Rehabilitative
4 Services [~~Texas Employment Commission~~], data and statistics,
5 including data and statistics compiled for rate-making purposes.

6 (c) The department [~~division~~] shall consult with the Texas
7 Workforce [~~Department of Insurance and the Texas Employment~~]
8 Commission in the design of data information and retrieval systems
9 to accomplish the mutual purposes of the department [~~these~~
10 ~~agencies~~] and [~~of~~] the commission [~~division~~].

11 SECTION 1.411. Section 411.035, Labor Code, is amended to
12 read as follows:

13 Sec. 411.035. USE OF INJURY REPORT. A report made under
14 Section 411.032 may not be considered to be an admission by or
15 evidence against an employer or an insurance carrier in a
16 proceeding before the department [~~commission~~] or a court in which
17 the facts set out in the report are contradicted by the employer or
18 insurance carrier.

19 SECTION 1.412. Section 411.064, Labor Code, is amended to
20 read as follows:

21 Sec. 411.064. INSPECTIONS. (a) The department, in
22 conjunction with the audits conducted under Section 402.166(g), may
23 [~~division shall~~] conduct inspections [~~an inspection at least every~~
24 ~~two years~~] to determine the adequacy of the accident prevention
25 services required by Section 411.061 for each insurance company
26 writing workers' compensation insurance in this state.

27 (b) If, after an inspection under Subsection (a), an

1 insurance company's accident prevention services are determined to
2 be inadequate, the department [~~division~~] shall reinspect the
3 accident prevention services of the insurance company not earlier
4 than the 180th day or later than the 270th day after the date the
5 accident prevention services were determined by the department
6 [~~division~~] to be inadequate.

7 (c) The insurance company shall reimburse the department
8 [~~commission~~] for the reasonable cost of the reinspection, including
9 a reasonable allocation of the department's [~~commission's~~]
10 administrative costs incurred in conducting the inspections.

11 SECTION 1.413. Section 411.065, Labor Code, is amended to
12 read as follows:

13 Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE
14 COMPANY. (a) Each insurance company writing workers' compensation
15 insurance in this state shall submit to the department [~~division~~]
16 at least once a year detailed information on the type of accident
17 prevention facilities offered to that insurance company's
18 policyholders.

19 (b) The information must include:

20 (1) the amount of money spent by the insurance company
21 on accident prevention services;

22 (2) [~~the number and qualifications of field safety~~
23 ~~representatives employed by the insurance company,~~

24 [~~3~~] the number of site inspections performed;

25 (3) [~~4~~] accident prevention services for which the
26 insurance company contracts;

27 (4) [~~5~~] a breakdown of the premium size of the risks

1 to which services were provided;

2 (5) [~~(6)~~] evidence of the effectiveness of and
3 accomplishments in accident prevention; and

4 (6) [~~(7)~~] any additional information required by the
5 department [~~commission~~].

6 SECTION 1.414. Section 411.067, Labor Code, is amended to
7 read as follows:

8 Sec. 411.067. DEPARTMENT [~~COMMISSION~~] PERSONNEL. [~~(a)~~]
9 The department [~~commission~~] shall employ the personnel necessary to
10 enforce this subchapter, including at least 10 safety inspectors to
11 perform inspections at a job site and at an insurance company to
12 determine the adequacy of the accident prevention services provided
13 by the insurance company.

14 [~~(b) A safety inspector must have the qualifications~~
15 ~~required for a field safety representative by Section 411.062.~~]

16 SECTION 1.415. The heading to Subchapter F, Chapter 411,
17 Labor Code, is amended to read as follows:

18 SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS;

19 EDUCATIONAL MATERIALS

20 SECTION 1.416. Section 411.081, Labor Code, is amended to
21 read as follows:

22 Sec. 411.081. TELEPHONE HOTLINE. (a) The department
23 [~~division~~] shall maintain in English and in Spanish a 24-hour
24 toll-free telephone service for reports of violations of
25 occupational health or safety law.

26 (b) Each employer shall notify its employees of this service
27 in a manner prescribed by the commissioner [~~commission~~].

1 (c) The commissioner shall adopt rules requiring the notice
2 under Subsection (b) to be posted:

3 (1) in English and Spanish;

4 (2) in a conspicuous place in the employer's place of
5 business; and

6 (3) in a sufficient number of other locations
7 convenient to all employees.

8 SECTION 1.417. Subchapter F, Chapter 411, Labor Code, is
9 amended by adding Section 411.084 to read as follows:

10 Sec. 411.084. EDUCATIONAL MATERIALS. (a) The department
11 shall provide to employers and employees educational material,
12 including books, pamphlets, brochures, films, videotapes, or other
13 informational material.

14 (b) Educational material shall be provided to employers and
15 employees in English and Spanish.

16 (c) The department shall adopt minimum content requirements
17 for the educational material required under this section,
18 including:

19 (1) information on an employee's right to report an
20 unsafe working environment;

21 (2) instructions on how to report unsafe working
22 conditions and safety violations; and

23 (3) information on state laws regarding retaliation by
24 employers.

25 SECTION 1.418. Section 411.104, Labor Code, is amended to
26 read as follows:

27 Sec. 411.104. ADMINISTRATION BY DEPARTMENT. [~~DIVISION~~

1 DUTIES. ~~(a)~~ The department [~~division~~] shall administer this
2 subchapter.

3 [~~(b) In addition to the duties specified in this chapter,~~
4 ~~the division shall perform other duties as required by the~~
5 ~~commission.~~]

6 SECTION 1.419. The following laws are repealed:

- 7 (1) Section 411.001(1), Labor Code;
8 (2) Subchapters D and G, Chapter 411, Labor Code;
9 (3) Section 411.062, Labor Code;
10 (4) Section 411.063(b), Labor Code; and
11 (5) Section 411.102(1), Labor Code.

12 PART 15. AMENDMENTS TO CHAPTER 412, LABOR CODE

13 SECTION 1.451. Sections 412.041(g), (i), and (l), Labor
14 Code, are amended to read as follows:

15 (g) The director shall act as an adversary before the
16 department [~~commission~~] and courts and present the legal defenses
17 and positions of the state as an employer and insurer, as
18 appropriate.

19 (i) In administering Chapter 501, the director is subject to
20 the rules, orders, and decisions of the commissioner [~~commission~~]
21 in the same manner as a private employer, insurer, or association.

22 (1) The director shall furnish copies of all rules to:

23 (1) [~~the commission,~~
24 [~~(2)~~] the commissioner [~~of the Texas Department of~~
25 ~~Insurance~~]; and

26 (2) [~~(3)~~] the administrative heads of all state
27 agencies affected by this chapter and Chapter 501.

PART 16. AMENDMENTS TO CHAPTER 413, LABOR CODE

SECTION 1.501. The heading to Subchapter A, Chapter 413, Labor Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS [~~DIVISION OF MEDICAL REVIEW~~]

SECTION 1.502. Section 413.001, Labor Code, is amended to read as follows:

Sec. 413.001. APPLICABILITY. This chapter applies to the provision of health care services by insurance carriers who use provider networks and to insurance carriers who do not use provider networks. [~~DEFINITION. In this chapter, "division" means the division of medical review of the commission.~~]

SECTION 1.503. 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 department [~~division~~] shall monitor health care providers, insurance carriers, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner [~~commission~~] relating to health care, including medical policies and fee guidelines.

(b) [~~(c)~~] In monitoring health care providers who serve as designated doctors under this subtitle [~~Chapter 408~~], the department [~~division~~] shall evaluate the compliance of those providers with this subtitle and with rules adopted by the

1 commissioner [~~commission~~] relating to medical policies, fee
2 guidelines, and impairment ratings.

3 (c) The department may monitor independent review
4 organizations to ensure the compliance of those organizations with
5 rules adopted by the commissioner. In monitoring independent
6 review organizations who provide services described by this
7 chapter, the department shall evaluate:

8 (1) the compliance of those organizations with this
9 subtitle and with rules adopted by the commissioner relating to
10 medical policies, fee guidelines, and impairment ratings; and

11 (2) the quality and timeliness of decisions made under
12 Section 408A.003, 408D.102, or 413.031.

13 SECTION 1.504. Section 413.003, Labor Code, is amended to
14 read as follows:

15 Sec. 413.003. AUTHORITY TO CONTRACT. The commissioner
16 [~~commission~~] may contract with a private or public entity to
17 perform a duty or function of the department under this chapter
18 [~~division~~].

19 SECTION 1.505. Section 413.004, Labor Code, is amended to
20 read as follows:

21 Sec. 413.004. COORDINATION WITH PROVIDERS. The department
22 [~~division~~] shall coordinate the department's [~~its~~] activities with
23 health care providers as necessary to perform the department's
24 [~~its~~] duties under this chapter. The coordination may include:

25 (1) conducting educational seminars on commissioner
26 [~~commission~~] rules and procedures; or

27 (2) providing information to and requesting

1 assistance from professional peer review organizations.

2 SECTION 1.506. Section 413.007, Labor Code, is amended to
3 read as follows:

4 Sec. 413.007. INFORMATION MAINTAINED BY DEPARTMENT
5 [~~DIVISION~~]. (a) The department [~~division~~] shall maintain a
6 statewide data base of medical charges, actual payments, and
7 treatment protocols that may be used by:

8 (1) the commissioner [~~commission~~] in adopting [~~the~~]
9 medical policies and fee guidelines; and

10 (2) the department [~~division~~] in administering [~~the~~]
11 medical policies, fee guidelines, or rules.

12 (b) The department [~~division~~] shall ensure that the data
13 base:

14 (1) contains information necessary to detect
15 practices and patterns in medical charges, actual payments, and
16 treatment protocols; and

17 (2) may [~~can~~] be used in a meaningful way to allow the
18 [~~commission to~~] control of medical costs as provided by this
19 subtitle.

20 (c) The department [~~division~~] shall ensure that the data
21 base is available for public access for a reasonable fee
22 established by the department [~~commission~~]. The identities of
23 injured employees [~~workers~~] and beneficiaries may not be disclosed.

24 (d) The department [~~division~~] shall take appropriate action
25 to be aware of and to maintain the most current information on
26 developments in the treatment and cure of injuries and diseases
27 common in workers' compensation cases.

1 SECTION 1.507. Sections 413.008(a) and (b), Labor Code, are
2 amended to read as follows:

3 (a) On request from the department [~~commission~~] for
4 specific information, an insurance carrier shall provide to the
5 department [~~division~~] any information in the carrier's [~~its~~]
6 possession, custody, or control that reasonably relates to the
7 department's [~~commission's~~] duties under this subtitle and to
8 health care:

- 9 (1) treatment;
10 (2) services;
11 (3) fees; and
12 (4) charges.

13 (b) The department [~~commission~~] shall maintain the
14 confidentiality of information received under this section [~~keep~~
15 ~~confidential information~~] that is confidential by law.

16 SECTION 1.508. Section 413.011, Labor Code, is amended to
17 read as follows:

18 Sec. 413.011. REIMBURSEMENT POLICIES FOR NON-NETWORK AND
19 OUT-OF-NETWORK HEALTH CARE; FEE [~~AND~~] GUIDELINES; MEDICAL
20 POLICIES; TREATMENT GUIDELINES AND PROTOCOLS. (a) This section
21 applies to non-network health care and out-of-network health care
22 which the insurance carrier is obligated to provide.

23 (a-1) The commissioner [~~commission~~] shall adopt [~~use~~]
24 health care reimbursement policies and fee guidelines for health
25 care that is provided through a provider network under Section
26 408B.004(b) that reflect the standardized reimbursement structures
27 found in other health care delivery systems, with minimal

1 modifications to those reimbursement methodologies as necessary to
2 meet occupational injury requirements.

3 (b) To achieve standardization, the commissioner
4 [~~commission~~] shall adopt the most current reimbursement
5 methodologies, models, and values or weights used by the federal
6 Centers for Medicare & Medicaid Services [~~Health Care Financing~~
7 ~~Administration~~], including applicable payment policies relating to
8 coding, billing, and reporting, and may modify documentation
9 requirements as necessary to meet the requirements of Section
10 413.053.

11 (c) [~~(b)~~] In determining the appropriate fees, the
12 commissioner [~~commission~~] shall also develop multiple conversion
13 factors or other payment adjustment factors taking into account
14 economic indicators in health care and the requirements of
15 Subsection (e) [~~(d)~~]. The department [~~commission~~] shall also
16 provide for reasonable fees for the evaluation and management of
17 care as required by Section 408C.004(b) [~~408.025(e)~~] and
18 commissioner [~~commission~~] rules. This section does not adopt the
19 Medicare fee schedule, and the commissioner [~~commission~~] shall not
20 adopt conversion factors or other payment adjustment factors based
21 solely on those factors as developed by the federal Centers for
22 Medicare & Medicaid Services [~~Health Care Financing~~
23 ~~Administration~~].

24 (d) [~~(e)~~] This section may not be interpreted in a manner
25 that would discriminate in the amount or method of payment or
26 reimbursement for services in a manner prohibited by Section
27 1451.104 [~~3(d), Article 21.52~~], Insurance Code, or as restricting

1 the ability of chiropractors to serve as treating doctors as
2 authorized by this subtitle. The commissioner [~~commission~~] shall
3 also develop guidelines relating to fees charged or paid for
4 providing expert testimony relating to an issue arising under this
5 subtitle.

6 (e) Fee guidelines [~~(d) Guidelines for medical services~~
7 ~~fees~~] must be fair and reasonable and designed to ensure the quality
8 of medical care and to achieve effective medical cost control. The
9 guidelines may not provide for payment of a fee in excess of the fee
10 charged for similar treatment of an injured individual of an
11 equivalent standard of living and paid by that individual or by
12 someone acting on that individual's behalf. The commissioner
13 [~~commission~~] shall consider the increased security of payment
14 afforded by this subtitle in establishing the fee guidelines.
15 Agreements between a provider and the insurance carrier or provider
16 network that are above the guidelines are permitted.

17 (f) The rules adopted by the department for the
18 reimbursement of prescription medications and services shall
19 authorize pharmacies to utilize agents or assignees to process
20 claims and act on their behalf pursuant to terms and conditions as
21 agreed upon by pharmacies.

22 (g) [(e)] The commissioner [~~commission~~] by rule shall [~~may~~]
23 adopt one or more sets of treatment guidelines, including
24 return-to-work guidelines, and individual treatment protocols,
25 including protocols for pharmacy benefits. Except as otherwise
26 provided by this subsection, the treatment guidelines and protocols
27 must be nationally recognized, scientifically valid, and

1 outcome-based and designed to reduce excessive or inappropriate
2 medical care while safeguarding necessary medical care. If a
3 nationally recognized treatment guideline or protocol is not
4 available for adoption by the commissioner [~~commission~~], the
5 commissioner [~~commission~~] may adopt another treatment guideline or
6 protocol as long as it is scientifically valid and outcome-based.

7 (h) [~~(f)~~] The commissioner [~~commission~~] by rule may
8 establish medical policies or treatment guidelines or protocols
9 relating to necessary treatments for injuries.

10 (i) [~~(g)~~] Any medical policies or guidelines adopted by the
11 commissioner [~~commission~~] must be:

12 (1) designed to ensure the quality of medical care and
13 to achieve effective medical cost control;

14 (2) designed to enhance a timely and appropriate
15 return to work; and

16 (3) consistent with Sections 413.013, 413.020,
17 413.052, and 413.053.

18 SECTION 1.509. Section 413.013, Labor Code, is amended to
19 read as follows:

20 Sec. 413.013. PROGRAMS. The commissioner [~~commission~~] by
21 rule shall establish:

22 (1) for health care that is not provided through a
23 provider network under Chapter 408B:

24 (A) a program for prospective, concurrent, and
25 retrospective review and resolution of a dispute regarding health
26 care treatments and services; and

27 (B) [~~(2)~~] a program for the systematic

1 monitoring of the necessity of treatments administered and fees
2 charged and paid for medical treatments or services, including the
3 authorization of prospective, concurrent, or retrospective review
4 under the medical policies of the commissioner [~~commission~~] to
5 ensure that the medical policies or guidelines are not exceeded;

6 (2) [~~(3)~~] a program to detect practices and patterns
7 by insurance carriers, including carriers who use provider
8 networks, in unreasonably denying authorization of payment for
9 medical services requested or performed if authorization is
10 required by the medical policies of the commissioner [~~commission~~];
11 and

12 (3) [~~(4)~~] a program to increase the intensity of
13 review for compliance with the medical policies or fee guidelines
14 for any health care provider that has established a practice or
15 pattern in charges and treatments inconsistent with the medical
16 policies and fee guidelines.

17 SECTION 1.510. Section 413.014, Labor Code, is amended by
18 amending Subsections (b)-(e) and adding Subsection (f) to read as
19 follows:

20 (b) The commissioner [~~commission~~] by rule shall specify
21 which health care treatments and services provided by an insurance
22 carrier who does not use a provider network under Chapter 408B
23 require express preauthorization or concurrent review by the
24 insurance carrier.

25 (1) Treatments and services for a medical emergency do
26 not require express preauthorization.

27 (2) For preauthorized surgeries under this section,

1 the commissioner shall, by rule, require access to surgically
2 implanted, inserted, or otherwise applied devices or tissues by
3 ensuring reimbursement of reasonable, necessary, and actual costs.

4 (c) The commissioner [~~commission~~] rules adopted under this
5 section must provide that preauthorization and concurrent review
6 are required at a minimum for:

7 (1) spinal surgery, as provided by Section 408A.010
8 [~~408.026~~];

9 (2) work-hardening or work-conditioning services
10 provided by a health care facility that is not credentialed by an
11 organization recognized by commissioner [~~commission~~] rules;

12 (3) inpatient hospitalization, including any
13 procedure and length of stay;

14 (4) physical and occupational therapy;

15 (5) outpatient or ambulatory surgical services, as
16 defined by commissioner [~~commission~~] rule; and

17 (6) [~~(5)~~] any investigational or experimental
18 services or devices.

19 (d) The insurance carrier is not liable for those specified
20 treatments and services requiring preauthorization unless
21 preauthorization is sought by the claimant or health care provider
22 and either obtained from the insurance carrier or ordered by the
23 department [~~commission~~].

24 (e) If a specified health care treatment or service is
25 preauthorized as provided by this section, that treatment or
26 service is not subject to retrospective review of the medical
27 necessity of the treatment or service.

1 (f) The department [~~commission~~] may not prohibit an
2 insurance carrier and a health care provider from voluntarily
3 discussing health care treatment and treatment plans and
4 pharmaceutical services, either prospectively or concurrently, and
5 may not prohibit an insurance carrier from certifying or agreeing
6 to pay for health care consistent with those agreements. The
7 insurance carrier is liable for health care treatment and treatment
8 plans and pharmaceutical services that are voluntarily
9 preauthorized and may not dispute the certified or agreed-on
10 preauthorized health care treatment and treatment plans and
11 pharmaceutical services at a later date.

12 SECTION 1.511. Section 413.0141, Labor Code, is amended to
13 read as follows:

14 Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. (a) The
15 commissioner [~~commission may~~] by rule shall provide that an
16 insurance carrier, including a carrier who provides health care
17 services through a provider network, shall provide for payment of
18 specified pharmaceutical services sufficient for the first seven
19 days following the date of injury if the health care provider
20 requests and receives verification of insurance coverage and a
21 verbal confirmation of an injury from the employer or from the
22 insurance carrier [~~as provided by Section 413.014~~].

23 (b) The commissioner rules must [~~adopted by the commission~~
24 ~~shall~~] provide that an insurance carrier is eligible for
25 reimbursement for pharmaceutical services paid under this section
26 from the subsequent injury fund in the event the injury is
27 determined not to be compensable.

1 SECTION 1.512. Sections 413.015(a) and (b), Labor Code, are
2 amended to read as follows:

3 (a) Insurance carriers who do not provide health care
4 services through a provider network under Chapter 408B shall make
5 appropriate payment of charges for medical services provided under
6 this subtitle. An insurance carrier may contract with a separate
7 entity to forward payments for medical services. Any payment due
8 the insurance carrier from the separate entity must be made in
9 accordance with the contract. The separate entity is subject to the
10 direction of the insurance carrier, and the insurance carrier is
11 responsible for the actions of the separate entity under this
12 subsection. An insurance carrier who provides health care services
13 through a provider network under Chapter 408B is subject to the
14 provisions of that chapter.

15 (b) The commissioner [~~commission~~] shall provide by rule for
16 the review and audit of the payment by insurance carriers subject to
17 this section of charges for medical services provided under this
18 subtitle to ensure compliance of health care providers and
19 insurance carriers with the medical policies and fee guidelines
20 adopted by the commissioner [~~commission~~].

21 SECTION 1.513. Section 413.017, Labor Code, is amended to
22 read as follows:

23 Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following
24 medical services are presumed reasonable:

25 (1) medical services consistent with the medical
26 policies and fee guidelines adopted by the commissioner
27 [~~commission~~]; and

1 (2) medical services that are provided subject to
2 prospective, concurrent, or retrospective review as required by the
3 medical policies of the commissioner [~~commission~~] and that are
4 authorized by an insurance carrier.

5 SECTION 1.514. Section 413.018, Labor Code, is amended to
6 read as follows:

7 Sec. 413.018. REVIEW OF MEDICAL CARE; RETURN TO WORK
8 PROGRAMS [~~IF GUIDELINES EXCEEDED~~]. (a) The commissioner
9 [~~commission~~] by rule shall provide for the periodic review of
10 medical care provided in claims in which guidelines for expected or
11 average return to work time frames are exceeded.

12 (b) The commissioner [~~division~~] shall review the medical
13 treatment provided in a claim that exceeds the guidelines and may
14 take appropriate action to ensure that necessary and reasonable
15 care is provided.

16 (c) The department [~~commission~~] shall implement a program
17 to encourage employers and treating doctors to discuss the
18 availability of modified duty to encourage the safe and more timely
19 return to work of injured employees. The department [~~commission~~]
20 may require a treating or examining doctor, on the request of the
21 employer, insurance carrier, or commissioner [~~commission~~], to
22 provide a functional capacity evaluation of an injured employee and
23 to determine the employee's ability to engage in physical
24 activities found in the workplace or in activities that are
25 required in a modified duty setting.

26 (d) The department [~~commission~~] shall provide through the
27 department's [~~commission's~~] health and safety information [~~and~~

1 ~~medical review outreach~~] programs information to employers
2 regarding effective return to work programs.

3 (e) This section does not require an employer to provide
4 modified duty or an employee to accept a modified duty assignment.
5 An employee who does not accept an employer's offer of modified duty
6 determined by the commissioner [~~commission~~] to be a bona fide job
7 offer is subject to Section 408D.053(e) [~~408.103(e)~~].

8 (f) [~~(e)~~] The commissioner [~~commission~~] may adopt rules and
9 forms as necessary to implement this section.

10 (g) The commissioner shall adopt rules to recognize
11 exemplary return-to-work programs.

12 (h) The commissioner shall adopt rules that allow insurance
13 carriers to offer incentives to employers who offer exemplary
14 return-to-work programs.

15 SECTION 1.515. Section 413.020, Labor Code, is amended to
16 read as follows:

17 Sec. 413.020. DEPARTMENT [~~COMMISSION~~] CHARGES. The
18 commissioner [~~commission~~] by rule shall establish procedures to
19 enable the department [~~commission~~] to charge:

20 (1) an insurance carrier a reasonable fee for access
21 to or evaluation of health care treatment, fees, or charges under
22 this subtitle; and

23 (2) a health care provider who exceeds a fee or
24 utilization guideline established under this subtitle or an
25 insurance carrier who unreasonably disputes charges that are
26 consistent with a fee or utilization guideline established under
27 this subtitle a reasonable fee for review of health care treatment,

1 fees, or charges under this subtitle.

2 SECTION 1.516. Subchapter C, Chapter 413, Labor Code, is
3 amended to read as follows:

4 SUBCHAPTER C. DISPUTE RESOLUTION REGARDING MEDICAL BENEFITS

5 Sec. 413.031. MEDICAL DISPUTE: RIGHT TO REVIEW

6 [~~RESOLUTION~~]. (a) A party, including a health care provider, is
7 entitled to a review of a medical service provided or for which
8 authorization of payment is sought if a health care provider is:

9 (1) denied payment or paid a reduced amount for the
10 medical service rendered;

11 (2) denied authorization for the payment for the
12 service requested or performed if authorization is required or
13 allowed by this subtitle or commissioner [~~commission~~] rules;

14 (3) ordered by the commissioner [~~commission~~] to refund
15 a payment received; or

16 (4) ordered to make a payment that was refused or
17 reduced for a medical service rendered.

18 (b) A health care provider who submits a charge in excess of
19 the fee guidelines or treatment policies is entitled to a review of
20 the medical service to determine if reasonable medical
21 justification exists for the deviation. A claimant is entitled to a
22 review of a medical service for which preauthorization is sought by
23 the health care provider and denied by the insurance carrier. The
24 commissioner [~~commission~~] shall adopt rules to notify claimants of
25 their rights under this subsection.

26 (c) A claimant is entitled to a review of a request for a
27 change of treating doctor under Section 408B.303.

1 Sec. 413.032. INFORMAL DISPUTE RESOLUTION AT CARRIER. (a)
2 Before bringing a dispute regarding medical benefits to the
3 department, the parties to the dispute must try to resolve the
4 dispute among themselves through an informal process conducted by
5 the insurance carrier.

6 (b) If a party notifies an insurance carrier of an issue
7 requiring dispute resolution under this subchapter, the carrier,
8 not later than the fifth business day after the date of receiving
9 the notice, shall send to the party a letter acknowledging receipt
10 of the notice.

11 (c) An insurance carrier shall acknowledge, investigate,
12 and resolve an issue under this section not later than the 30th
13 calendar day after the date the carrier receives a written notice of
14 the issue from the party.

15 (d) The commissioner shall adopt rules that specify the
16 requirements for documentation of the initial attempt under
17 Subsection (a) to resolve the dispute, including documentation of
18 telephone calls or written correspondence.

19 Sec. 413.033. FEE DISPUTES. [~~e~~] In resolving disputes
20 over the amount of payment due for services determined to be
21 medically necessary and appropriate for treatment of a compensable
22 injury, the role of the department [~~commission~~] is to adjudicate
23 the payment given the relevant statutory provisions and
24 commissioner [~~commission~~] rules. The department [~~commission~~]
25 shall publish on its Internet website its medical dispute
26 decisions, including decisions of independent review
27 organizations[, and any subsequent decisions by the State Office of

1 ~~Administrative Hearings~~]. Before publication, the department
2 ~~[commission]~~ shall redact only that information necessary to
3 prevent identification of the injured employee ~~[worker]~~.

4 Sec. 413.034. REVIEW BY INDEPENDENT REVIEW ORGANIZATION.

5 (a) If the parties are unable to resolve a dispute regarding
6 medical benefits through the informal dispute resolution process
7 required under Section 413.032, either party may file with the
8 department a request for review by an independent review
9 organization certified under Article 21.58C, Insurance Code.

10 (b) An ~~[(d) A review of the medical necessity of a health~~
11 ~~care service requiring preauthorization under Section 413.014 or~~
12 ~~commission rules under that section shall be conducted by an]~~
13 independent review organization shall conduct a review of the
14 medical necessity of a health care service:

15 (1) requiring preauthorization under Section 413.014
16 or commissioner rules under that section; or

17 (2) provided under this chapter or Chapter 408 or
18 408A.

19 (c) An independent review organization shall conduct a
20 review under this section ~~[Article 21.58C, Insurance Code,]~~ in the
21 same manner as reviews of utilization review decisions ~~[by health~~
22 ~~maintenance organizations]~~. It is a defense for the insurance
23 carrier if the carrier timely complies with the decision of the
24 independent review organization.

25 (d) In performing a review of medical necessity, the
26 independent review organization shall consider the department's
27 health care reimbursement policies adopted under Section 413.011 if

1 those policies are raised by one of the parties to the dispute. If
2 the independent review organization's decision is contrary to the
3 department's policies adopted under Section 413.011, the
4 independent review organization must indicate in the decision the
5 specific basis for its divergence in the review of medical
6 necessity. This subsection does not prohibit an independent review
7 organization from considering the payment policies adopted under
8 Section 413.011 in any dispute, regardless of whether those
9 policies are raised by a party to the dispute.

10 (e) In performing a review of medical necessity, an
11 independent review organization may request that the department
12 order an examination by a designated doctor.

13 Sec. 413.035. INDEPENDENT REVIEW ORGANIZATION DECISION;
14 APPEAL. (a) An independent review organization that conducts a
15 review under this subchapter shall specify the elements on which
16 the decision of the organization is based. At a minimum, the
17 decision must include:

18 (1) a list of all medical records and other documents
19 reviewed by the organization;

20 (2) a description and the source of the screening
21 criteria or clinical basis used in making the decision;

22 (3) an analysis of and explanation for the decision,
23 including the findings and conclusions used to support the
24 decision; and

25 (4) a description of the qualifications of each
26 physician or other health care provider who reviews the decision.

27 (b) The independent review organization shall certify that

1 each physician or other health care provider who reviews the
2 decision certifies that no known conflicts of interest exist
3 between that provider and the injured employee, the injured
4 employee's employer, and any of the treating doctors or insurance
5 carrier health care providers who reviewed the case for decision
6 before referral to the independent review organization.

7 (c) Either party may appeal the decision of the independent
8 review organization to district court for judicial review.
9 Judicial review under this section shall be conducted in the manner
10 provided for judicial review of contested cases under Subchapter G,
11 Chapter 2001, Government Code.

12 Sec. 413.036. ALTERNATIVE PROCESS. [~~(e)~~ Except as
13 provided by Subsections (d), (f), and (m), a review of the medical
14 necessity of a health care service provided under this chapter or
15 Chapter 408 shall be conducted by an independent review
16 organization under Article 21.58C, Insurance Code, in the same
17 manner as reviews of utilization review decisions by health
18 maintenance organizations. It is a defense for the insurance
19 carrier if the carrier timely complies with the decision of the
20 independent review organization.

21 [~~(e-1)~~ In performing a review of medical necessity under
22 Subsection (d) or (e), the independent review organization shall
23 consider the commission's health care reimbursement policies and
24 guidelines adopted under Section 413.011 if those policies and
25 guidelines are raised by one of the parties to the dispute. If the
26 independent review organization's decision is contrary to the
27 commission's policies or guidelines adopted under Section 413.011,

1 ~~the independent review organization must indicate in the decision~~
2 ~~the specific basis for its divergence in the review of medical~~
3 ~~necessity. This subsection does not prohibit an independent review~~
4 ~~organization from considering the payment policies adopted under~~
5 ~~Section 413.011 in any dispute, regardless of whether those~~
6 ~~policies are raised by a party to the dispute.~~

7 ~~[(f)]~~ The commissioner ~~[commission]~~ by rule may prescribe
8 an alternative ~~[shall specify the appropriate]~~ dispute resolution
9 process for disputes:

10 (1) in which a claimant has paid for medical services
11 and seeks reimbursement; or

12 (2) regarding medical services costing less than the
13 cost of a review of the medical necessity of a health care service
14 by an independent review organization.

15 Sec. 413.037. PAYMENT OF COSTS. (a) ~~[(g) In performing a~~
16 ~~review of medical necessity under Subsection (d) or (e), an~~
17 ~~independent review organization may request that the commission~~
18 ~~order an examination by a designated doctor under Chapter 408.~~

19 ~~[(h)]~~ The insurance carrier shall pay the cost of ~~[the]~~
20 review by an independent review organization if the dispute arises
21 in connection with a request for health care services:

22 (1) provided through a provider network; or

23 (2) that require preauthorization under Section
24 413.014 or commissioner ~~[commission]~~ rules under that section.

25 (b) ~~[(i)]~~ Except as provided by Subsection (a) ~~[(h)]~~, the
26 cost of the review shall be paid by the nonprevailing party.

27 (c) ~~[(j)]~~ Notwithstanding Subsections (a) and (b) ~~[(h) and~~

1 ~~(i)]~~, an employee may not be required to pay any portion of the cost
2 of a review.

3 (d) Except as otherwise provided by this subsection, the
4 cost of a review under an alternative dispute resolution process
5 under Section 413.036 shall be paid by the nonprevailing party. An
6 employee whose weekly income benefit is less than 75 percent of the
7 average weekly wage may not be required to pay more than half of the
8 cost of such a review.

9 ~~[(k) Except as provided by Subsection (l), a party to a~~
10 ~~medical dispute that remains unresolved after a review of the~~
11 ~~medical service under this section is entitled to a hearing. The~~
12 ~~hearing shall be conducted by the State Office of Administrative~~
13 ~~Hearings within 90 days of receipt of a request for a hearing in the~~
14 ~~manner provided for a contested case under Chapter 2001, Government~~
15 ~~Code (the administrative procedure law). A party who has exhausted~~
16 ~~the party's administrative remedies under this subtitle and who is~~
17 ~~aggrieved by a final decision of the State Office of Administrative~~
18 ~~Hearings may seek judicial review of the decision. Judicial review~~
19 ~~under this subsection shall be conducted in the manner provided for~~
20 ~~judicial review of contested cases under Subchapter G, Chapter~~
21 ~~2001, Government Code.~~

22 ~~[(l) A party to a medical dispute regarding spinal surgery~~
23 ~~that remains unresolved after a review by an independent review~~
24 ~~organization as provided by Subsections (d) and (e) is entitled to~~
25 ~~dispute resolution as provided by Chapter 410.~~

26 ~~[(m) The commission by rule may prescribe an alternate~~
27 ~~dispute resolution process to resolve disputes regarding medical~~

1 ~~services costing less than the cost of a review of the medical~~
2 ~~necessity of a health care service by an independent review~~
3 ~~organization. The cost of a review under the alternate dispute~~
4 ~~resolution process shall be paid by the nonprevailing party.]~~

5 SECTION 1.517. Sections 413.041(a), (b), and (d), Labor
6 Code, are amended to read as follows:

7 (a) Each health care practitioner shall disclose to the
8 department [~~commission~~] the identity of any health care provider in
9 which the health care practitioner, or the health care provider
10 that employs the health care practitioner, has a financial
11 interest. The health care practitioner shall make the disclosure
12 in the manner provided by commissioner [~~commission~~] rule.

13 (b) The commissioner [~~commission~~] shall require by rule
14 that a doctor disclose financial interests in other health care
15 providers [~~as a condition of registration for the approved doctor~~
16 ~~list established under Section 408.023~~] and shall define "financial
17 interest" for purposes of this subsection as provided by analogous
18 federal regulations. The commissioner [~~commission~~] by rule shall
19 adopt the federal standards that prohibit the payment or acceptance
20 of payment in exchange for health care referrals relating to fraud,
21 abuse, and antikickbacks.

22 (d) The department [~~commission~~] shall publish all final
23 disclosure enforcement orders issued under this section on the
24 department's [~~commission's~~] Internet website.

25 SECTION 1.518. Section 413.042(a), Labor Code, is amended
26 to read as follows:

27 (a) A health care provider may not pursue a private claim

1 against a workers' compensation claimant for all or part of the cost
2 of a health care service provided to the claimant by the provider
3 unless:

4 (1) the injury is finally adjudicated not compensable
5 under this subtitle; or

6 (2) the employee violates Section 408C.002 [~~408.022~~]
7 relating to the selection of a doctor and the doctor did not know of
8 the violation at the time the services were rendered.

9 SECTION 1.519. Section 413.044, Labor Code, is amended to
10 read as follows:

11 Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. In addition
12 to or in lieu of an administrative penalty under Section 415.021 or
13 a sanction imposed under Section 415.023, the department
14 [~~commissioner~~] may impose sanctions against a person who serves as a
15 designated doctor under this subtitle, including a designated
16 doctor who serves under a provider network, [~~Chapter 408~~] who,
17 after an evaluation conducted under Section 413.002(b)
18 [~~413.002(c)~~], is determined by the department [~~division~~] to be out
19 of compliance with this subtitle or with rules adopted by the
20 commissioner [~~commissioner~~] relating to medical policies, fee
21 guidelines, and impairment ratings.

22 SECTION 1.520. The heading to Subchapter E, Chapter 413,
23 Labor Code, is amended to read as follows:

24 SUBCHAPTER E. IMPLEMENTATION OF DEPARTMENT [~~COMMISSIONER~~]
25 POWERS AND DUTIES

26 SECTION 1.521. Section 413.051, Labor Code, is amended to
27 read as follows:

1 Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND
2 HEALTH CARE PROVIDERS. (a) In this section, "health care provider
3 professional review organization" includes an independent review
4 organization.

5 (b) The department [~~commission~~] may contract with a health
6 care provider, health care provider professional review
7 organization, or other entity to develop, maintain, or review
8 medical policies or fee guidelines or to review compliance with the
9 medical policies or fee guidelines.

10 (c) [~~(b)~~] For purposes of review or resolution of a dispute
11 with an insurance carrier that does not use a provider network under
12 Chapter 408B, as to compliance with the medical policies or fee
13 guidelines, the department [~~commission~~] may contract with a health
14 care provider, health care provider professional review
15 organization, or other entity that includes in the review process
16 health care practitioners who are licensed in the category under
17 review and are of the same field or specialty as the category under
18 review.

19 (d) [~~(c)~~] The department [~~commission~~] may contract with a
20 health care provider, health care provider professional review
21 organization, or other entity for medical consultant services,
22 including:

- 23 (1) independent medical examinations;
24 (2) medical case reviews; or
25 (3) establishment of medical policies and fee
26 guidelines.

27 (e) [~~(d)~~] The commissioner [~~commission~~] shall establish

1 standards for contracts under this section.

2 ~~[(c) For purposes of this section, "health care provider~~
3 ~~professional review organization" includes an independent review~~
4 ~~organization.]~~

5 SECTION 1.522. Section 413.0511, Labor Code, is amended to
6 read as follows:

7 Sec. 413.0511. MEDICAL ADVISOR. (a) The department
8 ~~[commission]~~ shall employ or contract with a medical advisor, who
9 must be a physician ~~[doctor as that term is defined by Section~~
10 ~~401.011]~~.

11 (b) The medical advisor shall make recommendations
12 regarding the adoption of rules to:

13 (1) develop, maintain, and review guidelines as
14 provided by Section 413.011, including rules regarding impairment
15 ratings;

16 (2) review compliance with those guidelines;

17 (3) regulate or perform other acts related to medical
18 benefits as required by the commissioner ~~[commission]~~;

19 (4) impose sanctions ~~[or delete doctors from the~~
20 ~~commission's list of approved doctors under Section 408.023]~~ for [+
21

22 ~~[(A) any reason described by Section 408.0231, or~~

23 ~~[(B)] noncompliance with commissioner~~
~~[commission] rules;~~

24 (5) ~~[impose conditions or restrictions as authorized~~
25 ~~by Section 408.0231(f)],~~

26 ~~[(6)]~~ receive, and share with the medical quality
27 review panel established under Section 413.0512, confidential

1 information, and other information to which access is otherwise
2 restricted by law, as provided by Sections 413.0512, 413.0513, and
3 413.0514 from the Texas State Board of Medical Examiners, the Texas
4 Board of Chiropractic Examiners, or other occupational licensing
5 boards regarding a physician, chiropractor, or other type of doctor
6 ~~[who applies for registration or is registered with the commission~~
7 ~~on the list of approved doctors]; and~~

8 (6) ~~[(7)]~~ determine minimal modifications to the
9 reimbursement methodology and model used by the Medicare system as
10 necessary to meet occupational injury requirements.

11 SECTION 1.523. Sections 413.0512(a), (c), and (d), Labor
12 Code, are amended to read as follows:

13 (a) The commissioner, with the advice of the medical
14 advisor, shall establish a medical quality review panel of health
15 care providers to assist the medical advisor in performing the
16 duties required under Section 413.0511. The panel is ~~[independent~~
17 ~~of the medical advisory committee created under Section 413.005 and~~
18 ~~is]~~ not subject to Chapter 2110, Government Code.

19 (c) The medical quality review panel shall recommend to the
20 medical advisor:

21 (1) appropriate action regarding doctors, other
22 health care providers, insurance carriers, ~~[and]~~ utilization
23 review agents, independent review organizations, and provider
24 networks; and

25 (2) the addition or deletion of doctors from the list
26 of ~~[approved doctors under Section 408.023 or the list of]~~
27 designated doctors established under Section 408D.102 ~~[408.122]~~.

1 (d) A person who serves on the medical quality review panel
2 is immune from suit and from civil liability for an act performed,
3 or a recommendation made, within the scope of the person's
4 functions as a member of the panel if the person acts without malice
5 and in the reasonable belief that the action or recommendation is
6 warranted by the facts known to that person. In the event of a civil
7 action brought against a member of the panel that arises from the
8 person's participation on the panel, the person is entitled to the
9 same protections afforded the commissioner or a department employee
10 ~~[commission member]~~ under Section 34.001, Insurance Code
11 ~~[402.010]~~.

12 SECTION 1.524. Section 413.0513, Labor Code, is amended to
13 read as follows:

14 Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a)
15 Information collected, assembled, or maintained by or on behalf of
16 the department ~~[commission]~~ under Section 413.0511 or 413.0512
17 constitutes an investigation file for purposes of Section 402.211
18 ~~[402.092]~~ and may not be disclosed under Section 413.0511 or
19 413.0512 except as provided by that section.

20 (b) Confidential information, and other information to
21 which access is restricted by law, developed by or on behalf of the
22 department ~~[commission]~~ under Section 413.0511 or 413.0512 is not
23 subject to discovery or court subpoena in any action other than:

24 (1) an action to enforce this subtitle brought by the
25 department ~~[commission]~~, an appropriate licensing or regulatory
26 agency, or an appropriate enforcement authority; or

27 (2) a criminal proceeding.

1 SECTION 1.525. Section 413.0514, Labor Code, is amended to
2 read as follows:

3 Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL
4 LICENSING BOARDS. (a) This section applies only to information
5 held by or for the department [~~commission~~], the Texas State Board of
6 Medical Examiners, and Texas Board of Chiropractic Examiners that
7 relates to a person who is licensed or otherwise regulated by any of
8 those state agencies.

9 (b) The department [~~commission~~] and the Texas State Board of
10 Medical Examiners on request or on its own initiative, may share
11 with each other confidential information or information to which
12 access is otherwise restricted by law. The department [~~commission~~]
13 and the Texas State Board of Medical Examiners shall cooperate with
14 and assist each other when either agency is conducting an
15 investigation by providing information to each other that the
16 sending agency determines is relevant to the investigation. Except
17 as provided by this section, confidential information that is
18 shared under this section remains confidential under law and legal
19 restrictions on access to the information remain in effect.
20 Furnishing information by the Texas State Board of Medical
21 Examiners to the department [~~commission~~] or by the department
22 [~~commission~~] to the Texas State Board of Medical Examiners under
23 this subsection does not constitute a waiver of privilege or
24 confidentiality as established by law.

25 (c) Information that is received by the department
26 [~~commission~~] from the Texas State Board of Medical Examiners or by
27 the Texas State Board of Medical Examiners from the department

1 ~~[commission]~~ remains confidential, may not be disclosed by the
2 department ~~[commission]~~ except as necessary to further the
3 investigation, and shall be exempt from disclosure under Sections
4 402.211 ~~[402.092]~~ and 413.0513.

5 (d) The department ~~[commission]~~ and the Texas Board of
6 Chiropractic Examiners, on request or on either agency's ~~[its own]~~
7 initiative, may share with each other confidential information or
8 information to which access is otherwise restricted by law. The
9 department ~~[commission]~~ and the Texas Board of Chiropractic
10 Examiners shall cooperate with and assist each other when either
11 agency is conducting an investigation by providing information to
12 each other that is relevant to the investigation. Except as
13 provided by this section, confidential information that is shared
14 under this section remains confidential under law and legal
15 restrictions on access to the information remain in effect unless
16 the agency sharing the information approves use of the information
17 by the receiving agency for enforcement purposes. Furnishing
18 information by the Texas Board of Chiropractic Examiners to the
19 department ~~[commission]~~ or by the department ~~[commission]~~ to the
20 Texas Board of Chiropractic Examiners under this subsection does
21 not constitute a waiver of privilege or confidentiality as
22 established by law.

23 (e) Information that is received by the department
24 ~~[commission]~~ from the Texas Board of Chiropractic Examiners or by
25 the Texas Board of Chiropractic Examiners from the department
26 remains confidential and may not be disclosed by the department
27 ~~[commission]~~ except as necessary to further the investigation

1 unless the agency sharing the information and the agency receiving
2 the information agree to use of the information by the receiving
3 agency for enforcement purposes.

4 (f) The department [~~commission~~] and the Texas State Board of
5 Medical Examiners shall provide information to each other on all
6 disciplinary actions taken.

7 (g) The department [~~commission~~] and the Texas Board of
8 Chiropractic Examiners shall provide information to each other on
9 all disciplinary actions taken.

10 SECTION 1.526. Section 413.0515, Labor Code, is amended to
11 read as follows:

12 Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR
13 VIOLATIONS. (a) If the department [~~commission~~] or the Texas State
14 Board of Medical Examiners discovers an act or omission by a
15 physician that may constitute a felony, a misdemeanor involving
16 moral turpitude, a violation of state or federal narcotics or
17 controlled substance law, an offense involving fraud or abuse under
18 the Medicare or Medicaid program, or a violation of this subtitle,
19 the agency shall report that act or omission to the other agency.

20 (b) If the department [~~commission~~] or the Texas Board of
21 Chiropractic Examiners discovers an act or omission by a
22 chiropractor that may constitute a felony, a misdemeanor involving
23 moral turpitude, a violation of state or federal narcotics or
24 controlled substance law, an offense involving fraud or abuse under
25 the Medicare or Medicaid program, or a violation of this subtitle,
26 the agency shall report that act or omission to the other agency.

27 SECTION 1.527. Section 413.052, Labor Code, is amended to

1 read as follows:

2 Sec. 413.052. PRODUCTION OF DOCUMENTS; SUBPOENA. The
3 commissioner [~~commission~~] by rule shall establish procedures to
4 enable the department [~~commission~~] to compel the production of
5 documents under this subtitle. The commissioner shall exercise
6 subpoena powers under this section in the manner provided by
7 Subchapter C, Chapter 36, Insurance Code.

8 SECTION 1.528. Section 413.053, Labor Code, is amended to
9 read as follows:

10 Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The
11 commissioner [~~commission~~] by rule shall establish standards of
12 reporting and billing governing both form and content.

13 SECTION 1.529. Section 413.054(a), Labor Code, is amended
14 to read as follows:

15 (a) A person who performs services for the department
16 [~~commission~~] as a designated doctor, an independent medical
17 examiner, a doctor performing a medical case review, or a member of
18 a peer review panel has the same immunity from liability as the
19 commissioner or a department employee [~~commission member~~] under
20 Section 34.001, Insurance Code [~~402.010~~].

21 SECTION 1.530. Sections 413.055(a) and (b), Labor Code, are
22 amended to read as follows:

23 (a) The commissioner [~~executive director, as provided by~~
24 ~~commission rule,~~] may enter an interlocutory order for the payment
25 of all or part of medical benefits. The order may address accrued
26 benefits, future benefits, or both accrued benefits and future
27 benefits.

1 (b) The subsequent injury fund shall reimburse an insurance
2 carrier for any overpayments of benefits made under an order
3 entered under Subsection (a) if the order is reversed or modified by
4 final arbitration, order, or decision of the commissioner
5 [~~commission~~] or a court. The commissioner [~~commission~~] shall adopt
6 rules to provide for a periodic reimbursement schedule, providing
7 for reimbursement at least annually.

8 SECTION 1.531. The following laws are repealed:

- 9 (1) Section 413.005, Labor Code;
10 (2) Section 413.006, Labor Code; and
11 (3) Section 413.016, Labor Code.

12 PART 17. AMENDMENTS TO CHAPTER 414, LABOR CODE

13 SECTION 1.551. The heading to Chapter 414, Labor Code, is
14 amended to read as follows:

15 CHAPTER 414. ENFORCEMENT [~~DIVISION~~] OF COMPLIANCE
16 AND PRACTICE REQUIREMENTS [~~PRACTICES~~]

17 SECTION 1.552. Section 414.002, Labor Code, is amended to
18 read as follows:

19 Sec. 414.002. MONITORING DUTIES. (a) The department
20 [~~division~~] shall monitor for compliance with commissioner
21 [~~commission~~] rules, this subtitle, and other laws relating to
22 workers' compensation the conduct of persons subject to this
23 subtitle[~~, other than persons monitored by the division of medical~~
24 ~~review~~]. Persons to be monitored under this chapter include:

- 25 (1) persons claiming benefits under this subtitle;
26 (2) employers;
27 (3) insurance carriers; [~~and~~]

- (4) attorneys and other representatives of parties;
- (5) health care providers;
- (6) independent review organizations; and
- (7) provider networks.

(b) The department [~~division~~] shall monitor conduct described by Sections 415.001, 415.002, and 415.003 and refer persons engaging in that conduct for [~~to the division of~~] hearings.

(c) The department [~~division~~] shall monitor payments made to health care providers on behalf of workers' compensation claimants who receive medical services to ensure that the payments are made on time as required by Section 408.027.

SECTION 1.553. Section 414.003, Labor Code, is amended to read as follows:

Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The department [~~division~~] shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this chapter that:

(1) violate this subtitle or commissioner [~~commission~~] rules; or

(2) otherwise adversely affect the workers' compensation system of this state.

(b) The commissioner [~~commission~~] shall use the information compiled under this section to impose appropriate penalties and other sanctions under Chapters 415 and 416.

SECTION 1.554. Section 414.004, Labor Code, is amended to read as follows:

Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS.

1 (a) The department [~~division~~] shall review regularly the workers'
2 compensation records of insurance carriers as required to ensure
3 compliance with this subtitle.

4 (b) Each insurance carrier, the carrier's agents, and those
5 with whom the carrier has contracted to provide, review, or monitor
6 services under this subtitle shall:

7 (1) cooperate with the department [~~division~~];

8 (2) make available to the department [~~division~~] any
9 records or other necessary information; and

10 (3) allow the department [~~division~~] access to the
11 information at reasonable times at the person's offices.

12 (c) The insurance carrier, other than a governmental
13 entity, shall pay the reasonable expenses, including travel
14 expenses, of an auditor who audits for the department an insurance
15 carrier's workers' compensation records at the office of the
16 insurance carrier.

17 SECTION 1.555. Section 414.005, Labor Code, is amended to
18 read as follows:

19 Sec. 414.005. WORKERS' COMPENSATION INVESTIGATION UNIT;
20 FRAUD INVESTIGATIONS. (a) The department [~~division~~] shall
21 maintain an investigation unit to conduct investigations relating
22 to alleged violations of this subtitle or commissioner [~~commissioner~~]
23 rules adopted under this subtitle [~~, with particular emphasis on~~
24 ~~violations of Chapters 415 and 416~~].

25 (b) The department shall conduct investigations of fraud
26 involving participants in the workers' compensation system. In
27 conducting investigations under this subsection, the department

1 may operate under the insurance fraud unit established under
2 Chapter 701, Insurance Code.

3 (c) The department's duties in conducting and prosecuting
4 fraud investigations under this section are funded through the
5 maintenance tax assessed under Section 403.002.

6 SECTION 1.5551. Chapter 414, Labor Code, is amended by
7 adding Section 414.0055 to read as follows:

8 Sec. 414.0055. DUTY TO REPORT; ADMINISTRATIVE VIOLATION.

9 (a) This section applies only to a person who is:

10 (1) an injured employee or other claimant under this
11 subtitle;

12 (2) an insurance carrier;

13 (3) a doctor or other health care provider who
14 provides health care services regarding a claim for workers'
15 compensation benefits; or

16 (4) an employer.

17 (b) A person subject to this section who determines that a
18 fraudulent act has been or is about to be committed by another in
19 conjunction with a workers' compensation claim shall report the
20 information in writing to the department not later than the 30th day
21 after the date the person makes the determination.

22 (c) A person subject to this section commits a violation if
23 the person violates Subsection (b). A violation under this
24 subsection is a Class B administrative violation.

25 (d) The identity of a person who reports to the department
26 under Subsection (b) is confidential and is not public information
27 under Chapter 552, Government Code.

1 SECTION 1.556. Section 414.006, Labor Code, is amended to
2 read as follows:

3 Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. For further
4 investigation or the institution of appropriate proceedings, the
5 department [~~division~~] may refer the persons involved in a case
6 subject to an investigation to [+

7 [~~(1) the division of hearings, or~~

8 [~~(2)~~] other appropriate authorities, including
9 licensing agencies, district and county attorneys, or the attorney
10 general.

11 SECTION 1.557. Section 414.007, Labor Code, is amended to
12 read as follows:

13 Sec. 414.007. [~~REVIEW OF REFERRALS FROM DIVISION OF~~
14 MEDICAL REVIEW. The department [~~division~~] shall review information
15 [~~and referrals received from the division of medical review~~]
16 concerning alleged violations of this subtitle regarding the
17 provision of medical benefits and, under Sections 414.005 and
18 414.006 and Chapters 415 and 416, may conduct investigations, make
19 referrals to other authorities, and initiate administrative
20 violation proceedings.

21 SECTION 1.558. Section 414.001, Labor Code, is repealed.

22 PART 18. AMENDMENTS TO CHAPTER 415, LABOR CODE

23 SECTION 1.601. Section 415.001, Labor Code, is amended to
24 read as follows:

25 Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE
26 OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee
27 or legal beneficiary commits an administrative violation if the

1 person wilfully or intentionally:

2 (1) fails without good cause to attend a dispute
3 resolution proceeding under this subtitle [~~within the commission~~];

4 (2) attends a dispute resolution proceeding under this
5 subtitle [~~within the commission~~] without complete authority or
6 fails to exercise authority to effectuate an agreement or
7 settlement;

8 (3) commits an act of barratry under Section 38.12,
9 Penal Code;

10 (4) withholds from the employee's or legal
11 beneficiary's weekly benefits or from advances amounts not
12 authorized to be withheld by the department [~~commission~~];

13 (5) enters into a settlement or agreement without the
14 knowledge, consent, and signature of the employee or legal
15 beneficiary;

16 (6) takes a fee or withholds expenses in excess of the
17 amounts authorized by the department [~~commission~~];

18 (7) refuses or fails to make prompt delivery to the
19 employee or legal beneficiary of funds belonging to the employee or
20 legal beneficiary as a result of a settlement, agreement, order, or
21 award;

22 (8) violates the Texas Disciplinary Rules of
23 Professional Conduct of the State Bar of Texas;

24 (9) misrepresents the provisions of this subtitle to
25 an employee, an employer, a health care provider, or a legal
26 beneficiary;

27 (10) violates a commissioner [~~commission~~] rule; or

1 (11) fails to comply with this subtitle.

2 SECTION 1.602. Section 415.002, Labor Code, is amended to
3 read as follows:

4 Sec. 415.002. ADMINISTRATIVE VIOLATION BY [~~AN~~] INSURANCE
5 CARRIER. (a) An insurance carrier or its representative commits an
6 administrative violation if that person wilfully or intentionally:

7 (1) misrepresents a provision of this subtitle to an
8 employee, an employer, a health care provider, or a legal
9 beneficiary;

10 (2) terminates or reduces benefits without
11 substantiating evidence that the action is reasonable and
12 authorized by law;

13 (3) instructs an employer not to file a document
14 required to be filed with the department [~~commission~~];

15 (4) instructs or encourages an employer to violate a
16 claimant's right to medical benefits under this subtitle;

17 (5) fails to tender promptly full death benefits if a
18 legitimate dispute does not exist as to the liability of the
19 insurance carrier;

20 (6) allows an employer, other than a self-insured
21 employer, to dictate the methods by which and the terms on which a
22 claim is handled and settled;

23 (7) fails to confirm medical benefits coverage to a
24 person or facility providing medical treatment to a claimant if a
25 legitimate dispute does not exist as to the liability of the
26 insurance carrier;

27 (8) fails, without good cause, to attend a dispute

1 resolution proceeding under this subtitle [~~within the commission~~];

2 (9) attends a dispute resolution proceeding under this
3 subtitle [~~within the commission~~] without complete authority or
4 fails to exercise authority to effectuate agreement or settlement;

5 (10) adjusts a workers' compensation claim in a manner
6 contrary to license requirements for an insurance adjuster,
7 including the requirements of Chapter 4101, Insurance Code [~~407,~~
8 ~~Acts of the 63rd Legislature, Regular Session, 1973 (Article~~
9 ~~21.07-4, Vernon's Texas Insurance Code)~~], or commissioner [~~the~~
10 ~~rules [of the State Board of Insurance]~~];

11 (11) fails to process claims promptly in a reasonable
12 and prudent manner;

13 (12) fails to initiate or reinstate benefits when due
14 if a legitimate dispute does not exist as to the liability of the
15 insurance carrier;

16 (13) misrepresents the reason for not paying benefits
17 or terminating or reducing the payment of benefits;

18 (14) dates documents to misrepresent the actual date
19 of the initiation of benefits;

20 (15) makes a notation on a draft or other instrument
21 indicating that the draft or instrument represents a final
22 settlement of a claim if the claim is still open and pending before
23 the department [~~commission~~];

24 (16) fails or refuses to pay benefits from week to week
25 as and when due directly to the person entitled to the benefits;

26 (17) fails to pay an order awarding benefits;

27 (18) controverts a claim if the evidence clearly

1 indicates liability;

2 (19) unreasonably disputes the reasonableness and
3 necessity of health care;

4 (20) violates a commissioner [~~commission~~] rule; or

5 (21) fails to comply with a provision of this
6 subtitle.

7 (b) An insurance carrier or its representative does not
8 commit an administrative violation under Subsection (a)(6) by
9 allowing an employer to:

10 (1) freely discuss a claim;

11 (2) assist in the investigation and evaluation of a
12 claim; or

13 (3) attend a proceeding [~~of the commission~~] and
14 participate at the proceeding in accordance with this subtitle.

15 SECTION 1.603. Section 415.003, Labor Code, is amended to
16 read as follows:

17 Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE
18 PROVIDER. A health care provider commits an administrative
19 violation if the person wilfully or intentionally:

20 (1) submits a charge for health care that was not
21 furnished;

22 (2) administers improper, unreasonable, or medically
23 unnecessary treatment or services;

24 (3) makes an unnecessary referral;

25 (4) violates the department's [~~commission's~~] fee [~~and~~
26 ~~treatment~~] guidelines;

27 (5) violates a commissioner [~~commission~~] rule; or

1 (6) fails to comply with a provision of this subtitle.

2 SECTION 1.604. Sections 415.0035(a), (b), (e), and (f),
3 Labor Code, are amended to read as follows:

4 (a) An insurance carrier or its representative commits an
5 administrative violation if that person:

6 (1) fails to submit to the department [~~commission~~] a
7 settlement or agreement of the parties;

8 (2) fails to timely notify the department [~~commission~~]
9 of the termination or reduction of benefits and the reason for that
10 action; or

11 (3) denies preauthorization in a manner that is not in
12 accordance with Chapter 408B or Section 413.014 or with
13 commissioner rules adopted [~~by the commission~~] under Section
14 413.014.

15 (b) A health care provider commits an administrative
16 violation if that person:

17 (1) fails or refuses to timely file required reports
18 or records; or

19 (2) fails to file with the department [~~commission~~] the
20 [~~annual~~] disclosure statement required by Section 413.041.

21 (e) An insurance carrier or health care provider commits an
22 administrative violation if that person violates this subtitle or a
23 rule, order, or decision of the commissioner [~~commission~~].

24 (f) A subsequent administrative violation under this
25 section, after prior notice to the insurance carrier or health care
26 provider of noncompliance, is subject to penalties as provided by
27 Section 415.021. Prior notice under this subsection is not

1 required if the violation was committed wilfully or intentionally,
2 or if the violation was of a decision or order of the commissioner
3 [~~commission~~].

4 SECTION 1.605. Section 415.007(a), Labor Code, is amended
5 to read as follows:

6 (a) An attorney who represents a claimant before the
7 department [~~commission~~] may not lend money to the claimant during
8 the pendency of the workers' compensation claim.

9 SECTION 1.606. Section 415.008(e), Labor Code, is amended
10 to read as follows:

11 (e) If an administrative violation proceeding is pending
12 under this section against an employee or person claiming death
13 benefits, the department [~~commission~~] may not take final action on
14 the person's benefits.

15 SECTION 1.607. Sections 415.021(a)-(c), Labor Code, are
16 amended to read as follows:

17 (a) The department [~~commission~~] may assess an
18 administrative penalty against a person who commits an
19 administrative violation. Notwithstanding Subsection (c), the
20 commissioner [~~commission~~] by rule shall adopt a schedule of
21 specific monetary administrative penalties for specific violations
22 under this subtitle.

23 (b) The department [~~commission~~] may assess an
24 administrative penalty not to exceed \$10,000 and may enter a cease
25 and desist order against a person who:

- 26 (1) commits repeated administrative violations;
27 (2) allows, as a business practice, the commission of

1 repeated administrative violations; or

2 (3) violates an order or decision of the commissioner
3 [~~commission~~].

4 (c) In assessing an administrative penalty, the department
5 [~~commission~~] shall consider:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, consequences, extent, and gravity of the
8 prohibited act;

9 (2) the history and extent of previous administrative
10 violations;

11 (3) the demonstrated good faith of the violator,
12 including actions taken to rectify the consequences of the
13 prohibited act;

14 (4) the economic benefit resulting from the prohibited
15 act;

16 (5) the penalty necessary to deter future violations;
17 and

18 (6) other matters that justice may require.

19 SECTION 1.608. Section 415.023(b), Labor Code, is amended
20 to read as follows:

21 (b) The commissioner [~~commission~~] may adopt rules providing
22 for:

23 (1) a reduction or denial of fees;

24 (2) public or private reprimand by the commissioner
25 [~~commission~~];

26 (3) suspension from practice before the department
27 [~~commission~~];

1 (4) restriction, suspension, or revocation of the
2 right to receive reimbursement under this subtitle; or

3 (5) referral and petition to the appropriate licensing
4 authority for appropriate disciplinary action, including the
5 restriction, suspension, or revocation of the person's license.

6 SECTION 1.609. Section 415.024, Labor Code, is amended to
7 read as follows:

8 Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT;
9 ADMINISTRATIVE VIOLATION. A material and substantial breach of a
10 settlement agreement that establishes a compliance plan is a Class
11 A administrative violation. In determining the amount of the
12 penalty, the department [~~commission~~] shall consider the total
13 volume of claims handled by the insurance carrier.

14 SECTION 1.610. Section 415.031, Labor Code, is amended to
15 read as follows:

16 Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION
17 PROCEEDINGS. Any person may request the initiation of
18 administrative violation proceedings by filing a written
19 allegation with the department [~~director of the division of~~
20 ~~compliance and practices~~].

21 SECTION 1.611. Section 415.032, Labor Code, is amended to
22 read as follows:

23 Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION;
24 RESPONSE. (a) If investigation by the department [~~division of~~
25 ~~compliance and practices~~] indicates that an administrative
26 violation has occurred, the department [~~division~~] shall notify the
27 person alleged to have committed the violation in writing of:

- 1 (1) the charge;
- 2 (2) the proposed penalty;
- 3 (3) the right to consent to the charge and the penalty;
- 4 and
- 5 (4) the right to request a hearing.

6 (b) Not later than the 20th day after the date on which
7 notice is received, the charged party shall:

8 (1) remit the amount of the penalty to the department
9 [~~commission~~]; or

10 (2) submit to the department [~~commission~~] a written
11 request for a hearing.

12 SECTION 1.612. Section 415.033, Labor Code, is amended to
13 read as follows:

14 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a
15 charged party fails to respond as required under Section 415.032,
16 the penalty is due and the department [~~commission~~] shall initiate
17 enforcement proceedings.

18 SECTION 1.613. Section 415.034(a), Labor Code, is amended
19 to read as follows:

20 (a) On the request of the charged party or the commissioner
21 [~~executive director~~], the State Office of Administrative Hearings
22 shall set a hearing. The hearing shall be conducted in the manner
23 provided for a contested case under Chapter 2001, Government Code
24 [~~(the administrative procedure law)~~].

25 SECTION 1.614. Sections 415.035(b) and (d), Labor Code, are
26 amended to read as follows:

27 (b) If an administrative penalty is assessed, the person

1 charged shall:

2 (1) forward the amount of the penalty to the
3 department [~~executive director~~] for deposit in an escrow account;
4 or

5 (2) post with the department [~~executive director~~] a
6 bond for the amount of the penalty, effective until all judicial
7 review of the determination is final.

8 (d) If the court determines that the penalty should not have
9 been assessed or reduces the amount of the penalty, the department
10 [~~executive director~~] shall:

11 (1) remit the appropriate amount, plus accrued
12 interest, if the administrative penalty was paid; or

13 (2) release the bond.

14 PART 19. AMENDMENT TO CHAPTER 416, LABOR CODE

15 SECTION 1.651. Section 416.001, Labor Code, is amended to
16 read as follows:

17 Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An
18 action taken by an insurance carrier under an order of the
19 commissioner [~~commission or recommendations of a benefit review~~
20 ~~officer under Section 410.031, 410.032, or 410.033~~] may not be the
21 basis of a cause of action against the insurance carrier for a
22 breach of the duty of good faith and fair dealing.

23 PART 20. AMENDMENTS TO CHAPTER 417, LABOR CODE

24 SECTION 1.701. Sections 417.001(c) and (d), Labor Code, are
25 amended to read as follows:

26 (c) If a claimant receives benefits from the subsequent
27 injury fund, the department [~~commission~~] is:

1 (1) considered to be the insurance carrier under this
2 section for purposes of those benefits;

3 (2) subrogated to the rights of the claimant; and

4 (3) entitled to reimbursement in the same manner as
5 the insurance carrier.

6 (d) The department [~~commission~~] shall remit money recovered
7 under this section to the comptroller for deposit to the credit of
8 the subsequent injury fund.

9 SECTION 1.702. Section 417.003(b), Labor Code, is amended
10 to read as follows:

11 (b) An attorney who represents the claimant and is also to
12 represent the subrogated insurance carrier shall make a full
13 written disclosure to the claimant before employment as an attorney
14 by the insurance carrier. The claimant must acknowledge the
15 disclosure and consent to the representation. A signed copy of the
16 disclosure shall be furnished to all concerned parties and made a
17 part of the department [~~commission~~] file. A copy of the disclosure
18 with the claimant's consent shall be filed with the claimant's
19 pleading before a judgment is entered and approved by the court.
20 The claimant's attorney may not receive a fee under this section to
21 which the attorney is otherwise entitled under an agreement with
22 the insurance carrier unless the attorney complies with the
23 requirements of this subsection.

24 PART 21. ADOPTION OF CHAPTER 419, LABOR CODE

25 SECTION 1.751. Subtitle A, Title 5, Labor Code, is amended
26 by adding Chapter 419 to read as follows:

27 CHAPTER 419. MISUSE OF DEPARTMENT NAME

1 Sec. 419.001. DEFINITIONS. (a) In this chapter:

2 (1) "Representation of the department's logo" includes
3 a nonexact representation that is deceptively similar to the logo
4 used by the department.

5 (2) "Representation of the state seal" has the meaning
6 assigned by Section 17.08(a)(2), Business & Commerce Code.

7 (b) A term or representation is "deceptively similar" for
8 purposes of this chapter if:

9 (1) a reasonable person would believe that the term or
10 representation is in any manner approved, endorsed, sponsored,
11 authorized by, the same as, or associated with the department, this
12 state, or an agency of this state; or

13 (2) the circumstances under which the term is used
14 could mislead a reasonable person as to its identity.

15 Sec. 419.002. MISUSE OF DEPARTMENT'S NAME OR SYMBOLS
16 PROHIBITED IN RELATION TO WORKERS' COMPENSATION DUTIES OF
17 DEPARTMENT. (a) Except as authorized by law, a person, in
18 connection with any impersonation, advertisement, solicitation,
19 business name, business activity, document, product, or service
20 made or offered by the person regarding workers' compensation
21 coverage or benefits, may not knowingly use or cause to be used:

22 (1) the words "Texas Department of Insurance,"
23 "Department of Insurance," or "Texas Workers' Compensation";

24 (2) any term using both "Texas" and "Workers'
25 Compensation" or any term using both "Texas" and "Workers' Comp";

26 (3) the initials "T.D.I."; or

27 (4) any combination or variation of the words or

1 initials, or any term deceptively similar to the words or initials,
2 described by Subdivisions (1)-(3).

3 (b) A person subject to Subsection (a) may not knowingly use
4 or cause to be used a word, term, or initials described by
5 Subsection (a) alone or in conjunction with:

6 (1) the state seal or a representation of the state
7 seal;

8 (2) a picture or map of this state; or

9 (3) the official logo of the department or a
10 representation of the department's logo.

11 Sec. 419.003. RULES. The commissioner may adopt rules
12 relating to the regulation of the use of the department's name and
13 other rules as necessary to implement this chapter.

14 Sec. 419.004. CIVIL PENALTY. (a) A person who violates
15 Section 419.002 or a rule adopted under this chapter is liable for a
16 civil penalty not to exceed \$5,000 for each violation.

17 (b) The attorney general, at the request of the department,
18 shall bring an action to collect a civil penalty under this section
19 in a district court in Travis County.

20 Sec. 419.005. ADMINISTRATIVE PENALTY. (a) The department
21 may assess an administrative penalty against a person who violates
22 Section 419.002 or a rule adopted under this chapter.

23 (b) An administrative penalty imposed under this section:

24 (1) may not exceed \$5,000 for each violation; and

25 (2) is subject to the procedural requirements adopted
26 for administrative penalties imposed under Section 415.021.

27 Sec. 419.006. INJUNCTIVE RELIEF. (a) At the request of the

1 commissioner, the attorney general or a district attorney may bring
2 an action in district court in Travis County to enjoin or restrain a
3 violation or threatened violation of this chapter on a showing that
4 a violation has occurred or is likely to occur.

5 (b) The department may recover the costs of investigating an
6 alleged violation of this chapter if an injunction is issued.

7 Sec. 419.007. REMEDIES NOT EXCLUSIVE. The remedies
8 provided by this chapter are not exclusive and may be sought in any
9 combination determined by the department as necessary to enforce
10 this chapter.

11 ARTICLE 2. AMENDMENTS TO SUBTITLE C, TITLE 5, LABOR CODE

12 PART 1. AMENDMENTS TO CHAPTER 501, LABOR CODE

13 SECTION 2.001. Section 501.001(1), Labor Code, is amended
14 to read as follows:

15 (1) "Department" [~~"Commission"~~] means the Texas
16 Department of Insurance [~~Workers' Compensation Commission~~].

17 SECTION 2.002. Section 501.002, Labor Code, is amended by
18 amending Subsections (a) and (c) and adding Subsection (a-1) to
19 read as follows:

20 (a) The following provisions of Subtitles A and B apply to
21 and are included in this chapter except to the extent that they are
22 inconsistent with this chapter:

23 (1) Chapter 401, other than Section 401.012 defining
24 "employee";

25 (2) Chapter 402;

26 (3) Chapter 403, other than Sections 403.001-403.005;

27 (4) Chapters 404 and [~~Chapter~~] 405;

1 (5) Subchapters B and D through H, Chapter 406, other
2 than Sections 406.071(a), 406.073, and 406.075;

3 (6) Chapter 408, other than Sections 408.001(b) and
4 (c);

5 (7) Chapters 408A, 408C, 408D, and 408E, except as
6 provided by Subsection (a-1);

7 (8) Chapters 409 and 410;

8 (9) [~~8~~] Subchapters A and G, Chapter 411, other than
9 Sections 411.003 and 411.004;

10 (10) [~~9~~] Chapters 412-417; and

11 (11) [~~10~~] Chapter 451.

12 (a-1) The office shall provide workers' compensation
13 medical benefits for covered employees through a provider network
14 under Chapter 408B if the commissioner of insurance determines that
15 provision of those benefits through a network is available to the
16 employees and practical for the state. To that extent, Chapter 408B
17 applies to this chapter.

18 (c) For the purpose of applying the provisions listed by
19 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "insurer"
20 or "employer" means "state," "office," "director," or "state
21 agency," as applicable.

22 SECTION 2.003. Section 501.026(d), Labor Code, is amended
23 to read as follows:

24 (d) A person entitled to benefits under this section may
25 receive the benefits only if the person seeks medical attention
26 from a doctor for the injury not later than 48 hours after the
27 occurrence of the injury or after the date the person knew or should

1 have known the injury occurred. The person shall comply with the
2 requirements of Section 409.001 by providing notice of the injury
3 to the department [~~commission~~] or the state agency with which the
4 officer or employee under Subsection (b) is associated.

5 SECTION 2.004. Sections 501.050(a), (b), and (d), Labor
6 Code, are amended to read as follows:

7 (a) In each case appealed from the department [~~commission~~]
8 to a [~~county or~~] district court:

9 (1) the clerk of the court shall mail to the department
10 [~~commission~~]:

11 (A) not later than the 20th day after the date the
12 case is filed, a notice containing the style, number, and date of
13 filing of the case; and

14 (B) not later than the 20th day after the date the
15 judgment is rendered, a certified copy of the judgment; and

16 (2) the attorney preparing the judgment shall file the
17 original and a copy of the judgment with the clerk.

18 (b) An attorney's failure to comply with Subsection (a)(2)
19 does not excuse the failure of a [~~county or~~] district clerk to
20 comply with Subsection (a)(1)(B).

21 (d) A [~~county or~~] district clerk who violates this section
22 commits an offense. An offense under this subsection is a
23 misdemeanor punishable by a fine not to exceed \$250.

24 PART 2. AMENDMENTS TO CHAPTER 502, LABOR CODE

25 SECTION 2.051. Section 502.001(1), Labor Code, is amended
26 to read as follows:

27 (1) "Department" [~~"Commission"~~] means the Texas

1 Department of Insurance [~~Workers' Compensation Commission~~].

2 SECTION 2.052. Section 502.002, Labor Code, is amended by
3 amending Subsections (a) and (b) and adding Subsection (a-1) to
4 read as follows:

5 (a) The following provisions of Subtitle A apply to and are
6 included in this chapter except to the extent that they are
7 inconsistent with this chapter:

8 (1) Chapter 401, other than Section 401.012 defining
9 "employee";

10 (2) Chapter 402;

11 (3) Chapter 403, other than Sections 403.001-403.005;

12 (4) Chapters 404 and [~~Chapter~~] 405;

13 (5) Sections 406.031-406.033; Subchapter D, Chapter
14 406; Sections 406.092 and 406.093;

15 (6) Chapter 408, other than Sections 408.001(b) and
16 (c);

17 (7) Chapters 408A, 408C, 408D, and 408E, except as
18 provided by Subsection (a-1);

19 (8) Chapters 409 and 410;

20 (9) [~~8~~] Subchapters A and G, Chapter 411, other than
21 Sections 411.003 and 411.004; and

22 (10) [~~9~~] Chapters 412-417.

23 (a-1) Each institution shall provide workers' compensation
24 medical benefits for the institution's employees through a provider
25 network under Chapter 408B if the commissioner of insurance
26 determines that provision of those benefits through a network is
27 available to the employees and practical for the state. To that

1 extent, Chapter 408B applies to this chapter.

2 (b) For the purpose of applying the provisions listed by
3 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "employer"
4 means "the institution."

5 SECTION 2.053. Section 502.041, Labor Code, is amended to
6 read as follows:

7 Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An
8 employee may elect to use accrued sick leave before receiving
9 income benefits. If an employee elects to use sick leave, the
10 employee is not entitled to income benefits under this chapter
11 until the employee has exhausted the employee's accrued sick leave
12 [~~institution may provide that an injured employee may remain on the~~
13 ~~payroll until the employee's earned annual and sick leave is~~
14 ~~exhausted].~~

15 (b) An employee may elect to use all or any number of weeks
16 of accrued annual leave after the employee's accrued sick leave is
17 exhausted. If an employee elects to use annual leave, the employee
18 is not entitled to income benefits under this chapter until the
19 elected number of weeks of leave have been exhausted. [~~While an~~
20 ~~injured employee remains on the payroll under Subsection (a),~~
21 ~~medical services remain available to the employee, but workers'~~
22 ~~compensation benefits do not accrue or become payable to the~~
23 ~~injured employee.]~~

24 SECTION 2.054. The heading to Section 502.063, Labor Code,
25 is amended to read as follows:

26 Sec. 502.063. CERTIFIED COPIES OF [~~COMMISSION~~] DOCUMENTS.

27 SECTION 2.055. Sections 502.063(a) and (c), Labor Code, are

1 amended to read as follows:

2 (a) The department [~~commission~~] shall furnish a certified
3 copy of an order, award, decision, or paper on file in the
4 department's [~~commission's~~] office to a person entitled to the copy
5 on written request and payment of the fee for the copy. The fee is
6 the same as that charged for similar services by the secretary of
7 state's office.

8 (c) A fee or salary may not be paid to a department [~~member~~
9 ~~or~~] employee [~~of the commission~~] for making a copy under Subsection
10 (a) that exceeds the fee charged for the copy.

11 SECTION 2.056. Section 502.065, Labor Code, is amended to
12 read as follows:

13 Sec. 502.065. REPORTS OF INJURIES. (a) In addition to a
14 report of an injury filed with the department [~~commission~~] under
15 Section 409.005(a), an institution shall file a supplemental report
16 that contains:

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) The institution shall file the supplemental report on a
24 form prescribed by the commissioner of insurance [~~obtained for that~~
25 ~~purpose~~]:

26 (1) on the termination of incapacity of the injured
27 employee; or

1 (2) if the incapacity extends beyond 60 days.

2 SECTION 2.057. Sections 502.066(a) and (e), Labor Code, are
3 amended to read as follows:

4 (a) The department [~~commission~~] may require an employee who
5 claims to have been injured to submit to an examination by the
6 department [~~commission~~] or a person acting under the department's
7 [~~commission's~~] authority at a reasonable time and place in this
8 state.

9 (e) The institution shall pay the fee set by the department
10 for the services [~~commission~~] of a physician or chiropractor
11 selected by the employee under Subsection (b) or (d).

12 SECTION 2.058. Section 502.067(a), Labor Code, is amended
13 to read as follows:

14 (a) The commissioner of insurance [~~commission~~] may order or
15 direct the institution to reduce or suspend the compensation of an
16 injured employee who:

17 (1) persists in insanitary or injurious practices that
18 tend to imperil or retard the employee's recovery; or

19 (2) refuses to submit to medical, surgical,
20 chiropractic, or other remedial treatment recognized by the state
21 that is reasonably essential to promote the employee's recovery.

22 SECTION 2.059. Section 502.068, Labor Code, is amended to
23 read as follows:

24 Sec. 502.068. POSTPONEMENT OF HEARING. If an injured
25 employee is receiving benefits under this chapter and the
26 institution is providing hospitalization, medical treatment, or
27 chiropractic care to the employee, the department [~~commission~~] may

1 postpone the hearing on the employee's claim. An appeal may not be
2 taken from an [~~a commission~~] order of the commissioner of insurance
3 under this section.

4 SECTION 2.060. Section 502.069, Labor Code, is amended to
5 read as follows:

6 Sec. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT
7 JUDGMENT; OFFENSE. (a) In each case appealed from the department
8 [~~commission~~] to a [~~county or~~] district court:

9 (1) the clerk of the court shall mail to the department
10 [~~commission~~]:

11 (A) not later than the 20th day after the date the
12 case is filed, a notice containing the style, number, and date of
13 filing of the case; and

14 (B) not later than the 20th day after the date the
15 judgment is rendered, a certified copy of the judgment; and

16 (2) the attorney preparing the judgment shall file the
17 original and a copy of the judgment with the clerk.

18 (b) An attorney's failure to comply with Subsection (a)(2)
19 does not excuse the failure of a [~~county or~~] district clerk to
20 comply with Subsection (a)(1)(B).

21 (c) The duties of a [~~county or~~] district clerk under
22 Subsection (a)(1) are part of the clerk's ex officio duties, and the
23 clerk is not entitled to a fee for the services.

24 (d) A [~~county or~~] district clerk who violates this section
25 commits an offense. An offense under this section is a misdemeanor
26 punishable by a fine not to exceed \$250.

27 PART 3. AMENDMENTS TO CHAPTER 503, LABOR CODE

1 SECTION 2.101. Section 503.001(1), Labor Code, is amended
2 to read as follows:

3 (1) "Department" [~~"Commission"~~] means the Texas
4 Department of Insurance [~~Workers' Compensation Commission~~].

5 SECTION 2.102. Section 503.002, Labor Code, is amended by
6 amending Subsections (a) and (b) and adding Subsection (a-1) to
7 read as follows:

8 (a) The following provisions of Subtitle A apply to and are
9 included in this chapter except to the extent that they are
10 inconsistent with this chapter:

11 (1) Chapter 401, other than Section 401.012 defining
12 "employee";

13 (2) Chapter 402;

14 (3) Chapter 403, other than Sections 403.001-403.005;

15 (4) Chapters 404 and [~~Chapter~~] 405;

16 (5) Sections 406.031-406.033; Subchapter D, Chapter
17 406; Sections 406.092 and 406.093;

18 (6) Chapter 408, other than Sections 408.001(b) and
19 (c);

20 (7) Chapters 408A, 408C, 408D, and 408E, except as
21 provided by Subsection (a-1);

22 (8) Chapters 409 and 410;

23 (9) [~~(8)~~] Subchapters A and G, Chapter 411, other than
24 Sections 411.003 and 411.004; and

25 (10) [~~(9)~~] Chapters 412-417.

26 (a-1) Each institution shall provide workers' compensation
27 medical benefits for the institution's employees through a provider

1 network under Chapter 408B if the commissioner of insurance
2 determines that provision of those benefits through a network is
3 available to the employees and practical for the state. To that
4 extent, Chapter 408B applies to this chapter.

5 (b) For the purpose of applying the provisions listed by
6 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "employer"
7 means "the institution."

8 SECTION 2.103. Section 503.041, Labor Code, is amended to
9 read as follows:

10 Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An
11 employee may elect to use accrued sick leave before receiving
12 income benefits. If an employee elects to use sick leave, the
13 employee is not entitled to income benefits under this chapter
14 until the employee has exhausted the employee's accrued sick leave.
15 [~~An institution may provide that an injured employee may remain on~~
16 ~~the payroll until the employee's earned annual and sick leave is~~
17 ~~exhausted.]~~

18 (b) An employee may elect to use all or any number of weeks
19 of accrued annual leave after the employee's accrued sick leave is
20 exhausted. If an employee elects to use annual leave, the employee
21 is not entitled to income benefits under this chapter until the
22 elected number of weeks of leave have been exhausted. [~~While an~~
23 ~~injured employee remains on the payroll under Subsection (a), the~~
24 ~~employee is entitled to medical benefits but income benefits do not~~
25 ~~accrue.]~~

26 SECTION 2.104. The heading to Section 503.063, Labor Code,
27 is amended to read as follows:

1 Sec. 503.063. CERTIFIED COPIES OF [~~COMMISSION~~] DOCUMENTS.

2 SECTION 2.105. Sections 503.063(a) and (c), Labor Code, are
3 amended to read as follows:

4 (a) The department [~~commission~~] shall furnish a certified
5 copy of an order, award, decision, or paper on file in the
6 department's [~~commission's~~] office to a person entitled to the copy
7 on written request and payment of the fee for the copy. The fee is
8 the same as that charged for similar services by the secretary of
9 state's office.

10 (c) A fee or salary may not be paid to a department [~~member~~
11 ~~or~~] employee [~~of the commission~~] for making a copy under Subsection
12 (a) that exceeds the fee charged for the copy.

13 SECTION 2.106. Section 503.065, Labor Code, is amended to
14 read as follows:

15 Sec. 503.065. REPORTS OF INJURIES. (a) In addition to a
16 report of an injury filed with the department [~~commission~~] under
17 Section 409.005(a), an institution shall file a supplemental report
18 that contains:

19 (1) the name, age, sex, and occupation of the injured
20 employee;

21 (2) the character of work in which the employee was
22 engaged at the time of the injury;

23 (3) the place, date, and hour of the injury; and

24 (4) the nature and cause of the injury.

25 (b) The institution shall file the supplemental report on a
26 form prescribed by the commissioner of insurance [~~obtained for that~~
27 ~~purpose~~]:

1 (1) on the termination of incapacity of the injured
2 employee; or

3 (2) if the incapacity extends beyond 60 days.

4 SECTION 2.107. Sections 503.066(a) and (e), Labor Code, are
5 amended to read as follows:

6 (a) The department [~~commission~~] may require an employee who
7 claims to have been injured to submit to an examination by the
8 department [~~commission~~] or a person acting under the department's
9 [~~commission's~~] authority at a reasonable time and place in this
10 state.

11 (e) The institution shall pay the fee, as set by the
12 department [~~commission~~], for the services of a physician selected
13 by the employee under Subsection (b) or (d).

14 SECTION 2.108. Section 503.067(a), Labor Code, is amended
15 to read as follows:

16 (a) The commissioner of insurance [~~commission~~] may order or
17 direct the institution to reduce or suspend the compensation of an
18 injured employee who:

19 (1) persists in insanitary or injurious practices that
20 tend to imperil or retard the employee's recovery; or

21 (2) refuses to submit to medical, surgical, or other
22 remedial treatment recognized by the state that is reasonably
23 essential to promote the employee's recovery.

24 SECTION 2.109. Section 503.068, Labor Code, is amended to
25 read as follows:

26 Sec. 503.068. POSTPONEMENT OF HEARING. If an injured
27 employee is receiving benefits under this chapter and the

1 institution is providing hospitalization or medical treatment to
2 the employee, the department [~~commission~~] may postpone the hearing
3 on the employee's claim. An appeal may not be taken from an [~~a~~
4 ~~commission~~] order of the commissioner of insurance under this
5 section.

6 SECTION 2.110. Section 503.069, Labor Code, is amended to
7 read as follows:

8 Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT
9 JUDGMENT; OFFENSE. (a) In each case appealed from the department
10 [~~commission~~] to a [~~county or~~] district court:

11 (1) the clerk of the court shall mail to the department
12 [~~commission~~]:

13 (A) not later than the 20th day after the date the
14 case is filed, a notice containing the style, number, and date of
15 filing of the case; and

16 (B) not later than the 20th day after the date the
17 judgment is rendered, a certified copy of the judgment; and

18 (2) the attorney preparing the judgment shall file the
19 original and a copy of the judgment with the clerk.

20 (b) An attorney's failure to comply with Subsection (a)(2)
21 does not excuse the failure of a [~~county or~~] district clerk to
22 comply with Subsection (a)(1)(B).

23 (c) The duties of a [~~county or~~] district clerk under
24 Subsection (a)(1) are part of the clerk's ex officio duties, and the
25 clerk is not entitled to a fee for the services.

26 (d) A [~~county or~~] district clerk who violates this section
27 commits an offense. An offense under this section is a misdemeanor

1 punishable by a fine not to exceed \$250.

2 SECTION 2.111. Section 503.070(a), Labor Code, is amended
3 to read as follows:

4 (a) A party who does not consent to abide by the final
5 decision of the department [~~commission~~] shall file notice with the
6 department [~~commission~~] as required by Section 410.253 and bring
7 suit in the county in which the injury occurred to set aside the
8 final decision of the department [~~commission~~].

9 PART 4. AMENDMENTS TO CHAPTER 504, LABOR CODE

10 SECTION 2.151. Section 504.001, Labor Code, is amended by
11 amending Subdivision (1) and adding Subdivision (4) to read as
12 follows:

13 (1) "Department" [~~"Commission"~~] means the Texas
14 Department of Insurance [~~Workers' Compensation Commission~~].

15 (4) "Pool" means two or more political subdivisions
16 that collectively self-insure under an interlocal contract entered
17 into under Chapter 791, Government Code.

18 SECTION 2.152. Section 504.002, Labor Code, is amended by
19 amending Subsections (a) and (b) and adding Subsection (a-1) to
20 read as follows:

21 (a) The following provisions of Subtitles A and B apply to
22 and are included in this chapter except to the extent that they are
23 inconsistent with this chapter:

24 (1) Chapter 401, other than Section 401.011(18)
25 defining "employer" and Section 401.012 defining "employee";

26 (2) Chapter 402;

27 (3) Chapter 403, other than Sections 403.001-403.005;

1 (4) Sections 406.006-406.009 and Subchapters B and
2 D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035,
3 406.091, and 406.096;

4 (5) Chapter 408, other than Sections 408.001(b) and
5 (c);

6 (6) Chapters 408A, 408C, 408D, and 408E, except as
7 provided by Subsection (a-1);

8 (7) Chapters 409-412 [417]; [and]

9 (8) Chapter 413, except as provided by Section
10 504.011;

11 (9) Chapters 414-417; and

12 (10) [~~7~~] Chapter 451.

13 (a-1) Chapter 408B applies to this chapter as provided by
14 Section 504.011.

15 (b) For the purpose of applying the provisions listed by
16 Subsections [Subsection] (a) and (a-1) to this chapter, "employer"
17 means "political subdivision."

18 SECTION 2.153. Section 504.011, Labor Code, is amended to
19 read as follows:

20 Sec. 504.011. METHOD OF PROVIDING COVERAGE. (a) A
21 political subdivision shall provide [~~extend~~] workers' compensation
22 benefits to its employees by:

23 (1) becoming a self-insurer;

24 (2) providing insurance under a workers' compensation
25 insurance policy; or

26 (3) entering into an interlocal agreement with other
27 political subdivisions providing for self-insurance.

1 (b) A political subdivision shall provide workers'
2 compensation medical benefits for the political subdivision's
3 employees through a provider network under Chapter 408B if the
4 governing body of the political subdivision determines that
5 provision of those benefits through a network is available to the
6 employees and practical for the political subdivision. A political
7 subdivision may enter into interlocal agreements and other
8 agreements with other political subdivisions to establish or
9 contract with provider networks under this section.

10 (c) If a political subdivision or a pool determines that a
11 provider network under Chapter 408B is not available or practical
12 for the political subdivision or pool, the political subdivision or
13 pool may provide medical benefits to its injured employees or to the
14 injured employees of the members of the pool:

15 (1) in the manner provided by Chapter 408, other than
16 Sections 408.001(b) and (c) and Section 408.002, and by Subchapters
17 B and C, Chapter 413; or

18 (2) by directly contracting with health care providers
19 or by contracting through a health benefits pool established under
20 Chapter 172, Local Government Code.

21 (d) The provisions of Chapters 408 and 408A relating to
22 medical benefits, Chapter 408B, and Chapter 413, do not apply if the
23 political subdivision or pool provides medical benefits under
24 Subsection (c)(2).

25 (e) If the political subdivision or pool provides medical
26 benefits under Subsection (c)(2), the following standards apply:

27 (1) the political subdivision or pool must ensure that

1 workers' compensation medical benefits are reasonably available to
2 all injured employees of the political subdivision within a
3 designated service area;

4 (2) the political subdivision or pool must ensure that
5 all necessary health care services are provided in a manner that
6 will ensure the availability of and accessibility to adequate
7 numbers of health care providers, specialty care providers, and
8 health care facilities;

9 (3) the political subdivision or pool must have an
10 internal review process for resolving complaints relating to the
11 manner of providing medical benefits, including an appeal to the
12 governing body or its designee and review by an independent review
13 organization;

14 (4) the political subdivision or pool must establish
15 reasonable procedures for transition of injured employees to
16 contracting health care providers and for continuity of treatment,
17 including:

18 (A) notice of impending termination of a
19 provider's contract; and

20 (B) maintenance of a current list of contracting
21 providers;

22 (5) the political subdivision or pool shall provide
23 for emergency care, as defined by Section 401.011, if:

24 (A) an injured employee is not able to reasonably
25 reach a contracting provider; and

26 (B) the care is for:

27 (i) medical screening or another evaluation

1 that is necessary to determine whether a medical emergency
2 condition exists;

3 (ii) necessary emergency care services
4 including treatment and stabilization; and

5 (iii) services originating in a hospital
6 emergency facility following treatment or stabilization of an
7 emergency medical condition;

8 (6) prospective or concurrent review of the medical
9 necessity and appropriateness of health care services must comply
10 with Article 21.58A, Insurance Code; and

11 (7) the political subdivision or pool shall continue
12 to report data to the appropriate agency as required by Subtitle A.

13 (f) This section may not be construed as waiving sovereign
14 immunity or creating a new cause of action.

15 SECTION 2.154. Sections 504.016(d) and (e), Labor Code, are
16 amended to read as follows:

17 (d) A joint insurance fund created under this section may
18 provide to the department [~~Texas Department of Insurance~~] loss data
19 in the same manner as an insurance company writing workers'
20 compensation insurance. The department [~~State Board of Insurance~~]
21 shall use the loss data as provided by Subchapter D, Chapter 5,
22 Insurance Code.

23 (e) Except as provided by Subsection (d), a joint insurance
24 fund created under this section is not considered insurance for
25 purposes of any state statute and is not subject to [~~State Board of~~
26 ~~Insurance~~] rules adopted by the commissioner of insurance.

27 SECTION 2.155. Section 504.017, Labor Code, is amended to

1 read as follows:

2 Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION
3 ENTITIES. An entity is eligible to participate under Section
4 504.016 or Chapter 791 or 2259, Government Code, if the entity
5 provides transportation subsidized in whole or in part by and
6 provided to clients of:

7 (1) the [~~Texas~~] Department of [~~on~~] Aging and
8 Disability Services;

9 (2) the Department of Assistive and Rehabilitative
10 Services [~~Texas Commission on Alcohol and Drug Abuse~~];

11 (3) the Department of State Health Services [~~Texas~~
12 ~~Commission for the Blind~~];

13 (4) the Texas Cancer Council;

14 (5) the Department of Family and Protective Services
15 [~~Texas Commission for the Deaf and Hard of Hearing~~];

16 (6) the Texas Department of Housing and Community
17 Affairs;

18 (7) the Health and Human Services Commission [~~Texas~~
19 ~~Department of Human Services~~]; or

20 (8) [~~the Texas Department of Mental Health and Mental~~
21 ~~Retardation~~;

22 [~~(9) the Texas Rehabilitation Commission~~; or

23 [~~(10)~~] the Texas Youth Commission.

24 SECTION 2.156. The heading to Section 504.018, Labor Code,
25 is amended to read as follows:

26 Sec. 504.018. NOTICE TO DEPARTMENT [~~COMMISSION~~] AND
27 EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

1 SECTION 2.157. Section 504.018(a), Labor Code, is amended
2 to read as follows:

3 (a) A political subdivision shall notify the department
4 [~~commission~~] of the method by which the [~~its~~] employees of the
5 political subdivision will receive benefits, the approximate
6 number of employees covered, and the estimated amount of payroll.

7 PART 5. AMENDMENTS TO CHAPTER 505, LABOR CODE

8 SECTION 2.201. Section 505.002, Labor Code, is amended by
9 amending Subsections (a) and (b) and adding Subsection (a-1) to
10 read as follows:

11 (a) The following provisions of Subtitles A and B apply to
12 and are included in this chapter except to the extent that they are
13 inconsistent with this chapter:

14 (1) Chapter 401, other than Section 401.012, defining
15 "employee";

16 (2) Chapter 402;

17 (3) Chapter 403, other than Sections 403.001-403.005;

18 (4) Chapters 404 and [~~Chapter~~] 405;

19 (5) Subchapters B, D, E, and H, Chapter 406, other than
20 Sections 406.071-406.073, and 406.075;

21 (6) Chapter 408, other than Sections 408.001(b) and
22 (c);

23 (7) Chapters 408A, 408C, 408D, and 408E, except as
24 provided by Subsection (a-1);

25 (8) Chapters 409 and 410;

26 (9) [~~(8)~~] Subchapters A and G, Chapter 411, other than
27 Sections 411.003 and 411.004;

1 (10) [~~(9)~~] Chapters 412-417; and

2 (11) [~~(10)~~] Chapter 451.

3 (a-1) The department shall provide workers' compensation
4 medical benefits for the department's employees through a provider
5 network under Chapter 408B if the commissioner of insurance
6 determines that provision of those benefits through a network is
7 available to the employees and practical for the state. To that
8 extent, Chapter 408B applies to this chapter.

9 (b) For the purpose of applying the provisions listed by
10 Subsections [~~Subsection~~] (a) and (a-1) to this chapter, "employer"
11 means "department."

12 SECTION 2.202. The heading to Section 505.053, Labor Code,
13 is amended to read as follows:

14 Sec. 505.053. CERTIFIED COPIES OF [~~COMMISSION~~] DOCUMENTS.

15 SECTION 2.203. Sections 505.053(a) and (c), Labor Code, are
16 amended to read as follows:

17 (a) The Texas Department of Insurance [~~commission~~] shall
18 furnish a certified copy of an order, award, decision, or paper on
19 file in that department's [~~the commission's~~] office to a person
20 entitled to the copy on written request and payment of the fee for
21 the copy. The fee shall be the same as that charged for similar
22 services by the secretary of state's office.

23 (c) A fee or salary may not be paid to an employee of the
24 Texas Department of Insurance [~~a person in the commission~~] for
25 making the copies that exceeds the fee charged for the copies.

26 SECTION 2.204. Section 505.054(d), Labor Code, is amended
27 to read as follows:

1 (d) A physician designated under Subsection (c) who
2 conducts an examination shall file with the department a complete
3 transcript of the examination on a form furnished by the
4 department. The department shall maintain all reports under this
5 subsection as part of the department's permanent records. A report
6 under this subsection is admissible in evidence before the Texas
7 Department of Insurance [~~commission~~] and in an appeal from a final
8 award or ruling of the Texas Department of Insurance [~~commission~~]
9 in which the individual named in the examination is a claimant for
10 compensation under this chapter. A report under this subsection
11 that is admitted is prima facie evidence of the facts stated in the
12 report.

13 SECTION 2.205. Section 505.055, Labor Code, is amended to
14 read as follows:

15 Sec. 505.055. REPORTS OF INJURIES. (a) A report of an
16 injury filed with the Texas Department of Insurance [~~commission~~]
17 under Section 409.005, in addition to the information required by
18 [~~commission~~] rules of the commissioner of insurance, must contain:

19 (1) the name, age, sex, and occupation of the injured
20 employee;

21 (2) the character of work in which the employee was
22 engaged at the time of the injury;

23 (3) the place, date, and hour of the injury; and

24 (4) the nature and cause of the injury.

25 (b) In addition to subsequent reports of an injury filed
26 with the Texas Department of Insurance [~~commission~~] under Section
27 409.005(i) [~~409.005(e)~~], the department shall file a subsequent

1 report on a form prescribed by the commissioner of insurance
2 [~~obtained for that purpose~~]:

3 (1) on the termination of incapacity of the injured
4 employee; or

5 (2) if the incapacity extends beyond 60 days.

6 SECTION 2.206. Sections 505.056(a) and (d), Labor Code, are
7 amended to read as follows:

8 (a) The Texas Department of Insurance [~~commission~~] may
9 require an employee who claims to have been injured to submit to an
10 examination by that department [~~the commission~~] or a person acting
11 under the [~~commission's~~] authority of the commissioner of insurance
12 at a reasonable time and place in this state.

13 (d) On the request of an employee or the department, the
14 employee or the department is entitled to have a physician selected
15 by the employee or the department present to participate in an
16 examination under Subsection (a) or Section 408A.002 [~~408.004~~].
17 The employee is entitled to have a physician selected by the
18 employee present to participate in an examination under Subsection
19 (c). The department shall pay the fee set by the Texas Department
20 of Insurance for the services [~~commission~~] of a physician selected
21 by the employee under this subsection.

22 SECTION 2.207. Section 505.057(a), Labor Code, is amended
23 to read as follows:

24 (a) The Texas Department of Insurance [~~commission~~] may
25 order or direct the department to reduce or suspend the
26 compensation of an injured employee if the employee:

27 (1) persists in insanitary or injurious practices that

1 tend to imperil or retard the employee's recovery; or

2 (2) refuses to submit to medical, surgical, or other
3 remedial treatment recognized by the state that is reasonably
4 essential to promote the employee's recovery.

5 SECTION 2.208. Section 505.058, Labor Code, is amended to
6 read as follows:

7 Sec. 505.058. POSTPONEMENT OF HEARING. If an injured
8 employee is receiving benefits under this chapter and the
9 department is providing hospitalization or medical treatment to the
10 employee, the Texas Department of Insurance [~~commission~~] may
11 postpone the hearing of the employee's claim. An appeal may not be
12 taken from an [~~a commission~~] order of the commissioner of insurance
13 under this section.

14 SECTION 2.209. Section 505.059, Labor Code, is amended to
15 read as follows:

16 Sec. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT
17 JUDGMENT; OFFENSE. (a) In each case appealed from the Texas
18 Department of Insurance [~~commission~~] to a [~~county or~~] district
19 court:

20 (1) the clerk of the court shall mail to the Texas
21 Department of Insurance [~~commission~~]:

22 (A) not later than the 20th day after the date the
23 case is filed, a notice containing the style, number, and date of
24 filing of the case; and

25 (B) not later than the 20th day after the date the
26 judgment is rendered, a certified copy of the judgment; and

27 (2) the attorney preparing the judgment shall file the

1 original and a copy of the judgment with the clerk.

2 (b) An attorney's failure to comply with Subsection (a)(2)
3 does not excuse the failure of a [~~county or~~] district clerk to
4 comply with Subsection (a)(1)(B).

5 (c) The duties of a [~~county or~~] district clerk under
6 Subsection (a)(1) are part of the clerk's ex officio duties, and the
7 clerk is not entitled to a fee for the services.

8 (d) A [~~county or~~] district clerk who violates this section
9 commits an offense. An offense under this section is a misdemeanor
10 punishable by a fine not to exceed \$250.

11 SECTION 2.210. Section 505.001(a)(1), Labor Code, is
12 repealed.

13 ARTICLE 2A. ALTERNATIVE COMPENSATION PILOT PROGRAM

14 SECTION 2A.001. Title 5, Labor Code, is amended by adding
15 Subtitle D to read as follows:

16 SUBTITLE D. ALTERNATIVE COMPENSATION PROGRAMS

17 CHAPTER 551. PILOT PROGRAM ON USE OF INSURANCE POLICY

18 TO PROVIDE MEDICAL AND INCOME BENEFITS

19 SUBCHAPTER A. GENERAL PROVISIONS

20 Sec. 551.001. DEFINITIONS. In this chapter:

21 (1) "Alternative benefit plan" means a plan of health
22 care benefits and income benefits offered under this chapter by an
23 employer to an employee who sustains an injury in the course and
24 scope of employment.

25 (2) "Commissioner" means the commissioner of
26 insurance.

27 (3) "Course and scope of employment" has the meaning

1 assigned by Section 401.011(12).

2 (4) "Department" means the Texas Department of
3 Insurance.

4 (5) "Employer" means a person who employs one or more
5 employees.

6 (6) "Employee" means a person in the service of
7 another under any contract of hire, whether express or implied or
8 oral or written. The term includes an employee employed in the
9 usual course and scope of the employer's business who is directed by
10 the employer to perform services temporarily outside the usual
11 course and scope of the employer's business. The term does not
12 include an independent contractor or the employee of an independent
13 contractor.

14 (7) "Group health insurance policy" means a group,
15 blanket, or franchise insurance policy that provides benefits for
16 health care services resulting from accident, illness, or disease.
17 For purposes of this chapter, the term includes a group hospital
18 service contract or a group subscriber contract.

19 (8) "Program" means the alternative benefit plan pilot
20 program established under this chapter.

21 (9) "Qualified insurance policy" means a group health
22 insurance policy approved by the commissioner as provided by
23 Section 551.052.

24 Sec. 551.002. EXPIRATION. The program is abolished and
25 this chapter expires effective September 1, 2009.

26 [Sections 551.003-551.050 reserved for expansion]

1 SUBCHAPTER B. GENERAL POWERS AND DUTIES OF

2 COMMISSIONER AND DEPARTMENT

3 Sec. 551.051. EFFECT OF EMPLOYER PARTICIPATION. An
4 employer who elects to participate in the program under this
5 chapter is considered a subscribing employer to the workers'
6 compensation system of this state for all purposes under Subtitle
7 A.

8 Sec. 551.052. IMPLEMENTATION OF PROGRAM; POLICY APPROVAL
9 PROCESS. (a) The commissioner shall develop and operate a pilot
10 program under which an employer may offer an alternative benefit
11 plan to the employer's employees through a qualified insurance
12 policy that:

13 (1) provides health care benefits to the employees,
14 including benefits for an injury sustained by an employee in the
15 course and scope of the employee's employment; and

16 (2) qualifies as provision of medical benefits for
17 purposes of workers' compensation insurance coverage as described
18 by Subtitle A.

19 (b) Before an employer may use a qualified insurance policy
20 for employee health care benefits under this chapter, the employer
21 must submit the policy to the department for approval in the manner
22 prescribed by the commissioner, accompanied by any filing fee set
23 by the commissioner by rule.

24 (c) The commissioner by rule shall adopt guidelines for the
25 approval of policies submitted to the department under this
26 section. The guidelines must require that the policy include
27 limits and coverages for health care services, including

1 hospitalization, that are at least equivalent to the limits and
2 coverages applicable to the medical benefits provided to an
3 employee covered under Subtitle A.

4 (d) The commissioner shall review a policy submitted under
5 Subsection (b) not later than the 30th day after the date the policy
6 is submitted to the department. If the commissioner disapproves a
7 policy, the department shall notify the employer who submitted the
8 policy not later than the fifth day after the date on which the
9 policy is disapproved.

10 (e) If the commissioner approves the policy, the department
11 shall notify the employer not later than the 10th day after the date
12 of the final approval. The employer may begin using the policy for
13 benefits under this chapter as of the date of the final approval.

14 Sec. 551.053. COVERAGE FOR INCOME BENEFITS; APPROVAL. (a)
15 If a qualified insurance policy is approved under Section 551.052,
16 the employer may obtain an insurance policy from any insurer
17 authorized to engage in the business of workers' compensation
18 insurance in this state to provide coverage for each employee of the
19 employer, or the legal beneficiary of a deceased employee, against
20 a loss caused by:

21 (1) any loss of wages incurred as a result of an
22 accident, illness, or disease, regardless of whether the accident,
23 illness, or disease is caused by or directly related to the
24 employee's employment; or

25 (2) the death of the employee.

26 (b) The employer must submit the indemnity policy to the
27 department for approval in the manner prescribed for approval of a

1 policy under Section 551.052.

2 (c) The commissioner by rule shall adopt guidelines for the
3 approval of a policy submitted to the department under this
4 section. The guidelines must require that the policy provide
5 coverage for:

6 (1) income benefits in the manner provided by Chapter
7 408D; and

8 (2) death and burial benefits in the manner provided
9 by Chapter 408E.

10 Sec. 551.054. RULEMAKING. The commissioner shall adopt
11 rules as necessary to implement the duties of the department under
12 this chapter.

13 Sec. 551.055. REPORT TO LEGISLATURE. Not later than
14 December 1 of each year, the commissioner shall submit a report to
15 the governor, the lieutenant governor, the speaker of the house of
16 representatives, and the members of the legislature regarding the
17 status and results of the program.

18 [Sections 551.056-551.100 reserved for expansion]

19 SUBCHAPTER C. OPERATION OF PROGRAM

20 Sec. 551.101. EMPLOYER AUTHORIZATION TO OFFER ALTERNATIVE
21 BENEFIT PLAN. (a) Notwithstanding Subtitle A, a subscribing
22 employer who elects to participate in the program may offer an
23 alternative benefit plan to provide benefits to an employee who
24 sustains an injury in the course and scope of the employee's
25 employment. An employer may not offer an alternative benefit plan
26 other than through the program as provided by this chapter.

27 (b) An employer may offer an alternative benefit plan under

1 this chapter only through:

2 (1) health insurance coverage provided through a
3 qualified insurance policy; and

4 (2) indemnity coverage provided through a policy
5 approved by the commissioner.

6 Sec. 551.102. ELIGIBILITY TO PARTICIPATE IN PROGRAM. An
7 employer is only eligible to participate in the program if the
8 employer elected to obtain workers' compensation insurance
9 coverage under Subtitle A on or before January 1, 2005. An employer
10 who did not elect to obtain workers' compensation insurance
11 coverage under Subtitle A on or before January 1, 2005, may not
12 participate in the program.

13 [Sections 551.103-551.150 reserved for expansion]

14 SUBCHAPTER D. PROVISION OF ALTERNATIVE BENEFIT PLAN
15 THROUGH QUALIFIED INSURANCE POLICY AND ENDORSEMENTS

16 Sec. 551.151. RESPONSIBILITIES OF EMPLOYER. (a) An
17 employer who elects to participate in the program shall:

18 (1) pay any coinsurance or deductible otherwise
19 imposed on the insured employee for any compensable work-related
20 injury; and

21 (2) continue the payment of wages to an insured
22 employee until that employee begins to receive income benefits
23 through the indemnity insurance policy under Section 551.053.

24 (b) If an employee receives benefits under an alternative
25 benefit plan, the employer shall maintain a qualified insurance
26 policy and indemnity insurance policy for the benefit of that
27 employee until the benefits to which the employee is entitled have

1 been paid. A qualified insurance policy and indemnity insurance
2 policy required to be maintained under this subsection must provide
3 benefits adequate to pay all benefits to which the employee is
4 entitled.

5 Sec. 551.152. SUBROGATION. (a) This section applies to an
6 action to recover damages for personal injuries or death sustained
7 by an employee in the course and scope of employment against:

8 (1) an employer who has obtained a qualified insurance
9 policy and indemnity insurance policy covering that employee; or

10 (2) a third party.

11 (b) A judgment against an employer shall be reduced to the
12 extent that the employee has been compensated or is entitled to be
13 compensated under the employer's qualified insurance policy or
14 indemnity insurance policy. A judgment reduced under this
15 subsection shall be reinstated to the extent that the qualified
16 insurance policy or indemnity insurance policy is canceled or
17 otherwise fails to fully compensate the employee or a legal
18 beneficiary of the employee to the extent provided by the policy.

19 (c) An insurance carrier that is liable for the payment of
20 benefits to the employee or a legal beneficiary of the employee is
21 subrogated to the rights of the employee or legal beneficiary
22 against a third party.

23 [Sections 551.153-551.200 reserved for expansion]

24 SUBCHAPTER E. EFFECT OF ALTERNATIVE BENEFIT PLAN

25 Sec. 551.201. APPLICATION OF SUBTITLE A. Subtitle A
26 applies to an employer who provides an alternative benefit plan in
27 the manner prescribed by this chapter.

1 Sec. 551.202. CONTRACT REQUIREMENTS. A person who requires
2 an employer, as a prerequisite to entering into a contract with that
3 employer, to present evidence of workers' compensation insurance
4 coverage shall accept instead of that evidence a qualified
5 insurance policy and indemnity insurance policy issued as provided
6 by this chapter from an employer who obtains and maintains in effect
7 a qualified insurance policy and indemnity insurance policy.

8 SECTION 2A.002. (a) The commissioner of insurance shall
9 adopt rules as required by this article not later than January 1,
10 2006.

11 (b) Subchapter E, Chapter 551, Labor Code, as added by this
12 article, takes effect March 1, 2006, and applies only to an
13 alternative benefit plan entered into on or after that date.

14 SECTION 2A.003. Except as provided by Section 2A.002(b) of
15 this article, this article takes effect September 1, 2005.

16 ARTICLE 3. CONFORMING AMENDMENTS

17 PART 1. CONFORMING AMENDMENTS--GOVERNMENT CODE

18 SECTION 3.001. Section 23.101(a), Government Code, is
19 amended to read as follows:

20 (a) The trial courts of this state shall regularly and
21 frequently set hearings and trials of pending matters, giving
22 preference to hearings and trials of the following:

23 (1) temporary injunctions;

24 (2) criminal actions, with the following actions given
25 preference over other criminal actions:

26 (A) criminal actions against defendants who are
27 detained in jail pending trial;

1 (B) criminal actions involving a charge that a
2 person committed an act of family violence, as defined by Section
3 71.004, Family Code; and

4 (C) an offense under:

5 (i) Section 21.11, Penal Code;

6 (ii) Chapter 22, Penal Code, if the victim
7 of the alleged offense is younger than 17 years of age;

8 (iii) Section 25.02, Penal Code, if the
9 victim of the alleged offense is younger than 17 years of age; or

10 (iv) Section 25.06, Penal Code;

11 (3) election contests and suits under the Election
12 Code;

13 (4) orders for the protection of the family under
14 Subtitle B, Title 4, Family Code;

15 (5) appeals of final rulings and decisions of the
16 Texas Department of Insurance regarding workers' compensation
17 claims [~~Workers' Compensation Commission~~] and claims under the
18 Federal Employers' Liability Act and the Jones Act; and

19 (6) appeals of final orders of the commissioner of the
20 General Land Office under Section 51.3021, Natural Resources Code.

21 SECTION 3.002. Section 25.0003(c), Government Code, is
22 amended to read as follows:

23 (c) In addition to other jurisdiction provided by law, a
24 statutory county court exercising civil jurisdiction concurrent
25 with the constitutional jurisdiction of the county court has
26 concurrent jurisdiction with the district court in[+]

27 [~~1~~] civil cases in which the matter in controversy

1 exceeds \$500 but does not exceed \$100,000, excluding interest,
2 statutory or punitive damages and penalties, and attorney's fees
3 and costs, as alleged on the face of the petition~~, and~~

4 ~~[(2) appeals of final rulings and decisions of the~~
5 ~~Texas Workers' Compensation Commission, regardless of the amount in~~
6 ~~controversy].~~

7 SECTION 3.003. Section 25.0222(a), Government Code, is
8 amended to read as follows:

9 (a) In addition to the jurisdiction provided by Section
10 25.0003 and other law, a statutory county court in Brazoria County
11 has concurrent jurisdiction with the district court in:

12 (1) civil cases in which the matter in controversy
13 exceeds \$500 but does not exceed \$100,000, excluding interest,
14 statutory damages and penalties, and attorney's fees and costs, as
15 alleged on the face of the petition; and

16 ~~(2) [appeals of final rulings and decisions of the~~
17 ~~Texas Workers' Compensation Commission, regardless of the amount in~~
18 ~~controversy; and~~

19 ~~[(3)]~~ family law cases and proceedings and juvenile
20 jurisdiction under Section 23.001.

21 SECTION 3.004. Section 25.0862(i), Government Code, is
22 amended to read as follows:

23 (i) The clerk of the statutory county courts and statutory
24 probate court shall keep a separate docket for each court. The
25 clerk shall tax the official court reporter's fees as costs in civil
26 actions in the same manner as the fee is taxed in civil cases in the
27 district courts. The district clerk serves as clerk of the county

1 courts in a cause of action arising under the Family Code [~~and an~~
2 ~~appeal of a final ruling or decision of the Texas Workers'~~
3 ~~Compensation Commission~~], and the county clerk serves as clerk of
4 the court in all other cases.

5 SECTION 3.005. Section 25.2222(b), Government Code, as
6 amended by Chapter 22, Acts of the 72nd Legislature, Regular
7 Session, 1991, is amended to read as follows:

8 (b) A county court at law has concurrent jurisdiction with
9 the district court in:

10 (1) civil cases in which the matter in controversy
11 exceeds \$500 and does not exceed \$100,000, excluding mandatory
12 damages and penalties, attorney's fees, interest, and costs;

13 (2) nonjury family law cases and proceedings;

14 (3) [~~final rulings and decisions of the Texas Workers'~~
15 ~~Compensation Commission, regardless of the amount in controversy,~~

16 ~~(4)] eminent domain proceedings, both statutory and
17 inverse, regardless of the amount in controversy;~~

18 (4) [~~(5)] suits to decide the issue of title to real or
19 personal property;~~

20 (5) [~~(6)] suits to recover damages for slander or
21 defamation of character;~~

22 (6) [~~(7)] suits for the enforcement of a lien on real
23 property;~~

24 (7) [~~(8)] suits for the forfeiture of a corporate
25 charter;~~

26 (8) [~~(9)] suits for the trial of the right to property
27 valued at \$200 or more that has been levied on under a writ of~~

1 execution, sequestration, or attachment; and

2 (9) [~~(10)~~] suits for the recovery of real property.

3 SECTION 3.006. Section 551.044(b), Government Code, is
4 amended to read as follows:

5 (b) Subsection (a) does not apply to:

6 (1) the Texas Department of Insurance, as regards
7 proceedings and activities of the department or commissioner of
8 insurance under Title 5, Labor Code [~~Workers' Compensation~~
9 ~~Commission~~]; or

10 (2) the governing board of an institution of higher
11 education.

12 SECTION 3.007. Section 2001.003(7), Government Code, is
13 amended to read as follows:

14 (7) "State agency" means a state officer, board,
15 commission, or department with statewide jurisdiction that makes
16 rules or determines contested cases. The term includes the State
17 Office of Administrative Hearings for the purpose of determining
18 contested cases. The term does not include:

19 (A) a state agency wholly financed by federal
20 money;

21 (B) the legislature;

22 (C) the courts;

23 (D) the Texas Department of Insurance, as regards
24 proceedings and activities of the department or commissioner of
25 insurance under Title 5, Labor Code [~~Workers' Compensation~~
26 ~~Commission~~]; or

27 (E) an institution of higher education.

1 SECTION 3.008. Section 2002.001(3), Government Code, is
2 amended to read as follows:

3 (3) "State agency" means a state officer, board,
4 commission, or department with statewide jurisdiction that makes
5 rules or determines contested cases other than:

6 (A) an agency wholly financed by federal money;

7 (B) the legislature;

8 (C) the courts;

9 (D) the Texas Department of Insurance, as regards
10 proceedings and activities of the department or commissioner of
11 insurance under Title 5, Labor Code [~~Workers' Compensation~~
12 ~~Commission~~]; or

13 (E) an institution of higher education.

14 SECTION 3.009. Section 2003.001(4), Government Code, is
15 amended to read as follows:

16 (4) "State agency" means:

17 (A) a state board, commission, department, or
18 other agency that is subject to Chapter 2001; and

19 (B) to the extent provided by Title 5, Labor
20 Code, the Texas Department of Insurance, as regards proceedings and
21 activities of the department or commissioner of insurance under
22 Title 5, Labor Code [~~Workers' Compensation Commission~~].

23 SECTION 3.010. Section 2003.021(c), Government Code, is
24 amended to read as follows:

25 (c) The office shall conduct hearings under Title 5, Labor
26 Code, as provided by that title. In conducting hearings under Title
27 5, Labor Code, the office shall consider the applicable substantive

1 rules and policies of the Texas Department of Insurance regarding
 2 workers' compensation claims [~~Workers' Compensation Commission~~].
 3 The office and the Texas Department of Insurance [~~Workers'~~
 4 ~~Compensation Commission~~] shall enter into an interagency contract
 5 under Chapter 771 to pay the costs incurred by the office in
 6 implementing this subsection.

7 SECTION 3.011. Section 2054.021(c), Government Code, is
 8 amended to read as follows:

9 (c) Two groups each composed of three ex officio members
 10 serve on the board on a rotating basis. The ex officio members
 11 serve as nonvoting members of the board. Only one group serves at a
 12 time. The first group is composed of the commissioner of insurance
 13 [~~executive director of the Texas Workers' Compensation~~
 14 ~~Commission~~], the executive commissioner of the Health and Human
 15 Services Commission [~~health and human services~~], and the executive
 16 director of the Texas Department of Transportation. Members of the
 17 first group serve for two-year terms that begin February 1 of every
 18 other odd-numbered year and that expire on February 1 of the next
 19 odd-numbered year. The second group is composed of the
 20 commissioner of education, the executive director of the Texas
 21 Department of Criminal Justice, and the executive director of the
 22 Parks and Wildlife Department. Members of the second group serve
 23 for two-year terms that begin February 1 of the odd-numbered years
 24 in which the terms of members of the first group expire and that
 25 expire on February 1 of the next odd-numbered year.

26 PART 2. CONFORMING AMENDMENTS--INSURANCE CODE

27 SECTION 3.051. Section 31.002, Insurance Code, is amended

1 to read as follows:

2 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other
3 duties required of the Texas Department of Insurance, the
4 department shall:

5 (1) regulate the business of insurance in this state;
6 ~~and~~

7 (2) administer the workers' compensation system of
8 this state as provided by Title 5, Labor Code; and

9 (3) ensure that this code and other laws regarding
10 insurance and insurance companies are executed.

11 SECTION 3.052. Section 31.004, Insurance Code, is amended
12 to read as follows:

13 Sec. 31.004. SUNSET PROVISION. (a) The Texas Department of
14 Insurance is subject to Chapter 325, Government Code (Texas Sunset
15 Act). Unless continued in existence as provided by that chapter,
16 the department is abolished September 1, 2007.

17 (b) In conducting its review of the Texas Department of
18 Insurance as required by Subsection (a), the Sunset Advisory
19 Commission shall limit its review to the operations of that
20 department under the Insurance Code. Unless continued as provided
21 by Chapter 325, Government Code, the duties of the Texas Department
22 of Insurance under Title 5, Labor Code, expire September 1, 2019, or
23 another date designated by the legislature.

24 SECTION 3.053. Section 31.021(b), Insurance Code, is
25 amended to read as follows:

26 (b) The commissioner has the powers and duties vested in the
27 department by:

1 (1) this code and other insurance laws of this state;
2 and

3 (2) Title 5, Labor Code, and other workers'
4 compensation insurance laws of this state.

5 SECTION 3.054. Section 33.007(a), Insurance Code, is
6 amended to read as follows:

7 (a) A person who served as the commissioner, the general
8 counsel to the commissioner, or the public insurance counsel, or as
9 an employee of the State Office of Administrative Hearings who was
10 involved in hearing cases under this code, [or] another insurance
11 law of this state, or Title 5, Labor Code, commits an offense if the
12 person represents another person in a matter before the department
13 or receives compensation for services performed on behalf of
14 another person regarding a matter pending before the department
15 during the one-year period after the date the person ceased to be
16 the commissioner, the general counsel to the commissioner, the
17 public insurance counsel, or an employee of the State Office of
18 Administrative Hearings.

19 SECTION 3.055. Section 36.104, Insurance Code, is amended
20 to read as follows:

21 Sec. 36.104. INFORMAL DISPOSITION OF CERTAIN CONTESTED
22 CASES [~~CASE~~]. (a) The commissioner may, on written agreement or
23 stipulation of each party and any intervenor, informally dispose of
24 a contested case in accordance with Section 2001.056, Government
25 Code, notwithstanding any provision of this code that requires a
26 hearing before the commissioner.

27 (b) This section does not apply to a contested case under

1 Title 5, Labor Code.

2 SECTION 3.056. Subchapter D, Chapter 36, Insurance Code, is
3 amended by adding Section 36.2015 to read as follows:

4 Sec. 36.2015. ACTIONS UNDER TITLE 5, LABOR CODE.
5 Notwithstanding Section 36.201, a decision, order, rule, form, or
6 administrative or other ruling of the commissioner under Title 5,
7 Labor Code, is subject to judicial review as provided by Title 5,
8 Labor Code.

9 SECTION 3.057. Section 40.003(c), Insurance Code, is
10 amended to read as follows:

11 (c) This chapter does not apply to a proceeding conducted
12 under Chapter 201 [~~Article 1.04D~~] or to a proceeding relating to:

13 (1) approving or reviewing rates or rating manuals
14 filed by an individual company, unless the rates or manuals are
15 contested;

16 (2) adopting a rule;

17 (3) adopting or approving a policy form or policy form
18 endorsement;

19 (4) adopting or approving a plan of operation for an
20 organization subject to the jurisdiction of the department; [~~or~~]

21 (5) adopting a presumptive rate under Chapter 1153; or

22 (6) a workers' compensation claim brought under Title
23 5, Labor Code [~~Article 3.53~~].

24 SECTION 3.058. Section 81.001(c), Insurance Code, is
25 amended to read as follows:

26 (c) This section does not apply to conduct that is:

27 (1) a violation that is ongoing at the time the

1 department seeks to impose the sanction, penalty, or fine; [~~or~~]

2 (2) a violation of Subchapter A, Chapter 544 [~~Article~~
3 ~~21.21-6 of this code, as added by Chapter 415, Acts of the 74th~~
4 ~~Legislature, Regular Session, 1995~~], or Section 541.057 [~~4(7)(a),~~
5 ~~Article 21.21 of this code~~], as those provisions relate to
6 discrimination on the basis of race or color, regardless of the time
7 the conduct occurs; or

8 (3) a violation of Title 5, Labor Code.

9 SECTION 3.059. Section 84.002, Insurance Code, is amended
10 by adding Subsection (c) to read as follows:

11 (c) This chapter applies to a monetary penalty the
12 department or commissioner imposes under Title 5, Labor Code, only
13 as provided by that title.

14 SECTION 3.060. Section 843.101, Insurance Code, is amended
15 by adding Subsection (e) to read as follows:

16 (e) A health maintenance organization may serve as a
17 certified provider network, as defined by Section 401.011, Labor
18 Code, in accordance with Chapter 408B, Labor Code.

19 SECTION 3.061. Section 1301.056(b), Insurance Code, as
20 effective April 1, 2005, is amended to read as follows:

21 (b) A party to a preferred provider contract, including a
22 contract with a preferred provider organization, may not sell,
23 lease, or otherwise transfer information regarding the payment or
24 reimbursement terms of the contract without the express authority
25 of and prior adequate notification to the other contracting
26 parties. This subsection does not affect the authority of the
27 commissioner [~~or the Texas Workers' Compensation Commission~~] under

1 this code or Title 5, Labor Code, to request and obtain information.

2 SECTION 3.062. Subchapter D, Chapter 5, Insurance Code, is
3 amended by adding Articles 5.55A and 5.55D to read as follows:

4 Art. 5.55A. WORKERS' COMPENSATION COVERAGE WRITTEN BY GROUP
5 HEALTH INSURERS AUTHORIZED. (a) A person authorized by the
6 department to engage in the business of insurance in this state
7 under a certificate of authority that includes authorization to
8 write group health insurance may also write workers' compensation
9 insurance in this state.

10 (b) A person writing workers' compensation insurance under
11 this article is, with respect to that insurance, subject to each
12 duty imposed on a workers' compensation insurer under this code and
13 under Title 5, Labor Code, including provisions relating to the
14 payment of premium and maintenance taxes and maintenance of
15 reserves, and is a member insurer under Article 21.28-C of this
16 code.

17 (c) Notwithstanding Subsection (b) of this article, the
18 commissioner by rule may provide that a person writing workers'
19 compensation insurance under this article may instead comply with
20 specified regulatory provisions otherwise applicable to the
21 person, such as provisions relating to authorized investments and
22 transactions for a life, health, and accident insurance company, if
23 the commissioner finds that those provisions provide at least as
24 much protection to insureds, insurers, creditors, and the public as
25 the comparable provisions otherwise applicable to a workers'
26 compensation insurer.

27 Art. 5.55D. DISCOUNTS FOR CERTAIN PROGRAMS

1 Sec. 1. DEFINITION. In this article, "insurer" means a
2 person authorized and admitted by the department to engage in the
3 business of insurance in this state under a certificate of
4 authority that includes authorization to write workers'
5 compensation insurance. The term includes the Texas Mutual
6 Insurance Company.

7 Sec. 2. REQUIRED FILING OF DISCOUNT INFORMATION. (a) Each
8 insurer shall file with the department in the manner prescribed by
9 the commissioner by rule information regarding any premium
10 discounts offered by the insurer to an employer who is a
11 policyholder under a policy of workers' compensation insurance for
12 the use by the employer of:

13 (1) return-to-work programs for injured employees;

14 and

15 (2) employee safety programs.

16 (b) The insurer shall include in the filing the percentage
17 amount discounted from the premium for each program described under
18 Subsection (a) of this section.

19 Sec. 3. DEPARTMENT ANALYSIS; RULES. The department shall
20 analyze the information contained in filings made under this
21 article and shall determine whether the mandatory use of the
22 workers' compensation insurance premium discounts would improve
23 the operation of the workers' compensation system of this state. If
24 the department does so determine, the commissioner by rule may
25 establish a mandatory premium discount program under this article.

26 SECTION 3.063. Article 5.58(b), Insurance Code, is amended
27 to read as follows:

1 (b) Standards and Procedures. For purposes of Subsection
2 (c) of this article, the commissioner shall establish standards and
3 procedures for categorizing insurance and medical benefits
4 reported on each workers' compensation claim. The commissioner
5 shall ~~[consult with the Texas Workers' Compensation Commission and~~
6 ~~the Research and Oversight Council on Workers' Compensation in~~
7 ~~establishing these standards to]~~ ensure that the data collection
8 methodology will also yield data necessary for research and medical
9 cost containment efforts.

10 SECTION 3.064. Article 5.60A, Insurance Code, is amended to
11 read as follows:

12 Art. 5.60A. RATE HEARINGS. (a) The commissioner ~~[Board]~~
13 shall conduct a public ~~[an annual]~~ hearing not later than December
14 1, 2008, to review rates to be charged for workers' compensation
15 insurance written in this state ~~[under this subchapter]~~. A public
16 hearing under this article is not a contested case as defined by
17 Section 2001.003, Government Code. ~~[The hearing shall be conducted~~
18 ~~under the contested case provisions of the Administrative Procedure~~
19 ~~and Texas Register Act (Article 6252-13a, Vernon's Texas Civil~~
20 ~~Statutes).]~~

21 (b) Not later than the 30th day before the date of the public
22 hearing required under Subsection (a) of this article, each insurer
23 subject to this subchapter shall file the insurer's rates,
24 supporting information, and supplementary rating information with
25 the commissioner ~~[The Board shall conduct a hearing six months~~
26 ~~prior to the annual hearing to revise rates to establish the~~
27 ~~methodology and sources of data to be used in reviewing rates. The~~

1 ~~hearing shall be conducted under the Administrative Procedure and~~
2 ~~Texas Register Act (Article 6252-13a, Vernon's Texas Civil~~
3 ~~Statutes)].~~

4 (c) The commissioner shall review the information submitted
5 under Subsection (b) of this section to determine the positive or
6 negative impact of the enactment of House Bill 7, Acts of the 79th
7 Legislature, Regular Session, 2005, on workers' compensation rates
8 and premiums. The commissioner may consider other factors,
9 including relativities under Article 5.60 of this code, in
10 determining whether a change in rates has impacted the premium
11 charged to policyholders [~~To assist the Board in making rates and~~
12 ~~to provide additional information on certain trends that may affect~~
13 ~~the costs of workers' compensation insurance, the executive~~
14 ~~director of the Texas Workers' Compensation Commission or a person~~
15 ~~designated by that officer shall testify at any rate hearing~~
16 ~~conducted under this article. The testimony shall relate to trends~~
17 ~~in:~~

18 ~~[(1) claims resolution of workers' compensation cases,~~
19 ~~and~~

20 ~~[(2) cost components in workers' compensation cases].~~

21 (d) The commissioner shall implement rules as necessary to
22 mandate rate reductions or to modify the use of individual risk
23 variations if the commissioner determines that the rates or
24 premiums charged by insurers are excessive, as that term is defined
25 in this code [~~The testimony of the executive director or designee~~
26 ~~is subject to cross-examination by the Board and any party to the~~
27 ~~hearing)].~~

1 (e) The commissioner may adopt rules as necessary to mandate
2 rate or premium reductions by insurers for the use of
3 cost-containment strategies that result in savings to the workers'
4 compensation system, including use of a provider network health
5 care delivery system, as described by Chapter 408B, Labor Code [~~The~~
6 ~~Board shall consider changes in the workers' compensation laws when~~
7 ~~setting workers' compensation insurance rates~~].

8 (f) Not later than January 1, 2009, the commissioner shall
9 submit a report to the governor, the lieutenant governor, the
10 speaker of the house of representatives, and the members of the 81st
11 Legislature regarding the information collected from the insurer
12 filings under this article. The commissioner shall recommend
13 proposed legislation that reflects the findings of the report and
14 how that information may be used to lower the rates filed by
15 insurers and the premium charged to policyholders.

16 (g) The commissioner shall schedule a public hearing to
17 review rates and premiums to be charged for workers' compensation
18 insurance each biennium under this article.

19 (h) This section expires September 1, 2019.

20 SECTION 3.065. Article 5.65A(a), Insurance Code, is amended
21 to read as follows:

22 (a) A company or association that writes workers'
23 compensation insurance in this state shall notify each policyholder
24 of any claim that is filed against the policy. Thereafter a company
25 shall notify the policyholder of any proposal to settle a claim or,
26 on receipt of a written request from the policyholder, of any
27 administrative or judicial proceeding relating to the resolution of

1 a claim[, ~~including a benefit review conference conducted by the~~
2 ~~Texas Workers' Compensation Commission~~].

3 SECTION 3.066. Sections 8(a), (e), (g)-(i), (k), and (l),
4 Article 5.76-3, Insurance Code, are amended to read as follows:

5 (a) The company may make and enforce requirements for the
6 prevention of injuries to employees of its policyholders or
7 applicants for insurance under this article. For this purpose,
8 representatives of the company[, ~~representatives of the~~
9 ~~commission,~~] or representatives of the department on reasonable
10 notice shall be granted free access to the premises of each
11 policyholder or applicant during regular working hours.

12 (e) The policyholder shall obtain the safety consultation
13 not later than the 30th day after the effective date of the policy
14 and shall obtain the safety consultation from the department
15 [~~division of workers' health and safety of the commission~~], the
16 company, or another professional source approved for that purpose
17 by the department [~~division of workers' health and safety~~]. The
18 safety consultant shall file a written report with the department
19 [~~commission~~] and the policyholder setting out any hazardous
20 conditions or practices identified by the safety consultation.

21 (g) The department [~~division of workers' health and safety~~
22 ~~of the commission~~] may investigate accidents occurring at the work
23 sites of a policyholder for whom a plan has been developed under
24 Subsection (f) of this section, and [~~the division~~] may otherwise
25 monitor the implementation of the accident prevention plan as it
26 finds necessary.

27 (h) In accordance with rules adopted by the commissioner

1 ~~[commission]~~, not earlier than 90 days or later than six months
2 after the development of an accident prevention plan under
3 Subsection (f) of this section, the department ~~[division of~~
4 ~~workers' health and safety of the commission]~~ shall conduct a
5 follow-up inspection of the policyholder's premises. The
6 department ~~[commission]~~ may require the participation of the safety
7 consultant who performed the initial consultation and developed the
8 safety plan. If the commissioner ~~[division]~~ determines that the
9 policyholder has complied with the terms of the accident prevention
10 plan or has implemented other accepted corrective measures, the
11 commissioner ~~[division]~~ shall so certify. If a policyholder fails
12 or refuses to implement the accident prevention plan or other
13 suitable hazard abatement measures, the policyholder may elect to
14 cancel coverage not later than the 30th day after the date of the
15 ~~[division]~~ determination. If the policyholder does not elect to
16 cancel, the company may cancel the coverage or the commissioner
17 ~~[commission]~~ may assess an administrative penalty not to exceed
18 \$5,000. Each day of noncompliance constitutes a separate violation.
19 Penalties collected under this section shall be deposited in the
20 general revenue fund and may be appropriated ~~[to the credit of the~~
21 ~~commission or reappropriated]~~ to the department ~~[commission]~~ to
22 offset the costs of implementing and administering this section.

23 (i) In assessing an administrative penalty, the
24 commissioner ~~[commission]~~ may consider any matter that justice may
25 require and shall consider:

26 (1) the seriousness of the violation, including the
27 nature, circumstances, consequences, extent, and gravity of the

1 prohibited act;

2 (2) the history and extent of previous administrative
3 violations;

4 (3) the demonstrated good faith of the violator,
5 including actions taken to rectify the consequences of the
6 prohibited act;

7 (4) any economic benefit resulting from the prohibited
8 act; and

9 (5) the penalty necessary to deter future violations.

10 (k) The department [~~commission~~] shall charge the
11 policyholder for the reasonable cost of services provided under
12 Subsections (e), (f), and (h) of this section. The fees for those
13 services shall be set at a cost-reimbursement level including a
14 reasonable allocation of the department's [~~commission's~~]
15 administrative costs.

16 (l) The department [~~compliance and practices division of~~
17 ~~the commission~~] shall enforce compliance with this section through
18 the administrative violation proceedings under Chapter 415, Labor
19 Code.

20 SECTION 3.067. Sections 9(a), (b), and (e), Article 5.76-3,
21 Insurance Code, are amended to read as follows:

22 (a) The company shall develop and implement a program to
23 identify and investigate fraud and violations of this code relating
24 to workers' compensation insurance by an applicant, policyholder,
25 claimant, agent, insurer, health care provider, or other person.
26 The company shall cooperate with the department [~~commission~~] to
27 compile and maintain information necessary to detect practices or

1 patterns of conduct that violate this code relating to the workers'
2 compensation insurance or Subtitle A, Title 5, Labor Code (the
3 Texas Workers' 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 department [~~commission~~] to avoid duplication of
9 efforts; and

10 (2) refer cases that are not otherwise resolved by the
11 company to the department [~~commission~~] to:

12 (A) perform any further investigations that are
13 necessary under the circumstances;

14 (B) conduct administrative violation
15 proceedings; and

16 (C) assess and collect penalties and
17 restitution.

18 (e) Penalties collected under Subsection (b) of this
19 section shall be deposited in the Texas Department of Insurance
20 operating account [~~general revenue fund to the credit of the~~
21 ~~commission~~] and shall be appropriated to the department
22 [~~commission~~] to offset the costs of this program.

23 SECTION 3.068. Section 10(a), Article 5.76-3, Insurance
24 Code, is amended to read as follows:

25 (a) Information maintained in the investigation files of
26 the company is confidential and may not be disclosed except:

27 (1) in a criminal proceeding;

1 (2) in a hearing conducted by the department
2 [~~commission~~];

3 (3) on a judicial determination of good cause; or

4 (4) to a governmental agency, political subdivision,
5 or regulatory body if the disclosure is necessary or proper for the
6 enforcement of the laws of this or another state or of the United
7 States.

8 SECTION 3.069. Section 12(e), Article 5.76-3, Insurance
9 Code, is amended to read as follows:

10 (e) The company shall file annual statements with the
11 department [~~and the commission~~] in the same manner as required of
12 other workers' compensation insurance carriers, and the
13 commissioner shall include a report on the company's condition in
14 the commissioner's annual report under Section 32.021 of this code.

15 SECTION 3.070. Section 16(b), Article 5.76-3, Insurance
16 Code, is amended to read as follows:

17 (b) The company shall file with the department [~~and the~~
18 ~~commission~~] all reports required of other workers' compensation
19 insurers.

20 SECTION 3.071. Sections 10(a) and (c), Article 5.76-5,
21 Insurance Code, are amended to read as follows:

22 (a) A maintenance tax surcharge is assessed against:

23 (1) each insurance company writing workers'
24 compensation insurance in this state;

25 (2) each certified self-insurer under Chapter 407,
26 Labor Code [~~as provided in Chapter D, Article 3, Texas Workers'~~
27 ~~Compensation Act (Article 8308-3.51 et seq., Vernon's Texas Civil~~

1 ~~Statutes~~]; and

2 (3) the fund.

3 (c) On determining [~~receiving notice of~~] the rate of
4 assessment [~~set by the Texas Workers' Compensation Commission~~]
5 under Section 403.003, Labor Code [~~2.23, Texas Workers'~~
6 ~~Compensation Act (Article 8308-2.23, Vernon's Texas Civil~~
7 ~~Statutes)~~], the commissioner [~~State Board of Insurance~~] shall
8 increase the tax rate to a rate sufficient to pay all debt service
9 on the bonds subject to the maximum tax rate established by Section
10 403.002, Labor Code [~~2.22, Texas Workers' Compensation Act (Article~~
11 ~~8308-2.22, Vernon's Texas Civil Statutes)~~]. If the resulting tax
12 rate is insufficient to pay all costs for the department under this
13 article [~~Texas Workers' Compensation Commission~~] and all debt
14 service on the bonds, the commissioner [~~State Board of Insurance~~]
15 may assess an additional surcharge not to exceed one percent of
16 gross workers' compensation premiums to cover all debt service on
17 the bonds. In this code, the maintenance tax surcharge includes the
18 additional maintenance tax assessed under this subsection and the
19 surcharge assessed under this subsection to pay all debt service of
20 the bonds.

21 SECTION 3.072. Section 3A, Article 21.28, Insurance Code,
22 is amended to read as follows:

23 Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION [~~OF~~
24 ~~TEXAS WORKERS' COMPENSATION COMMISSION~~]. (a) The liquidator shall
25 notify the department [~~Texas Workers' Compensation Commission~~]
26 immediately upon a finding of insolvency or impairment upon any
27 insurance company which has in force any workers' compensation

1 coverage in Texas.

2 (b) The department [~~Texas Workers' Compensation Commission~~]
3 shall, upon said notice, submit to the liquidator a list of active
4 cases pending before the department [~~Texas Workers' Compensation~~
5 ~~Commission~~] in which there has been an acceptance of liability by
6 the carrier, where it appears that no bona fide dispute exists and
7 where payments were commenced prior to the finding of insolvency or
8 impairment and where future or past indemnity or medical payments
9 are due.

10 (c) Notwithstanding the provisions of Section 3 of this
11 Article, the liquidator is authorized to commence or continue the
12 payment of claims based upon the list submitted in Subsection (b)
13 above.

14 (d) In order to avoid undue delay in the payment of covered
15 workers' compensation claims, the liquidator shall contract with
16 [~~the Texas Workers' Compensation Pool or~~] any [~~other~~] qualified
17 organization for claims adjusting. Files and information delivered
18 by the department [~~Texas Workers' Compensation Commission~~] to the
19 liquidator may be delivered to the [~~Texas Workers' Compensation~~
20 ~~Pool or any~~] organization with which the liquidator has contracted
21 for claims adjusting services.

22 [~~(e) The Texas Workers' Compensation Commission shall report~~
23 ~~to the State Board of Insurance any occasion when a workers'~~
24 ~~compensation insurer has committed acts that may indicate insurer~~
25 ~~financial impairment, delinquency or insolvency.]~~

26 SECTION 3.073. Section 8(d), Article 21.28-C, Insurance
27 Code, is amended to read as follows:

1 (d) The association shall investigate and adjust,
2 compromise, settle, and pay covered claims to the extent of the
3 association's obligation and deny all other claims. The
4 association may review settlements, releases, and judgments to
5 which the impaired insurer or its insureds were parties to
6 determine the extent to which those settlements, releases, and
7 judgments may be properly contested. Any judgment taken before the
8 designation of impairment in which an insured under a liability
9 policy or the insurer failed to exhaust all appeals, any judgment
10 taken by default or consent against an insured or the impaired
11 insurer, and any settlement, release, or judgment entered into by
12 the insured or the impaired insurer, is not binding on the
13 association, and may not be considered as evidence of liability or
14 of damages in connection with any claim brought against the
15 association or any other party under this Act. Notwithstanding any
16 other provision of this Act, a covered claim shall not include any
17 claim filed with the guaranty association on a date that is later
18 than eighteen months after the date of the order of liquidation,
19 except that a claim for workers' compensation benefits is governed
20 by Title 5, Labor Code, and the applicable rules of the commissioner
21 [~~Texas Workers' Compensation Commission~~].

22 SECTION 3.074. Section 4(1), Article 21.58A, Insurance
23 Code, is amended to read as follows:

24 (1) Unless precluded or modified by contract, a utilization
25 review agent shall reimburse health care providers for the
26 reasonable costs for providing medical information in writing,
27 including copying and transmitting any requested patient records or

1 other documents. A health care provider's charges for providing
2 medical information to a utilization review agent shall not exceed
3 the cost of copying set by rule of the commissioner [~~Texas Workers'~~
4 ~~Compensation Commission~~] for records regarding a workers'
5 compensation claim and may not include any costs that are otherwise
6 recouped as a part of the charge for health care.

7 SECTION 3.075. Section 14(c), Article 21.58A, Insurance
8 Code, is amended to read as follows:

9 (c) Except as otherwise provided by this subsection, this
10 article applies to utilization review of health care services
11 provided to persons eligible for workers' compensation medical
12 benefits under Title 5, Labor Code. The commissioner shall
13 regulate in the manner provided by this article a person who
14 performs review of a medical benefit provided under Title 5
15 [~~Chapter 408~~], Labor Code. [~~This subsection does not affect the~~
16 ~~authority of the Texas Workers' Compensation Commission to exercise~~
17 ~~the powers granted to that commission under Title 5, Labor Code.~~]
18 In the event of a conflict between this article and Title 5, Labor
19 Code, Title 5, Labor Code, prevails. The commissioner [~~and the~~
20 ~~Texas Workers' Compensation Commission~~] may adopt rules [~~and enter~~
21 ~~into memoranda of understanding~~] as necessary to implement this
22 subsection.

23 SECTION 3.076. The following laws are repealed:

- 24 (1) Section 31.006, Insurance Code; and
25 (2) Section 1(2), Article 5.76-3, Insurance Code.

26 PART 3. CONFORMING AMENDMENTS--OTHER CODES

27 SECTION 3.101. 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 3.102. Section 91.003(b), Labor Code, is amended to
19 read as follows:

20 (b) In particular, the Texas Workforce Commission, the
21 Texas Department of Insurance, [~~the Texas Workers' Compensation~~
22 ~~Commission~~], and the attorney general's office shall assist in the
23 implementation of this chapter and shall provide information to the
24 department on request.

25 SECTION 3.103. Section 160.006(a), Occupations Code, is
26 amended to read as follows:

27 (a) A record, report, or other information received and

1 maintained by the board under this subchapter or Subchapter B,
2 including any material received or developed by the board during an
3 investigation or hearing and the identity of, and reports made by, a
4 physician performing or supervising compliance monitoring for the
5 board, is confidential. The board may disclose this information
6 only:

7 (1) in a disciplinary hearing before the board or in a
8 subsequent trial or appeal of a board action or order;

9 (2) to the physician licensing or disciplinary
10 authority of another jurisdiction, to a local, state, or national
11 professional medical society or association, or to a medical peer
12 review committee located inside or outside this state that is
13 concerned with granting, limiting, or denying a physician hospital
14 privileges;

15 (3) under a court order;

16 (4) to qualified personnel for bona fide research or
17 educational purposes, if personally identifiable information
18 relating to any physician or other individual is first deleted; or

19 (5) to the Texas Department of Insurance [~~Workers'~~
20 ~~Compensation Commission~~] as provided by Section 413.0514, Labor
21 Code.

22 ARTICLE 4. TRANSITION; EFFECTIVE DATE

23 SECTION 4.001. ABOLITION OF TEXAS WORKERS' COMPENSATION
24 COMMISSION; GENERAL TRANSFER OF AUTHORITY TO TEXAS DEPARTMENT OF
25 INSURANCE. (a) The Texas Workers' Compensation Commission is
26 abolished March 1, 2006.

27 (b) Except as otherwise provided by this article, all

1 powers, duties, obligations, rights, contracts, funds, unspent
2 appropriations, records, real or personal property, and personnel
3 of the Texas Workers' Compensation Commission shall be transferred
4 to the Texas Department of Insurance not later than February 28,
5 2006.

6 SECTION 4.002. OFFICE OF INJURED EMPLOYEE COUNSEL. (a) The
7 office of injured employee counsel created under Chapter 404, Labor
8 Code, as added by this Act, is established September 1, 2005.

9 (b) The governor shall appoint the injured employee public
10 counsel of the office of injured employee counsel not later than
11 October 1, 2005.

12 (c) The injured employee public counsel of the office of
13 injured employee counsel shall adopt initial rules for the office
14 under Section 404.006, Labor Code, as added by this Act, not later
15 than March 1, 2006.

16 (d) The Texas Department of Insurance shall provide, in
17 Austin and in each regional office operated by the department to
18 administer Subtitle A, Title 5, Labor Code, as amended by this Act,
19 suitable office space, personnel services, computer support, and
20 other administrative support to the office of injured employee
21 counsel as required by Chapter 404, Labor Code, as added by this
22 Act. The department shall provide the facilities and support not
23 later than October 1, 2005.

24 (e) All powers, duties, obligations, rights, contracts,
25 funds, unspent appropriations, records, real or personal property,
26 and personnel of the Texas Workers' Compensation Commission
27 relating to the operation of the workers' compensation ombudsman

1 program under Subchapter C, Chapter 409, Labor Code, as that
2 subchapter existed before amendment by this Act, shall be
3 transferred to the office of injured employee counsel not later
4 than March 1, 2006. An ombudsman transferred to the office of
5 injured employee counsel under this section shall begin providing
6 services under Chapter 404, Labor Code, as added by this Act, not
7 later than March 1, 2006.

8 SECTION 4.003. INITIAL REPORT OF WORKERS' COMPENSATION
9 RESEARCH AND EVALUATION GROUP. The workers' compensation research
10 and evaluation group shall submit the initial report required under
11 Section 405.0025, Labor Code, as added by this Act, not later than
12 September 1, 2008.

13 SECTION 4.004. CONTINUATION OF CERTAIN POLICIES,
14 PROCEDURES, OR DECISIONS. (a) A policy, procedure, or decision of
15 the Texas Workers' Compensation Commission relating to a duty of
16 that commission that is transferred to the authority of the Texas
17 Department of Insurance under Subtitle A, Title 5, Labor Code, as
18 amended by this Act, continues in effect as a policy, procedure, or
19 decision of the commissioner of insurance until superseded by an
20 act of the commissioner of insurance.

21 (b) A policy, procedure, or decision of the Texas Workers'
22 Compensation Commission relating to a duty of that commission that
23 is transferred to the authority of the office of injured employee
24 counsel established under Chapter 404, Labor Code, as added by this
25 Act, continues in effect as a policy, procedure, or decision of the
26 office of injured employee counsel until superseded by an act of the
27 injured employee public counsel.

1 (c) Except as otherwise provided by this article, the
2 validity of a plan or procedure adopted, contract or acquisition
3 made, proceeding begun, grant or loan awarded, obligation incurred,
4 right accrued, or other action taken by or in connection with the
5 authority of the Texas Workers' Compensation Commission before that
6 commission is abolished under Section 4.001 of this article is not
7 affected by the abolishment.

8 SECTION 4.005. RULES. (a) The commissioner of insurance
9 shall adopt rules relating to the transfer of the programs assigned
10 to the Texas Department of Insurance under Subtitle A, Title 5,
11 Labor Code, as amended by this Act, not later than December 1, 2005.

12 (b) The injured employee public counsel of the office of
13 injured employee counsel established under Chapter 404, Labor Code,
14 as added by this Act, shall adopt rules relating to the transfer of
15 the programs assigned to the office of injured employee counsel
16 under Subtitle A, Title 5, Labor Code, as amended by this Act, not
17 later than March 1, 2006.

18 (c) A rule of the Texas Workers' Compensation Commission
19 relating to a duty of that commission that is transferred to the
20 authority of the Texas Department of Insurance under Subtitle A,
21 Title 5, Labor Code, as amended by this Act, continues in effect as
22 a rule of the commissioner of insurance until the earlier of:

23 (1) December 1, 2006; or

24 (2) the date on which the rule is superseded by a rule
25 adopted by the commissioner of insurance.

26 (d) A rule of the Texas Workers' Compensation Commission
27 relating to a duty of that commission that is transferred to the

1 authority of the office of injured employee counsel under Subtitle
2 A, Title 5, Labor Code, as amended by this Act, continues in effect
3 as a rule of the injured employee public counsel of the office of
4 injured employee counsel until the earlier of:

5 (1) December 1, 2006; or

6 (2) the date on which the rule is superseded by a rule
7 adopted by the injured employee public counsel.

8 SECTION 4.006. EFFECT ON ACTION OR PROCEEDING. (a) Except
9 as otherwise provided by this section, any action or proceeding
10 before the Texas Workers' Compensation Commission or to which the
11 commission is a party is transferred without change in status to the
12 Texas Department of Insurance.

13 (b) Benefit review conferences, as established under
14 Subchapter B, Chapter 410, Labor Code, as that subchapter existed
15 before amendment by this Act, are abolished February 28, 2006. A
16 benefit review officer conducting a benefit review conference that
17 is in progress on February 28, 2006, shall terminate the conference
18 and file with the Texas Department of Insurance the written
19 agreement required under Section 410.034, Labor Code, as that
20 section existed before repeal by this Act, not later than April 1,
21 2006. A claimant regarding workers' compensation benefits whose
22 claim is not heard by a benefit review officer under Subchapter B,
23 Chapter 410, Labor Code, as that subchapter existed before
24 amendment by this Act, on or before February 27, 2006, is entitled
25 to a contested case hearing or arbitration on the claim without
26 compliance with the informal dispute resolution procedures
27 established under Chapter 410, Labor Code, as amended by this Act.

1 If the claimant elects to proceed to a contested case hearing, the
2 claimant may elect to participate in a prehearing conference under
3 Section 410.151, Labor Code, as amended by this Act, or may proceed
4 directly to a contested case hearing. This subsection expires
5 April 30, 2006.

6 (c) The workers' compensation appeals panels established
7 under Subchapter E, Chapter 410, Labor Code, as that subchapter
8 existed before repeal by this Act, are abolished April 1, 2006, or
9 on an earlier date specified by the commissioner of insurance. An
10 appeals panel may not accept a new appeal of the decision of a
11 hearing officer under Chapter 410, Labor Code, as that chapter
12 existed before amendment by this Act, on or after February 28, 2006.
13 A party to a dispute regarding the decision of a hearing officer
14 that is filed with the Texas Workers' Compensation Commission or
15 the Texas Department of Insurance on or after February 28, 2006, may
16 seek judicial review under Chapter 410, Labor Code, as amended by
17 this Act.

18 SECTION 4.007. APPEAL. Section 410.252(e), Labor Code, as
19 added by this Act, and Sections 25.0003, 25.0222, and 25.0862,
20 Government Code, as amended by this Act, apply only to an appeal
21 filed on or after the effective date of this Act. An appeal filed
22 before the effective date of this Act is governed by the law in
23 effect on the date the appeal was filed, and the former law is
24 continued in effect for that purpose.

25 SECTION 4.008. STATE OFFICE OF ADMINISTRATIVE HEARINGS
26 REVIEW. (a) This section applies to a hearing conducted by the
27 State Office of Administrative Hearings under Section 413.031(k),

1 Labor Code, as that subsection existed prior to repeal by this Act.

2 (b) The State Office of Administrative Hearings shall
3 conclude on or before February 28, 2006, any hearings pending
4 before that office regarding medical disputes that remain
5 unresolved.

6 (c) Effective September 1, 2005, the State Office of
7 Administrative Hearings may not accept for hearing a medical
8 dispute that remains unresolved. A medical dispute that is not
9 pending for a hearing by the State Office of Administrative
10 Hearings on or before February 28, 2006, is subject to Section
11 413.033 and Section 413.035, Labor Code, as added by this Act, and
12 is not subject to a hearing before the State Office of
13 Administrative Hearings.

14 SECTION 4.009. CHANGE IN CRIMINAL PENALTY. (a) The changes
15 in law made by this Act apply only to the punishment for an offense
16 committed on or after the effective date of this Act. For purposes
17 of this section, an offense is committed before the effective date
18 of this Act if any element of the offense occurs before the
19 effective date.

20 (b) An offense committed before the effective date of this
21 Act is governed by the law in effect on the date the offense was
22 committed, and the former law is continued in effect for that
23 purpose.

24 SECTION 4.010. ABOLITION OF HEALTH CARE NETWORK ADVISORY
25 COMMITTEE. (a) The Health Care Network Advisory Committee is
26 abolished on the effective date of this Act.

27 (b) Except as otherwise provided by this article, all

1 powers, duties, obligations, rights, contracts, funds, records,
2 and real or personal property of the Health Care Network Advisory
3 Committee shall be transferred to the Texas Department of Insurance
4 not later than February 28, 2006.

5 SECTION 4.011. REFERENCE IN LAW. A reference in law to the
6 Texas Workers' Compensation Commission means the Texas Department
7 of Insurance or the office of injured employee counsel as
8 consistent with the respective duties of those state governmental
9 entities under the Labor Code, the Insurance Code, and other laws of
10 this state, as amended by this Act.

11 SECTION 4.012. BUDGET EXECUTION AUTHORITY.
12 Notwithstanding Section 317.005(e), Government Code, the
13 Legislative Budget Board may adopt an order under Section 317.005,
14 Government Code, affecting any portion of the total appropriation
15 of the Texas Department of Insurance if necessary to implement the
16 provisions of this Act. This section expires March 31, 2006.

17 SECTION 4.013. EFFECTIVE DATE. Except as otherwise
18 provided by this article, this Act takes effect September 1, 2005.