

1-1 By: Solomons, et al. (Senate Sponsor - Staples) H.B. No. 7  
1-2 (In the Senate - Received from the House April 4, 2005;  
1-3 April 6, 2005, read first time and referred to Committee on State  
1-4 Affairs; May 6, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; May 6, 2005, sent  
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 7 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the continuation and operation of the workers'  
1-11 compensation system of this state, including changing the name of  
1-12 the Texas Workers' Compensation Commission to the Texas Department  
1-13 of Workers' Compensation, the powers and duties of the governing  
1-14 authority of that department, the provision of workers'  
1-15 compensation benefits to injured employees, and the regulation of  
1-16 workers' compensation insurers; providing administrative and  
1-17 criminal penalties.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 ARTICLE 1. ORGANIZATION OF DEPARTMENT

1-20 SECTION 1.001. Subchapter A, Chapter 402, Labor Code, is  
1-21 amended to read as follows:

1-22 SUBCHAPTER A. ORGANIZATION

1-23 Sec. 402.001. DUTIES OF DEPARTMENT. In addition to the  
1-24 other duties required of the Texas Department of Workers'  
1-25 Compensation, the department shall:

1-26 (1) regulate the business of workers' compensation in  
1-27 this state; and

1-28 (2) ensure that this title and other laws regarding  
1-29 workers' compensation are executed.

1-30 Sec. 402.002. COMPOSITION OF DEPARTMENT. The department is  
1-31 composed of the commissioner and other officers and employees as  
1-32 required to efficiently implement:

1-33 (1) this title;

1-34 (2) other workers' compensation laws of this state;

1-35 and

1-36 (3) other laws granting jurisdiction or applicable to  
1-37 the department or the commissioner.

1-38 Sec. 402.003. CHIEF EXECUTIVE. (a) The commissioner is  
1-39 the department's chief executive and administrative officer. The  
1-40 commissioner shall administer and enforce this title, other  
1-41 workers' compensation laws of this state, and other laws granting  
1-42 jurisdiction to or applicable to the department or the  
1-43 commissioner.

1-44 (b) The commissioner has the powers and duties vested in the  
1-45 department by this title and other workers' compensation laws of  
1-46 this state.

1-47 Sec. 402.004. APPOINTMENT; TERM. (a) The governor, with  
1-48 the advice and consent of the senate, shall appoint the  
1-49 commissioner. The commissioner serves a two-year term that expires  
1-50 on February 1 of each odd-numbered year.

1-51 (b) The governor shall appoint the commissioner without  
1-52 regard to the race, color, disability, sex, religion, age, or  
1-53 national origin of the appointee.

1-54 Sec. 402.005. QUALIFICATIONS. The commissioner must:

1-55 (1) be a competent and experienced administrator;

1-56 (2) be well informed and qualified in the field of  
1-57 workers' compensation; and

1-58 (3) have at least five years of experience as an  
1-59 executive in the administration of business or government or as a  
1-60 practicing attorney, physician, or certified public accountant.

1-61 Sec. 402.006. INELIGIBILITY FOR PUBLIC OFFICE. The  
1-62 commissioner is ineligible to be a candidate for a public elective  
1-63 office in this state unless the commissioner has resigned and the

2-1 governor has accepted the resignation.

2-2 Sec. 402.007. COMPENSATION. The commissioner is entitled  
 2-3 to compensation as provided by the General Appropriations Act.  
 2-4 ~~[MEMBERSHIP REQUIREMENTS. (a) The Texas Workers' Compensation~~  
 2-5 ~~Commission is composed of six members appointed by the governor~~  
 2-6 ~~with the advice and consent of the senate.~~

2-7 ~~[(b) Appointments to the commission shall be made without~~  
 2-8 ~~regard to the race, color, disability, sex, religion, age, or~~  
 2-9 ~~national origin of the appointee. Section 401.011(16) does not~~  
 2-10 ~~apply to the use of the term "disability" in this subsection.~~

2-11 ~~[(c) Three members of the commission must be employers of~~  
 2-12 ~~labor and three members of the commission must be wage earners. A~~  
 2-13 ~~person is not eligible for appointment as a member of the commission~~  
 2-14 ~~if the person provides services subject to regulation by the~~  
 2-15 ~~commission or charges fees that are subject to regulation by the~~  
 2-16 ~~commission.~~

2-17 ~~[(d) In making appointments to the commission, the governor~~  
 2-18 ~~shall attempt to reflect the social, geographic, and economic~~  
 2-19 ~~diversity of the state. To ensure balanced representation, the~~  
 2-20 ~~governor may consider:~~

2-21 ~~[(1) the geographic location of a prospective~~  
 2-22 ~~appointee's domicile,~~

2-23 ~~[(2) the prospective appointee's experience as an~~  
 2-24 ~~employer or wage earner,~~

2-25 ~~[(3) the number of employees employed by a prospective~~  
 2-26 ~~member who would represent employers; and~~

2-27 ~~[(4) the type of work performed by a prospective~~  
 2-28 ~~member who would represent wage earners.~~

2-29 ~~[(e) The governor shall consider the factors listed in~~  
 2-30 ~~Subsection (d) in appointing a member to fill a vacancy on the~~  
 2-31 ~~commission.~~

2-32 ~~[(f) In making an appointment to the commission, the~~  
 2-33 ~~governor shall consider recommendations made by groups that~~  
 2-34 ~~represent employers or wage earners.~~

2-35 ~~[Sec. 402.0015. TRAINING PROGRAM FOR COMMISSION MEMBERS.~~  
 2-36 ~~(a) Before a member of the commission may assume the member's~~  
 2-37 ~~duties, the member must complete the training program established~~  
 2-38 ~~under this section.~~

2-39 ~~[(b) A training program established under this section must~~  
 2-40 ~~provide information to the member regarding:~~

2-41 ~~[(1) the enabling legislation that created the~~  
 2-42 ~~commission;~~

2-43 ~~[(2) the programs operated by the commission;~~

2-44 ~~[(3) the role and functions of the commission;~~

2-45 ~~[(4) the rules of the commission, with an emphasis on~~  
 2-46 ~~the rules that relate to disciplinary and investigatory authority;~~

2-47 ~~[(5) the current budget for the commission;~~

2-48 ~~[(6) the results of the most recent formal audit of the~~  
 2-49 ~~commission;~~

2-50 ~~[(7) the requirements of:~~

2-51 ~~[(A) the open meetings law, Chapter 551,~~  
 2-52 ~~Government Code;~~

2-53 ~~[(B) the open records law, Chapter 552,~~  
 2-54 ~~Government Code; and~~

2-55 ~~[(C) the administrative procedure law, Chapter~~  
 2-56 ~~2001, Government Code;~~

2-57 ~~[(8) the requirements of the conflict of interest laws~~  
 2-58 ~~and other laws relating to public officials; and~~

2-59 ~~[(9) any applicable ethics policies adopted by the~~  
 2-60 ~~commission or the Texas Ethics Commission.~~

2-61 ~~[Sec. 402.002. TERMS, VACANCY. (a) Members of the~~  
 2-62 ~~commission hold office for staggered two-year terms, with the terms~~  
 2-63 ~~of three members expiring on February 1 of each year.~~

2-64 ~~[(b) If a vacancy occurs during a term, the governor shall~~  
 2-65 ~~fill the vacancy for the unexpired term. The replacement must be~~  
 2-66 ~~from the group represented by the member being replaced.]~~

2-67 Sec. 402.008 [402.003]. EFFECT OF LOBBYING ACTIVITY. A  
 2-68 person may not serve as commissioner [a member of the commission] or  
 2-69 act as the general counsel to the department [commission] if the

3-1 person is required to register as a lobbyist under Chapter 305,  
 3-2 Government Code, because of the person's activities for  
 3-3 compensation on behalf of a profession that is regulated by or that  
 3-4 has fees regulated by the department [~~commission~~].

3-5 [~~Sec. 402.004. VOTING REQUIREMENTS. (a) The commission~~  
 3-6 ~~may take action only by a majority vote of its membership.~~

3-7 [~~(b) Decisions regarding the employment of an executive~~  
 3-8 ~~director require the affirmative vote of at least two commissioners~~  
 3-9 ~~representing employers and two commissioners representing wage~~  
 3-10 ~~earners.]~~

3-11 Sec. 402.009. GROUNDS FOR REMOVAL. [~~402.005. REMOVAL OF~~  
 3-12 ~~COMMISSION MEMBERS.]~~ (a) It is a ground for removal from office if  
 3-13 the commissioner [~~the commission if a member~~]:

3-14 (1) does not have at the time of appointment the  
 3-15 qualifications required by Section 402.005 [~~for appointment to the~~  
 3-16 ~~commission~~];

3-17 (2) does not maintain during service as commissioner  
 3-18 [~~on the commission~~] the qualifications required by Section 402.005  
 3-19 [~~for appointment to the commission~~];

3-20 (3) violates a prohibition established by Section  
 3-21 402.008 [~~402.003~~] or 402.012; or

3-22 (4) cannot because of illness or incapacity discharge  
 3-23 the commissioner's [~~member's~~] duties for a substantial part of the  
 3-24 commissioner's term [~~for which the member is appointed, or~~

3-25 [~~(5) is absent from more than half of the regularly~~  
 3-26 ~~scheduled commission meetings that the member is eligible to attend~~  
 3-27 ~~during a calendar year].~~

3-28 (b) The validity of an action of the commissioner or the  
 3-29 department [~~commission~~] is not affected by the fact that it is taken  
 3-30 when a ground for removal of the commissioner [~~a commission member~~]  
 3-31 exists.

3-32 [~~(c) If the executive director of the commission knows that~~  
 3-33 ~~a potential ground for removal exists, the executive director shall~~  
 3-34 ~~notify the chairman of the commission of the potential ground. The~~  
 3-35 ~~chairman shall then notify the governor and the attorney general~~  
 3-36 ~~that a potential ground for removal exists. If the potential ground~~  
 3-37 ~~for removal involves the chairman, the executive director shall~~  
 3-38 ~~notify the next highest officer of the commission, who shall notify~~  
 3-39 ~~the governor and the attorney general that a potential ground for~~  
 3-40 ~~removal exists.]~~

3-41 Sec. 402.010 [~~402.006~~]. PROHIBITED GIFTS; ADMINISTRATIVE  
 3-42 VIOLATION. (a) The commissioner [~~A member~~] or an employee of the  
 3-43 department [~~commission~~] may not accept a gift, gratuity, or  
 3-44 entertainment from a person having an interest in a matter or  
 3-45 proceeding pending before the department [~~commission~~].

3-46 (b) A violation of Subsection (a) is an [~~a Class A~~]  
 3-47 administrative violation and constitutes a ground for removal from  
 3-48 office or termination of employment.

3-49 [~~Sec. 402.007. MEETINGS. The commission shall meet at~~  
 3-50 ~~least once in each calendar quarter and may meet at other times at~~  
 3-51 ~~the call of the chairman or as provided by the rules of the~~  
 3-52 ~~commission.~~

3-53 [~~Sec. 402.008. CHAIRMAN. (a) The governor shall designate~~  
 3-54 ~~a member of the commission as the chairman of the commission to~~  
 3-55 ~~serve in that capacity for a two-year term expiring February 1 of~~  
 3-56 ~~each odd-numbered year. The governor shall alternate the~~  
 3-57 ~~chairmanship between the members who are employers and the members~~  
 3-58 ~~who are wage earners.~~

3-59 [~~(b) The chairman may vote on all matters before the~~  
 3-60 ~~commission.~~

3-61 [~~Sec. 402.009. LEAVE OF ABSENCE. (a) An employer may not~~  
 3-62 ~~terminate the employment of an employee who is appointed as a member~~  
 3-63 ~~of the commission because of the exercise by the employee of duties~~  
 3-64 ~~required as a commission member.~~

3-65 [~~(b) A member of the commission is entitled to a leave of~~  
 3-66 ~~absence from employment for the time required to perform commission~~  
 3-67 ~~duties. During the leave of absence, the member may not be~~  
 3-68 ~~subjected to loss of time, vacation time, or other benefits of~~  
 3-69 ~~employment, other than salary.]~~

4-1           Sec. 402.011 [402.010]. CIVIL LIABILITY OF THE  
 4-2 COMMISSIONER [MEMBER]. The commissioner [A member of the  
 4-3 ~~commission~~] is not liable in a civil action for an act performed in  
 4-4 good faith in the execution of duties as commissioner [~~a commission~~  
 4-5 ~~member~~].

4-6           ~~[Sec. 402.011. REIMBURSEMENT. (a) A member of the~~  
 4-7 ~~commission is entitled to reimbursement for actual and necessary~~  
 4-8 ~~expenses incurred in performing functions as a member of the~~  
 4-9 ~~commission. Reimbursement under this subsection may not exceed a~~  
 4-10 ~~limit established in the General Appropriations Act.~~

4-11           ~~[(b) A member is entitled to reimbursement for actual lost~~  
 4-12 ~~wages or use of leave benefits, if any, for:~~

4-13           ~~[(1) attendance at commission meetings and hearings,~~  
 4-14           ~~[(2) preparation for a commission meeting, not to~~  
 4-15 ~~exceed two days in each calendar quarter,~~

4-16           ~~[(3) attendance at a subcommittee meeting, not to~~  
 4-17 ~~exceed one day each month,~~

4-18           ~~[(4) attendance by the chair or vice chair of the~~  
 4-19 ~~commission at a legislative committee meeting if attendance is~~  
 4-20 ~~requested by the committee chair, and~~

4-21           ~~[(5) attendance at a meeting by a member appointed to~~  
 4-22 ~~the Research and Oversight Council on Workers' Compensation or the~~  
 4-23 ~~Texas Certified Self-Insured Guaranty Association.~~

4-24           ~~[(c) Reimbursement under Subsection (b) may not exceed \$100~~  
 4-25 ~~a day and \$5,000 a year.~~

4-26           ~~[(d) A member of the commission is entitled to reimbursement~~  
 4-27 ~~for actual and necessary expenses for attendance at not more than~~  
 4-28 ~~five seminars in a calendar year if:~~

4-29           ~~[(1) the member is invited as a representative of the~~  
 4-30 ~~commission to participate in a program offered at the seminar; and~~

4-31           ~~[(2) the member's participation is approved by the~~  
 4-32 ~~chair of the commission.]~~

4-33           Sec. 402.012. CONFLICT OF INTEREST. (a) An officer,  
 4-34 employee, or paid consultant of a Texas trade association whose  
 4-35 members provide services subject to regulation by the department  
 4-36 [~~commission~~] or provide services whose fees are subject to  
 4-37 regulation by the department [~~commission~~] may not be the  
 4-38 commissioner [~~a member of the commission~~] or an employee of the  
 4-39 department [~~commission~~] who is exempt from the state's position  
 4-40 classification plan or is compensated at or above the amount  
 4-41 prescribed by the General Appropriations Act for step 1, salary  
 4-42 group A17 [17], of the position classification salary schedule.

4-43           (b) On acceptance of appointment as commissioner [~~to the~~  
 4-44 ~~commission~~], a commissioner [~~an appointee~~] who is an officer,  
 4-45 employee, or paid consultant of a Texas trade association described  
 4-46 by Subsection (a) must resign the position or terminate the  
 4-47 contract with the trade association.

4-48           (c) For the purposes of this section, "Texas trade  
 4-49 association" means a nonprofit, cooperative, and voluntarily  
 4-50 joined association of business or professional competitors in this  
 4-51 state designed to assist its members and its industry or profession  
 4-52 in dealing with mutual business or professional problems and in  
 4-53 promoting their common interest. The term does not include a labor  
 4-54 union or an employees' association.

4-55           Sec. 402.0125. PROHIBITION ON EMPLOYMENT OR  
 4-56 REPRESENTATION. (a) The commissioner or an employee of the  
 4-57 department involved in hearing department cases may not:

4-58           (1) be employed by an insurance carrier that was in the  
 4-59 scope of the commissioner's or employee's official responsibility  
 4-60 while the commissioner or employee was associated with the  
 4-61 department; or

4-62           (2) represent a person before the department or a  
 4-63 court in a matter:

4-64           (A) in which the commissioner or employee was  
 4-65 personally involved while associated with the department; or

4-66           (B) that was within the commissioner's or  
 4-67 employee's official responsibility while the commissioner or  
 4-68 employee was associated with the department.

4-69           (b) The prohibition of Subsection (a)(1) applies until the:

5-1 (1) second anniversary of the date the commissioner  
 5-2 ceases to serve as the commissioner; and

5-3 (2) first anniversary of the date the employee's  
 5-4 employment with the department ceases.

5-5 (c) The prohibition of Subsection (a)(2) applies while the  
 5-6 commissioner or employee of the department involved in hearing  
 5-7 insurance cases is associated with the department and at any time  
 5-8 thereafter.

5-9 Sec. 402.013. TRAINING PROGRAM FOR COMMISSIONER. (a) Not  
 5-10 later than the 90th day after the date on which the commissioner  
 5-11 takes office, the commissioner shall complete a training program  
 5-12 that complies with this section.

5-13 (b) The training program must provide the commissioner with  
 5-14 information regarding:

5-15 (1) the legislation that created the department;  
 5-16 (2) the programs operated by the department;  
 5-17 (3) the role and functions of the department;  
 5-18 (4) the rules of the department, with an emphasis on  
 5-19 the rules that relate to disciplinary and investigatory authority;

5-20 (5) the current budget for the department;  
 5-21 (6) the results of the most recent formal audit of the  
 5-22 department;

5-23 (7) the requirements of:  
 5-24 (A) the open meetings law, Chapter 551,  
 5-25 Government Code;  
 5-26 (B) the public information law, Chapter 552,  
 5-27 Government Code;  
 5-28 (C) the administrative procedure law, Chapter  
 5-29 2001, Government Code; and

5-30 (D) other laws relating to public officials,  
 5-31 including conflict-of-interest laws; and

5-32 (8) any applicable ethics policies adopted by the  
 5-33 department or the Texas Ethics Commission.

5-34 Sec. 402.014. GENERAL POWERS AND DUTIES OF COMMISSIONER.  
 5-35 (a) The commissioner shall conduct the day-to-day operations of  
 5-36 the department and otherwise implement department policy.

5-37 (b) The commissioner may:  
 5-38 (1) investigate misconduct;  
 5-39 (2) hold hearings;  
 5-40 (3) issue subpoenas to compel the attendance of  
 5-41 witnesses and the production of documents;

5-42 (4) administer oaths;  
 5-43 (5) take testimony directly or by deposition or  
 5-44 interrogatory;

5-45 (6) assess and enforce penalties established under  
 5-46 this title;

5-47 (7) enter appropriate orders as authorized by this  
 5-48 title;

5-49 (8) institute an action in the department's name to  
 5-50 enjoin the violation of this subtitle;

5-51 (9) initiate an action under Section 410.254 to  
 5-52 intervene in a judicial proceeding;

5-53 (10) prescribe the form, manner, and procedure for the  
 5-54 transmission of information to the department;

5-55 (11) correct clerical errors in the entry of the  
 5-56 orders; and

5-57 (12) exercise other powers and perform other duties as  
 5-58 necessary to implement and enforce this title.

5-59 (c) The commissioner is the agent for service of process on  
 5-60 out-of-state employers.

5-61 SECTION 1.002. Subchapter C, Chapter 402, Labor Code, is  
 5-62 amended to read as follows:

5-63 SUBCHAPTER C. DEPARTMENT [~~EXECUTIVE DIRECTOR AND~~] PERSONNEL

5-64 Sec. 402.041. APPOINTMENTS. (a) Subject to the General  
 5-65 Appropriations Act or other law, the commissioner shall appoint  
 5-66 deputies, assistants, division directors, and other personnel as  
 5-67 necessary to carry out the powers and duties of the commissioner and  
 5-68 the department under this title, other workers' compensation laws  
 5-69 of this state, and other laws granting jurisdiction or applicable

6-1 to the department or the commissioner.

6-2 (b) A person appointed under this section must have the  
6-3 professional, administrative, and workers' compensation experience  
6-4 necessary to qualify the person for the position to which the person  
6-5 is appointed.

6-6 (c) A person appointed as an associate or deputy  
6-7 commissioner or to hold an equivalent position must have at least  
6-8 five years of the experience required for appointment as  
6-9 commissioner under Section 402.005. At least two years of that  
6-10 experience must be in work related to the position to be held.

6-11 Sec. 402.042. DIVISION OF RESPONSIBILITIES. The  
6-12 commissioner shall develop and implement policies that clearly  
6-13 define the respective responsibilities of the commissioner and the  
6-14 staff of the department. [EXECUTIVE DIRECTOR. (a) The executive

6-15 director is the executive officer and administrative head of the  
6-16 commission. The executive director exercises all rights, powers,  
6-17 and duties imposed or conferred by law on the commission, except for  
6-18 rulemaking and other rights, powers, and duties specifically  
6-19 reserved under this subtitle to members of the commission.

6-20 [(b) The executive director shall hire personnel as  
6-21 necessary to administer this subtitle.

6-22 [(c) The executive director serves at the pleasure of the  
6-23 commission.

6-24 [(d) The commission shall develop and implement policies  
6-25 that clearly separate the policymaking responsibilities of the  
6-26 commission and the management responsibilities of the executive  
6-27 director and the staff of the commission.

6-28 [Sec. 402.042. GENERAL POWERS AND DUTIES OF EXECUTIVE  
6-29 DIRECTOR. (a) The executive director shall conduct the day-to-day  
6-30 operations of the commission in accordance with policies  
6-31 established by the commission and otherwise implement commission  
6-32 policy.

6-33 [(b) The executive director may:

6-34 [(1) investigate misconduct;

6-35 [(2) hold hearings;

6-36 [(3) issue subpoenas to compel the attendance of  
6-37 witnesses and the production of documents;

6-38 [(4) administer oaths;

6-39 [(5) take testimony directly or by deposition or  
6-40 interrogatory;

6-41 [(6) assess and enforce penalties established under  
6-42 this subtitle;

6-43 [(7) enter appropriate orders as authorized by this  
6-44 subtitle;

6-45 [(8) correct clerical errors in the entry of orders;

6-46 [(9) institute an action in the commission's name to  
6-47 enjoin the violation of this subtitle;

6-48 [(10) initiate an action under Section 410.254 to  
6-49 intervene in a judicial proceeding;

6-50 [(11) prescribe the form, manner, and procedure for  
6-51 transmission of information to the commission; and

6-52 [(12) delegate all powers and duties as necessary.

6-53 [(c) The executive director is the agent for service of  
6-54 process on out-of-state employers.

6-55 [Sec. 402.043. ADMINISTRATIVE ASSISTANTS. The executive  
6-56 director shall employ and supervise:

6-57 [(1) one person representing wage earners permanently  
6-58 assigned to act as administrative assistant to the members of the  
6-59 commission who represent wage earners; and

6-60 [(2) one person representing employers permanently  
6-61 assigned to act as administrative assistant to the members of the  
6-62 commission who represent employers.]

6-63 Sec. 402.043 [402.044]. CAREER LADDER; ANNUAL PERFORMANCE  
6-64 EVALUATIONS. (a) The commissioner or the commissioner's designee  
6-65 [executive director] shall develop an intra-agency career ladder  
6-66 program that addresses opportunities for mobility and advancement  
6-67 for employees within the department [commission]. The program  
6-68 shall require intra-agency postings of all positions concurrently  
6-69 with any public posting.

7-1 (b) The commissioner or the commissioner's designee  
 7-2 [~~executive director~~] shall develop a system of annual performance  
 7-3 evaluations that are based on documented employee performance. All  
 7-4 merit pay for department [~~commission~~] employees must be based on  
 7-5 the system established under this subsection.

7-6 Sec. 402.044 [~~402.045~~]. EQUAL EMPLOYMENT OPPORTUNITY  
 7-7 POLICY STATEMENT. (a) The commissioner or the commissioner's  
 7-8 designee [~~executive director~~] shall prepare and maintain a written  
 7-9 policy statement to ensure implementation of a program of equal  
 7-10 employment opportunity under which all personnel transactions are  
 7-11 made without regard to race, color, disability, sex, religion, age,  
 7-12 or national origin. The policy statement must include:

7-13 (1) personnel policies, including policies related to  
 7-14 recruitment, evaluation, selection, appointment, training, and  
 7-15 promotion of personnel that are in compliance with the requirements  
 7-16 of Chapter 21;

7-17 (2) a comprehensive analysis of the department  
 7-18 [~~commission~~] work force that meets federal and state guidelines;

7-19 (3) procedures by which a determination can be made of  
 7-20 significant underuse in the department [~~commission~~] work force of  
 7-21 all persons for whom federal or state guidelines encourage a more  
 7-22 equitable balance; and

7-23 (4) reasonable methods to appropriately address those  
 7-24 areas of underuse.

7-25 (b) A policy statement prepared under this section must:

7-26 (1) cover an annual period;

7-27 (2) be updated annually;

7-28 (3) be reviewed by the civil rights division of the  
 7-29 Texas Workforce Commission [~~on Human Rights~~] for compliance with  
 7-30 Subsection (a)(1); and

7-31 (4) be filed with the Texas Workforce Commission  
 7-32 [~~governor's office~~].

7-33 (c) The Texas Workforce Commission [~~governor's office~~]  
 7-34 shall deliver a biennial report to the legislature based on the  
 7-35 information received under Subsection (b). The report may be made  
 7-36 separately or as part of other biennial reports made to the  
 7-37 legislature.

7-38 ARTICLE 2. CONFORMING AMENDMENTS WITHIN CHAPTER 402, LABOR CODE

7-39 SECTION 2.001. The heading to Chapter 402, Labor Code, is  
 7-40 amended to read as follows:

7-41 CHAPTER 402. TEXAS DEPARTMENT OF WORKERS' COMPENSATION  
 7-42 [COMMISSION]

7-43 SECTION 2.002. Section 402.021, Labor Code, is amended to  
 7-44 read as follows:

7-45 Sec. 402.021. DEPARTMENT [COMMISSION] DIVISIONS. (a) The  
 7-46 commissioner [~~commission shall have:~~

7-47 [~~(1) a division of workers' health and safety;~~

7-48 [~~(2) a division of medical review;~~

7-49 [~~(3) a division of compliance and practices; and~~

7-50 [~~(4) a division of hearings.~~

7-51 [(b) ~~In addition to the divisions listed by Subsection (a),~~  
 7-52 ~~the executive director, with the approval of the commission,~~] may  
 7-53 establish divisions within the department [commission] for  
 7-54 effective administration and performance of department  
 7-55 [commission] functions. The commissioner [~~executive director~~] may  
 7-56 allocate and reallocate functions among the divisions.

7-57 (b) [~~(c)~~] The commissioner [~~executive director~~] shall  
 7-58 appoint the directors of the divisions of the department  
 7-59 [commission]. The directors serve at the pleasure of the  
 7-60 commissioner [~~executive director~~].

7-61 (c) A reference in this title or any other law to the  
 7-62 division of workers' health and safety, the division of medical  
 7-63 review, the division of compliance and practices, the division of  
 7-64 hearings, and the division of self-insurance regulation of the  
 7-65 former Texas Workers' Compensation Commission means the  
 7-66 department.

7-67 SECTION 2.003. Section 402.022, Labor Code, is amended to  
 7-68 read as follows:

7-69 Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The

8-1 commissioner [~~executive director~~] shall prepare information of  
 8-2 public interest describing the functions of the department  
 8-3 [~~commission~~] and the procedures by which complaints are filed with  
 8-4 and resolved by the department [~~commission~~].

8-5 (b) The commissioner [~~executive director~~] shall make the  
 8-6 information available to the public and appropriate state agencies.

8-7 SECTION 2.004. Section 402.023, Labor Code, is amended to  
 8-8 read as follows:

8-9 Sec. 402.023. COMPLAINT INFORMATION. (a) The commissioner  
 8-10 [~~executive director~~] shall keep an information file about each  
 8-11 written complaint filed with the department [~~commission~~] that is  
 8-12 unrelated to a specific workers' compensation claim. The  
 8-13 information must include:

8-14 (1) the date the complaint is received;  
 8-15 (2) the name of the complainant;  
 8-16 (3) the subject matter of the complaint;  
 8-17 (4) a record of all persons contacted in relation to  
 8-18 the complaint;

8-19 (5) a summary of the results of the review or  
 8-20 investigation of the complaint; and

8-21 (6) for complaints for which the department  
 8-22 [~~commission~~] took no action, an explanation of the reason the  
 8-23 complaint was closed without action.

8-24 (b) For each written complaint that is unrelated to a  
 8-25 specific workers' compensation claim that the department  
 8-26 [~~commission~~] has authority to resolve, the commissioner [~~executive~~  
 8-27 ~~director~~] shall provide to the person filing the complaint and the  
 8-28 person about whom the complaint is made information about the  
 8-29 department's [~~commission's~~] policies and procedures relating to  
 8-30 complaint investigation and resolution. The commissioner  
 8-31 [~~commission~~], at least quarterly and until final disposition of the  
 8-32 complaint, shall notify those persons about the status of the  
 8-33 complaint unless the notice would jeopardize an undercover  
 8-34 investigation.

8-35 SECTION 2.005. Section 402.024, Labor Code, is amended to  
 8-36 read as follows:

8-37 Sec. 402.024. PUBLIC PARTICIPATION. (a) The commissioner  
 8-38 [~~commission~~] shall develop and implement policies that provide the  
 8-39 public with a reasonable opportunity to appear before the  
 8-40 department [~~commission~~] and to speak on issues under the general  
 8-41 jurisdiction of the department [~~commission~~].

8-42 (b) The department [~~commission~~] shall comply with federal  
 8-43 and state laws related to program and facility accessibility.

8-44 (c) In addition to compliance with Subsection (a), the  
 8-45 commissioner [~~executive director~~] shall prepare and maintain a  
 8-46 written plan that describes how a person who does not speak English  
 8-47 may be provided reasonable access to the department's  
 8-48 [~~commission's~~] programs and services.

8-49 SECTION 2.006. The heading to Subchapter D, Chapter 402,  
 8-50 Labor Code, is amended to read as follows:

8-51 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DEPARTMENT  
 8-52 [~~COMMISSION~~]

8-53 SECTION 2.007. Section 402.061, Labor Code, is amended to  
 8-54 read as follows:

8-55 Sec. 402.061. ADOPTION OF RULES. The commissioner  
 8-56 [~~commission~~] shall adopt rules as necessary for the implementation  
 8-57 and enforcement of this subtitle.

8-58 SECTION 2.008. Subsection (a), Section 402.062, Labor Code,  
 8-59 is amended to read as follows:

8-60 (a) The department [~~commission~~] may accept gifts, grants,  
 8-61 or donations as provided by rules adopted by the commissioner  
 8-62 [~~commission~~].

8-63 SECTION 2.009. Section 402.064, Labor Code, is amended to  
 8-64 read as follows:

8-65 Sec. 402.064. FEES. In addition to fees established by this  
 8-66 subtitle, the commissioner [~~commission~~] shall set reasonable fees  
 8-67 for services provided to persons requesting services from the  
 8-68 department [~~commission~~], including services provided under  
 8-69 Subchapter E.



9-1 SECTION 2.010. Section 402.065, Labor Code, is amended to  
9-2 read as follows:

9-3 Sec. 402.065. EMPLOYMENT OF COUNSEL. The commissioner  
9-4 [~~commission~~] may employ counsel to represent the department  
9-5 [~~commission~~] in any legal action the department [~~commission~~] is  
9-6 authorized to initiate.

9-7 SECTION 2.011. Section 402.066, Labor Code, is amended to  
9-8 read as follows:

9-9 Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The  
9-10 commissioner [~~commission~~] shall consider and recommend to the  
9-11 legislature changes to this subtitle.

9-12 (b) The commissioner [~~commission~~] shall forward the  
9-13 recommended changes to the legislature not later than December 1 of  
9-14 each even-numbered year.

9-15 SECTION 2.012. Section 402.0665, Labor Code, is amended to  
9-16 read as follows:

9-17 Sec. 402.0665. LEGISLATIVE OVERSIGHT. The legislature may  
9-18 adopt requirements relating to legislative oversight of the  
9-19 department [~~commission~~] and the workers' compensation system of  
9-20 this state. The department [~~commission~~] shall comply with any  
9-21 requirements adopted by the legislature under this section.

9-22 SECTION 2.013. Section 402.067, Labor Code, is amended to  
9-23 read as follows:

9-24 Sec. 402.067. ADVISORY COMMITTEES. The commissioner  
9-25 [~~commission~~] may appoint advisory committees as the commissioner  
9-26 [~~it~~] considers necessary.

9-27 SECTION 2.014. Section 402.068, Labor Code, is amended to  
9-28 read as follows:

9-29 Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. Except as  
9-30 expressly provided by this subchapter, the department [~~commission~~]  
9-31 may not delegate rights and duties imposed on it by this subchapter.

9-32 SECTION 2.015. Section 402.069, Labor Code, is amended to  
9-33 read as follows:

9-34 Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT  
9-35 INFORMATION. The commissioner or the commissioner's designee  
9-36 [~~executive director~~] shall provide to department [~~members of the~~  
9-37 ~~commission and commission~~] employees, as often as necessary,  
9-38 information regarding their:

9-39 (1) qualifications for office or employment under this  
9-40 subtitle; and

9-41 (2) responsibilities under applicable law relating to  
9-42 standards of conduct for state officers or employees.

9-43 SECTION 2.016. Subsection (a), Section 402.071, Labor Code,  
9-44 is amended to read as follows:

9-45 (a) The commissioner [~~commission~~] shall establish  
9-46 qualifications for a representative and shall adopt rules  
9-47 establishing procedures for authorization of representatives.

9-48 SECTION 2.017. Section 402.072, Labor Code, is amended to  
9-49 read as follows:

9-50 Sec. 402.072. SANCTIONS. Only the commissioner  
9-51 [~~commission~~] may impose:

9-52 (1) a sanction that deprives a person of the right to  
9-53 practice before the department [~~commission~~] or of the right to  
9-54 receive remuneration under this subtitle for a period exceeding 30  
9-55 days; or

9-56 (2) another sanction suspending for more than 30 days  
9-57 or revoking a license, certification, or permit required for  
9-58 practice in the field of workers' compensation.

9-59 SECTION 2.018. Subsections (a) and (c), Section 402.073,  
9-60 Labor Code, are amended to read as follows:

9-61 (a) The commissioner [~~commission~~] and the chief  
9-62 administrative law judge of the State Office of Administrative  
9-63 Hearings by rule shall adopt a memorandum of understanding  
9-64 governing administrative procedure law hearings under this  
9-65 subtitle conducted by the State Office of Administrative Hearings  
9-66 in the manner provided for a contested case hearing under Chapter  
9-67 2001, Government Code [~~(the administrative procedure law)~~].

9-68 (c) In a case in which a hearing is conducted in conjunction  
9-69 with Section 402.072, 407.046, or 408.023, and in other cases under

10-1 this subtitle that are not subject to Subsection (b), the  
 10-2 administrative law judge who conducts the hearing for the State  
 10-3 Office of Administrative Hearings shall propose a decision to the  
 10-4 commissioner [~~commission~~] for final consideration and decision by  
 10-5 the commissioner [~~commission~~].

10-6 SECTION 2.019. Section 402.081, Labor Code, is amended to  
 10-7 read as follows:

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

10-13 (b) The commissioner [~~executive director~~] may destroy a  
 10-14 record maintained by the department [~~commission~~] pertaining to an  
 10-15 injury after the 50th anniversary of the date of the injury to which  
 10-16 the record refers unless benefits are being paid on the claim on  
 10-17 that date.

10-18 (c) A record maintained by the department [~~commission~~] may  
 10-19 be preserved in any format permitted by Chapter 441, Government  
 10-20 Code, and rules adopted by the Texas State Library and Archives  
 10-21 Commission under that chapter.

10-22 (d) The department [~~commission~~] may charge a reasonable fee  
 10-23 for making available for inspection any of its information that  
 10-24 contains confidential information that must be redacted before the  
 10-25 information is made available. However, when a request for  
 10-26 information is for the inspection of 10 or fewer pages, and a copy  
 10-27 of the information is not requested, the department [~~commission~~]  
 10-28 may charge only the cost of making a copy of the page from which  
 10-29 confidential information must be redacted. The fee for access to  
 10-30 information under Chapter 552, Government Code, shall be in accord  
 10-31 with the rules of the Texas Building and Procurement [~~General~~  
 10-32 ~~Services~~] Commission that prescribe the method for computing the  
 10-33 charge for copies under that chapter.

10-34 SECTION 2.020. Section 402.082, Labor Code, is amended to  
 10-35 read as follows:

10-36 Sec. 402.082. INJURY INFORMATION MAINTAINED BY DEPARTMENT  
 10-37 [COMMISSION]. The department [~~commission~~] shall maintain  
 10-38 information on every compensable injury as to the:

10-39 (1) race, ethnicity, and sex of the claimant;  
 10-40 (2) classification of the injury;  
 10-41 (3) identification of whether the claimant is  
 10-42 receiving medical care through a workers' compensation health care  
 10-43 network certified under Chapter 1305, Insurance Code;

10-44 (4) amount of wages earned by the claimant before the  
 10-45 injury; and

10-46 (5) [~~(4)~~] amount of compensation received by the  
 10-47 claimant.

10-48 SECTION 2.021. Subsection (a), Section 402.083, Labor Code,  
 10-49 is amended to read as follows:

10-50 (a) Information in or derived from a claim file regarding an  
 10-51 employee is confidential and may not be disclosed by the department  
 10-52 [~~commission~~] except as provided by this subtitle or other law.

10-53 SECTION 2.022. Subsections (a), (b), and (d), Section  
 10-54 402.084, Labor Code, are amended to read as follows:

10-55 (a) The department [~~commission~~] shall perform and release a  
 10-56 record check on an employee, including current or prior injury  
 10-57 information, to the parties listed in Subsection (b) if:

10-58 (1) the claim is:  
 10-59 (A) open or pending before the department  
 10-60 [~~commission~~];  
 10-61 (B) on appeal to a court of competent  
 10-62 jurisdiction; or

10-63 (C) the subject of a subsequent suit in which the  
 10-64 insurance carrier or the subsequent injury fund is subrogated to  
 10-65 the rights of the named claimant; and

10-66 (2) the requesting party requests the release on a  
 10-67 form prescribed by the department [~~commission~~] for this purpose and  
 10-68 provides all required information.

10-69 (b) Information on a claim may be released as provided by

11-1 Subsection (a) to:  
 11-2 (1) the employee or the employee's legal beneficiary;  
 11-3 (2) the employee's or the legal beneficiary's  
 11-4 representative;  
 11-5 (3) the employer at the time of injury;  
 11-6 (4) the insurance carrier;  
 11-7 (5) the Texas Certified Self-Insurer Guaranty  
 11-8 Association established under Subchapter G, Chapter 407, if that  
 11-9 association has assumed the obligations of an impaired employer;  
 11-10 (6) the Texas Property and Casualty Insurance Guaranty  
 11-11 Association, if that association has assumed the obligations of an  
 11-12 impaired insurance company;  
 11-13 (7) a third-party litigant in a lawsuit in which the  
 11-14 cause of action arises from the incident that gave rise to the  
 11-15 injury; or  
 11-16 (8) a subclaimant under Section 409.009 that is an  
 11-17 insurance carrier that has adopted an antifraud plan under  
 11-18 Subchapter B, Chapter 704 [Article 3.97-3], Insurance Code, or the  
 11-19 authorized representative of such a subclaimant.  
 11-20 (d) Information on a claim relating to a subclaimant under  
 11-21 Subsection (b)(8) may include information, in an electronic data  
 11-22 format, on all workers' compensation claims necessary to determine  
 11-23 if a subclaim exists. The information on a claim remains subject to  
 11-24 confidentiality requirements while in the possession of a  
 11-25 subclaimant or representative. The commissioner [~~commission~~] by  
 11-26 rule may establish a reasonable fee for all information requested  
 11-27 under this subsection in an electronic data format by subclaimants  
 11-28 or authorized representatives of subclaimants. The commissioner  
 11-29 [~~commission~~] shall adopt rules under Section 401.024(d) to  
 11-30 establish:  
 11-31 (1) reasonable security parameters for all transfers  
 11-32 of information requested under this subsection in electronic data  
 11-33 format; and  
 11-34 (2) requirements regarding the maintenance of  
 11-35 electronic data in the possession of a subclaimant or the  
 11-36 subclaimant's representative.  
 11-37 SECTION 2.023. Section 402.085, Labor Code, is amended to  
 11-38 read as follows:  
 11-39 Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The  
 11-40 department [~~commission~~] shall release information on a claim to:  
 11-41 (1) the Texas Department of Insurance for any  
 11-42 statutory or regulatory purpose, including a research purpose under  
 11-43 Chapter 405;  
 11-44 (2) a legislative committee for legislative purposes;  
 11-45 (3) a state or federal elected official requested in  
 11-46 writing to provide assistance by a constituent who qualifies to  
 11-47 obtain injury information under Section 402.084(b), if the request  
 11-48 for assistance is provided to the department [~~commission~~]; or  
 11-49 (4) [~~the Research and Oversight Council on Workers'~~  
 11-50 ~~Compensation for research purposes, or~~  
 11-51 ~~(5)]~~ the attorney general or another entity that  
 11-52 provides child support services under Part D, Title IV, Social  
 11-53 Security Act (42 U.S.C. Section 651 et seq.), relating to:  
 11-54 (A) establishing, modifying, or enforcing a  
 11-55 child support or medical support obligation; or  
 11-56 (B) locating an absent parent.  
 11-57 (b) The department [~~commission~~] may release information on  
 11-58 a claim to a governmental agency, political subdivision, or  
 11-59 regulatory body to use to:  
 11-60 (1) investigate an allegation of a criminal offense or  
 11-61 licensing or regulatory violation;  
 11-62 (2) provide:  
 11-63 (A) unemployment compensation benefits;  
 11-64 (B) crime victims compensation benefits;  
 11-65 (C) vocational rehabilitation services; or  
 11-66 (D) health care benefits;  
 11-67 (3) investigate occupational safety or health  
 11-68 violations;  
 11-69 (4) verify income on an application for benefits under

12-1 an income-based state or federal assistance program; or  
 12-2 (5) assess financial resources in an action, including  
 12-3 an administrative action, to:  
 12-4 (A) establish, modify, or enforce a child support  
 12-5 or medical support obligation;  
 12-6 (B) establish paternity;  
 12-7 (C) locate an absent parent; or  
 12-8 (D) cooperate with another state in an action  
 12-9 authorized under Part D, Title IV, Social Security Act (42 U.S.C.  
 12-10 Section 651 et seq.), or Chapter 231, Family [~~76, Human Resources~~]  
 12-11 Code.

12-12 SECTION 2.024. Subsections (a), (b), and (d), Section  
 12-13 402.088, Labor Code, are amended to read as follows:

12-14 (a) On receipt of a valid request made under and complying  
 12-15 with Section 402.087, the department [~~commission~~] shall review its  
 12-16 records.

12-17 (b) If the department [~~commission~~] finds that the applicant  
 12-18 has made two or more general injury claims in the preceding five  
 12-19 years, the department [~~commission~~] shall release the date and  
 12-20 description of each injury to the employer.

12-21 (d) If the employer requests information on three or more  
 12-22 applicants at the same time, the department [~~commission~~] may refuse  
 12-23 to release information until it receives the written authorization  
 12-24 from each applicant.

12-25 SECTION 2.025. Section 402.089, Labor Code, is amended to  
 12-26 read as follows:

12-27 Sec. 402.089. FAILURE TO FILE AUTHORIZATION[~~+~~  
 12-28 ~~ADMINISTRATIVE VIOLATION~~]. [~~(a)~~] An employer who receives  
 12-29 information by telephone from the department [~~commission~~] under  
 12-30 Section 402.088 and who fails to file the necessary authorization  
 12-31 in accordance with Section 402.087 commits an [~~a Class C~~]  
 12-32 administrative violation.

12-33 [~~(b) Each failure to file an authorization is a separate~~  
 12-34 ~~violation.~~]

12-35 SECTION 2.026. Section 402.090, Labor Code, is amended to  
 12-36 read as follows:

12-37 Sec. 402.090. STATISTICAL INFORMATION. The department  
 12-38 [~~commission~~], the Texas Department of Insurance [~~research center~~],  
 12-39 or any other governmental agency may prepare and release  
 12-40 statistical information if the identity of an employee is not  
 12-41 explicitly or implicitly disclosed.

12-42 SECTION 2.027. Subsection (a), Section 402.091, Labor Code,  
 12-43 is amended to read as follows:

12-44 (a) A person commits an offense if the person knowingly,  
 12-45 intentionally, or recklessly publishes, discloses, or distributes  
 12-46 information that is confidential under this subchapter to a person  
 12-47 not authorized to receive the information directly from the  
 12-48 department [~~commission~~].

12-49 SECTION 2.028. Subsections (a), (b), (d), (e), and (f),  
 12-50 Section 402.092, Labor Code, are amended to read as follows:

12-51 (a) Information maintained in the investigation files of  
 12-52 the department [~~commission~~] is confidential and may not be  
 12-53 disclosed except:

- 12-54 (1) in a criminal proceeding;
- 12-55 (2) in a hearing conducted by the department  
 12-56 [~~commission~~];
- 12-57 (3) on a judicial determination of good cause; or
- 12-58 (4) to a governmental agency, political subdivision,  
 12-59 or regulatory body if the disclosure is necessary or proper for the  
 12-60 enforcement of the laws of this or another state or of the United  
 12-61 States.

12-62 (b) Department [~~Commission~~] investigation files are not  
 12-63 open records for purposes of Chapter 552, Government Code.

12-64 (d) For purposes of this section, "investigation file"  
 12-65 means any information compiled or maintained by the department  
 12-66 [~~commission~~] with respect to a department [~~commission~~]  
 12-67 investigation authorized by law.

12-68 (e) The department [~~commission~~], upon request, shall  
 12-69 disclose the identity of a complainant under this section if the

13-1 department [~~commission~~] finds:

- 13-2 (1) the complaint was groundless or made in bad faith;
- 13-3 or
- 13-4 (2) the complaint lacks any basis in fact or evidence;
- 13-5 or
- 13-6 (3) the complaint is frivolous; or
- 13-7 (4) the complaint is done specifically for competitive
- 13-8 or economic advantage.

13-9 (f) Upon completion of an investigation where the  
 13-10 department [~~commission~~] determines a complaint is groundless,  
 13-11 frivolous, made in bad faith, or is not supported by evidence or is  
 13-12 done specifically for competitive or economic advantage the  
 13-13 department [~~commission~~] shall notify the person who was the subject  
 13-14 of the complaint of its finding and the identity of the complainant.

13-15 ARTICLE 3. GENERAL OPERATION OF WORKERS' COMPENSATION SYSTEM;  
 13-16 CONFORMING AMENDMENTS WITHIN LABOR CODE

13-17 SECTION 3.001. Subsection (b), Section 91.003, Labor Code,  
 13-18 is amended to read as follows:

13-19 (b) In particular, the Texas Workforce Commission, the  
 13-20 Texas Department of Insurance, the Texas Department of Workers'  
 13-21 Compensation [~~Commission~~], the Department of Assistive and  
 13-22 Rehabilitative Services, and the attorney general's office shall  
 13-23 assist in the implementation of this chapter and shall provide  
 13-24 information to the department on request.

13-25 SECTION 3.002. Section 401.002, Labor Code, is amended to  
 13-26 read as follows:

13-27 Sec. 401.002. APPLICATION OF SUNSET ACT. The Texas  
 13-28 Department of Workers' Compensation [~~Commission~~] is subject to  
 13-29 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
 13-30 in existence as provided by that chapter, the department  
 13-31 [~~commission~~] is abolished September 1, 2017 [~~2005~~].

13-32 SECTION 3.003. Subsection (a), Section 401.003, Labor Code,  
 13-33 is amended to read as follows:

13-34 (a) The department [~~commission~~] is subject to audit by the  
 13-35 state auditor in accordance with Chapter 321, Government Code. The  
 13-36 state auditor may audit [~~the commission's~~]:

- 13-37 (1) the structure and internal controls of the
- 13-38 department;
- 13-39 (2) the level and quality of service provided by the
- 13-40 department to employers, injured employees, insurance carriers,
- 13-41 self-insured governmental entities, and other participants;
- 13-42 (3) the implementation of statutory mandates by the
- 13-43 department;
- 13-44 (4) employee turnover;
- 13-45 (5) information management systems, including public
- 13-46 access to nonconfidential information;
- 13-47 (6) the adoption and implementation of administrative
- 13-48 rules by the commissioner; and
- 13-49 (7) assessment of administrative violations and the
- 13-50 penalties for those violations.

13-51 SECTION 3.004. Section 401.011, Labor Code, is amended by  
 13-52 amending Subdivisions (2), (8), (15), (37), (38), and (39) and by  
 13-53 adding Subdivisions (18-a), (22-a), (45), and (46) to read as  
 13-54 follows:

13-55 (2) "Administrative violation" means a violation of  
 13-56 this subtitle, ~~or~~ a rule adopted under this subtitle, or an order  
 13-57 or decision of the department that is subject to penalties and  
 13-58 sanctions as provided by this subtitle.

13-59 (8) "Commissioner" means the commissioner of workers'  
 13-60 compensation [~~"Commission" means the Texas Workers' Compensation~~  
 13-61 ~~Commission~~].

13-62 (15) "Designated doctor" means a doctor appointed by  
 13-63 mutual agreement of the parties or by the department [~~commission~~]  
 13-64 to recommend a resolution of a dispute as to the medical condition  
 13-65 of an injured employee.

13-66 (18-a) "Evidence-based medicine" means the use of  
 13-67 current best quality scientific and medical evidence in making  
 13-68 decisions about the care of individual patients. The practice of  
 13-69 evidence-based medicine means integrating best available clinical

14-1 scientific evidence with individual clinical expertise.

14-2 (22-a) "Health care reasonably required" means health  
 14-3 care that is clinically appropriate and considered effective for  
 14-4 the employee's injury and provided in accordance with best  
 14-5 practices consistent with:

14-6 (A) evidence-based medicine, formulated from  
 14-7 credible scientific studies, including peer-reviewed medical  
 14-8 literature and other current scientifically based texts, and  
 14-9 treatment and practice guidelines; or

14-10 (B) if that evidence is not available, generally  
 14-11 accepted standards of medical practice recognized in the medical  
 14-12 community.

14-13 (37) "Representative" means a person, including an  
 14-14 attorney, authorized by the commissioner [~~commission~~] to assist or  
 14-15 represent an employee, a person claiming a death benefit, or an  
 14-16 insurance carrier in a matter arising under this subtitle that  
 14-17 relates to the payment of compensation.

14-18 (38) "Research center" means the research functions of  
 14-19 the Texas Department of Insurance required [~~Texas Workers'~~  
 14-20 ~~Compensation Research Center established~~] under Chapter 405 [404].

14-21 (39) "Sanction" means a penalty or other punitive  
 14-22 action or remedy imposed by the commissioner [~~commission~~] on an  
 14-23 insurance carrier, representative, employee, employer, or health  
 14-24 care provider for an act or omission in violation of this subtitle  
 14-25 or a rule, [~~or~~] order, or decision of the commissioner  
 14-26 [~~commission~~].

14-27 (45) "Department" means the Texas Department of  
 14-28 Workers' Compensation.

14-29 (46) "Violation" means an administrative violation  
 14-30 subject to penalties and sanctions as provided by this subtitle.

14-31 SECTION 3.0041. Section 401.013, Labor Code, is amended by  
 14-32 adding Subsection (c) to read as follows:

14-33 (c) Upon the voluntary introduction into the body of any  
 14-34 substance listed under Subsection (a)(2)(b), based upon a blood  
 14-35 test or urinalysis, it is a rebuttable presumption that a person is  
 14-36 intoxicated and not having the normal use of mental or physical  
 14-37 faculties.

14-38 SECTION 3.005. Section 401.021, Labor Code, is amended to  
 14-39 read as follows:

14-40 Sec. 401.021. APPLICATION OF OTHER ACTS. Except as  
 14-41 otherwise provided by this subtitle:

14-42 (1) a proceeding, hearing, judicial review, or  
 14-43 enforcement of a commissioner [~~commission~~] order, decision, or rule  
 14-44 is governed by the following subchapters and sections of Chapter  
 14-45 2001, Government Code:

14-46 (A) Subchapters A, B, D, E, G, and H, excluding  
 14-47 Sections 2001.004(3) and 2001.005;

14-48 (B) Sections 2001.051, 2001.052, and 2001.053;

14-49 (C) Sections 2001.056 through 2001.062; and

14-50 (D) Section 2001.141(c);

14-51 (2) a proceeding, hearing, judicial review, or  
 14-52 enforcement of a commissioner [~~commission~~] order, decision, or rule  
 14-53 is governed by Subchapters A and B, Chapter 2002, Government Code,  
 14-54 excluding Sections 2002.001(2) and 2002.023;

14-55 (3) Chapter 551, Government Code, applies to a  
 14-56 proceeding under this subtitle, other than:

14-57 (A) a benefit review conference;

14-58 (B) a contested case hearing;

14-59 (C) an appeals panel proceeding;

14-60 (D) arbitration; or

14-61 (E) another proceeding involving a determination  
 14-62 on a workers' compensation claim; and

14-63 (4) Chapter 552, Government Code, applies to a record  
 14-64 of the department [~~commission~~] or a record of the Texas Department  
 14-65 of Insurance regarding workers' compensation [~~the~~] research  
 14-66 [~~center~~].

14-67 SECTION 3.006. Subsection (b), Section 401.023, Labor Code,  
 14-68 is amended to read as follows:

14-69 (b) The department [~~commission~~] shall compute and publish

15-1 the interest and discount rate quarterly, using the treasury  
 15-2 constant maturity rate for one-year treasury bills issued by the  
 15-3 United States government, as published by the Federal Reserve Board  
 15-4 on the 15th day preceding the first day of the calendar quarter for  
 15-5 which the rate is to be effective, plus 3.5 percent. For this  
 15-6 purpose, calendar quarters begin January 1, April 1, July 1, and  
 15-7 October 1.

15-8 SECTION 3.007. Subsections (b), (c), and (d), Section  
 15-9 401.024, Labor Code, are amended to read as follows:

15-10 (b) Notwithstanding another provision of this subtitle that  
 15-11 specifies the form, manner, or procedure for the transmission of  
 15-12 specified information, the commissioner [~~commission~~] by rule may  
 15-13 permit or require the use of an electronic transmission instead of  
 15-14 the specified form, manner, or procedure. If the electronic  
 15-15 transmission of information is not authorized or permitted by  
 15-16 [~~commission~~] rule, the transmission of that information is governed  
 15-17 by any applicable statute or rule that prescribes the form, manner,  
 15-18 or procedure for the transmission, including standards adopted by  
 15-19 the Department of Information Resources.

15-20 (c) The commissioner [~~commission~~] may designate and  
 15-21 contract with a data collection agent to fulfill the data  
 15-22 collection requirements of this subtitle.

15-23 (d) The commissioner [~~executive director~~] may prescribe the  
 15-24 form, manner, and procedure for transmitting any authorized or  
 15-25 required electronic transmission, including requirements related  
 15-26 to security, confidentiality, accuracy, and accountability.

15-27 SECTION 3.008. Subchapter C, Chapter 401, Labor Code, is  
 15-28 amended by adding Section 401.025 to read as follows:

15-29 Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE  
 15-30 DIRECTOR. (a) A reference in this code or other law to the Texas  
 15-31 Workers' Compensation Commission or the executive director of that  
 15-32 commission means the department or the commissioner as consistent  
 15-33 with the respective duties of the commissioner and the department  
 15-34 under this code and other workers' compensation laws of this state.

15-35 (b) A reference in this code or other law to the executive  
 15-36 director of the Texas Workers' Compensation Commission means the  
 15-37 commissioner.

15-38 SECTION 3.009. The heading to Chapter 403, Labor Code, is  
 15-39 amended to read as follows:

15-40 CHAPTER 403. DEPARTMENT [~~COMMISSION~~] FINANCING

15-41 SECTION 3.010. Section 403.001, Labor Code, is amended to  
 15-42 read as follows:

15-43 Sec. 403.001. DEPARTMENT [~~COMMISSION~~] FUNDS. (a) Except  
 15-44 as provided by Sections 403.006 and 403.007 or as otherwise  
 15-45 provided by law, money collected under this subtitle, including  
 15-46 administrative penalties and advance deposits for purchase of  
 15-47 services, shall be deposited in the general revenue fund of the  
 15-48 state treasury to the credit of the department [~~commission~~].

15-49 (b) The money may be spent as authorized by legislative  
 15-50 appropriation on warrants issued by the comptroller under  
 15-51 requisitions made by the department [~~commission~~].

15-52 (c) Money deposited in the general revenue fund under this  
 15-53 section may be used to satisfy the requirements of Section 201.052  
 15-54 [~~Article 4.19~~], Insurance Code.

15-55 SECTION 3.011. Section 403.003, Labor Code, is amended to  
 15-56 read as follows:

15-57 Sec. 403.003. RATE OF ASSESSMENT. (a) The commissioner  
 15-58 [~~commission~~] shall set and certify to the comptroller the rate of  
 15-59 maintenance tax assessment not later than October 31 of each year,  
 15-60 taking into account:

15-61 (1) any expenditure projected as necessary for the  
 15-62 department [~~commission~~] to:

15-63 (A) administer this subtitle during the fiscal  
 15-64 year for which the rate of assessment is set; and

15-65 (B) reimburse the general revenue fund as  
 15-66 provided by Section 201.052 [~~Article 4.19~~], Insurance Code;

15-67 (2) projected employee benefits paid from general  
 15-68 revenues;

15-69 (3) a surplus or deficit produced by the tax in the

16-1 preceding year;

16-2 (4) revenue recovered from other sources, including  
16-3 reappropriated receipts, grants, payments, fees, gifts, and  
16-4 penalties recovered under this subtitle; and

16-5 (5) expenditures projected as necessary to support the  
16-6 prosecution of workers' compensation insurance fraud.

16-7 (b) In setting the rate of assessment, the commissioner  
16-8 [~~commission~~] may not consider revenue or expenditures related to:

16-9 (1) the State Office of Risk Management;

16-10 (2) the workers' compensation research functions of  
16-11 the Texas Department of Insurance under Chapter 405 [~~and oversight~~  
16-12 ~~council on workers' compensation~~]; or

16-13 (3) any other revenue or expenditure excluded from  
16-14 consideration by law.

16-15 SECTION 3.012. Section 403.004, Labor Code, is amended to  
16-16 read as follows:

16-17 Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM  
16-18 BUSINESS. The insurance commissioner or the commissioner  
16-19 [~~executive director of the commission~~] immediately shall proceed to  
16-20 collect taxes due under this chapter from an insurance carrier that  
16-21 withdraws from business in this state, using legal process as  
16-22 necessary.

16-23 SECTION 3.013. Section 403.005, Labor Code, is amended to  
16-24 read as follows:

16-25 Sec. 403.005. TAX RATE SURPLUS OR DEFICIT. (a) If the tax  
16-26 rate set by the commissioner [~~commission~~] for a year does not  
16-27 produce sufficient revenue to make all expenditures authorized by  
16-28 legislative appropriation, the deficit shall be paid from the  
16-29 general revenue fund.

16-30 (b) If the tax rate set by the commissioner [~~commission~~] for  
16-31 a year produces revenue that exceeds the amount required to make all  
16-32 expenditures authorized by the legislature, the excess shall be  
16-33 deposited in the general revenue fund to the credit of the  
16-34 department [~~commission~~].

16-35 SECTION 3.014. Section 403.006, Labor Code, as amended by  
16-36 Chapters 211 and 1296, Acts of the 78th Legislature, Regular  
16-37 Session, 2003, is reenacted and amended to read as follows:

16-38 Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent  
16-39 injury fund is a dedicated [~~an~~] account in the general revenue fund.  
16-40 Money in the account may be appropriated only for the purposes of  
16-41 this section or as provided by other law. [~~Section 403.095,~~  
16-42 ~~Government Code, does not apply to the subsequent injury fund.~~]

16-43 (b) The subsequent injury fund is liable for:

16-44 (1) the payment of compensation as provided by Section  
16-45 408.162;

16-46 (2) reimbursement of insurance carrier claims of  
16-47 overpayment of benefits made under an interlocutory order or  
16-48 decision of the commissioner [~~commission~~] as provided by this  
16-49 subtitle, consistent with the priorities established by rule by the  
16-50 commissioner [~~commission~~]; and

16-51 (3) reimbursement of insurance carrier claims as  
16-52 provided by Sections 408.042 and 413.0141, consistent with the  
16-53 priorities established by rule by the commissioner [~~commission~~]; and

16-54 [~~(4) the payment of an assessment of feasibility and~~  
16-55 ~~the development of regional networks established under Section~~  
16-56 ~~408.0221].~~

16-57 (c) The commissioner [~~executive director~~] shall appoint an  
16-58 administrator for the subsequent injury fund.

16-59 (d) Based on an actuarial assessment of the funding  
16-60 available under Section 403.007(e), the commissioner [~~commission~~]  
16-61 may make partial payment of insurance carrier claims under  
16-62 Subsection (b)(3).

16-63 SECTION 3.015. Section 403.007, Labor Code, is amended to  
16-64 read as follows:

16-65 Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a  
16-66 compensable death occurs and no legal beneficiary survives or a  
16-67 claim for death benefits is not timely made, the insurance carrier  
16-68 shall pay to the department [~~commission~~] for deposit to the credit  
16-69 of the subsequent injury fund an amount equal to 364 weeks of the



17-1 death benefits otherwise payable.

17-2 (b) The insurance carrier may elect or the commissioner  
17-3 [~~commission~~] may order that death benefits payable to the fund be  
17-4 commuted on written approval of the commissioner [~~executive~~  
17-5 ~~director~~]. The commutation may be discounted for present payment  
17-6 at the rate established in Section 401.023, compounded annually.

17-7 (c) If a claim for death benefits is not filed with the  
17-8 department [~~commission~~] by a legal beneficiary on or before the  
17-9 first anniversary of the date of the death of the employee, it is  
17-10 presumed, for purposes of this section only, that no legal  
17-11 beneficiary survived the deceased employee. The presumption does  
17-12 not apply against a minor beneficiary or an incompetent beneficiary  
17-13 for whom a guardian has not been appointed.

17-14 (d) If the insurance carrier makes payment to the subsequent  
17-15 injury fund and it is later determined by a final award of the  
17-16 commissioner [~~commission~~] or the final judgment of a court of  
17-17 competent jurisdiction that a legal beneficiary is entitled to the  
17-18 death benefits, the commissioner [~~commission~~] shall order the fund  
17-19 to reimburse the insurance carrier for the amount overpaid to the  
17-20 fund.

17-21 (e) If the commissioner [~~commission~~] determines that the  
17-22 funding under Subsection (a) is not adequate to meet the expected  
17-23 obligations of the subsequent injury fund established under Section  
17-24 403.006, the fund shall be supplemented by the collection of a  
17-25 maintenance tax paid by insurance carriers, other than a  
17-26 governmental entity, as provided by Sections 403.002 and 403.003.  
17-27 The rate of assessment must be adequate to provide 120 percent of  
17-28 the projected unfunded liabilities of the fund for the next  
17-29 biennium as certified by an independent actuary or financial  
17-30 advisor.

17-31 (f) The commissioner's [~~commission's~~] actuary or financial  
17-32 advisor shall report biannually to the Texas Department of  
17-33 Insurance [~~Research and Oversight Council on Workers'~~  
17-34 ~~Compensation~~] on the financial condition and projected assets and  
17-35 liabilities of the subsequent injury fund. The commissioner  
17-36 [~~commission~~] shall make the reports available to members of the  
17-37 legislature and the public. The department [~~commission~~] may  
17-38 purchase annuities to provide for payments due to claimants under  
17-39 this subtitle if the commissioner [~~commission~~] determines that the  
17-40 purchase of annuities is financially prudent for the administration  
17-41 of the fund.

17-42 SECTION 3.0151. Subtitle A, Title 5, Labor Code, is amended  
17-43 by adding Chapter 404 to read as follows:

17-44 CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

17-45 SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

17-46 Sec. 404.001. DEFINITIONS. In this chapter:

17-47 (1) "Office" means the office of injured employee  
17-48 counsel.

17-49 (2) "Public counsel" means the injured employee public  
17-50 counsel.

17-51 Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE  
17-52 ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (a) The  
17-53 office of injured employee counsel is established to represent the  
17-54 interests of workers' compensation claimants in this state.

17-55 (b) The office is administratively attached to the  
17-56 department but is independent of direction by the commissioner and  
17-57 the department.

17-58 (c) The department shall provide the staff and facilities  
17-59 necessary to enable the office to perform the duties of the office  
17-60 under this subtitle, including:

17-61 (1) administrative assistance and services to the  
17-62 office, including budget planning and purchasing;

17-63 (2) personnel services; and

17-64 (3) computer equipment and support.

17-65 (d) The public counsel and the commissioner may enter into  
17-66 interagency contracts and other agreements as necessary to  
17-67 implement this chapter.

17-68 Sec. 404.003. SUNSET PROVISION. The office of injured  
17-69 employee counsel is subject to Chapter 325, Government Code (Texas

18-1 Sunset Act). Unless continued in existence as provided by that  
 18-2 chapter, the office is abolished and this chapter expires  
 18-3 September 1, 2017.

18-4 Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office  
 18-5 shall prepare information of public interest describing the  
 18-6 functions of the office.

18-7 (b) The office shall make the information available to the  
 18-8 public and appropriate state agencies.

18-9 Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The  
 18-10 office shall prepare and maintain a written plan that describes how  
 18-11 a person who does not speak English can be provided reasonable  
 18-12 access to the office's programs.

18-13 (b) The office shall comply with federal and state laws for  
 18-14 program and facility accessibility.

18-15 Sec. 404.006. RULEMAKING. (a) The public counsel shall  
 18-16 adopt rules as necessary to implement this chapter.

18-17 (b) Rulemaking under this section is subject to Chapter  
 18-18 2001, Government Code.

18-19 [Sections 404.007-404.050 reserved for expansion]

18-20 SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

18-21 Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with  
 18-22 the advice and consent of the senate, shall appoint the injured  
 18-23 employee public counsel. The public counsel serves a two-year term  
 18-24 that expires on February 1 of each odd-numbered year.

18-25 (b) The governor shall appoint the public counsel without  
 18-26 regard to the race, color, disability, sex, religion, age, or  
 18-27 national origin of the appointee.

18-28 (c) If a vacancy occurs during a term, the governor shall  
 18-29 fill the vacancy for the unexpired term.

18-30 (d) In appointing the public counsel, the governor may  
 18-31 consider recommendations made by groups that represent wage  
 18-32 earners.

18-33 Sec. 404.052. QUALIFICATIONS. To be eligible to serve as  
 18-34 public counsel, a person must:

18-35 (1) be a resident of Texas;

18-36 (2) be licensed to practice law in this state;

18-37 (3) have management experience;

18-38 (4) possess knowledge and experience with the workers'  
 18-39 compensation system; and

18-40 (5) have experience with legislative procedures and  
 18-41 administrative law.

18-42 Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL.  
 18-43 A person is not eligible for appointment as public counsel if the  
 18-44 person or the person's spouse:

18-45 (1) is employed by or participates in the management  
 18-46 of a business entity or other organization that holds a license,  
 18-47 certificate of authority, or other authorization from the  
 18-48 department or that receives funds from the department;

18-49 (2) owns or controls, directly or indirectly, more  
 18-50 than a 10 percent interest in a business entity or other  
 18-51 organization regulated by or receiving funds from the department or  
 18-52 the office; or

18-53 (3) uses or receives a substantial amount of tangible  
 18-54 goods, services, or funds from the department or the office, other  
 18-55 than compensation or reimbursement authorized by law.

18-56 Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve  
 18-57 as public counsel if the person is required to register as a  
 18-58 lobbyist under Chapter 305, Government Code, because of the  
 18-59 person's activities for compensation related to the operation of  
 18-60 the department or the office.

18-61 Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for  
 18-62 removal from office that the public counsel:

18-63 (1) does not have at the time of appointment or  
 18-64 maintain during service as public counsel the qualifications  
 18-65 required by Section 404.052;

18-66 (2) violates a prohibition established by Section  
 18-67 404.053, 404.054, 404.056, or 404.057; or

18-68 (3) cannot, because of illness or disability,  
 18-69 discharge the public counsel's duties for a substantial part of the

19-1 public counsel's term.

19-2 (b) The validity of an action of the office is not affected  
 19-3 by the fact that the action is taken when a ground for removal of the  
 19-4 public counsel exists.

19-5 Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT.

19-6 (a) A former public counsel may not make any communication to or  
 19-7 appearance before the Texas Department of Workers' Compensation,  
 19-8 Texas Department of Insurance, commissioner of workers'  
 19-9 compensation, commissioner of insurance, or an employee of the  
 19-10 Texas Department of Workers' Compensation or Texas Department of  
 19-11 Insurance before the second anniversary of the date the person  
 19-12 ceases to serve as public counsel if the communication or  
 19-13 appearance is made:

19-14 (1) on behalf of another person in connection with any  
 19-15 matter on which the person seeks official action; or

19-16 (2) with the intent to influence the commissioner of  
 19-17 workers' compensation or commissioner of insurance decision or  
 19-18 action, unless the person is acting on the person's own behalf and  
 19-19 without remuneration.

19-20 (b) A former public counsel may not represent any person or  
 19-21 receive compensation for services rendered on behalf of any person  
 19-22 regarding a matter before the Texas Department of Workers'  
 19-23 Compensation or the Texas Department of Insurance before the second  
 19-24 anniversary of the date the person ceases to serve as public  
 19-25 counsel.

19-26 (c) A person commits an offense if the person violates this  
 19-27 section. An offense under this section is a Class A misdemeanor.

19-28 (d) A former employee of the office may not:

19-29 (1) be employed by an insurance carrier regarding a  
 19-30 matter that was in the scope of the employee's official  
 19-31 responsibility while the employee was associated with the office;  
 19-32 or

19-33 (2) represent a person before the Texas Department of  
 19-34 Workers' Compensation or the Texas Department of Insurance or a  
 19-35 court in a matter:

19-36 (A) in which the employee was personally involved  
 19-37 while associated with the office; or

19-38 (B) that was within the employee's official  
 19-39 responsibility while the employee was associated with the office.

19-40 (e) The prohibition of Subsection (d)(1) applies until the  
 19-41 first anniversary of the date the employee's employment with the  
 19-42 office ceases.

19-43 (f) The prohibition of Subsection (d)(2) applies to a  
 19-44 current employee of the office while the employee is associated  
 19-45 with the office and at any time after.

19-46 Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section,  
 19-47 "trade association" means a nonprofit, cooperative, and  
 19-48 voluntarily joined association of business or professional  
 19-49 competitors designed to assist its members and its industry or  
 19-50 profession in dealing with mutual business or professional problems  
 19-51 and in promoting their common interest.

19-52 (b) A person may not serve as public counsel if the person  
 19-53 has been, within the previous two years:

19-54 (1) an officer, employee, or paid consultant of a  
 19-55 trade association in the field of workers' compensation; or

19-56 (2) the spouse of an officer, manager, or paid  
 19-57 consultant of a trade association in the field of workers'  
 19-58 compensation.

19-59 [Sections 404.058-404.100 reserved for expansion]

19-60 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

19-61 Sec. 404.101. GENERAL DUTIES. (a) The office shall, as  
 19-62 provided by this subtitle:

19-63 (1) provide assistance to workers' compensation  
 19-64 claimants as provided by this subtitle;

19-65 (2) advocate on behalf of the public regarding  
 19-66 rulemaking by the commissioner of workers' compensation and  
 19-67 commissioner of insurance relating to workers' compensation;

19-68 (3) assist injured employees with contacting  
 19-69 appropriate licensing boards for complaints against a health care

20-1 provider; and

20-2 (4) assist injured employees with referral to local,  
 20-3 state, and federal financial assistance, rehabilitation, and work  
 20-4 placement programs, as well as other social services that the  
 20-5 office considers appropriate.

20-6 (b) The office:

20-7 (1) may assess the impact of workers' compensation  
 20-8 laws, rules, procedures, and forms on injured employees in this  
 20-9 state; and

20-10 (2) shall, as provided by this subtitle:

20-11 (A) monitor the performance and operation of the  
 20-12 workers' compensation system, with a focus on the system's effect on  
 20-13 the return to work of injured employees;

20-14 (B) assist injured employees, through the  
 20-15 ombudsman program, with the resolution of complaints pending at the  
 20-16 department;

20-17 (C) assist injured workers, through the  
 20-18 ombudsman program, in the department's administrative dispute  
 20-19 resolution system; and

20-20 (D) advocate in the office's own name positions  
 20-21 determined by the public counsel to be most advantageous to a  
 20-22 substantial number of injured workers.

20-23 (c) The office may not appear or intervene, as a party or  
 20-24 otherwise, before the commissioner of workers' compensation,  
 20-25 commissioner of insurance, Texas Department of Workers'  
 20-26 Compensation, or Texas Department of Insurance on behalf of an  
 20-27 individual injured employee.

20-28 Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL.  
 20-29 The public counsel shall administer and enforce this chapter,  
 20-30 including preparing and submitting to the legislature a budget for  
 20-31 the office and approving expenditures for professional services,  
 20-32 travel, per diem, and other actual and necessary expenses incurred  
 20-33 in administering the office.

20-34 Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The  
 20-35 office shall operate the ombudsman program under Subchapter D.

20-36 (b) The office shall coordinate services provided by the  
 20-37 ombudsman program with services provided by the Department of  
 20-38 Assistive and Rehabilitative Services.

20-39 Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public  
 20-40 counsel:

20-41 (1) may appear or intervene, as a party or otherwise,  
 20-42 as a matter of right before the commissioner of workers'  
 20-43 compensation, commissioner of insurance, Texas Department of  
 20-44 Workers' Compensation, or Texas Department of Insurance on behalf  
 20-45 of injured employees as a class in matters involving rates, rules,  
 20-46 and forms affecting workers' compensation insurance for which the  
 20-47 commissioner of workers' compensation or the commissioner of  
 20-48 insurance promulgates rates or adopts or approves rules or forms;

20-49 (2) may intervene as a matter of right or otherwise  
 20-50 appear in a judicial proceeding involving or arising from an action  
 20-51 taken by an administrative agency in a proceeding in which the  
 20-52 public counsel previously appeared under the authority granted by  
 20-53 this chapter;

20-54 (3) may appear or intervene, as a party or otherwise,  
 20-55 as a matter of right on behalf of injured employees as a class in any  
 20-56 proceeding in which the public counsel determines that injured  
 20-57 employees are in need of representation, except that the public  
 20-58 counsel may not intervene in an enforcement or parens patriae  
 20-59 proceeding brought by the attorney general; and

20-60 (4) may appear or intervene before the commissioner of  
 20-61 workers' compensation, commissioner of insurance, Texas Department  
 20-62 of Workers' Compensation, or Texas Department of Insurance, as a  
 20-63 party or otherwise, on behalf of injured employees as a class in a  
 20-64 matter involving rates, rules, or forms affecting injured employees  
 20-65 as a class in any proceeding in which the public counsel determines  
 20-66 that injured employees are in need of representation.

20-67 Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN  
 20-68 ADMINISTRATIVE PROCEDURES. The office, through the ombudsman  
 20-69 program, may appear before the commissioner or department on behalf

21-1 of an individual injured employee during an administrative dispute  
21-2 resolution process.

21-3 Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall  
21-4 report to the governor, lieutenant governor, speaker of the house  
21-5 of representatives, and the chairs of the legislative committees  
21-6 with appropriate jurisdiction not later than December 31 of each  
21-7 even-numbered year. The report must include:

21-8 (1) a description of the activities of the office;  
21-9 (2) identification of any problems in the workers'  
21-10 compensation system from the perspective of injured employees as  
21-11 considered by the public counsel, with recommendations for  
21-12 regulatory and legislative action; and  
21-13 (3) an analysis of the ability of the workers'  
21-14 compensation system to provide adequate, equitable, and timely  
21-15 benefits to injured employees at a reasonable cost to employers.

21-16 (b) The office shall coordinate with the workers'  
21-17 compensation research and evaluation group to obtain needed  
21-18 information and data to make the evaluations required for the  
21-19 report.

21-20 (c) The office shall publish and disseminate the  
21-21 legislative report to interested persons, and may charge a fee for  
21-22 the publication as necessary to achieve optimal dissemination.

21-23 Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. The  
21-24 public counsel:

21-25 (1) is entitled to the same access as a party, other  
21-26 than Texas Department of Workers' Compensation or Texas Department  
21-27 of Insurance staff, to Texas Department of Workers' Compensation or  
21-28 Texas Department of Insurance records available in a proceeding  
21-29 before the commissioner of workers' compensation, commissioner of  
21-30 insurance, Texas Department of Workers' Compensation or Texas  
21-31 Department of Insurance under the authority granted to the public  
21-32 counsel by this chapter; and

21-33 (2) is entitled to obtain discovery under Chapter  
21-34 2001, Government Code, of any nonprivileged matter that is relevant  
21-35 to the subject matter involved in a proceeding or submission before  
21-36 the commissioner of workers' compensation, commissioner of  
21-37 insurance, Texas Department of Workers' Compensation, or Texas  
21-38 Department of Insurance as authorized by this chapter.

21-39 Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public  
21-40 counsel may recommend proposed legislation to the legislature that  
21-41 the public counsel determines would positively affect the interests  
21-42 of injured employees.

21-43 Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public  
21-44 counsel shall submit to the Texas Department of Workers'  
21-45 Compensation and Texas Department of Insurance for adoption by the  
21-46 commissioners a notice of injured employee rights and  
21-47 responsibilities to be distributed as provided by commissioner of  
21-48 workers' compensation and commissioner of insurance rules.

21-49 Sec. 404.110. APPLICABILITY OF CONFIDENTIALITY REQUIREMENTS.  
21-50 Confidentiality requirements applicable to examination reports  
21-51 under Article 1.18, Insurance Code, and to the commissioner under  
21-52 Section 3A, Article 21.28-A, Insurance Code, apply to the public  
21-53 counsel.

21-54 Sec. 404.111. ACCESS TO INFORMATION. (a) The office is  
21-55 entitled to information that is otherwise confidential under a law  
21-56 of this state, including information made confidential under:

21-57 (1) Section 843.006, Insurance Code;  
21-58 (2) Chapter 108, Health and Safety Code; and  
21-59 (3) Chapter 552, Government Code.

21-60 (b) On request by the public counsel, the Texas Department  
21-61 of Workers' Compensation or Texas Department of Insurance shall  
21-62 provide any information or data requested by the office in  
21-63 furtherance of the duties of the office under this chapter.

21-64 (c) The office may not make public any confidential  
21-65 information provided to the office under this chapter but may  
21-66 disclose a summary of the information that does not directly or  
21-67 indirectly identify the individual or entity that is the subject of  
21-68 the information. The office may not release, and an individual or  
21-69 entity may not gain access to, any information that:

22-1 (1) could reasonably be expected to reveal the  
 22-2 identity of a doctor or an injured employee;

22-3 (2) reveals the zip code of an injured employee's  
 22-4 primary residence;

22-5 (3) discloses a provider discount or a differential  
 22-6 between a payment and a billed charge; or

22-7 (4) relates to an actual payment made by a payer to an  
 22-8 identified provider.

22-9 (d) Information collected or used by the office under this  
 22-10 chapter is subject to the confidentiality provisions and criminal  
 22-11 penalties of:

22-12 (1) Section 81.103, Health and Safety Code;

22-13 (2) Section 311.037, Health and Safety Code; and

22-14 (3) Chapter 159, Occupations Code.

22-15 (e) Information on doctors and injured employees that is in  
 22-16 the possession of the office, and any compilation, report, or  
 22-17 analysis produced from the information that identifies doctors and  
 22-18 injured employees is not:

22-19 (1) subject to discovery, subpoena, or other means of  
 22-20 legal compulsion for release to any individual or entity; or

22-21 (2) admissible in any civil, administrative, or  
 22-22 criminal proceeding.

22-23 (f) Notwithstanding Subsection (c)(2), the office may use  
 22-24 zip code information to analyze information on a geographical  
 22-25 basis.

22-26 SECTION. 3.0152. Subchapter C, Chapter 409, Labor Code, is  
 22-27 redesignated as Subchapter D, Chapter 404, Labor Code, and Sections  
 22-28 409.041 through 409.044, Labor Code, are renumbered as Sections  
 22-29 404.151 through 404.154, Labor Code, and amended to read as  
 22-30 follows:

22-31 SUBCHAPTER D [C]. OMBUDSMAN PROGRAM

22-32 Sec. 404.151 [409.041]. OMBUDSMAN PROGRAM. (a) The  
 22-33 office [commission] shall maintain an ombudsman program as provided  
 22-34 by this subchapter to assist injured employees [workers] and  
 22-35 persons claiming death benefits in obtaining benefits under this  
 22-36 subtitle.

22-37 (b) An ombudsman shall:

22-38 (1) meet with or otherwise provide information to  
 22-39 injured employees [workers];

22-40 (2) investigate complaints;

22-41 (3) communicate with employers, insurance carriers,  
 22-42 and health care providers on behalf of injured employees [workers];

22-43 (4) assist unrepresented claimants, employers, and  
 22-44 other parties to enable those persons to protect their rights in the  
 22-45 workers' compensation system; and

22-46 (5) meet with an unrepresented claimant privately for  
 22-47 a minimum of 15 minutes prior to any informal or formal hearing.

22-48 Sec. 404.151 [409.042]. DESIGNATION AS OMBUDSMAN;  
 22-49 ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION  
 22-50 REQUIREMENTS. (a) At least one specially qualified employee in  
 22-51 each department [commission] office shall be an ombudsman  
 22-52 designated by the office of injured employee counsel, [an  
 22-53 ombudsman] who shall perform the duties under this subchapter  
 22-54 [section] as the person's primary responsibility.

22-55 (b) To be eligible for designation as an ombudsman, a person  
 22-56 must:

22-57 (1) demonstrate satisfactory knowledge of the  
 22-58 requirements of:

22-59 (A) this subtitle and the provisions of Subtitle  
 22-60 C that relate to claims management;

22-61 (B) other laws relating to workers'  
 22-62 compensation; and

22-63 (C) rules adopted under this subtitle and the  
 22-64 laws described under Subdivision (1)(B);

22-65 (2) have demonstrated experience in handling and  
 22-66 resolving problems for the general public;

22-67 (3) possess strong interpersonal skills; and

22-68 (4) have at least one year of demonstrated experience  
 22-69 in the field of workers' compensation.

23-1 (c) The public counsel shall [~~commission~~] by rule [~~shall~~]  
 23-2 adopt training guidelines and continuing education requirements  
 23-3 for ombudsmen. Training provided under this subsection must:

23-4 (1) include education regarding this subtitle and [~~7~~]  
 23-5 rules adopted under this subtitle, [~~and appeals panel decisions,~~]  
 23-6 with emphasis on benefits and the dispute resolution process; and

23-7 (2) require an ombudsman undergoing training to be  
 23-8 observed and monitored by an experienced ombudsman during daily  
 23-9 activities conducted under this subchapter.

23-10 Sec. 404.153 [~~409.043~~]. EMPLOYER NOTIFICATION; ADMINISTRATIVE  
 23-11 VIOLATION. (a) Each employer shall notify its employees of the  
 23-12 ombudsman program in the [~~a~~] manner prescribed by the office  
 23-13 [~~commission~~].

23-14 (b) An employer commits a violation if the employer fails to  
 23-15 comply with this section. A violation under this section is a Class  
 23-16 C administrative violation.

23-17 Sec. 404.154 [~~409.044~~]. PUBLIC INFORMATION. The office  
 23-18 [~~commission~~] shall widely disseminate information about the  
 23-19 ombudsman program.

23-20 SECTION 3.016. Section 405.001, Labor Code, is amended to  
 23-21 read as follows:

23-22 Sec. 405.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

23-23 (1) "Commissioner" means the commissioner of  
 23-24 insurance.

23-25 (2) "Department" [~~"department"~~] means the Texas  
 23-26 Department of Insurance.

23-27 SECTION 3.017. Section 405.002, Labor Code, is amended by  
 23-28 amending Subsection (a) and adding Subsections (d) and (e) to read  
 23-29 as follows:

23-30 (a) The department shall conduct professional studies and  
 23-31 research related to:

- 23-32 (1) the delivery of benefits;
- 23-33 (2) litigation and controversy related to workers'  
 23-34 compensation;
- 23-35 (3) insurance rates and rate-making procedures;
- 23-36 (4) rehabilitation and reemployment of injured  
 23-37 workers;

- 23-38 (5) workplace health and safety issues;
- 23-39 (6) the quality and cost of medical benefits; [~~and~~]

23-40 (7) the impact of workers' compensation health care  
 23-41 networks certified under Chapter 1305, Insurance Code, on claims  
 23-42 costs and injured employee outcomes; and

23-43 (8) other matters relevant to the cost, quality, and  
 23-44 operational effectiveness of the workers' compensation system.

23-45 (d) In accordance with Subchapter K, Chapter 1305,  
 23-46 Insurance Code, the department shall:

23-47 (1) biennially evaluate the cost and quality of health  
 23-48 care provided by workers' compensation health care networks; and

23-49 (2) issue annual consumer report cards comparing  
 23-50 workers' compensation health care networks certified by the  
 23-51 department under Chapter 1305, Insurance Code, with each other and  
 23-52 with care provided outside of networks. The report cards should  
 23-53 include comparisons on costs, medical outcomes, and return-to-work  
 23-54 rates.

23-55 (e) The commissioner of insurance shall adopt rules as  
 23-56 necessary to establish data reporting requirements to support the  
 23-57 research duties of the department under this chapter. Nothing in  
 23-58 this section shall be construed to require additional reporting  
 23-59 requirements on nonsubscribing companies.

23-60 SECTION 3.018. Chapter 405, Labor Code, is amended by  
 23-61 adding Section 405.0021 to read as follows:

23-62 Sec. 405.0021. RESEARCH AGENDA. (a) The department shall  
 23-63 prepare and publish annually in the Texas Register a proposed  
 23-64 workers' compensation research agenda for commissioner review and  
 23-65 approval.

23-66 (b) The commissioner shall:

- 23-67 (1) accept public comments on the research agenda; and
- 23-68 (2) hold a public hearing on the proposed research  
 23-69 agenda if a hearing is requested by interested persons.

24-1 SECTION 3.019. Section 406.004, Labor Code, is amended to  
 24-2 read as follows:

24-3 Sec. 406.004. EMPLOYER NOTICE TO DEPARTMENT [~~COMMISSION,~~  
 24-4 ~~ADMINISTRATIVE VIOLATION~~]. (a) An employer who does not obtain  
 24-5 workers' compensation insurance coverage shall notify the  
 24-6 department [~~commission~~] in writing, in the time and as prescribed  
 24-7 by commissioner [~~commission~~] rule, that the employer elects not to  
 24-8 obtain coverage.

24-9 (b) The commissioner [~~commission~~] shall prescribe forms to  
 24-10 be used for the employer notification and shall require the  
 24-11 employer to provide reasonable information to the department  
 24-12 [~~commission~~] about the employer's business.

24-13 (c) The department [~~commission~~] may contract with the Texas  
 24-14 Workforce [~~Employment~~] Commission or the comptroller for  
 24-15 assistance in collecting the notification required under this  
 24-16 section. Those agencies shall cooperate with the department  
 24-17 [~~commission~~] in enforcing this section.

24-18 (d) The employer notification filing required under this  
 24-19 section shall be filed with the department [~~commission~~] in  
 24-20 accordance with Section 406.009.

24-21 (e) An employer commits a violation if the employer fails to  
 24-22 comply with this section. [~~A violation under this subsection is a~~  
 24-23 ~~Class D administrative violation. Each day of noncompliance~~  
 24-24 ~~constitutes a separate violation.~~]

24-25 SECTION 3.020. Subsections (c) and (e), Section 406.005,  
 24-26 Labor Code, are amended to read as follows:

24-27 (c) Each employer shall post a notice of whether the  
 24-28 employer has workers' compensation insurance coverage at  
 24-29 conspicuous locations at the employer's place of business as  
 24-30 necessary to provide reasonable notice to the employees. The  
 24-31 commissioner [~~commission~~] may adopt rules relating to the form and  
 24-32 content of the notice. The employer shall revise the notice when  
 24-33 the information contained in the notice is changed.

24-34 (e) An employer commits a violation if the employer fails to  
 24-35 comply with this section. [~~A violation under this subsection is a~~  
 24-36 ~~Class D administrative violation.~~]

24-37 SECTION 3.021. Subsections (a), (b), and (c), Section  
 24-38 406.006, Labor Code, are amended to read as follows:

24-39 (a) An insurance company from which an employer has obtained  
 24-40 workers' compensation insurance coverage, a certified  
 24-41 self-insurer, a workers' compensation self-insurance group under  
 24-42 Chapter 407A, and a political subdivision shall file notice of the  
 24-43 coverage and claim administration contact information with the  
 24-44 department [~~commission~~] not later than the 10th day after the date  
 24-45 on which the coverage or claim administration agreement takes  
 24-46 effect, unless the commissioner [~~commission~~] adopts a rule  
 24-47 establishing a later date for filing. Coverage takes effect on the  
 24-48 date on which a binder is issued, a later date and time agreed to by  
 24-49 the parties, on the date provided by the certificate of  
 24-50 self-insurance, or on the date provided in an interlocal agreement  
 24-51 that provides for self-insurance. The commissioner [~~commission~~]  
 24-52 may adopt rules that establish the coverage and claim  
 24-53 administration contact information required under this subsection.

24-54 (b) The notice required under this section shall be filed  
 24-55 with the department [~~commission~~] in accordance with Section  
 24-56 406.009.

24-57 (c) An insurance company, a certified self-insurer, a  
 24-58 workers' compensation self-insurance group under Chapter 407A, or a  
 24-59 political subdivision commits a violation if the person fails to  
 24-60 file notice with the department [~~commission~~] as provided by this  
 24-61 section. [~~A violation under this subsection is a Class C~~  
 24-62 ~~administrative violation. Each day of noncompliance constitutes a~~  
 24-63 ~~separate violation.~~]

24-64 SECTION 3.022. Subsections (a), (b), and (c), Section  
 24-65 406.007, Labor Code, are amended to read as follows:

24-66 (a) An employer who terminates workers' compensation  
 24-67 insurance coverage obtained under this subtitle shall file a  
 24-68 written notice with the department [~~commission~~] by certified mail  
 24-69 not later than the 10th day after the date on which the employer



25-1 notified the insurance carrier to terminate the coverage. The  
 25-2 notice must include a statement certifying the date that notice was  
 25-3 provided or will be provided to affected employees under Section  
 25-4 406.005.

25-5 (b) The notice required under this section shall be filed  
 25-6 with the department [~~commission~~] in accordance with Section  
 25-7 406.009.

25-8 (c) Termination of coverage takes effect on the later of:  
 25-9 (1) the 30th day after the date of filing of notice  
 25-10 with the department [~~commission~~] under Subsection (a); or

25-11 (2) the cancellation date of the policy.

25-12 SECTION 3.023. Section 406.008, Labor Code, is amended to  
 25-13 read as follows:

25-14 Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY  
 25-15 INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels  
 25-16 a policy of workers' compensation insurance or that does not renew  
 25-17 the policy by the anniversary date of the policy shall deliver  
 25-18 notice of the cancellation or nonrenewal by certified mail or in  
 25-19 person to the employer and the department [~~commission~~] not later  
 25-20 than:

25-21 (1) the 30th day before the date on which the  
 25-22 cancellation or nonrenewal takes effect; or

25-23 (2) the 10th day before the date on which the  
 25-24 cancellation or nonrenewal takes effect if the insurance company  
 25-25 cancels or does not renew because of:

25-26 (A) fraud in obtaining coverage;  
 25-27 (B) misrepresentation of the amount of payroll  
 25-28 for purposes of premium calculation;

25-29 (C) failure to pay a premium when due;

25-30 (D) an increase in the hazard for which the  
 25-31 employer seeks coverage that results from an act or omission of the  
 25-32 employer and that would produce an increase in the rate, including  
 25-33 an increase because of a failure to comply with:

25-34 (i) reasonable recommendations for loss  
 25-35 control; or

25-36 (ii) recommendations designed to reduce a  
 25-37 hazard under the employer's control within a reasonable period; or

25-38 (E) a determination made by the commissioner of  
 25-39 insurance that the continuation of the policy would place the  
 25-40 insurer in violation of the law or would be hazardous to the  
 25-41 interest of subscribers, creditors, or the general public.

25-42 (b) The notice required under this section shall be filed  
 25-43 with the department [~~commission~~].

25-44 (c) Failure of the insurance company to give notice as  
 25-45 required by this section extends the policy until the date on which  
 25-46 the required notice is provided to the employer and the department  
 25-47 [~~commission~~].

25-48 SECTION 3.024. Section 406.009, Labor Code, is amended to  
 25-49 read as follows:

25-50 Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION;  
 25-51 MONITORING AND ENFORCING COMPLIANCE. (a) The department  
 25-52 [~~commission~~] shall collect and maintain the information required  
 25-53 under this subchapter and shall monitor compliance with the  
 25-54 requirements of this subchapter.

25-55 (b) The commissioner [~~commission~~] may adopt rules as  
 25-56 necessary to enforce this subchapter.

25-57 (c) The commissioner [~~commission~~] may designate a data  
 25-58 collection agent, implement an electronic reporting and public  
 25-59 information access program, and adopt rules as necessary to  
 25-60 implement the data collection requirements of this subchapter. The  
 25-61 commissioner [~~executive director~~] may establish the form, manner,  
 25-62 and procedure for the transmission of information to the department  
 25-63 [~~commission as authorized by Section 402.042(b)(11)~~].

25-64 (d) The department [~~commission~~] may require an employer or  
 25-65 insurance carrier subject to this subtitle to identify or confirm  
 25-66 an employer's coverage status and claim administration contact  
 25-67 information as necessary to achieve the purposes of this subtitle.

25-68 (e) An employer or insurance carrier commits a violation if  
 25-69 that person fails to comply with Subsection (d). [~~A violation under~~

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

SECTION 3.025. Subsections (c) and (d), Section 406.010, Labor Code, is amended to read as follows:

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

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

SECTION 3.026. Section 406.011, Labor Code, is amended to read as follows:

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

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

SECTION 3.0261. Section 406.033, Labor Code, is amended by adding Subsection (f) to read as follows:

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

(1) is knowing and voluntary;  
(2) is entered into not less than 10 business days after the initial report of injury, provided that the employee prior to the signing of the waiver has received a medical evaluation from a nonemergency care doctor; and

(3) is in writing so that the true intent of the parties is specifically stated in the four corners of the document. The waiver provisions must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in type larger than the type contained in the body of the agreement or in contrasting colors.

SECTION 3.027. Subsection (c), Section 406.051, Labor Code, is amended to read as follows:

(c) The employer may not transfer:

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

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

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

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

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

SECTION 3.028. Subsections (b) and (c), Section 406.073, Labor Code, are amended to read as follows:

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

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

SECTION 3.029. Subsections (a) and (b), Section 406.074, Labor Code, are amended to read as follows:

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

(1) conflicts of jurisdiction;

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

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

(4) procedures for the appropriate agency to use to

27-1 proceed against an employer of this state who fails to comply with  
 27-2 the workers' compensation laws of the other jurisdiction.

27-3 (b) An executed agreement that has been adopted as a rule by  
 27-4 the commissioner [~~commission~~] binds all subject employers and  
 27-5 employees.

27-6 SECTION 3.030. Subsection (b), Section 406.093, Labor Code,  
 27-7 is amended to read as follows:

27-8 (b) The commissioner [~~commission~~] by rule shall adopt  
 27-9 procedures relating to the method of payment of benefits to legally  
 27-10 incompetent employees.

27-11 SECTION 3.031. Subsection (b), Section 406.095, Labor Code,  
 27-12 is amended to read as follows:

27-13 (b) The commissioner [~~commission~~] by rule shall establish  
 27-14 the procedures and requirements for an election under this section.

27-15 SECTION 3.032. Subsection (g), Section 406.123, Labor Code,  
 27-16 is amended to read as follows:

27-17 (g) A general contractor who enters into an agreement with a  
 27-18 subcontractor under this section commits a violation if the  
 27-19 contractor fails to file a copy of the agreement as required by  
 27-20 Subsection (f). [~~A violation under this subsection is a Class B~~  
 27-21 ~~administrative violation.~~]

27-22 SECTION 3.033. Subsections (c) and (d), Section 406.144,  
 27-23 Labor Code, are amended to read as follows:

27-24 (c) An agreement under this section shall be filed with the  
 27-25 department [~~commission~~] either by personal delivery or by  
 27-26 registered or certified mail and is considered filed on receipt by  
 27-27 the department [~~commission~~].

27-28 (d) The hiring contractor shall send a copy of an agreement  
 27-29 under this section to the hiring contractor's workers' compensation  
 27-30 insurance carrier on filing of the agreement with the department  
 27-31 [~~commission~~].

27-32 SECTION 3.034. Subsections (a) through (d) and (f), Section  
 27-33 406.145, Labor Code, are amended to read as follows:

27-34 (a) A hiring contractor and an independent subcontractor  
 27-35 may make a joint agreement declaring that the subcontractor is an  
 27-36 independent contractor as defined in Section 406.141(2) and that  
 27-37 the subcontractor is not the employee of the hiring contractor. If  
 27-38 the joint agreement is signed by both the hiring contractor and the  
 27-39 subcontractor and filed with the department [~~commission~~], the  
 27-40 subcontractor, as a matter of law, is an independent contractor and  
 27-41 not an employee, and is not entitled to workers' compensation  
 27-42 insurance coverage through the hiring contractor unless an  
 27-43 agreement is entered into under Section 406.144 to provide workers'  
 27-44 compensation insurance coverage. The commissioner [~~commission~~]  
 27-45 shall prescribe forms for the joint agreement.

27-46 (b) A joint agreement shall be delivered to the department  
 27-47 [~~commission~~] by personal delivery or registered or certified mail  
 27-48 and is considered filed on receipt by the department [~~commission~~].

27-49 (c) The hiring contractor shall send a copy of a joint  
 27-50 agreement signed under this section to the hiring contractor's  
 27-51 workers' compensation insurance carrier on filing of the joint  
 27-52 agreement with the department [~~commission~~].

27-53 (d) The department [~~commission~~] shall maintain a system for  
 27-54 accepting and maintaining the joint agreements.

27-55 (f) If a subsequent hiring agreement is made to which the  
 27-56 joint agreement does not apply, the hiring contractor and  
 27-57 independent contractor shall notify the department [~~commission~~]  
 27-58 and the hiring contractor's workers' compensation insurance carrier  
 27-59 in writing.

27-60 SECTION 3.035. Subsection (b), Section 406.162, Labor Code,  
 27-61 is amended to read as follows:

27-62 (b) The comptroller shall prepare a consumer price index for  
 27-63 this state and shall certify the applicable index factor to the  
 27-64 department [~~commission~~] before October 1 of each year. The  
 27-65 department [~~commission~~] shall adjust the gross annual payroll  
 27-66 requirement under Subsection (a)(2)(B) accordingly.

27-67 SECTION 3.036. Subdivision (3), Section 407.001, Labor  
 27-68 Code, is amended to read as follows:

27-69 (3) "Impaired employer" means a certified

28-1 self-insurer:

28-2 (A) who has suspended payment of compensation as  
28-3 determined by the department [~~commission~~];

28-4 (B) who has filed for relief under bankruptcy  
28-5 laws;

28-6 (C) against whom bankruptcy proceedings have  
28-7 been filed; or

28-8 (D) for whom a receiver has been appointed by a  
28-9 court of this state.

28-10 SECTION 3.037. Section 407.021, Labor Code, is amended to  
28-11 read as follows:

28-12 Sec. 407.021. DIVISION. The division of self-insurance  
28-13 regulation is a division of the department [~~commission~~].

28-14 SECTION 3.038. Section 407.022, Labor Code, is amended to  
28-15 read as follows:

28-16 Sec. 407.022. DIRECTOR. (a) The commissioner [~~executive  
28-17 director of the commission~~] shall appoint the director of the  
28-18 division.

28-19 (b) The director shall exercise all the rights, powers, and  
28-20 duties imposed or conferred on the department [~~commission~~] by this  
28-21 chapter, other than by Section 407.023.

28-22 SECTION 3.039. Section 407.023, Labor Code, is amended to  
28-23 read as follows:

28-24 Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER  
28-25 [~~COMMISSION~~]. (a) The commissioner [~~commission, by majority  
28-26 vote,~~] shall:

28-27 (1) approve or deny a recommendation by the director  
28-28 concerning the issuance or revocation of a certificate of authority  
28-29 to self-insure; and

28-30 (2) certify that a certified self-insurer has  
28-31 suspended payment of compensation or has otherwise become an  
28-32 impaired employer.

28-33 (b) The commissioner [~~commission~~] may not delegate the  
28-34 powers and duties imposed by this section.

28-35 SECTION 3.040. Subsections (a), (b), and (c), Section  
28-36 407.041, Labor Code, are amended to read as follows:

28-37 (a) An employer who desires to self-insure under this  
28-38 chapter must submit an application to the department [~~commission~~]  
28-39 for a certificate of authority to self-insure.

28-40 (b) The application must be:

28-41 (1) submitted on a form adopted by the commissioner  
28-42 [~~commission~~]; and

28-43 (2) accompanied by a nonrefundable \$1,000 application  
28-44 fee.

28-45 (c) Not later than the 60th day after the date on which the  
28-46 application is received, the director shall recommend approval or  
28-47 denial of the application to the department [~~commission~~].

28-48 SECTION 3.041. Section 407.042, Labor Code, is amended to  
28-49 read as follows:

28-50 Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval  
28-51 of the Texas Certified Self-Insurer Guaranty Association, [~~and by  
28-52 majority vote,~~] the commissioner [~~commission~~] shall issue a  
28-53 certificate of authority to self-insure to an applicant who meets  
28-54 the certification requirements under this chapter and pays the  
28-55 required fee.

28-56 SECTION 3.042. Section 407.043, Labor Code, is amended to  
28-57 read as follows:

28-58 Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If  
28-59 the commissioner [~~commission~~] determines that an applicant for a  
28-60 certificate of authority to self-insure does not meet the  
28-61 certification requirements, the commissioner [~~commission~~] shall  
28-62 notify the applicant in writing of the commissioner's [~~its~~]  
28-63 determination, stating the specific reasons for the denial and the  
28-64 conditions to be met before approval may be granted.

28-65 (b) The applicant is entitled to a reasonable period, as  
28-66 determined by the commissioner [~~commission~~], to meet the conditions  
28-67 for approval before the application is considered rejected for  
28-68 purposes of appeal.

28-69 SECTION 3.043. Subsection (a), Section 407.044, Labor Code,

29-1 is amended to read as follows:

29-2 (a) A certificate of authority to self-insure is valid for  
29-3 one year after the date of issuance and may be renewed under  
29-4 procedures prescribed by the commissioner [~~commission~~].

29-5 SECTION 3.044. Section 407.045, Labor Code, is amended to  
29-6 read as follows:

29-7 Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A  
29-8 certified self-insurer may withdraw from self-insurance at any time  
29-9 with the approval of the commissioner [~~commission~~]. The  
29-10 commissioner [~~commission~~] shall approve the withdrawal if the  
29-11 certified self-insurer shows to the satisfaction of the  
29-12 commissioner [~~commission~~] that the certified self-insurer has  
29-13 established an adequate program to pay all incurred losses,  
29-14 including unreported losses, that arise out of accidents or  
29-15 occupational diseases first distinctly manifested during the  
29-16 period of operation as a certified self-insurer.

29-17 (b) A certified self-insurer who withdraws from  
29-18 self-insurance shall surrender to the department [~~commission~~] the  
29-19 certificate of authority to self-insure.

29-20 SECTION 3.045. Subsections (a), (b), and (d), Section  
29-21 407.046, Labor Code, are amended to read as follows:

29-22 (a) The commissioner [~~commission by majority vote~~] may  
29-23 revoke the certificate of authority to self-insure of a certified  
29-24 self-insurer who fails to comply with requirements or conditions  
29-25 established by this chapter or a rule adopted by the commissioner  
29-26 [~~commission~~] under this chapter.

29-27 (b) If the commissioner [~~commission~~] believes that a ground  
29-28 exists to revoke a certificate of authority to self-insure, the  
29-29 commissioner [~~commission~~] shall refer the matter to the State  
29-30 Office of Administrative Hearings. That office shall hold a  
29-31 hearing to determine if the certificate should be revoked. The  
29-32 hearing shall be conducted in the manner provided for a contested  
29-33 case hearing under Chapter 2001, Government Code [~~the~~  
29-34 ~~administrative procedure law~~].

29-35 (d) If the certified self-insurer fails to show cause why  
29-36 the certificate should not be revoked, the commissioner  
29-37 [~~commission~~] immediately shall revoke the certificate.

29-38 SECTION 3.046. Subsection (b), Section 407.047, Labor Code,  
29-39 is amended to read as follows:

29-40 (b) The security required under Sections 407.064 and  
29-41 407.065 shall be maintained with the department [~~commission~~] or  
29-42 under the department's [~~commission's~~] control until each claim for  
29-43 workers' compensation benefits is paid, is settled, or lapses under  
29-44 this subtitle.

29-45 SECTION 3.047. Subsections (a), (c), (e), and (f), Section  
29-46 407.061, Labor Code, are amended to read as follows:

29-47 (a) To be eligible for a certificate of authority to  
29-48 self-insure, an applicant for an initial or renewal certificate  
29-49 must present evidence satisfactory to the commissioner  
29-50 [~~commission~~] and the association of sufficient financial strength  
29-51 and liquidity, under standards adopted by the commissioner  
29-52 [~~commission~~], to ensure that all workers' compensation obligations  
29-53 incurred by the applicant under this chapter are met promptly.

29-54 (c) The applicant must present a plan for claims  
29-55 administration that is acceptable to the commissioner [~~commission~~]  
29-56 and that designates a qualified claims servicing contractor.

29-57 (e) The applicant must provide to the commissioner  
29-58 [~~commission~~] a copy of each contract entered into with a person that  
29-59 provides claims services, underwriting services, or accident  
29-60 prevention services if the provider of those services is not an  
29-61 employee of the applicant. The contract must be acceptable to the  
29-62 commissioner [~~commission~~] and must be submitted in a standard form  
29-63 adopted by the commissioner [~~commission~~], if the commissioner  
29-64 [~~commission~~] adopts such a form.

29-65 (f) The commissioner [~~commission~~] shall adopt rules for the  
29-66 requirements for the financial statements required by Subsection  
29-67 (b)(2).

29-68 SECTION 3.048. Section 407.062, Labor Code, is amended to  
29-69 read as follows:

30-1           Sec. 407.062. FINANCIAL           STRENGTH           AND           LIQUIDITY  
30-2 REQUIREMENTS. In assessing the financial strength and liquidity of  
30-3 an applicant, the commissioner [~~commission~~] shall consider:

30-4           (1) the applicant's organizational structure and  
30-5 management background;

30-6           (2) the applicant's profit and loss history;

30-7           (3) the applicant's compensation loss history;

30-8           (4) the source and reliability of the financial  
30-9 information submitted by the applicant;

30-10          (5) the number of employees affected by  
30-11 self-insurance;

30-12          (6) the applicant's access to excess insurance  
30-13 markets;

30-14          (7) financial ratios, indexes, or other financial  
30-15 measures that the commissioner [~~commission~~] finds appropriate; and

30-16          (8) any other information considered appropriate by  
30-17 the commissioner [~~commission~~].

30-18          SECTION 3.049. Subsection (a), Section 407.063, Labor Code,  
30-19 is amended to read as follows:

30-20          (a) In addition to meeting the other certification  
30-21 requirements imposed under this chapter, an applicant for an  
30-22 initial certificate of authority to self-insure must present  
30-23 evidence satisfactory to the commissioner [~~commission~~] of a total  
30-24 unmodified workers' compensation insurance premium in this state in  
30-25 the calendar year of application of at least \$500,000.

30-26          SECTION 3.050. Subsection (b), Section 407.064, Labor Code,  
30-27 is amended to read as follows:

30-28          (b) If an applicant who has provided a letter of credit as  
30-29 all or part of the security required under this section desires to  
30-30 cancel the existing letter of credit and substitute a different  
30-31 letter of credit or another form of security, the applicant shall  
30-32 notify the department [~~commission~~] in writing not later than the  
30-33 60th day before the effective date of the cancellation of the  
30-34 original letter of credit.

30-35          SECTION 3.051. Subsection (d), Section 407.067, Labor Code,  
30-36 is amended to read as follows:

30-37          (d) A person commits a violation if the person violates  
30-38 Subsection (c). [~~A violation under this subsection is a Class B~~  
30-39 ~~administrative violation. Each day of noncompliance constitutes a~~  
30-40 ~~separate violation.~~]

30-41          SECTION 3.052. Subsections (a) through (d), (f), and (g),  
30-42 Section 407.081, Labor Code, are amended to read as follows:

30-43          (a) Each certified self-insurer shall file an annual report  
30-44 with the department [~~commission~~]. The commissioner [~~commission~~]  
30-45 shall prescribe the form of the report and shall furnish blank forms  
30-46 for the preparation of the report to each certified self-insurer.

30-47          (b) The report must:

30-48           (1) include payroll information, in the form  
30-49 prescribed by this chapter and the department [~~commission~~];

30-50           (2) state the number of injuries sustained in the  
30-51 three preceding calendar years; and

30-52           (3) indicate separately the amount paid during each  
30-53 year for income benefits, medical benefits, death benefits, burial  
30-54 benefits, and other proper expenses related to worker injuries.

30-55          (c) Each certified self-insurer shall file with the  
30-56 department [~~commission~~] as part of the annual report annual  
30-57 independent financial statements that reflect the financial  
30-58 condition of the self-insurer. The department [~~commission~~] shall  
30-59 make a financial statement filed under this subsection available  
30-60 for public review.

30-61          (d) The department [~~commission~~] may require that the report  
30-62 include additional financial and statistical information.

30-63          (f) The report must include an estimate of future liability  
30-64 for compensation. The estimate must be signed and sworn to by a  
30-65 certified casualty actuary every third year, or more frequently if  
30-66 required by the commissioner [~~commission~~].

30-67          (g) If the commissioner [~~commission~~] considers it  
30-68 necessary, the commissioner [~~it~~] may order a certified self-insurer  
30-69 whose financial condition or claims record warrants closer

31-1 supervision to report as provided by this section more often than  
31-2 annually.

31-3 SECTION 3.053. Subsections (a), (c), (d), and (e), Section  
31-4 407.082, Labor Code, are amended to read as follows:

31-5 (a) Each certified self-insurer shall maintain the books,  
31-6 records, and payroll information necessary to compile the annual  
31-7 report required under Section 407.081 and any other information  
31-8 reasonably required by the commissioner [~~commission~~].

31-9 (c) The material maintained by the certified self-insurer  
31-10 shall be open to examination by an authorized agent or  
31-11 representative of the department [~~commission~~] at reasonable times  
31-12 to ascertain the correctness of the information.

31-13 (d) The examination may be conducted at any location,  
31-14 including the department's [~~commission's~~] Austin offices, or, at  
31-15 the certified self-insurer's option, in the offices of the  
31-16 certified self-insurer. The certified self-insurer shall pay the  
31-17 reasonable expenses, including travel expenses, of an inspector who  
31-18 conducts an inspection at its offices.

31-19 (e) An unreasonable refusal on the part of a certified  
31-20 self-insurer to make available for inspection the books, records,  
31-21 payroll information, or other required information constitutes  
31-22 grounds for the revocation of the certificate of authority to  
31-23 self-insure and is an [a Class A] administrative violation. [~~Each~~  
31-24 ~~day of noncompliance constitutes a separate violation.~~]

31-25 SECTION 3.054. Subsection (b), Section 407.101, Labor Code,  
31-26 is amended to read as follows:

31-27 (b) The department [~~commission~~] shall deposit the  
31-28 application fee for a certificate of authority to self-insure in  
31-29 the state treasury to the credit of the workers' compensation  
31-30 self-insurance fund.

31-31 SECTION 3.055. Section 407.102, Labor Code, is amended to  
31-32 read as follows:

31-33 Sec. 407.102. REGULATORY FEE. (a) Each certified  
31-34 self-insurer shall pay an annual fee to cover the administrative  
31-35 costs incurred by the department [~~commission~~] in implementing this  
31-36 chapter.

31-37 (b) The department [~~commission~~] shall base the fee on the  
31-38 total amount of income benefit payments made in the preceding  
31-39 calendar year. The department [~~commission~~] shall assess each  
31-40 certified self-insurer a pro rata share based on the ratio that the  
31-41 total amount of income benefit payments made by that certified  
31-42 self-insurer bears to the total amount of income benefit payments  
31-43 made by all certified self-insurers.

31-44 SECTION 3.056. Subsections (a) and (d), Section 407.103,  
31-45 Labor Code, are amended to read as follows:

31-46 (a) Each certified self-insurer shall pay a self-insurer  
31-47 maintenance tax for the administration of the department  
31-48 [~~commission~~] and to support the prosecution of workers'  
31-49 compensation insurance fraud in this state. Not more than two  
31-50 percent of the total tax base of all certified self-insurers, as  
31-51 computed under Subsection (b), may be assessed for a maintenance  
31-52 tax under this section.

31-53 (d) In setting the rate of maintenance tax assessment for  
31-54 insurance companies, the commissioner [~~commission~~] may not  
31-55 consider revenue or expenditures related to the division.

31-56 SECTION 3.057. Subsections (b) through (e), Section  
31-57 407.104, Labor Code, are amended to read as follows:

31-58 (b) The department [~~commission~~] shall compute the fee and  
31-59 taxes of a certified self-insurer and notify the certified  
31-60 self-insurer of the amounts due. The taxes and fees shall be  
31-61 remitted to the department [~~commission~~].

31-62 (c) The regulatory fee imposed under Section 407.102 shall  
31-63 be deposited in the state treasury to the credit of the workers'  
31-64 compensation self-insurance fund. The self-insurer maintenance  
31-65 tax shall be deposited in the state treasury to the credit of the  
31-66 department [~~commission~~].

31-67 (d) A certified self-insurer commits a violation if the  
31-68 self-insurer does not pay the taxes and fee imposed under Sections  
31-69 407.102 and 407.103 in a timely manner. [~~A violation under this~~]

32-1 ~~subsection is a Class B administrative violation. Each day of~~  
 32-2 ~~noncompliance constitutes a separate violation.]~~

32-3 (e) If the certificate of authority to self-insure of a  
 32-4 certified self-insurer is terminated, the insurance commissioner  
 32-5 or the commissioner ~~[executive director of the commission]~~ shall  
 32-6 proceed immediately to collect taxes due under this subtitle, using  
 32-7 legal process as necessary.

32-8 SECTION 3.058. Subsections (b) and (c), Section 407.122,  
 32-9 Labor Code, are amended to read as follows:

32-10 (b) The board of directors is composed of the following  
 32-11 voting members:

32-12 (1) three certified self-insurers;  
 32-13 (2) one member designated by the commissioner ~~[one~~  
 32-14 ~~commission member representing wage earners,~~

32-15 ~~[(3) one commission member representing employers];~~  
 32-16 and

32-17 (3) ~~[(4)]~~ the public counsel of the office of public  
 32-18 insurance counsel.

32-19 (c) The ~~[executive director of the commission and the]~~  
 32-20 director of the division of self-insurance regulation serves  
 32-21 ~~[serve]~~ as a nonvoting member ~~[members]~~ of the board of directors.

32-22 SECTION 3.059. Subsection (b), Section 407.123, Labor Code,  
 32-23 is amended to read as follows:

32-24 (b) Rules adopted by the board are subject to the approval  
 32-25 of the commissioner ~~[commission]~~.

32-26 SECTION 3.060. Subsections (a) and (c), Section 407.124,  
 32-27 Labor Code, are amended to read as follows:

32-28 (a) On determination by the commissioner ~~[commission]~~ that  
 32-29 a certified self-insurer has become an impaired employer, the  
 32-30 director shall secure release of the security deposit required by  
 32-31 this chapter and shall promptly estimate:

32-32 (1) the amount of additional funds needed to  
 32-33 supplement the security deposit;

32-34 (2) the available assets of the impaired employer for  
 32-35 the purpose of making payment of all incurred liabilities for  
 32-36 compensation; and

32-37 (3) the funds maintained by the association for the  
 32-38 emergency payment of compensation liabilities.

32-39 (c) A certified self-insurer designated as an impaired  
 32-40 employer is exempt from assessments beginning on the date of the  
 32-41 designation until the commissioner ~~[commission]~~ determines that  
 32-42 the employer is no longer impaired.

32-43 SECTION 3.061. Subsection (d), Section 407.126, Labor Code,  
 32-44 is amended to read as follows:

32-45 (d) The board of directors shall administer the trust fund  
 32-46 in accordance with rules adopted by the commissioner ~~[commission]~~.

32-47 SECTION 3.062. Subsection (a), Section 407.127, Labor Code,  
 32-48 is amended to read as follows:

32-49 (a) If the commissioner ~~[commission]~~ determines that the  
 32-50 payment of benefits and claims administration shall be made through  
 32-51 the association, the association assumes the workers' compensation  
 32-52 obligations of the impaired employer and shall begin the payment of  
 32-53 the obligations for which it is liable not later than the 30th day  
 32-54 after the date of notification by the director.

32-55 SECTION 3.063. Subsection (a), Section 407.133, Labor Code,  
 32-56 is amended to read as follows:

32-57 (a) The commissioner ~~[commission, after notice and hearing~~  
 32-58 ~~and by majority vote,]~~ may suspend or revoke the certificate of  
 32-59 authority to self-insure of a certified self-insurer who fails to  
 32-60 pay an assessment. The association promptly shall report such a  
 32-61 failure to the director.

32-62 SECTION 3.064. Subsection (d), Section 407A.053, Labor  
 32-63 Code, is amended to read as follows:

32-64 (d) Any securities posted must be deposited in the state  
 32-65 treasury and must be assigned to and made negotiable by the  
 32-66 commissioner of the Texas Department of Workers' Compensation  
 32-67 ~~[executive director of the commission]~~ under a trust document  
 32-68 acceptable to the commissioner of insurance. Interest accruing on  
 32-69 a negotiable security deposited under this subsection shall be



33-1 collected and transmitted to the depositor if the depositor is not  
33-2 in default.

33-3 SECTION 3.065. Subsection (c), Section 407A.201, Labor  
33-4 Code, is amended to read as follows:

33-5 (c) The membership of an individual member of a group is  
33-6 subject to cancellation by the group as provided by the bylaws of  
33-7 the group. An individual member may also elect to terminate  
33-8 participation in the group. The group shall notify the  
33-9 commissioner and the Texas Department of Workers' Compensation  
33-10 [~~commission~~] of the cancellation or termination of a membership not  
33-11 later than the 10th day after the date on which the cancellation or  
33-12 termination takes effect and shall maintain coverage of each  
33-13 canceled or terminated member until the 30th day after the date of  
33-14 the notice, at the terminating member's expense, unless before that  
33-15 date the Texas Department of Workers' Compensation [~~commission~~]  
33-16 notifies the group that the canceled or terminated member has:

33-17 (1) obtained workers' compensation insurance  
33-18 coverage;

33-19 (2) become a certified self-insurer; or

33-20 (3) become a member of another group.

33-21 SECTION 3.066. The heading to Section 407A.301, Labor Code,  
33-22 is amended to read as follows:

33-23 Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT OF WORKERS'  
33-24 COMPENSATION [~~COMMISSION~~] AND RESEARCH FUNCTIONS OF DEPARTMENT OF  
33-25 INSURANCE [~~AND OVERSIGHT COUNCIL~~].

33-26 SECTION 3.067. Subsection (a), Section 407A.301, Labor  
33-27 Code, is amended to read as follows:

33-28 (a) Each group shall pay a self-insurance group maintenance  
33-29 tax under this section for:

33-30 (1) the administration of the Texas Department of  
33-31 Workers' Compensation [~~commission~~];

33-32 (2) the prosecution of workers' compensation insurance  
33-33 fraud in this state; and

33-34 (3) the research functions of the department under  
33-35 Chapter 405 [~~Research and Oversight Council on Workers'~~  
33-36 ~~Compensation~~].

33-37 SECTION 3.068. Section 407A.303, Labor Code, is amended to  
33-38 read as follows:

33-39 Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The  
33-40 group shall remit the taxes for deposit in the state treasury to the  
33-41 credit of the Texas Department of Workers' Compensation  
33-42 [~~commission~~].

33-43 (b) A group commits a violation if the group does not pay the  
33-44 taxes imposed under Sections 407A.301 and 407A.302 in a timely  
33-45 manner. [~~A violation under this subsection is a Class B~~  
33-46 ~~administrative violation. Each day of noncompliance constitutes a~~  
33-47 ~~separate violation.]~~

33-48 (c) If the certificate of approval of a group is terminated,  
33-49 the commissioner of insurance or the commissioner [~~executive~~  
33-50 ~~director~~] of the Texas Department of Workers' Compensation  
33-51 [~~commission~~] shall immediately notify the comptroller to collect  
33-52 taxes as directed under Sections 407A.301 and 407A.302.

33-53 SECTION 3.069. Subsection (b), Section 407A.357, Labor  
33-54 Code, is amended to read as follows:

33-55 (b) The guaranty association advisory committee is composed  
33-56 of the following voting members:

33-57 (1) three members who represent different groups under  
33-58 this chapter, subject to Subsection (c);

33-59 (2) one member designated by the commissioner of the  
33-60 Texas Department of Workers' Compensation [~~one commission member~~  
33-61 ~~who represents wage earners~~];

33-62 (3) one member designated by the insurance  
33-63 commissioner; and

33-64 (4) the public counsel of the office of public  
33-65 insurance counsel.

33-66 SECTION 3.070. Subsection (c), Section 408.003, Labor Code,  
33-67 is amended to read as follows:

33-68 (c) The employer shall notify the department [~~commission~~]  
33-69 and the insurance carrier on forms prescribed by the commissioner

34-1 [~~commission~~] of the initiation of and amount of payments made under  
34-2 this section.

34-3 SECTION 3.071. Section 408.004, Labor Code, is amended by  
34-4 amending Subsections (a), (b), and (d) through (g), and by adding  
34-5 Subsection (h) to read as follows:

34-6 (a) The commissioner [~~commission~~] may require an employee  
34-7 to submit to medical examinations to resolve any question about[+  
34-8 [~~(1)~~] the appropriateness of the health care received

34-9 by the employee[~~, or~~  
34-10 [~~(2)~~ similar issues].

34-11 (b) The commissioner [~~commission~~] may require an employee  
34-12 to submit to a medical examination at the request of the insurance  
34-13 carrier, but only after the insurance carrier has attempted and  
34-14 failed to receive the permission and concurrence of the employee  
34-15 for the examination. Except as otherwise provided by this  
34-16 subsection, the insurance carrier is entitled to the examination  
34-17 only once in a 180-day period. The commissioner [~~commission~~] may  
34-18 adopt rules that require an employee to submit to not more than  
34-19 three medical examinations in a 180-day period under specified  
34-20 circumstances, including to determine whether there has been a  
34-21 change in the employee's condition and[~~]~~ whether it is necessary  
34-22 to change the employee's diagnosis[~~, and whether treatment should~~  
34-23 ~~be extended to another body part or system]. The commissioner  
34-24 [~~commission~~] by rule shall adopt a system for monitoring requests  
34-25 made under this subsection by insurance carriers. That system must  
34-26 ensure that good cause exists for any additional medical  
34-27 examination allowed under this subsection that is not requested by  
34-28 the employee. A subsequent examination must be performed by the  
34-29 same doctor unless otherwise approved by the commissioner  
34-30 [~~commission~~].~~

34-31 (d) An injured employee is entitled to have a doctor of the  
34-32 employee's choice present at an examination required by the  
34-33 department [~~commission~~] at the request of an insurance carrier.  
34-34 The insurance carrier shall pay a fee set by the commissioner  
34-35 [~~commission~~] to the doctor selected by the employee.

34-36 (e) An employee who, without good cause as determined by the  
34-37 commissioner [~~commission~~], fails or refuses to appear at the time  
34-38 scheduled for an examination under Subsection (a) or (b) commits a  
34-39 violation. [~~A violation under this subsection is a Class D~~  
34-40 ~~administrative violation. An employee is not entitled to temporary~~  
34-41 ~~income benefits, and an insurance carrier may suspend the payment~~  
34-42 ~~of temporary income benefits, during and for a period in which the~~  
34-43 ~~employee fails to submit to an examination under Subsection (a) or~~  
34-44 ~~(b) unless the commission determines that the employee had good~~  
34-45 ~~cause for the failure to submit to the examination. The commission~~  
34-46 ~~may order temporary income benefits to be paid for the period that~~  
34-47 ~~the commission determines the employee had good cause.] The~~  
34-48 commissioner [~~commission~~] by rule shall ensure that an employee  
34-49 receives reasonable notice of an examination [~~and of the insurance~~  
34-50 ~~carrier's basis for suspension of payment,~~] and that the employee  
34-51 is provided a reasonable opportunity to reschedule an examination  
34-52 missed by the employee for good cause.

34-53 (f) This section does not apply to health care provided  
34-54 through a workers' compensation health care network established  
34-55 under Chapter 1305, Insurance Code [~~If the report of a doctor~~  
34-56 ~~selected by an insurance carrier indicates that an employee can~~  
34-57 ~~return to work immediately or has reached maximum medical~~  
34-58 ~~improvement, the insurance carrier may suspend or reduce the~~  
34-59 ~~payment of temporary income benefits on the 14th day after the date~~  
34-60 ~~on which the insurance carrier files a notice of suspension with the~~  
34-61 ~~commission as provided by this subsection. The commission shall~~  
34-62 ~~hold an expedited benefit review conference, by personal appearance~~  
34-63 ~~or by telephone, not later than the 10th day after the date on which~~  
34-64 ~~the commission receives the insurance carrier's notice of~~  
34-65 ~~suspension. If a benefit review conference is not held by the 14th~~  
34-66 ~~day after the date on which the commission receives the insurance~~  
34-67 ~~carrier's notice of suspension, an interlocutory order, effective~~  
34-68 ~~from the date of the report certifying maximum medical improvement,~~  
34-69 ~~is automatically entered for the continuation of temporary income~~

35-1 ~~benefits until a benefit review conference is held, and the~~  
 35-2 ~~insurance carrier is eligible for reimbursement for any overpayment~~  
 35-3 ~~of benefits as provided by Chapter 410. The commission is not~~  
 35-4 ~~required to automatically schedule a contested case hearing as~~  
 35-5 ~~required by Section 410.025(b) if a benefit review conference is~~  
 35-6 ~~scheduled under this subsection. If a benefit review conference is~~  
 35-7 ~~held not later than the 14th day, the commission may enter an~~  
 35-8 ~~interlocutory order for the continuation of benefits, and the~~  
 35-9 ~~insurance carrier is eligible for reimbursement for any~~  
 35-10 ~~overpayments of benefits as provided by Chapter 410. The~~  
 35-11 ~~commission shall adopt rules as necessary to implement this~~  
 35-12 ~~subsection under which:~~

35-13 ~~[(1) an insurance carrier is required to notify the~~  
 35-14 ~~employee and the treating doctor of the suspension of benefits~~  
 35-15 ~~under this subsection by certified mail or another verifiable~~  
 35-16 ~~delivery method;~~

35-17 ~~[(2) the commission makes a reasonable attempt to~~  
 35-18 ~~obtain the treating doctor's opinion before the commission makes a~~  
 35-19 ~~determination regarding the entry of an interlocutory order; and~~

35-20 ~~[(3) the commission may allow abbreviated contested~~  
 35-21 ~~case hearings by personal appearance or telephone to consider~~  
 35-22 ~~issues relating to overpayment of benefits under this section].~~

35-23 (g) An insurance carrier who unreasonably requests a  
 35-24 medical examination under Subsection (b) commits a violation. [A  
 35-25 violation under this subsection is a Class B administrative  
 35-26 violation.]

35-27 (h) A person who makes a frivolous request for a medical  
 35-28 examination under Subsection (b), as determined by the  
 35-29 commissioner, commits a violation. An injured employee may not be  
 35-30 fined more than \$10,000 for a violation of this subsection.

35-31 SECTION 3.072. Section 408.0041, Labor Code, is amended to  
 35-32 read as follows:

35-33 Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the  
 35-34 request of an insurance carrier or an employee, or on the  
 35-35 commissioner's own order, the commissioner may [commission shall]  
 35-36 order a medical examination to resolve any question about:

- 35-37 (1) the impairment caused by the compensable injury;  
 35-38 [~~or~~]  
 35-39 (2) the attainment of maximum medical improvement;  
 35-40 (3) the extent of the employee's compensable injury;  
 35-41 (4) whether the injured employee's disability is a  
 35-42 direct result of the work-related injury;  
 35-43 (5) the ability of the employee to return to work; or  
 35-44 (6) issues similar to those described by Subdivisions  
 35-45 (1)-(5).

35-46 (b) A medical examination requested under Subsection (a)  
 35-47 shall be performed by the next available doctor on the department's  
 35-48 [commission's] list of designated doctors whose credentials are  
 35-49 appropriate for the issue in question and the injured employee's  
 35-50 medical condition as determined by commissioner rule. [The  
 35-51 designated doctor doing the review must be trained and experienced  
 35-52 with the treatment and procedures used by the doctor treating the  
 35-53 patient's medical condition, and the treatment and procedures  
 35-54 performed must be within the scope of practice of the designated  
 35-55 doctor.] The department [commission] shall assign a designated  
 35-56 doctor not later than the 10th day after the date on which the  
 35-57 request under Subsection (a) is received, and the examination must  
 35-58 be conducted not later than the 21st day after the date on which the  
 35-59 commissioner [commission] issues the order under Subsection (a).  
 35-60 An examination under this section may not be conducted more  
 35-61 frequently than every 60 days, unless good cause for more frequent  
 35-62 examinations exists, as defined by commissioner [commission]  
 35-63 rules.

35-64 (c) The treating doctor and the insurance carrier are both  
 35-65 responsible for sending to the designated doctor all of the injured  
 35-66 employee's medical records relating to the issue to be evaluated by  
 35-67 the designated doctor that are in their possession. The treating  
 35-68 doctor and insurance carrier may send the records without a signed  
 35-69 release from the employee. The designated doctor is authorized to

36-1 receive the employee's confidential medical records to assist in  
 36-2 the resolution of disputes. The treating doctor and insurance  
 36-3 carrier may also send the designated doctor an analysis of the  
 36-4 injured employee's medical condition, functional abilities, and  
 36-5 return-to-work opportunities.

36-6 (d) To avoid undue influence on a person selected as a  
 36-7 designated doctor under this section, and except as provided by  
 36-8 Subsection (c), only the injured employee or an appropriate member  
 36-9 of the department's staff [~~of the commission~~] may communicate with  
 36-10 the designated doctor about the case regarding the injured  
 36-11 employee's medical condition or history before the examination of  
 36-12 the injured employee by the designated doctor. After that  
 36-13 examination is completed, communication with the designated doctor  
 36-14 regarding the injured employee's medical condition or history may  
 36-15 be made only through appropriate department [~~commission~~] staff  
 36-16 members. The designated doctor may initiate communication with any  
 36-17 doctor who has previously treated or examined the injured employee  
 36-18 for the work-related injury or with peer reviewers identified by  
 36-19 the insurance carrier.

36-20 (e) The designated doctor shall report to the department  
 36-21 [~~commission~~]. The report of the designated doctor has presumptive  
 36-22 weight unless the preponderance [~~great weight~~] of the evidence is  
 36-23 to the contrary. An employer may make a bona fide offer of  
 36-24 employment subject to Sections 408.103(e) and 408.144(c) based on  
 36-25 the designated doctor's report.

36-26 (f) Unless otherwise ordered by the department, the  
 36-27 insurance carrier shall pay benefits based on the opinion of the  
 36-28 designated doctor during the pendency of any dispute. If an  
 36-29 insurance carrier is not satisfied with the opinion rendered by a  
 36-30 designated doctor under this section, the insurance carrier may  
 36-31 request the commissioner [~~commission~~] to order an employee to  
 36-32 attend an examination by a doctor selected by the insurance  
 36-33 carrier. [~~The commission shall allow the insurance carrier~~  
 36-34 ~~reasonable time to obtain and present the opinion of the doctor~~  
 36-35 ~~selected under this subsection before the commission makes a~~  
 36-36 ~~decision on the merits of the issue in question.~~]

36-37 (g) Except as otherwise provided by this subsection, an  
 36-38 injured employee is entitled to have a doctor of the employee's  
 36-39 choice present at an examination requested by an insurance carrier  
 36-40 under Subsection (f). The insurance carrier shall pay a fee set by  
 36-41 the commissioner to the doctor selected by the employee. If the  
 36-42 injured employee is subject to a workers' compensation health care  
 36-43 network under Chapter 1305, Insurance Code, the doctor must be the  
 36-44 employee's treating doctor.

36-45 (h) The insurance carrier shall pay for:

36-46 (1) an examination required under Subsection (a) or  
 36-47 (f); and

36-48 (2) the reasonable expenses incident to the employee  
 36-49 in submitting to the examination.

36-50 (i) [~~(h)~~] An employee who, without good cause as determined  
 36-51 by the commissioner, fails or refuses to appear at the time  
 36-52 scheduled for an examination under Subsection (a) or (f) commits a  
 36-53 violation. An injured employee may not be fined more than \$10,000  
 36-54 for a violation of this subsection.

36-55 (j) An employee is not entitled to temporary income benefits  
 36-56 [~~compensation~~], and an insurance carrier is authorized to suspend  
 36-57 the payment of temporary income benefits, during and for a period in  
 36-58 which the employee fails to submit to an examination required by  
 36-59 Subsection (a) or (f) [~~this chapter~~] unless the commissioner  
 36-60 [~~commission~~] determines that the employee had good cause for the  
 36-61 failure to submit to the examination. The commissioner  
 36-62 [~~commission~~] may order temporary income benefits to be paid for the  
 36-63 period for which the commissioner [~~commission~~] determined that the  
 36-64 employee had good cause. The commissioner [~~commission~~] by rule  
 36-65 shall ensure that:

36-66 (1) an employee receives reasonable notice of an  
 36-67 examination and the insurance carrier's basis for suspension; and

36-68 (2) the employee is provided a reasonable opportunity  
 36-69 to reschedule an examination for good cause.

37-1 (k) [~~(i)~~] If the report of a designated doctor indicates  
 37-2 that an employee has reached maximum medical improvement or is  
 37-3 otherwise able to return to work immediately, the insurance carrier  
 37-4 may suspend or reduce the payment of temporary income benefits  
 37-5 immediately.

37-6 (1) A person who makes a frivolous request for a medical  
 37-7 examination under Subsection (a) or (f), as determined by the  
 37-8 commissioner, commits a violation.

37-9 SECTION 3.073. Subsection (e), Section 408.005, Labor Code,  
 37-10 is amended to read as follows:

37-11 (e) The director of the division of hearings shall approve a  
 37-12 settlement if the director is satisfied that:

37-13 (1) the settlement accurately reflects the agreement  
 37-14 between the parties;

37-15 (2) the settlement reflects adherence to all  
 37-16 appropriate provisions of law and the policies of the commissioner  
 37-17 [~~commission~~]; and

37-18 (3) under the law and facts, the settlement is in the  
 37-19 best interest of the claimant.

37-20 SECTION 3.074. Section 408.022, Labor Code, is amended by  
 37-21 amending Subsections (a), (b), and (c) and adding Subsection (f) to  
 37-22 read as follows:

37-23 (a) Except in an emergency, the department [~~commission~~]  
 37-24 shall require an employee to receive medical treatment from a  
 37-25 doctor chosen from a list of doctors approved by the commissioner  
 37-26 [~~commission~~]. A doctor may perform only those procedures that are  
 37-27 within the scope of the practice for which the doctor is licensed.  
 37-28 The employee is entitled to the employee's initial choice of a  
 37-29 doctor from the department's [~~commission's~~] list.

37-30 (b) If an employee is dissatisfied with the initial choice  
 37-31 of a doctor from the department's [~~commission's~~] list, the employee  
 37-32 may notify the department [~~commission~~] and request authority to  
 37-33 select an alternate doctor. The notification must be in writing  
 37-34 stating the reasons for the change, except notification may be by  
 37-35 telephone when a medical necessity exists for immediate change.

37-36 (c) The commissioner [~~commission~~] shall prescribe criteria  
 37-37 to be used by the department [~~commission~~] in granting the employee  
 37-38 authority to select an alternate doctor. The criteria may include:

37-39 (1) whether treatment by the current doctor is  
 37-40 medically inappropriate;

37-41 (2) the professional reputation of the doctor;

37-42 (3) whether the employee is receiving appropriate  
 37-43 medical care to reach maximum medical improvement; and

37-44 (4) whether a conflict exists between the employee and  
 37-45 the doctor to the extent that the doctor-patient relationship is  
 37-46 jeopardized or impaired.

37-47 (f) This section does not apply to requirements regarding  
 37-48 the selection of a doctor under a workers' compensation health care  
 37-49 network established under Chapter 1305, Insurance Code, except as  
 37-50 provided by that chapter.

37-51 SECTION 3.075. Section 408.023, Labor Code, is amended to  
 37-52 read as follows:

37-53 Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING  
 37-54 DOCTORS. (a) The department [~~commission~~] shall develop a list of  
 37-55 doctors licensed in this state who are approved to provide health  
 37-56 care services under this subtitle. A [~~Each~~] doctor [~~licensed in~~  
 37-57 ~~this state on September 1, 2001,~~] is eligible to be included on the  
 37-58 department's [~~commission's~~] list of approved doctors if the doctor:

37-59 (1) registers with the department [~~commission~~] in the  
 37-60 manner prescribed by commissioner [~~commission~~] rules; and

37-61 (2) complies with the requirements adopted by the  
 37-62 commissioner [~~commission~~] under this section.

37-63 (b) The commissioner [~~commission~~] by rule shall establish  
 37-64 reasonable requirements for doctors and health care providers  
 37-65 financially related to those doctors regarding training,  
 37-66 impairment rating testing, and disclosure of financial interests as  
 37-67 required by Section 413.041, and for monitoring of those doctors  
 37-68 and health care providers as provided by Sections 408.0231 and  
 37-69 413.0512. The commissioner [~~commission~~] by rule shall provide a

38-1 reasonable period, not to exceed 18 months after the adoption of  
 38-2 rules under this section, for doctors to comply with the  
 38-3 registration and training requirements of this subchapter. Except  
 38-4 as otherwise provided by this section, the requirements under this  
 38-5 subsection apply to doctors and other health care providers who:

- 38-6 (1) provide health care services as treating doctors;  
 38-7 (2) provide health care services as authorized by this  
 38-8 chapter;  
 38-9 (3) perform medical peer review under this subtitle;  
 38-10 (4) perform utilization review of medical benefits  
 38-11 provided under this subtitle; or  
 38-12 (5) provide health care services on referral from a  
 38-13 treating doctor, as provided by commissioner [~~commission~~] rule.

38-14 (c) The department [~~commission~~] shall issue to a doctor who  
 38-15 is approved by the commissioner [~~commission~~] a certificate of  
 38-16 registration. In determining whether to issue a certificate of  
 38-17 registration, the commissioner [~~commission~~] may consider and  
 38-18 condition [~~its~~] approval on any practice restrictions applicable to  
 38-19 the applicant that are relevant to services provided under this  
 38-20 subtitle. The commissioner [~~commission~~] may also consider the  
 38-21 practice restrictions of an applicant when determining appropriate  
 38-22 sanctions under Section 408.0231.

38-23 (d) A certificate of registration issued under this section  
 38-24 is valid, unless revoked, suspended, or revised, for the period  
 38-25 provided by commissioner [~~commission~~] rule and may be renewed on  
 38-26 application to the department [~~commission~~]. The department  
 38-27 [~~commission~~] shall provide notice to each doctor on the approved  
 38-28 doctor list of the pending expiration of the doctor's certificate  
 38-29 of registration not later than the 60th day before the date of  
 38-30 expiration of the certificate.

38-31 (e) Notwithstanding other provisions of this section, a  
 38-32 doctor not licensed in this state but licensed in another state or  
 38-33 jurisdiction who treats employees or performs utilization review of  
 38-34 health care for an insurance carrier may apply for a certificate of  
 38-35 registration under this section to be included on the department's  
 38-36 [~~commission's~~] list of approved doctors.

38-37 (f) A doctor who contracts with a workers' compensation  
 38-38 health care network certified under Chapter 1305, Insurance Code,  
 38-39 is not subject to the registration requirements of this section for  
 38-40 the purpose of treating injured employees who are required to seek  
 38-41 medical care from a network. However, a doctor who contracts with a  
 38-42 workers' compensation health care network shall:

38-43 (1) comply with the requirements of Section 413.041  
 38-44 regarding the disclosure of financial interests; and

38-45 (2) if the doctor intends to provide certifications of  
 38-46 maximum medical improvement or assign impairment ratings, comply  
 38-47 with the impairment rating training and testing requirements  
 38-48 established by commissioner rule.

38-49 (g) A person required to comply with Subsection (f) who does  
 38-50 not comply commits a violation.

38-51 (h) An insurance carrier may not use a certification of  
 38-52 maximum medical improvement or an impairment rating assigned by a  
 38-53 doctor who fails to comply with Subsection (f)(2) for the purpose of  
 38-54 suspending temporary income benefits or computing impairment  
 38-55 income benefits.

38-56 (i) Except in an emergency or for immediate post-injury  
 38-57 medical care as defined by commissioner [~~commission~~] rule, or as  
 38-58 provided by Subsection (f), (k), [~~(h)~~] or (l) [~~(i)~~], each doctor who  
 38-59 performs functions under this subtitle, including examinations  
 38-60 under this chapter, must hold a certificate of registration and be  
 38-61 on the department's list of approved doctors in order to perform  
 38-62 services or receive payment for those services.

38-63 (j) [~~(g)~~] The commissioner [~~commission~~] by rule shall  
 38-64 modify registration and training requirements for doctors who  
 38-65 infrequently provide health care or [~~]~~ who perform utilization  
 38-66 review or peer review functions for insurance carriers [~~, or who~~  
 38-67 ~~participate in regional networks established under this~~  
 38-68 ~~subchapter,~~] as necessary to ensure that those doctors are informed  
 38-69 of the regulations that affect health care benefit delivery under

39-1 this subtitle.

39-2 (k) [~~(h)~~] Notwithstanding Section 4(h), Article 21.58A,  
39-3 Insurance Code, a utilization review agent that uses doctors to  
39-4 perform reviews of health care services provided under this  
39-5 subtitle may use doctors licensed by another state to perform the  
39-6 reviews, but the reviews must be performed under the direction of a  
39-7 doctor licensed to practice in this state.

39-8 (l) [~~(i)~~] The commissioner [~~commission~~] may grant  
39-9 exceptions to the requirement imposed under Subsection (i) [~~(f)~~] as  
39-10 necessary to ensure that:

39-11 (1) employees have access to health care; and  
39-12 (2) insurance carriers have access to evaluations of  
39-13 an employee's health care and income benefit eligibility as  
39-14 provided by this subtitle.

39-15 (m) [~~(j)~~] The injured employee's treating doctor is  
39-16 responsible for the efficient management of medical care as  
39-17 required by Section 408.025(c) and commissioner [~~commission~~]  
39-18 rules. The department [~~commission~~] shall collect information  
39-19 regarding:

39-20 (1) return-to-work outcomes;  
39-21 (2) patient satisfaction; and  
39-22 (3) cost and utilization of health care provided or  
39-23 authorized by a treating doctor on the list of approved doctors.

39-24 (n) [~~(k)~~] The commissioner [~~commission~~] may adopt rules to  
39-25 define the role of the treating doctor and to specify outcome  
39-26 information to be collected for a treating doctor.

39-27 SECTION 3.076. Section 408.0231, Labor Code, is amended to  
39-28 read as follows:

39-29 Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS;  
39-30 SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. (a) The  
39-31 commissioner [~~executive director~~] shall delete from the list of  
39-32 approved doctors a doctor:

39-33 (1) who fails to register with the department  
39-34 [~~commission~~] as provided by this chapter and commissioner  
39-35 [~~commission~~] rules;

39-36 (2) who is deceased;  
39-37 (3) whose license to practice in this state is  
39-38 revoked, suspended, or not renewed by the appropriate licensing  
39-39 authority; or

39-40 (4) who requests to be removed from the list.

39-41 (b) The commissioner [~~commission~~] by rule shall establish  
39-42 criteria for:

39-43 (1) deleting or suspending a doctor from the list of  
39-44 approved doctors;

39-45 (2) imposing sanctions on a doctor or an insurance  
39-46 carrier as provided by this section;

39-47 (3) monitoring of utilization review agents, as  
39-48 provided by a memorandum of understanding between the department  
39-49 [~~commission~~] and the Texas Department of Insurance; and

39-50 (4) authorizing increased or reduced utilization  
39-51 review and preauthorization controls on a doctor.

39-52 (c) Rules adopted under Subsection (b) are in addition to,  
39-53 and do not affect, the rules adopted under Section 415.023(b). The  
39-54 criteria for deleting a doctor from the list or for recommending or  
39-55 imposing sanctions may include anything the commissioner  
39-56 [~~commission~~] considers relevant, including:

39-57 (1) a sanction of the doctor by the commissioner  
39-58 [~~commission~~] for a violation of Chapter 413 or Chapter 415;

39-59 (2) a sanction by the Medicare or Medicaid program  
39-60 for:

39-61 (A) substandard medical care;  
39-62 (B) overcharging;  
39-63 (C) overutilization of medical services; or  
39-64 (D) any other substantive noncompliance with  
39-65 requirements of those programs regarding professional practice or  
39-66 billing;

39-67 (3) evidence from the department's [~~commission's~~]  
39-68 medical records that the applicable insurance carrier's  
39-69 utilization review practices or the doctor's charges, fees,

40-1 diagnoses, treatments, evaluations, or impairment ratings are  
 40-2 substantially different from those the commissioner [~~commission~~]  
 40-3 finds to be fair and reasonable based on either a single  
 40-4 determination or a pattern of practice;

40-5 (4) a suspension or other relevant practice  
 40-6 restriction of the doctor's license by an appropriate licensing  
 40-7 authority;

40-8 (5) professional failure to practice medicine or  
 40-9 provide health care, including chiropractic care, in an acceptable  
 40-10 manner consistent with the public health, safety, and welfare;

40-11 (6) findings of fact and conclusions of law made by a  
 40-12 court, an administrative law judge of the State Office of  
 40-13 Administrative Hearings, or a licensing or regulatory authority; or

40-14 (7) a criminal conviction.

40-15 (d) The commissioner [~~commission~~] by rule shall establish  
 40-16 procedures under which a doctor may apply for:

40-17 (1) reinstatement to the list of approved doctors; or

40-18 (2) restoration of doctor practice privileges removed  
 40-19 by the commissioner [~~commission~~] based on sanctions imposed under  
 40-20 this section.

40-21 (e) The commissioner [~~commission~~] shall act on a  
 40-22 recommendation by the medical advisor selected under Section  
 40-23 413.0511 and, after notice and the opportunity for a hearing, may  
 40-24 impose sanctions under this section on a doctor or an insurance  
 40-25 carrier or may recommend action regarding a utilization review  
 40-26 agent. The department [~~commission~~] and the Texas Department of  
 40-27 Insurance shall enter into a memorandum of understanding to  
 40-28 coordinate the regulation of insurance carriers and utilization  
 40-29 review agents as necessary to ensure:

40-30 (1) compliance with applicable regulations; and

40-31 (2) that appropriate health care decisions are reached  
 40-32 under this subtitle and under Article 21.58A, Insurance Code.

40-33 (f) The sanctions the commissioner [~~commission~~] may  
 40-34 recommend or impose under this section include:

40-35 (1) reduction of allowable reimbursement;

40-36 (2) mandatory preauthorization of all or certain  
 40-37 health care services;

40-38 (3) required peer review monitoring, reporting, and  
 40-39 audit;

40-40 (4) deletion or suspension from the approved doctor  
 40-41 list and the designated doctor list;

40-42 (5) restrictions on appointment under this chapter;

40-43 (6) conditions or restrictions on an insurance carrier  
 40-44 regarding actions by insurance carriers under this subtitle in  
 40-45 accordance with the memorandum of understanding adopted between the  
 40-46 department [~~commission~~] and the Texas Department of Insurance  
 40-47 regarding Article 21.58A, Insurance Code; and

40-48 (7) mandatory participation in training classes or  
 40-49 other courses as established or certified by the department  
 40-50 [~~commission~~].

40-51 (g) The commissioner shall adopt rules regarding doctors  
 40-52 who perform peer review functions for insurance carriers. Those  
 40-53 rules may include standards for peer review, imposition of  
 40-54 sanctions on doctors performing peer review functions, including  
 40-55 restriction, suspension, or removal of the doctor's ability to  
 40-56 perform peer review on behalf of insurance carriers in the workers'  
 40-57 compensation system, and other issues important to the quality of  
 40-58 peer review, as determined by the commissioner.

40-59 SECTION 3.077. Section 408.024, Labor Code, is amended to  
 40-60 read as follows:

40-61 Sec. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS.  
 40-62 Except as otherwise provided, and after notice and an opportunity  
 40-63 for hearing, the commissioner [~~commission~~] may relieve an insurance  
 40-64 carrier of liability for health care that is furnished by a health  
 40-65 care provider or another person selected in a manner inconsistent  
 40-66 with the requirements of this subchapter.

40-67 SECTION 3.078. Subsections (a), (b), and (d), Section  
 40-68 408.025, Labor Code, are amended to read as follows:

40-69 (a) The commissioner [~~commission~~] by rule shall adopt



41-1 requirements for reports and records that are required to be filed  
 41-2 with the department [~~commission~~] or provided to the injured  
 41-3 employee, the employee's attorney, or the insurance carrier by a  
 41-4 health care provider.

41-5 (b) The commissioner [~~commission~~] by rule shall adopt  
 41-6 requirements for reports and records that are to be made available  
 41-7 by a health care provider to another health care provider to prevent  
 41-8 unnecessary duplication of tests and examinations.

41-9 (d) On the request of an injured employee, the employee's  
 41-10 attorney, or the insurance carrier, a health care provider shall  
 41-11 furnish records relating to treatment or hospitalization for which  
 41-12 compensation is being sought. The department [~~commission~~] may  
 41-13 regulate the charge for furnishing a report or record, but the  
 41-14 charge may not be less than the fair and reasonable charge for  
 41-15 furnishing the report or record. A health care provider may  
 41-16 disclose to the insurance carrier of an affected employer records  
 41-17 relating to the diagnosis or treatment of the injured employee  
 41-18 without the authorization of the injured employee to determine the  
 41-19 amount of payment or the entitlement to payment.

41-20 SECTION 3.079. Subchapter B, Chapter 408, Labor Code, is  
 41-21 amended by adding Section 408.0251 to read as follows:

41-22 Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) The  
 41-23 commissioner by rule shall establish requirements regarding:

41-24 (1) the electronic submission and processing of  
 41-25 medical bills by health care providers to insurance carriers; and

41-26 (2) the electronic payment of medical bills by  
 41-27 insurance carriers to health care providers.

41-28 (b) Insurance carriers shall accept medical bills submitted  
 41-29 electronically by health care providers in accordance with  
 41-30 commissioner rule.

41-31 (c) The commissioner shall by rule establish criteria for  
 41-32 granting exceptions to insurance carriers and health care providers  
 41-33 who are unable to submit, accept, or pay medical bills  
 41-34 electronically.

41-35 SECTION 3.080. Section 408.026, Labor Code, is amended to  
 41-36 read as follows:

41-37 Sec. 408.026. SPINAL SURGERY. Except in a medical  
 41-38 emergency, an insurance carrier is liable for medical costs related  
 41-39 to spinal surgery only as provided by Section 413.014 and  
 41-40 commissioner [~~commission~~] rules.

41-41 SECTION 3.081. Subsection (d), Section 408.027, Labor Code,  
 41-42 is amended to read as follows:

41-43 (d) If an insurance carrier disputes the amount of payment  
 41-44 or the health care provider's entitlement to payment, the insurance  
 41-45 carrier shall send to the department [~~commission~~], the health care  
 41-46 provider, and the injured employee a report that sufficiently  
 41-47 explains the reasons for the reduction or denial of payment for  
 41-48 health care services provided to the employee. The insurance  
 41-49 carrier is entitled to a hearing as provided by Section 413.031(d).

41-50 SECTION 3.082. Section 408.028, Labor Code, is amended by  
 41-51 amending Subsections (b), (d), and (e) and adding Subsection (f) to  
 41-52 read as follows:

41-53 (b) The commissioner [~~commission~~] by rule shall require  
 41-54 [develop an open formulary under Section 413.011 that requires] the  
 41-55 use of generic pharmaceutical medications and clinically  
 41-56 appropriate over-the-counter alternatives to prescription  
 41-57 medications unless otherwise specified by the prescribing doctor,  
 41-58 in accordance with applicable state law. The department by rule may  
 41-59 adopt a closed formulary under Section 413.011. Rules adopted by  
 41-60 the department shall allow an appeals process for claims in which a  
 41-61 treating doctor determines and documents that a drug not included  
 41-62 in the formulary is necessary to treat an injured employee's  
 41-63 compensable injury.

41-64 (d) The commissioner [~~commission~~] shall adopt rules to  
 41-65 allow an employee to purchase over-the-counter alternatives to  
 41-66 prescription medications prescribed or ordered under Subsection  
 41-67 (a) or (b) and to obtain reimbursement from the insurance carrier  
 41-68 for those medications.

41-69 (e) Notwithstanding Subsection (b), the commissioner

42-1 [~~commission~~] by rule shall allow an employee to purchase a brand  
 42-2 name drug rather than a generic pharmaceutical medication or  
 42-3 over-the-counter alternative to a prescription medication if a  
 42-4 health care provider prescribes a generic pharmaceutical  
 42-5 medication or an over-the-counter alternative to a prescription  
 42-6 medication. The employee shall be responsible for paying the  
 42-7 difference between the cost of the brand name drug and the cost of  
 42-8 the generic pharmaceutical medication or of an over-the-counter  
 42-9 alternative to a prescription medication. The employee may not  
 42-10 seek reimbursement for the difference in cost from an insurance  
 42-11 carrier and is not entitled to use the medical dispute resolution  
 42-12 provisions of Chapter 413 with regard to the prescription. A  
 42-13 payment described by this subsection by an employee to a health care  
 42-14 provider does not violate Section 413.042. This subsection does  
 42-15 not affect the duty of a health care provider to comply with the  
 42-16 requirements of Subsection (b) when prescribing medications or  
 42-17 ordering over-the-counter alternatives to prescription  
 42-18 medications.

42-19 (f) Notwithstanding any other provision of this title, the  
 42-20 commissioner by rule shall adopt a fee schedule for pharmacy and  
 42-21 pharmaceutical services that will:

42-22 (1) provide reimbursement rates that are fair and  
 42-23 reasonable;

42-24 (2) assure adequate access to medications and services  
 42-25 for injured workers; and

42-26 (3) minimize costs to employees and insurance  
 42-27 carriers.

42-28 SECTION 3.083. Section 408.030, Labor Code, is amended to  
 42-29 read as follows:

42-30 Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. If the  
 42-31 department [~~commission~~] discovers an act or omission by a physician  
 42-32 that may constitute a felony, a misdemeanor involving moral  
 42-33 turpitude, a violation of a state or federal narcotics or  
 42-34 controlled substance law, an offense involving fraud or abuse under  
 42-35 the Medicare or Medicaid program, or a violation of this subtitle,  
 42-36 the department [~~commission~~] shall immediately report that act or  
 42-37 omission to the Texas State Board of Medical Examiners.

42-38 SECTION 3.084. Subchapter B, Chapter 408, Labor Code, is  
 42-39 amended by adding Section 408.031 to read as follows:

42-40 Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS.

42-41 (a) Notwithstanding any other provision of this chapter, an  
 42-42 injured employee may receive benefits under a workers' compensation  
 42-43 health care network established under Chapter 1305, Insurance Code,  
 42-44 in the manner provided by that chapter.

42-45 (b) In the event of a conflict between this title and  
 42-46 Chapter 1305, Insurance Code, as to the operation and regulation of  
 42-47 workers' compensation health care networks, regulation of the  
 42-48 health care providers who contract with those networks, or the  
 42-49 resolution of disputes regarding medical benefits provided through  
 42-50 those networks, Chapter 1305, Insurance Code, prevails.

42-51 SECTION 3.0841. Subchapter B, Chapter 408, Labor Code, is  
 42-52 amended by adding Section 408.032 to read as follows:

42-53 Sec. 408.032. INTERDISCIPLINARY REHABILITATION PROGRAMS  
 42-54 AND FACILITIES; ACCREDITATION REQUIRED. The commissioner shall  
 42-55 adopt a rule that requires that an interdisciplinary rehabilitation  
 42-56 program or facility that provides services to injured employees be  
 42-57 appropriately accredited, after determining that adequate access  
 42-58 to accredited rehabilitation care is available.

42-59 SECTION 3.085. Subsection (c), Section 408.041, Labor Code,  
 42-60 is amended to read as follows:

42-61 (c) If Subsection (a) or (b) cannot reasonably be applied  
 42-62 because the employee's employment has been irregular or because the  
 42-63 employee has lost time from work during the 13-week period  
 42-64 immediately preceding the injury because of illness, weather, or  
 42-65 another cause beyond the control of the employee, the commissioner  
 42-66 [~~commission~~] may determine the employee's average weekly wage by  
 42-67 any method that the commissioner [~~commission~~] considers fair, just,  
 42-68 and reasonable to all parties and consistent with the methods  
 42-69 established under this section.

43-1 SECTION 3.086. Subsections (d), (f), and (g), Section  
43-2 408.042, Labor Code, are amended to read as follows:

43-3 (d) The commissioner [~~commission~~] shall:

43-4 (1) prescribe a form to collect information regarding  
43-5 the wages of employees with multiple employment; and

43-6 (2) by rule, determine the manner by which the  
43-7 department [~~commission~~] collects and distributes wage information  
43-8 to implement this section.

43-9 (f) If the commissioner [~~commission~~] determines that  
43-10 computing the average weekly wage for an employee as provided by  
43-11 Subsection (c) is impractical or unreasonable, the commissioner  
43-12 [~~commission~~] shall set the average weekly wage in a manner that more  
43-13 fairly reflects the employee's average weekly wage and that is fair  
43-14 and just to both parties or is in the manner agreed to by the  
43-15 parties. The commissioner [~~commission~~] by rule may define methods  
43-16 to determine a fair and just average weekly wage consistent with  
43-17 this section.

43-18 (g) An insurance carrier is entitled to apply for and  
43-19 receive reimbursement at least annually from the subsequent injury  
43-20 fund for the amount of income benefits paid to a worker under this  
43-21 section that are based on employment other than the employment  
43-22 during which the compensable injury occurred. The commissioner  
43-23 [~~commission~~] may adopt rules that govern the documentation,  
43-24 application process, and other administrative requirements  
43-25 necessary to implement this subsection.

43-26 SECTION 3.087. Subsection (c), Section 408.043, Labor Code,  
43-27 is amended to read as follows:

43-28 (c) If, for good reason, the commissioner [~~commission~~]  
43-29 determines that computing the average weekly wage for a seasonal  
43-30 employee as provided by this section is impractical, the  
43-31 commissioner [~~commission~~] shall compute the average weekly wage as  
43-32 of the time of the injury in a manner that is fair and just to both  
43-33 parties.

43-34 SECTION 3.088. Subsection (b), Section 408.0445, Labor  
43-35 Code, is amended to read as follows:

43-36 (b) For purposes of computing income benefits or death  
43-37 benefits under Section 88.303, Education Code, the average weekly  
43-38 wage of a Texas Task Force 1 member, as defined by Section 88.301,  
43-39 Education Code, who is engaged in authorized training or duty is an  
43-40 amount equal to the sum of the member's regular weekly wage at any  
43-41 employment, including self-employment, that the member holds in  
43-42 addition to serving as a member of Texas Task Force 1, except that  
43-43 the amount may not exceed 100 percent of the state average weekly  
43-44 wage as determined under Section 408.047. A member for whom an  
43-45 average weekly wage cannot be computed shall be paid the minimum  
43-46 weekly benefit established by the commissioner [~~commission~~].

43-47 SECTION 3.089. Subsections (d) and (e), Section 408.0446,  
43-48 Labor Code, are amended to read as follows:

43-49 (d) If the commissioner [~~commission~~] determines that  
43-50 computing the average weekly wage of a school district employee as  
43-51 provided by this section is impractical because the employee did  
43-52 not earn wages during the 12 months immediately preceding the date  
43-53 of the injury, the commissioner [~~commission~~] shall compute the  
43-54 average weekly wage in a manner that is fair and just to both  
43-55 parties.

43-56 (e) The commissioner [~~commission~~] shall adopt rules as  
43-57 necessary to implement this section.

43-58 SECTION 3.090. Section 408.045, Labor Code, is amended to  
43-59 read as follows:

43-60 Sec. 408.045. NONPECUNIARY WAGES. The commissioner  
43-61 [~~commission~~] may not include nonpecuniary wages in computing an  
43-62 employee's average weekly wage during a period in which the  
43-63 employer continues to provide the nonpecuniary wages.

43-64 SECTION 3.091. Section 408.047, Labor Code, is amended to  
43-65 read as follows:

43-66 Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On and after  
43-67 October 1, 2006, the state average weekly wage is equal to 85  
43-68 percent of the average weekly wage in covered employment computed  
43-69 by the Texas Workforce Commission under Section 207.002(c).

44-1 (b) The state average weekly wage for the period [~~fiscal~~  
 44-2 ~~year~~] beginning September 1, 2005 [2003], and ending September 30,  
 44-3 2006 [~~August 31, 2004~~], is \$540 [~~\$537, and for the fiscal year~~  
 44-4 ~~beginning September 1, 2004, and ending August 31, 2005, is \$539~~].  
 44-5 This subsection expires October 1, 2006.

44-6 SECTION 3.092. Subsection (f), Section 408.061, Labor Code,  
 44-7 is amended to read as follows:

44-8 (f) The commissioner [~~commission~~] shall compute the maximum  
 44-9 weekly income benefits for each state fiscal year not later than  
 44-10 October [~~September~~] 1 of each year.

44-11 SECTION 3.093. Subsection (b), Section 408.062, Labor Code,  
 44-12 is amended to read as follows:

44-13 (b) The commissioner [~~commission~~] shall compute the minimum  
 44-14 weekly income benefit for each state fiscal year not later than  
 44-15 October [~~September~~] 1 of each year.

44-16 SECTION 3.094. Subsections (a) and (c), Section 408.063,  
 44-17 Labor Code, are amended to read as follows:

44-18 (a) To expedite the payment of income benefits, the  
 44-19 commissioner [~~commission~~] may by rule establish reasonable  
 44-20 presumptions relating to the wages earned by an employee, including  
 44-21 the presumption that an employee's last paycheck accurately  
 44-22 reflects the employee's usual wage.

44-23 (c) An employer who fails to file a wage statement in  
 44-24 accordance with Subsection (b) commits a violation. [~~A violation~~  
 44-25 ~~under this subsection is a Class D administrative violation.~~]

44-26 SECTION 3.095. Subsections (b) and (c), Section 408.081,  
 44-27 Labor Code, are amended to read as follows:

44-28 (b) Except as otherwise provided by this section or this  
 44-29 subtitle, income benefits shall be paid weekly as and when they  
 44-30 accrue without order from the commissioner [~~commission~~]. Interest  
 44-31 on accrued but unpaid benefits shall be paid, without order of the  
 44-32 commissioner [~~commission~~], at the time the accrued benefits are  
 44-33 paid.

44-34 (c) The commissioner [~~commission~~] by rule shall establish  
 44-35 requirements for agreements under which income benefits may be paid  
 44-36 monthly. Income benefits may be paid monthly only:

44-37 (1) on the request of the employee and the agreement of  
 44-38 the employee and the insurance carrier; and

44-39 (2) in compliance with the requirements adopted by the  
 44-40 commissioner [~~commission~~].

44-41 SECTION 3.096. Subsection (c), Section 408.082, Labor Code,  
 44-42 is amended to read as follows:

44-43 (c) If the disability continues for two [~~four~~] weeks or  
 44-44 longer after the date it begins, compensation shall be computed  
 44-45 from the date the disability begins.

44-46 SECTION 3.097. Subsections (a) and (b), Section 408.084,  
 44-47 Labor Code, are amended to read as follows:

44-48 (a) At the request of the insurance carrier, the  
 44-49 commissioner [~~commission~~] may order that impairment income  
 44-50 benefits and supplemental income benefits be reduced in a  
 44-51 proportion equal to the proportion of a documented impairment that  
 44-52 resulted from earlier compensable injuries.

44-53 (b) The commissioner [~~commission~~] shall consider the  
 44-54 cumulative impact of the compensable injuries on the employee's  
 44-55 overall impairment in determining a reduction under this section.

44-56 SECTION 3.098. Section 408.085, Labor Code, is amended to  
 44-57 read as follows:

44-58 Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If  
 44-59 there is a likelihood that income benefits will be paid, the  
 44-60 commissioner [~~commission~~] may grant an employee suffering  
 44-61 financial hardship advances as provided by this subtitle against  
 44-62 the amount of income benefits to which the employee may be entitled.  
 44-63 An advance may be ordered before or after the employee attains  
 44-64 maximum medical improvement. An insurance carrier shall pay the  
 44-65 advance ordered.

44-66 (b) An employee must apply to the department [~~commission~~]  
 44-67 for an advance on a form prescribed by the commissioner  
 44-68 [~~commission~~]. The application must describe the hardship that is  
 44-69 the grounds for the advance.

45-1 (c) An advance under this section may not exceed an amount  
 45-2 equal to four times the maximum weekly benefit for temporary income  
 45-3 benefits as computed in Section 408.061. The commissioner  
 45-4 [~~commissioner~~] may not grant more than three advances to a particular  
 45-5 employee based on the same injury.

45-6 (d) The commissioner [~~commissioner~~] may not grant an advance  
 45-7 to an employee who is receiving, on the date of the application  
 45-8 under Subsection (b), at least 90 percent of the employee's net  
 45-9 preinjury wages under Section 408.003 or 408.129.

45-10 SECTION 3.099. Section 408.086, Labor Code, is amended to  
 45-11 read as follows:

45-12 Sec. 408.086. DEPARTMENT [~~COMMISSIONER~~] DETERMINATION OF  
 45-13 EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) During the period  
 45-14 that impairment income benefits or supplemental income benefits are  
 45-15 being paid to an employee, the commissioner [~~commissioner~~] shall  
 45-16 determine at least annually whether any extended unemployment or  
 45-17 underemployment is a direct result of the employee's impairment.

45-18 (b) To make this determination, the commissioner  
 45-19 [~~commissioner~~] may require periodic reports from the employee and the  
 45-20 insurance carrier and, at the insurance carrier's expense, may  
 45-21 require physical or other examinations, vocational assessments, or  
 45-22 other tests or diagnoses necessary to perform the commissioner's  
 45-23 [~~its~~] duty under this section and Subchapter H.

45-24 SECTION 3.100. Subsection (b), Section 408.102, Labor Code,  
 45-25 is amended to read as follows:

45-26 (b) The commissioner [~~commissioner~~] by rule shall establish a  
 45-27 presumption that maximum medical improvement has been reached based  
 45-28 on a lack of medical improvement in the employee's condition.

45-29 SECTION 3.101. Subsection (b), Section 408.103, Labor Code,  
 45-30 is amended to read as follows:

45-31 (b) A temporary income benefit under Subsection (a)(2) may  
 45-32 not exceed the employee's actual earnings for the previous year. It  
 45-33 is presumed that the employee's actual earnings for the previous  
 45-34 year are equal to:

45-35 (1) the sum of the employee's wages as reported in the  
 45-36 most recent four quarterly wage reports to the Texas Workforce  
 45-37 [~~Employment~~] Commission divided by 52;

45-38 (2) the employee's wages in the single quarter of the  
 45-39 most recent four quarters in which the employee's earnings were  
 45-40 highest, divided by 13, if the commissioner [~~commissioner~~] finds that  
 45-41 the employee's most recent four quarters' earnings reported in the  
 45-42 Texas Workforce [~~Employment~~] Commission wage reports are not  
 45-43 representative of the employee's usual earnings; or

45-44 (3) the amount the commissioner [~~commissioner~~]  
 45-45 determines from other credible evidence to be the actual earnings  
 45-46 for the previous year if the Texas Workforce [~~Employment~~]  
 45-47 Commission does not have a wage report reflecting at least one  
 45-48 quarter's earnings because the employee worked outside the state  
 45-49 during the previous year.

45-50 SECTION 3.102. Subsections (a) and (c), Section 408.104,  
 45-51 Labor Code, are amended to read as follows:

45-52 (a) On application by either the employee or the insurance  
 45-53 carrier, the commissioner [~~commissioner~~] by order may extend the  
 45-54 104-week period described by Section 401.011(30)(B) if the employee  
 45-55 has had spinal surgery, or has been approved for spinal surgery  
 45-56 under Section 408.026 and commissioner [~~commissioner~~] rules, within  
 45-57 12 weeks before the expiration of the 104-week period. If an order  
 45-58 is issued under this section, the order shall extend the statutory  
 45-59 period for maximum medical improvement to a date certain, based on  
 45-60 medical evidence presented to the commissioner [~~commissioner~~].

45-61 (c) The commissioner [~~commissioner~~] shall adopt rules to  
 45-62 implement this section, including rules establishing procedures  
 45-63 for requesting and disputing an extension.

45-64 SECTION 3.103. Subchapter G, Chapter 408, Labor Code, is  
 45-65 amended by amending Section 408.122 and adding Section 408.1225 to  
 45-66 read as follows:

45-67 Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS [~~+~~  
 45-68 ~~DESIGNATED DOCTOR~~]. [~~(a)~~] A claimant may not recover impairment  
 45-69 income benefits unless evidence of impairment based on an objective

46-1 clinical or laboratory finding exists. If the finding of  
 46-2 impairment is made by a doctor chosen by the claimant and the  
 46-3 finding is contested, a designated doctor or a doctor selected by  
 46-4 the insurance carrier must be able to confirm the objective  
 46-5 clinical or laboratory finding on which the finding of impairment  
 46-6 is based.

46-7 Sec. 408.1225. DESIGNATED DOCTOR. (a) ~~[(b)]~~ To be  
 46-8 eligible to serve as a designated doctor, a doctor must meet  
 46-9 specific qualifications, including training in the determination  
 46-10 of impairment ratings and demonstrated expertise in performing  
 46-11 examinations and making evaluations as described by Section  
 46-12 408.0041. The commissioner ~~[executive director]~~ shall develop  
 46-13 qualification standards and administrative policies to implement  
 46-14 this subsection~~[7]~~ and ~~[the commission]~~ may adopt rules as  
 46-15 necessary.

46-16 (b) The commissioner shall ensure the quality of designated  
 46-17 doctor decisions and reviews through active monitoring of the  
 46-18 decisions and reviews, and may take action as necessary to:

46-19 (1) restrict the participation of a designated doctor;  
 46-20 or

46-21 (2) remove a doctor from inclusion on the department's  
 46-22 list of designated doctors. ~~[The designated doctor doing the~~  
 46-23 ~~review must be trained and experienced with the treatment and~~  
 46-24 ~~procedures used by the doctor treating the patient's medical~~  
 46-25 ~~condition, and the treatment and procedures performed must be~~  
 46-26 ~~within the scope of practice of the designated doctor. A designated~~  
 46-27 ~~doctor's credentials must be appropriate for the issue in question~~  
 46-28 ~~and the injured employee's medical condition.]~~

46-29 (c) The report of the designated doctor has presumptive  
 46-30 weight, and the department ~~[commission]~~ shall base its  
 46-31 determination of whether the employee has reached maximum medical  
 46-32 improvement on the report unless the preponderance ~~[great weight]~~  
 46-33 of the other medical evidence is to the contrary.

46-34 (d) The commissioner shall develop rules to ensure that a  
 46-35 designated doctor called on to conduct an examination under Section  
 46-36 408.0041 has no conflict of interest in serving as a designated  
 46-37 doctor in performing any examination.

46-38 SECTION 3.104. Section 408.123, Labor Code, is amended and  
 46-39 reenacted to read as follows:

46-40 Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL  
 46-41 IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an  
 46-42 employee has been certified by a doctor as having reached maximum  
 46-43 medical improvement, the certifying doctor shall evaluate the  
 46-44 condition of the employee and assign an impairment rating using the  
 46-45 impairment rating guidelines described by Section 408.124. If the  
 46-46 certification and evaluation are performed by a doctor other than  
 46-47 the employee's treating doctor, the certification and evaluation  
 46-48 shall be submitted to the treating doctor, and the treating doctor  
 46-49 shall indicate agreement or disagreement with the certification and  
 46-50 evaluation.

46-51 (b) A certifying doctor shall issue a written report  
 46-52 certifying that maximum medical improvement has been reached,  
 46-53 stating the employee's impairment rating, and providing any other  
 46-54 information required by the commissioner ~~[commission]~~ to:

- 46-55 (1) the department ~~[commission]~~;  
 46-56 (2) the employee; and  
 46-57 (3) the insurance carrier.

46-58 (c) The department shall adopt a rule that provides that, at  
 46-59 the conclusion of any examination in which maximum medical  
 46-60 improvement is certified and any impairment rating is assigned by  
 46-61 the treating doctor, written notice shall be given to the employee  
 46-62 that the employee may dispute the certification of maximum medical  
 46-63 improvement and assigned impairment rating. The notice to the  
 46-64 employee must state how to dispute the certification of maximum  
 46-65 medical improvement and impairment rating.

46-66 (d) If an employee is not certified as having reached  
 46-67 maximum medical improvement before the expiration of 102 weeks  
 46-68 after the date income benefits begin to accrue, the department  
 46-69 ~~[commission]~~ shall notify the treating doctor of the requirements

47-1 of this subchapter.

47-2 (e) [~~(d)~~] Except as otherwise provided by this section, an  
 47-3 employee's first valid certification of maximum medical  
 47-4 improvement and first valid assignment of an impairment rating is  
 47-5 final if the certification or assignment is not disputed before the  
 47-6 91st day after the date written notification of the certification  
 47-7 or assignment is provided to the employee and the carrier by  
 47-8 verifiable means.

47-9 (f) [~~(e)~~] An employee's first certification of maximum  
 47-10 medical improvement or assignment of an impairment rating may be  
 47-11 disputed after the period described by Subsection (e) [~~(d)~~] if:

47-12 (1) compelling medical evidence exists of:

47-13 (A) a significant error by the certifying doctor  
 47-14 in applying the appropriate American Medical Association  
 47-15 guidelines or in calculating the impairment rating;

47-16 (B) a clearly mistaken diagnosis or a previously  
 47-17 undiagnosed medical condition; or

47-18 (C) improper or inadequate treatment of the  
 47-19 injury before the date of the certification or assignment that  
 47-20 would render the certification or assignment invalid; or

47-21 (2) other compelling circumstances exist as  
 47-22 prescribed by commissioner [~~commission~~] rule.

47-23 (g) [~~(f)~~] If an employee has not been certified as having  
 47-24 reached maximum medical improvement before the expiration of 104  
 47-25 weeks after the date income benefits begin to accrue or the  
 47-26 expiration date of any extension of benefits under Section 408.104,  
 47-27 the impairment rating assigned after the expiration of either of  
 47-28 those periods is final if the impairment rating is not disputed  
 47-29 before the 91st day after the date written notification of the  
 47-30 certification or assignment is provided to the employee and the  
 47-31 carrier by verifiable means. A certification or assignment may be  
 47-32 disputed after the 90th day only as provided by Subsection (f)  
 47-33 [~~(e)~~].

47-34 (h) [~~(g)~~] If an employee's disputed certification of  
 47-35 maximum medical improvement or assignment of impairment rating is  
 47-36 finally modified, overturned, or withdrawn, the first  
 47-37 certification or assignment made after the date of the  
 47-38 modification, overturning, or withdrawal becomes final if the  
 47-39 certification or assignment is not disputed before the 91st day  
 47-40 after the date notification of the certification or assignment is  
 47-41 provided to the employee and the carrier by verifiable means. A  
 47-42 certification or assignment may be disputed after the 90th day only  
 47-43 as provided by Subsection (f) [~~(e)~~].

47-44 SECTION 3.105. Section 408.124, Labor Code, is amended to  
 47-45 read as follows:

47-46 Sec. 408.124. IMPAIRMENT RATING GUIDELINES. (a) An award  
 47-47 of an impairment income benefit, whether by the commissioner  
 47-48 [~~commission~~] or a court, shall be made on an impairment rating  
 47-49 determined using the impairment rating guidelines described in this  
 47-50 section.

47-51 (b) For determining the existence and degree of an  
 47-52 employee's impairment, the commissioner [~~commission~~] shall use  
 47-53 "Guides to the Evaluation of Permanent Impairment," third edition,  
 47-54 second printing, dated February 1989, published by the American  
 47-55 Medical Association.

47-56 (c) Notwithstanding Subsection (b), the commissioner  
 47-57 [~~commission~~] by rule may adopt the fourth edition of the "Guides to  
 47-58 the Evaluation of Permanent Impairment," published by the American  
 47-59 Medical Association, for determining the existence and degree of an  
 47-60 employee's impairment.

47-61 SECTION 3.106. Subsections (a) through (d) and (f), Section  
 47-62 408.125, Labor Code, are amended to read as follows:

47-63 (a) If an impairment rating is disputed, the commissioner  
 47-64 [~~commission~~] shall direct the employee to the next available doctor  
 47-65 on the department's [~~commission's~~] list of designated doctors, as  
 47-66 provided by Section 408.0041.

47-67 (b) The designated doctor shall report in writing to the  
 47-68 department [~~commission~~].

47-69 (c) The report of the designated doctor shall have

48-1 presumptive weight, and the department [~~commission~~] shall base the  
 48-2 impairment rating on that report unless the preponderance [~~great~~  
 48-3 ~~weight~~] of the other medical evidence is to the contrary. If the  
 48-4 preponderance [~~great weight~~] of the medical evidence contradicts  
 48-5 the impairment rating contained in the report of the designated  
 48-6 doctor chosen by the department [~~commission~~], the department  
 48-7 [~~commission~~] shall adopt the impairment rating of one of the other  
 48-8 doctors.

48-9 (d) To avoid undue influence on a person selected as a  
 48-10 designated doctor under this section, only the injured employee or  
 48-11 an appropriate member of the staff of the department [~~commission~~]  
 48-12 may communicate with the designated doctor about the case regarding  
 48-13 the injured employee's medical condition or history before the  
 48-14 examination of the injured employee by the designated doctor.  
 48-15 After that examination is completed, communication with the  
 48-16 designated doctor regarding the injured employee's medical  
 48-17 condition or history may be made only through appropriate  
 48-18 department [~~commission~~] staff members. The designated doctor may  
 48-19 initiate communication with any doctor who has previously treated  
 48-20 or examined the injured employee for the work-related injury.

48-21 (f) A violation of Subsection (d) is an [~~a Class C~~]  
 48-22 administrative violation.

48-23 SECTION 3.107. Subsection (c), Section 408.127, Labor Code,  
 48-24 is amended to read as follows:

48-25 (c) The commissioner [~~commission~~] shall adopt rules and  
 48-26 forms to ensure the full reporting and the accuracy of reductions  
 48-27 and reimbursements made under this section.

48-28 SECTION 3.108. Subsections (a), (b), and (d), Section  
 48-29 408.129, Labor Code, are amended to read as follows:

48-30 (a) On approval by the commissioner [~~commission~~] of a  
 48-31 written request received from an employee, an insurance carrier  
 48-32 shall accelerate the payment of impairment income benefits to the  
 48-33 employee. The accelerated payment may not exceed a rate of payment  
 48-34 equal to that of the employee's net preinjury wage.

48-35 (b) The commissioner [~~commission~~] shall approve the request  
 48-36 and order the acceleration of the benefits if the commissioner  
 48-37 [~~commission~~] determines that the acceleration is:

- 48-38 (1) required to relieve hardship; and
- 48-39 (2) in the overall best interest of the employee.

48-40 (d) The commissioner [~~commission~~] may prescribe forms  
 48-41 necessary to implement this section.

48-42 SECTION 3.109. Section 408.141, Labor Code, is amended to  
 48-43 read as follows:

48-44 Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An  
 48-45 award of a supplemental income benefit, whether by the commissioner  
 48-46 [~~commission~~] or a court, shall be made in accordance with this  
 48-47 subchapter.

48-48 SECTION 3.110. Subsections (a) and (b), Section 408.143,  
 48-49 Labor Code, are amended to read as follows:

48-50 (a) After the commissioner's [~~commission's~~] initial  
 48-51 determination of supplemental income benefits, the employee must  
 48-52 file a statement with the insurance carrier stating:

48-53 (1) that the employee has earned less than 80 percent  
 48-54 of the employee's average weekly wage as a direct result of the  
 48-55 employee's impairment;

48-56 (2) the amount of wages the employee earned in the  
 48-57 filing period provided by Subsection (b); and

48-58 (3) that the employee has in good faith sought  
 48-59 employment commensurate with the employee's ability to work.

48-60 (b) The statement required under this section must be filed  
 48-61 quarterly on a form and in the manner provided by the commissioner  
 48-62 [~~commission~~]. The commissioner [~~commission~~] may modify the filing  
 48-63 period as appropriate to an individual case.

48-64 SECTION 3.111. Subsection (c), Section 408.147, Labor Code,  
 48-65 is amended to read as follows:

48-66 (c) If an insurance carrier disputes the commissioner's [~~a~~  
 48-67 ~~commission~~] determination that an employee is entitled to  
 48-68 supplemental income benefits or the amount of supplemental income  
 48-69 benefits due and the employee prevails on any disputed issue, the



49-1 insurance carrier is liable for reasonable and necessary attorney's  
 49-2 fees incurred by the employee as a result of the insurance carrier's  
 49-3 dispute and for supplemental income benefits accrued but not paid  
 49-4 and interest on that amount, according to Section 408.064.  
 49-5 Attorney's fees awarded under this subsection are not subject to  
 49-6 Sections 408.221(b), (f), and (i).

49-7 SECTION 3.112. Section 408.148, Labor Code, is amended to  
 49-8 read as follows:

49-9 Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. The  
 49-10 commissioner [~~commission~~] may reinstate supplemental income  
 49-11 benefits to an employee who is discharged within 12 months of the  
 49-12 date of losing entitlement to supplemental income benefits under  
 49-13 Section 408.146(c) if the commissioner [~~commission~~] finds that the  
 49-14 employee was discharged at that time with the intent to deprive the  
 49-15 employee of supplemental income benefits.

49-16 SECTION 3.113. Section 408.149, Labor Code, is amended to  
 49-17 read as follows:

49-18 Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE.  
 49-19 (a) Not more than once in each period of 12 calendar months, an  
 49-20 employee and an insurance carrier each may request the commissioner  
 49-21 [~~commission~~] to review the status of the employee and determine  
 49-22 whether the employee's unemployment or underemployment is a direct  
 49-23 result of impairment from the compensable injury.

49-24 (b) Either party may request a benefit review conference to  
 49-25 contest a determination of the commissioner [~~commission~~] at any  
 49-26 time, subject only to the limits placed on the insurance carrier by  
 49-27 Section 408.147.

49-28 SECTION 3.114. Section 408.150, Labor Code, is amended to  
 49-29 read as follows:

49-30 Sec. 408.150. VOCATIONAL REHABILITATION. (a) The  
 49-31 department [~~commission~~] shall refer an employee to the Department  
 49-32 of Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
 49-33 ~~Commission~~] with a recommendation for appropriate services if the  
 49-34 department [~~commission~~] determines that an employee [~~entitled to~~  
 49-35 ~~supplemental income benefits~~] could be materially assisted by  
 49-36 vocational rehabilitation or training in returning to employment or  
 49-37 returning to employment more nearly approximating the employee's  
 49-38 preinjury employment. The department [~~commission~~] shall also  
 49-39 notify insurance carriers of the need for vocational rehabilitation  
 49-40 or training services. The insurance carrier may provide services  
 49-41 through a private provider of vocational rehabilitation services  
 49-42 under Section 409.012.

49-43 (b) An employee who refuses services or refuses to cooperate  
 49-44 with services provided under this section by the Department of  
 49-45 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
 49-46 ~~Commission~~] or a private provider loses entitlement to supplemental  
 49-47 income benefits.

49-48 SECTION 3.115. Section 408.151, Labor Code, is amended to  
 49-49 read as follows:

49-50 Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME  
 49-51 BENEFITS. (a) On or after the second anniversary of the date the  
 49-52 commissioner [~~commission~~] makes the initial award of supplemental  
 49-53 income benefits, an insurance carrier may not require an employee  
 49-54 who is receiving supplemental income benefits to submit to a  
 49-55 medical examination more than annually if, in the preceding year,  
 49-56 the employee's medical condition resulting from the compensable  
 49-57 injury has not improved sufficiently to allow the employee to  
 49-58 return to work.

49-59 (b) If a dispute exists as to whether the employee's medical  
 49-60 condition has improved sufficiently to allow the employee to return  
 49-61 to work, the commissioner [~~commission~~] shall direct the employee to  
 49-62 be examined by a designated doctor chosen by the department  
 49-63 [~~commission~~]. The designated doctor shall report to the department  
 49-64 [~~commission~~]. The report of the designated doctor has presumptive  
 49-65 weight, and the department [~~commission~~] shall base its  
 49-66 determination of whether the employee's medical condition has  
 49-67 improved sufficiently to allow the employee to return to work on  
 49-68 that report unless the preponderance [~~great weight~~] of the other  
 49-69 medical evidence is to the contrary.

50-1 [~~(c) The commissioner may require an employee to whom~~  
 50-2 ~~Subsection (a) applies to submit to a medical examination under~~  
 50-3 ~~Section 408.004 only to determine whether the employee's medical~~  
 50-4 ~~condition is a direct result of impairment from a compensable~~  
 50-5 ~~injury.]~~

50-6 SECTION 3.116. Subsection (d), Section 408.161, Labor Code,  
 50-7 is amended to read as follows:

50-8 (d) An insurance carrier may pay lifetime income benefits  
 50-9 through an annuity if the annuity agreement meets the terms and  
 50-10 conditions for annuity agreements adopted by the commissioner  
 50-11 [~~commission~~] by rule. The establishment of an annuity under this  
 50-12 subsection does not relieve the insurance carrier of the liability  
 50-13 under this title for ensuring that the lifetime income benefits are  
 50-14 paid.

50-15 SECTION 3.117. Subsections (c) and (d), Section 408.181,  
 50-16 Labor Code, are amended to read as follows:

50-17 (c) The commissioner [~~commission~~] by rule shall establish  
 50-18 requirements for agreements under which death benefits may be paid  
 50-19 monthly. Death benefits may be paid monthly only:

50-20 (1) on the request of the legal beneficiary and the  
 50-21 agreement of the legal beneficiary and the insurance carrier; and

50-22 (2) in compliance with the requirements adopted by the  
 50-23 commissioner [~~commission~~].

50-24 (d) An insurance carrier may pay death benefits through an  
 50-25 annuity if the annuity agreement meets the terms and conditions for  
 50-26 annuity agreements adopted by the commissioner [~~commission~~] by  
 50-27 rule. The establishment of an annuity under this subsection does  
 50-28 not relieve the insurance carrier of the liability under this title  
 50-29 for ensuring that the death benefits are paid.

50-30 SECTION 3.118. Subsection (f), Section 408.182, Labor Code,  
 50-31 is amended to read as follows:

50-32 (f) In this section:

50-33 (1) "Eligible child" means a child of a deceased  
 50-34 employee if the child is:

50-35 (A) a minor;

50-36 (B) enrolled as a full-time student in an  
 50-37 accredited educational institution and is less than 25 years of  
 50-38 age; or

50-39 (C) a dependent of the deceased employee at the  
 50-40 time of the employee's death.

50-41 (2) "Eligible grandchild" means a grandchild of a  
 50-42 deceased employee who is a dependent of the deceased employee and  
 50-43 whose parent is not an eligible child.

50-44 (3) "Eligible spouse" means the surviving spouse of a  
 50-45 deceased employee unless the spouse abandoned the employee for  
 50-46 longer than the year immediately preceding the death without good  
 50-47 cause, as determined by the department [~~commission~~].

50-48 SECTION 3.119. Subsection (b), Section 408.183, Labor Code,  
 50-49 is amended to read as follows:

50-50 (b) An eligible spouse is entitled to receive death benefits  
 50-51 for life or until remarriage. On remarriage, the eligible spouse is  
 50-52 entitled to receive 104 weeks of death benefits, commuted as  
 50-53 provided by commissioner [~~commission~~] rule.

50-54 SECTION 3.120. Subsection (c), Section 408.187, Labor Code,  
 50-55 is amended to read as follows:

50-56 (c) The commissioner [~~commission~~] shall require the  
 50-57 insurance carrier to pay the costs of a procedure ordered under this  
 50-58 section.

50-59 SECTION 3.121. Section 408.202, Labor Code, is amended to  
 50-60 read as follows:

50-61 Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not  
 50-62 assignable, except a legal beneficiary may, with the commissioner's  
 50-63 [~~commission~~] approval, assign the right to death benefits.

50-64 SECTION 3.122. Subsections (a) through (g), Section  
 50-65 408.221, Labor Code, are amended to read as follows:

50-66 (a) An attorney's fee, including a contingency fee, for  
 50-67 representing a claimant before the department [~~commission~~] or court  
 50-68 under this subtitle must be approved by the commissioner  
 50-69 [~~commission~~] or court.

51-1 (b) Except as otherwise provided, an attorney's fee under  
 51-2 this section is based on the attorney's time and expenses according  
 51-3 to written evidence presented to the department [~~commissioner~~] or  
 51-4 court. Except as provided by Subsection (c) or Section 408.147(c),  
 51-5 the attorney's fee shall be paid from the claimant's recovery.

51-6 (c) An insurance carrier that seeks judicial review under  
 51-7 Subchapter G, Chapter 410, of a final decision of a department  
 51-8 [~~commissioner~~] appeals panel regarding compensability or eligibility  
 51-9 for, or the amount of, income or death benefits is liable for  
 51-10 reasonable and necessary attorney's fees as provided by Subsection  
 51-11 (d) incurred by the claimant as a result of the insurance carrier's  
 51-12 appeal if the claimant prevails on an issue on which judicial review  
 51-13 is sought by the insurance carrier in accordance with the  
 51-14 limitation of issues contained in Section 410.302. If the carrier  
 51-15 appeals multiple issues and the claimant prevails on some, but not  
 51-16 all, of the issues appealed, the court shall apportion and award  
 51-17 fees to the claimant's attorney only for the issues on which the  
 51-18 claimant prevails. In making that apportionment, the court shall  
 51-19 consider the factors prescribed by Subsection (d). This subsection  
 51-20 does not apply to attorney's fees for which an insurance carrier may  
 51-21 be liable under Section 408.147. An award of attorney's fees under  
 51-22 this subsection is not subject to commissioner [~~commissioner~~] rules  
 51-23 adopted under Subsection (f). [~~This subsection expires September~~  
 51-24 ~~1, 2005.~~]

51-25 (d) In approving an attorney's fee under this section, the  
 51-26 commissioner [~~commissioner~~] or court shall consider:

- 51-27 (1) the time and labor required;  
 51-28 (2) the novelty and difficulty of the questions  
 51-29 involved;  
 51-30 (3) the skill required to perform the legal services  
 51-31 properly;  
 51-32 (4) the fee customarily charged in the locality for  
 51-33 similar legal services;  
 51-34 (5) the amount involved in the controversy;  
 51-35 (6) the benefits to the claimant that the attorney is  
 51-36 responsible for securing; and  
 51-37 (7) the experience and ability of the attorney  
 51-38 performing the services.

51-39 (e) The commissioner [~~commissioner~~] by rule or the court may  
 51-40 provide for the commutation of an attorney's fee, except that the  
 51-41 attorney's fee shall be paid in periodic payments in a claim  
 51-42 involving death benefits if the only dispute is as to the proper  
 51-43 beneficiary or beneficiaries.

51-44 (f) The commissioner [~~commissioner~~] by rule shall provide  
 51-45 guidelines for maximum attorney's fees for specific services in  
 51-46 accordance with this section.

51-47 (g) An attorney's fee may not be allowed in a case involving  
 51-48 a fatal injury or lifetime income benefit if the insurance carrier  
 51-49 admits liability on all issues and tenders payment of maximum  
 51-50 benefits in writing under this subtitle while the claim is pending  
 51-51 before the department [~~commissioner~~].

51-52 SECTION 3.123. Section 408.222, Labor Code, is amended to  
 51-53 read as follows:

51-54 Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL.

51-55 (a) The amount of an attorney's fee for defending an insurance  
 51-56 carrier in a workers' compensation action brought under this  
 51-57 subtitle must be approved by the commissioner [~~commissioner~~] or court  
 51-58 and determined by the commissioner [~~commissioner~~] or court to be  
 51-59 reasonable and necessary.

51-60 (b) In determining whether a fee is reasonable under this  
 51-61 section, the commissioner [~~commissioner~~] or court shall consider  
 51-62 issues analogous to those listed under Section 408.221(d). The  
 51-63 defense counsel shall present written evidence to the commissioner  
 51-64 [~~commissioner~~] or court relating to:

- 51-65 (1) the time spent and expenses incurred in defending  
 51-66 the case; and  
 51-67 (2) other evidence considered necessary by the  
 51-68 commissioner [~~commissioner~~] or court in making a determination under  
 51-69 this section.

52-1 SECTION 3.124. Section 409.002, Labor Code, is amended to  
52-2 read as follows:

52-3 Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to  
52-4 notify an employer as required by Section 409.001(a) relieves the  
52-5 employer and the employer's insurance carrier of liability under  
52-6 this subtitle unless:

52-7 (1) the employer, a person eligible to receive notice  
52-8 under Section 409.001(b), or the employer's insurance carrier has  
52-9 actual knowledge of the employee's injury;

52-10 (2) the commissioner [~~commission~~] determines that  
52-11 good cause exists for failure to provide notice in a timely manner;  
52-12 or

52-13 (3) the employer or the employer's insurance carrier  
52-14 does not contest the claim.

52-15 SECTION 3.125. Section 409.003, Labor Code, is amended to  
52-16 read as follows:

52-17 Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a  
52-18 person acting on the employee's behalf shall file with the  
52-19 department [~~commission~~] a claim for compensation for an injury not  
52-20 later than one year after the date on which:

52-21 (1) the injury occurred; or

52-22 (2) if the injury is an occupational disease, the  
52-23 employee knew or should have known that the disease was related to  
52-24 the employee's employment.

52-25 SECTION 3.126. Section 409.004, Labor Code, is amended to  
52-26 read as follows:

52-27 Sec. 409.004. FAILURE TO FILE CLAIM FOR COMPENSATION.  
52-28 Failure to file a claim for compensation with the department  
52-29 [~~commission~~] as required under Section 409.003 relieves the  
52-30 employer and the employer's insurance carrier of liability under  
52-31 this subtitle unless:

52-32 (1) good cause exists for failure to file a claim in a  
52-33 timely manner; or

52-34 (2) the employer or the employer's insurance carrier  
52-35 does not contest the claim.

52-36 SECTION 3.127. Subsections (d), (e), (f), and (h) through  
52-37 (l), Section 409.005, Labor Code, are amended to read as follows:

52-38 (d) The insurance carrier shall file the report of the  
52-39 injury on behalf of the policyholder. Except as provided by  
52-40 Subsection (e), the insurance carrier must electronically file the  
52-41 report with the department [~~commission~~] not later than the seventh  
52-42 day after the date on which the carrier receives the report from the  
52-43 employer.

52-44 (e) The commissioner [~~executive director~~] may waive the  
52-45 electronic filing requirement under Subsection (d) and allow an  
52-46 insurance carrier to mail or deliver the report to the department  
52-47 [~~commission~~] not later than the seventh day after the date on which  
52-48 the carrier receives the report from the employer.

52-49 (f) A report required under this section may not be  
52-50 considered to be an admission by or evidence against an employer or  
52-51 an insurance carrier in a proceeding before the department  
52-52 [~~commission~~] or a court in which the facts set out in the report are  
52-53 contradicted by the employer or insurance carrier.

52-54 (h) The commissioner [~~commission~~] may adopt rules relating  
52-55 to:

52-56 (1) the information that must be contained in a report  
52-57 required under this section, including the summary of rights and  
52-58 responsibilities required under Subsection (g); and

52-59 (2) the development and implementation of an  
52-60 electronic filing system for injury reports under this section.

52-61 (i) An employer and insurance carrier shall file subsequent  
52-62 reports as required by commissioner [~~commission~~] rule.

52-63 (j) The employer shall, on the written request of the  
52-64 employee, a doctor, the insurance carrier, or the commissioner  
52-65 [~~commission~~], notify the employee, the employee's treating doctor  
52-66 if known to the employer, and the insurance carrier of the existence  
52-67 or absence of opportunities for modified duty or a modified duty  
52-68 return-to-work program available through the employer. If those  
52-69 opportunities or that program exists, the employer shall identify

53-1 the employer's contact person and provide other information to  
 53-2 assist the doctor, the employee, and the insurance carrier to  
 53-3 assess modified duty or return-to-work options.

53-4 (k) This section does not prohibit the commissioner  
 53-5 [~~commission~~] from imposing requirements relating to return-to-work  
 53-6 under other authority granted to the department [~~commission~~] in  
 53-7 this subtitle.

53-8 (l) A person commits a violation if the person fails to  
 53-9 comply with this section unless good cause exists. [~~A violation~~  
 53-10 ~~under this subsection is a Class D administrative violation.~~]

53-11 SECTION 3.128. Subsections (b), (c), and (e), Section  
 53-12 409.006, Labor Code, are amended to read as follows:

53-13 (b) The record shall be available to the department  
 53-14 [~~commission~~] at reasonable times and under conditions prescribed by  
 53-15 the commissioner [~~commission~~].

53-16 (c) The commissioner [~~commission~~] may adopt rules relating  
 53-17 to the information that must be contained in an employer record  
 53-18 under this section.

53-19 (e) A person commits a violation if the person fails to  
 53-20 comply with this section. [~~A violation under this subsection is a~~  
 53-21 ~~Class D administrative violation.~~]

53-22 SECTION 3.129. Subsection (a), Section 409.007, Labor Code,  
 53-23 is amended to read as follows:

53-24 (a) A person must file a claim for death benefits with the  
 53-25 department [~~commission~~] not later than the first anniversary of the  
 53-26 date of the employee's death.

53-27 SECTION 3.130. Section 409.009, Labor Code, is amended to  
 53-28 read as follows:

53-29 Sec. 409.009. SUBCLAIMS. A person may file a written claim  
 53-30 with the department [~~commission~~] as a subclaimant if the person  
 53-31 has:

53-32 (1) provided compensation, including health care  
 53-33 provided by a health care insurer, directly or indirectly, to or for  
 53-34 an employee or legal beneficiary; and

53-35 (2) sought and been refused reimbursement from the  
 53-36 insurance carrier.

53-37 SECTION 3.131. Section 409.010, Labor Code, is amended to  
 53-38 read as follows:

53-39 Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL  
 53-40 BENEFICIARY. Immediately on receiving notice of an injury or death  
 53-41 from any person, the department [~~commission~~] shall mail to the  
 53-42 employee or legal beneficiary a clear and concise description of:

53-43 (1) the services provided by the department  
 53-44 [~~commission~~], including the services of the ombudsman program;

53-45 (2) the department's [~~commission's~~] procedures; and

53-46 (3) the person's rights and responsibilities under  
 53-47 this subtitle.

53-48 SECTION 3.132. Subsections (a) and (c), Section 409.011,  
 53-49 Labor Code, are amended to read as follows:

53-50 (a) Immediately on receiving notice of an injury or death  
 53-51 from any person, the department [~~commission~~] shall mail to the  
 53-52 employer a description of:

53-53 (1) the services provided by the department  
 53-54 [~~commission~~];

53-55 (2) the department's [~~commission's~~] procedures; and

53-56 (3) the employer's rights and responsibilities under  
 53-57 this subtitle.

53-58 (c) The department [~~commission~~] is not required to provide  
 53-59 the information to an employer more than once during a calendar  
 53-60 year.

53-61 SECTION 3.133. Section 409.012, Labor Code, is amended to  
 53-62 read as follows:

53-63 Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION.  
 53-64 (a) The commissioner [~~commission~~] shall analyze each report of  
 53-65 injury received from an employer under this chapter to determine  
 53-66 whether the injured employee would be assisted by vocational  
 53-67 rehabilitation.

53-68 (b) If the commissioner [~~commission~~] determines that an  
 53-69 injured employee would be assisted by vocational rehabilitation,

54-1 the department [~~commission~~] shall notify the injured employee in  
 54-2 writing of the services and facilities available through the  
 54-3 Department of Assistive and Rehabilitative Services [~~Texas~~  
 54-4 ~~Rehabilitation Commission~~] and private providers of vocational  
 54-5 rehabilitation. The department [~~commission~~] shall notify the  
 54-6 Department of Assistive and Rehabilitative Services [~~Texas~~  
 54-7 ~~Rehabilitation Commission~~] and the affected insurance carrier that  
 54-8 the injured employee has been identified as one who could be  
 54-9 assisted by vocational rehabilitation.

54-10 (c) The department [~~commission~~] shall cooperate with the  
 54-11 Department of Assistive and Rehabilitative Services [~~Texas~~  
 54-12 ~~Rehabilitation Commission~~] and private providers of vocational  
 54-13 rehabilitation in the provision of services and facilities to  
 54-14 employees by the Department of Assistive and Rehabilitative  
 54-15 Services [~~Texas Rehabilitation Commission~~].

54-16 (d) A private provider of vocational rehabilitation  
 54-17 services may register with the department [~~commission~~].

54-18 (e) The commissioner [~~commission~~] by rule may require that a  
 54-19 private provider of vocational rehabilitation services maintain  
 54-20 certain credentials and qualifications in order to provide services  
 54-21 in connection with a workers' compensation insurance claim.

54-22 (f) The department and the Department of Assistive and  
 54-23 Rehabilitative Services shall report to the legislature not later  
 54-24 than August 1, 2006, on their actions to improve access to and the  
 54-25 effectiveness of vocational rehabilitation programs for injured  
 54-26 employees. The report must include:

54-27 (1) a description of the actions each agency has taken  
 54-28 to improve communication regarding and coordination of vocational  
 54-29 rehabilitation programs;

54-30 (2) an analysis identifying the population of injured  
 54-31 employees that have the poorest return-to-work outcomes and are in  
 54-32 the greatest need for vocational rehabilitation services;

54-33 (3) any changes recommended to improve the access to  
 54-34 and effectiveness of vocational rehabilitation programs for the  
 54-35 populations identified in Subdivision (2); and

54-36 (4) a plan to implement these changes.

54-37 SECTION 3.134. Section 409.013, Labor Code, is amended to  
 54-38 read as follows:

54-39 Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF  
 54-40 INJURED WORKER. (a) The department [~~commission~~] shall develop  
 54-41 information for public dissemination about the benefit process and  
 54-42 the compensation procedures established under this chapter. The  
 54-43 information must be written in plain language and must be available  
 54-44 in English and Spanish.

54-45 (b) On receipt of a report under Section 409.005, the  
 54-46 department [~~commission~~] shall contact the affected employee by mail  
 54-47 or by telephone and shall provide the information required under  
 54-48 Subsection (a) to that employee, together with any other  
 54-49 information that may be prepared by the department [~~commission~~] for  
 54-50 public dissemination that relates to the employee's situation, such  
 54-51 as information relating to back injuries or occupational diseases.

54-52 SECTION 3.135. Subsections (a) and (b), Section 409.021,  
 54-53 Labor Code, are amended to read as follows:

54-54 (a) An insurance carrier shall initiate compensation under  
 54-55 this subtitle promptly. Not later than the 15th day after the date  
 54-56 on which an insurance carrier receives written notice of an injury,  
 54-57 the insurance carrier shall:

54-58 (1) begin the payment of benefits as required by this  
 54-59 subtitle; or

54-60 (2) notify the department [~~commission~~] and the  
 54-61 employee in writing of its refusal to pay and advise the employee  
 54-62 of:

54-63 (A) the right to request a benefit review  
 54-64 conference; and

54-65 (B) the means to obtain additional information  
 54-66 from the department [~~commission~~].

54-67 (b) An insurance carrier shall notify the department  
 54-68 [~~commission~~] in writing of the initiation of income or death  
 54-69 benefit payments in the manner prescribed by commissioner

55-1 [~~commission~~] rules.

55-2 SECTION 3.136. Subsection (c), Section 409.022, Labor Code,  
55-3 is amended to read as follows:

55-4 (c) An insurance carrier commits a violation if the  
55-5 insurance carrier does not have reasonable grounds for a refusal to  
55-6 pay benefits, as determined by the commissioner [~~commission. A~~  
55-7 ~~violation under this subsection is a Class B administrative~~  
55-8 ~~violation~~].

55-9 SECTION 3.137. Subsections (a), (c), and (d), Section  
55-10 409.023, Labor Code, are amended to read as follows:

55-11 (a) An insurance carrier shall continue to pay benefits  
55-12 promptly as and when the benefits accrue without a final decision,  
55-13 order, or other action of the commissioner [~~commission~~], except as  
55-14 otherwise provided.

55-15 (c) An insurance carrier commits a violation if the  
55-16 insurance carrier fails to comply with this section. [~~A violation~~  
55-17 ~~under this subsection is a Class B administrative violation. Each~~  
55-18 ~~day of noncompliance constitutes a separate violation.~~]

55-19 (d) An insurance carrier that commits multiple violations  
55-20 of this section commits an additional [~~a Class A~~] administrative  
55-21 violation and is subject to:

55-22 (1) the sanctions provided under Section 415.023; and

55-23 (2) revocation of the right to do business under the  
55-24 workers' compensation laws of this state.

55-25 SECTION 3.138. Subsection (b), Section 409.0231, Labor  
55-26 Code, is amended to read as follows:

55-27 (b) The commissioner [~~commission~~] shall adopt rules in  
55-28 consultation with the Texas Department of Information Resources as  
55-29 necessary to implement this section, including rules prescribing a  
55-30 period of benefits that is of sufficient duration to allow payment  
55-31 by electronic funds transfer.

55-32 SECTION 3.139. Section 409.024, Labor Code, is amended to  
55-33 read as follows:

55-34 Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE;  
55-35 ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file  
55-36 with the department [~~commission~~] a notice of termination or  
55-37 reduction of benefits, including the reasons for the termination or  
55-38 reduction, not later than the 10th day after the date on which  
55-39 benefits are terminated or reduced.

55-40 (b) An insurance carrier commits a violation if the  
55-41 insurance carrier does not have reasonable grounds to terminate or  
55-42 reduce benefits, as determined by the commissioner [~~commission. A~~  
55-43 ~~violation under this subsection is a Class B administrative~~  
55-44 ~~violation~~].

55-45 SECTION 3.140. Subsection (a), Section 409.041, Labor Code,  
55-46 is amended to read as follows:

55-47 (a) The department [~~commission~~] shall maintain an ombudsman  
55-48 program as provided by this subchapter to assist injured workers  
55-49 and persons claiming death benefits in obtaining benefits under  
55-50 this subtitle.

55-51 SECTION 3.141. Subsections (a) and (c), Section 409.042,  
55-52 Labor Code, are amended to read as follows:

55-53 (a) At least one specially qualified employee in each  
55-54 department [~~commission~~] office shall be designated an ombudsman who  
55-55 shall perform the duties under this section as the person's primary  
55-56 responsibility.

55-57 (c) The commissioner [~~commission~~] by rule shall adopt  
55-58 training guidelines and continuing education requirements for  
55-59 ombudsmen. Training provided under this subsection must:

55-60 (1) include education regarding this subtitle, rules  
55-61 adopted under this subtitle, and appeals panel decisions, with  
55-62 emphasis on benefits and the dispute resolution process; and

55-63 (2) require an ombudsman undergoing training to be  
55-64 observed and monitored by an experienced ombudsman during daily  
55-65 activities conducted under this subchapter.

55-66 SECTION 3.142. Section 409.043, Labor Code, is amended to  
55-67 read as follows:

55-68 Sec. 409.043. EMPLOYER NOTIFICATION; ADMINISTRATIVE  
55-69 VIOLATION. (a) Each employer shall notify its employees of the

56-1 ombudsman program in a manner prescribed by the commissioner  
56-2 [~~commission~~].

56-3 (b) An employer commits a violation if the employer fails to  
56-4 comply with this section. [~~A violation under this section is a~~  
56-5 ~~Class C administrative violation.~~]

56-6 SECTION 3.143. Section 409.044, Labor Code, is amended to  
56-7 read as follows:

56-8 Sec. 409.044. PUBLIC INFORMATION. The department  
56-9 [~~commission~~] shall widely disseminate information about the  
56-10 ombudsman program.

56-11 SECTION 3.144. Section 410.002, Labor Code, is amended to  
56-12 read as follows:

56-13 Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A  
56-14 proceeding before the department [~~commission~~] to determine the  
56-15 liability of an insurance carrier for compensation for an injury or  
56-16 death under this subtitle is governed by this chapter.

56-17 SECTION 3.145. Section 410.004, Labor Code, is amended to  
56-18 read as follows:

56-19 Sec. 410.004. DIVISION OF HEARINGS. The division shall  
56-20 conduct benefit review conferences, contested case hearings,  
56-21 arbitration, and appeals within the department [~~commission~~]  
56-22 related to workers' compensation claims.

56-23 SECTION 3.146. Subsection (a), Section 410.005, Labor Code,  
56-24 is amended to read as follows:

56-25 (a) Unless the commissioner [~~commission~~] determines that  
56-26 good cause exists for the selection of a different location, a  
56-27 benefit review conference or a contested case hearing may not be  
56-28 conducted at a site more than 75 miles from the claimant's residence  
56-29 at the time of the injury.

56-30 SECTION 3.147. Section 410.021, Labor Code, is amended to  
56-31 read as follows:

56-32 Sec. 410.021. PURPOSE. A benefit review conference is a  
56-33 nonadversarial, informal dispute resolution proceeding designed  
56-34 to:

56-35 (1) explain, orally and in writing, the rights of the  
56-36 respective parties to a workers' compensation claim and the  
56-37 procedures necessary to protect those rights;

56-38 (2) discuss the facts of the claim, review available  
56-39 information in order to evaluate the claim, and delineate the  
56-40 disputed issues; and

56-41 (3) mediate and resolve disputed issues by agreement  
56-42 of the parties in accordance with this subtitle and the policies of  
56-43 the department [~~commission~~].

56-44 SECTION 3.148. Subsections (b) and (c), Section 410.022,  
56-45 Labor Code, are amended to read as follows:

56-46 (b) A benefit review officer must:

56-47 (1) be an employee of the department [~~commission~~]; and

56-48 (2) be trained in the principles and procedures of  
56-49 dispute mediation.

56-50 (c) The department [~~commission~~] shall institute and  
56-51 maintain an education and training program for benefit review  
56-52 officers and shall consult or contract with the Federal Mediation  
56-53 and Conciliation Service or other appropriate organizations for  
56-54 this purpose.

56-55 SECTION 3.149. Section 410.023, Labor Code, is amended to  
56-56 read as follows:

56-57 Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. On  
56-58 receipt of a request from a party or on its own motion, the  
56-59 department [~~commission~~] may direct the parties to a disputed  
56-60 workers' compensation claim to meet in a benefit review conference  
56-61 to attempt to reach agreement on disputed issues involved in the  
56-62 claim.

56-63 SECTION 3.150. Section 410.024, Labor Code, is amended to  
56-64 read as follows:

56-65 Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO  
56-66 FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise  
56-67 provided by law or commissioner [~~commission~~] rule, the parties to a  
56-68 disputed compensation claim are not entitled to a contested case  
56-69 hearing or arbitration on the claim unless a benefit review



57-1 conference is conducted as provided by this subchapter.

57-2 (b) The commissioner [~~commission~~] by rule shall adopt  
57-3 guidelines relating to claims that do not require a benefit review  
57-4 conference and may proceed directly to a contested case hearing or  
57-5 arbitration.

57-6 SECTION 3.151. Section 410.025, Labor Code, is amended to  
57-7 read as follows:

57-8 Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE;  
57-9 NOTICE. (a) The commissioner [~~commission~~] by rule shall prescribe  
57-10 the time within which a benefit review conference must be  
57-11 scheduled.

57-12 (b) At the time a benefit review conference is scheduled,  
57-13 the department [~~commission~~] shall schedule a contested case hearing  
57-14 to be held not later than the 60th day after the date of the benefit  
57-15 review conference if the disputed issues are not resolved at the  
57-16 benefit review conference.

57-17 (c) The department [~~commission~~] shall send written notice  
57-18 of the benefit review conference to the parties to the claim and the  
57-19 employer.

57-20 (d) The commissioner [~~commission~~] by rule shall provide for  
57-21 expedited proceedings in cases in which compensability or liability  
57-22 for essential medical treatment is in dispute.

57-23 SECTION 3.152. Subsection (a), Section 410.026, Labor Code,  
57-24 is amended to read as follows:

57-25 (a) A benefit review officer shall:

57-26 (1) mediate disputes between the parties and assist in  
57-27 the adjustment of the claim consistent with this subtitle and the  
57-28 policies of the department [~~commission~~];

57-29 (2) thoroughly inform all parties of their rights and  
57-30 responsibilities under this subtitle, especially in a case in which  
57-31 the employee is not represented by an attorney or other  
57-32 representative; and

57-33 (3) ensure that all documents and information relating  
57-34 to the employee's wages, medical condition, and any other  
57-35 information pertinent to the resolution of disputed issues are  
57-36 contained in the claim file at the conference, especially in a case  
57-37 in which the employee is not represented by an attorney or other  
57-38 representative.

57-39 SECTION 3.153. Subsection (a), Section 410.027, Labor Code,  
57-40 is amended to read as follows:

57-41 (a) The commissioner [~~commission~~] shall adopt rules for  
57-42 conducting benefit review conferences.

57-43 SECTION 3.154. Subsection (b), Section 410.028, Labor Code,  
57-44 is amended to read as follows:

57-45 (b) A party commits a violation if the party fails to attend  
57-46 a benefit review conference without good cause as determined by the  
57-47 benefit review officer. [~~A violation under this subsection is a  
57-48 Class D administrative violation.~~]

57-49 SECTION 3.155. Section 410.030, Labor Code, is amended to  
57-50 read as follows:

57-51 Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An  
57-52 agreement signed in accordance with Section 410.029 is binding on  
57-53 the insurance carrier through the conclusion of all matters  
57-54 relating to the claim, unless the department [~~commission~~] or a  
57-55 court, on a finding of fraud, newly discovered evidence, or other  
57-56 good and sufficient cause, relieves the insurance carrier of the  
57-57 effect of the agreement.

57-58 (b) The agreement is binding on the claimant, if represented  
57-59 by an attorney, to the same extent as on the insurance carrier. If  
57-60 the claimant is not represented by an attorney, the agreement is  
57-61 binding on the claimant through the conclusion of all matters  
57-62 relating to the claim while the claim is pending before the  
57-63 department [~~commission~~], unless the commissioner [~~commission~~] for  
57-64 good cause relieves the claimant of the effect of the agreement.

57-65 SECTION 3.156. Subsection (b), Section 410.034, Labor Code,  
57-66 is amended to read as follows:

57-67 (b) The commissioner [~~commission~~] by rule shall prescribe  
57-68 the times within which the agreement and report must be filed.

57-69 SECTION 3.157. Section 410.102, Labor Code, is amended to

58-1 read as follows:

58-2 Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An  
58-3 arbitrator must be an employee of the department [~~commission~~],  
58-4 except that the department [~~commission~~] may contract with qualified  
58-5 arbitrators on a determination of special need.

58-6 (b) An arbitrator must:

58-7 (1) be a member of the National Academy of  
58-8 Arbitrators;

58-9 (2) be on an approved list of the American Arbitration  
58-10 Association or Federal Mediation and Conciliation Service; or

58-11 (3) meet qualifications established by the  
58-12 commissioner [~~commission~~] by rule [~~and be approved by an~~  
58-13 ~~affirmative vote of at least two commission members representing~~  
58-14 ~~employers of labor and at least two commission members representing~~  
58-15 ~~wage earners~~].

58-16 (c) The department [~~commission~~] shall require that each  
58-17 arbitrator have appropriate training in the workers' compensation  
58-18 laws of this state. The commissioner [~~commission~~] shall establish  
58-19 procedures to carry out this subsection.

58-20 SECTION 3.158. Section 410.103, Labor Code, is amended to  
58-21 read as follows:

58-22 Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

58-23 (1) protect the interests of all parties;

58-24 (2) ensure that all relevant evidence has been  
58-25 disclosed to the arbitrator and to all parties; and

58-26 (3) render an award consistent with this subtitle and  
58-27 the policies of the department [~~commission~~].

58-28 SECTION 3.159. Subsections (b) and (c), Section 410.104,  
58-29 Labor Code, are amended to read as follows:

58-30 (b) To elect arbitration, the parties must file the election  
58-31 with the department [~~commission~~] not later than the 20th day after  
58-32 the last day of the benefit review conference. The commissioner  
58-33 [~~commission~~] shall prescribe a form for that purpose.

58-34 (c) An election to engage in arbitration under this  
58-35 subchapter is irrevocable and binding on all parties for the  
58-36 resolution of all disputes arising out of the claims that are under  
58-37 the jurisdiction of the department [~~commission~~].

58-38 SECTION 3.160. Section 410.105, Labor Code, is amended to  
58-39 read as follows:

58-40 Sec. 410.105. LISTS OF ARBITRATORS. (a) The department  
58-41 [~~commission~~] shall establish regional lists of arbitrators who meet  
58-42 the qualifications prescribed under Sections 410.102(a) and (b).  
58-43 Each regional list shall be initially prepared in a random name  
58-44 order, and subsequent additions to a list shall be added  
58-45 chronologically.

58-46 (b) The commissioner [~~commission~~] shall review the lists of  
58-47 arbitrators annually and determine if each arbitrator is fair and  
58-48 impartial and makes awards that are consistent with and in  
58-49 accordance with this subtitle and the rules of the commissioner  
58-50 [~~commission~~]. ~~The commission shall remove an arbitrator if after~~  
58-51 ~~review the arbitrator does not receive an affirmative vote of at~~  
58-52 ~~least two commission members representing employers of labor and at~~  
58-53 ~~least two commission members representing wage earners~~].

58-54 (c) The department's [~~commission's~~] lists are confidential  
58-55 and are not subject to disclosure under Chapter 552, Government  
58-56 Code. The lists may not be revealed by any department [~~commission~~]  
58-57 employee to any person who is not a department [~~commission~~]  
58-58 employee. The lists are exempt from discovery in civil litigation  
58-59 unless the party seeking the discovery establishes reasonable cause  
58-60 to believe that a violation of the requirements of this section or  
58-61 Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that  
58-62 the violation is relevant to the issues in dispute.

58-63 SECTION 3.161. Section 410.106, Labor Code, is amended to  
58-64 read as follows:

58-65 Sec. 410.106. SELECTION OF ARBITRATOR. The department  
58-66 [~~commission~~] shall assign the arbitrator for a particular case by  
58-67 selecting the next name after the previous case's selection in  
58-68 consecutive order. The department [~~commission~~] may not change the  
58-69 order of names once the order is established under this subchapter,

59-1 except that once each arbitrator on the list has been assigned to a  
59-2 case, the names shall be randomly reordered.

59-3 SECTION 3.162. Subsection (a), Section 410.107, Labor Code,  
59-4 is amended to read as follows:

59-5 (a) The department [~~commission~~] shall assign an arbitrator  
59-6 to a pending case not later than the 30th day after the date on which  
59-7 the election for arbitration is filed with the department  
59-8 [~~commission~~].

59-9 SECTION 3.163. Subsection (a), Section 410.108, Labor Code,  
59-10 is amended to read as follows:

59-11 (a) Each party is entitled, in its sole discretion, to one  
59-12 rejection of the arbitrator in each case. If a party rejects the  
59-13 arbitrator, the department [~~commission~~] shall assign another  
59-14 arbitrator as provided by Section 410.106.

59-15 SECTION 3.164. Section 410.109, Labor Code, is amended to  
59-16 read as follows:

59-17 Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The  
59-18 arbitrator shall schedule arbitration to be held not later than the  
59-19 30th day after the date of the arbitrator's assignment and shall  
59-20 notify the parties and the department [~~commission~~] of the scheduled  
59-21 date.

59-22 (b) If an arbitrator is unable to schedule arbitration in  
59-23 accordance with Subsection (a), the department [~~commission~~] shall  
59-24 appoint the next arbitrator on the applicable list. Each party is  
59-25 entitled to reject the arbitrator appointed under this subsection  
59-26 in the manner provided under Section 410.108.

59-27 SECTION 3.165. Section 410.111, Labor Code, is amended to  
59-28 read as follows:

59-29 Sec. 410.111. RULES. The commissioner [~~commission~~] shall  
59-30 adopt rules for arbitration consistent with generally recognized  
59-31 arbitration principles and procedures.

59-32 SECTION 3.166. Subsection (b), Section 410.112, Labor Code,  
59-33 is amended to read as follows:

59-34 (b) A party commits a violation if the party, without good  
59-35 cause as determined by the arbitrator, fails to comply with  
59-36 Subsection (a). [~~A violation under this subsection is a Class D~~  
59-37 ~~administrative violation.~~]

59-38 SECTION 3.167. Subsection (b), Section 410.113, Labor Code,  
59-39 is amended to read as follows:

59-40 (b) A party commits a violation if the party does not attend  
59-41 the arbitration unless the arbitrator determines that the party had  
59-42 good cause not to attend. [~~A violation under this subsection is a~~  
59-43 ~~Class D administrative violation.~~]

59-44 SECTION 3.168. Subsection (b), Section 410.114, Labor Code,  
59-45 is amended to read as follows:

59-46 (b) The department [~~commission~~] shall make an electronic  
59-47 recording of the proceeding.

59-48 SECTION 3.169. Subsection (d), Section 410.118, Labor Code,  
59-49 is amended to read as follows:

59-50 (d) The arbitrator shall file a copy of the award as part of  
59-51 the permanent claim file at the department [~~commission~~] and shall  
59-52 notify the parties in writing of the decision.

59-53 SECTION 3.170. Subsection (b), Section 410.119, Labor Code,  
59-54 is amended to read as follows:

59-55 (b) An arbitrator's award is a final order of the department  
59-56 [~~commission~~].

59-57 SECTION 3.171. Subsections (a) and (b), Section 410.121,  
59-58 Labor Code, are amended to read as follows:

59-59 (a) On application of an aggrieved party, a court of  
59-60 competent jurisdiction shall vacate an arbitrator's award on a  
59-61 finding that:

59-62 (1) the award was procured by corruption, fraud, or  
59-63 misrepresentation;

59-64 (2) the decision of the arbitrator was arbitrary and  
59-65 capricious; or

59-66 (3) the award was outside the jurisdiction of the  
59-67 department [~~commission~~].

59-68 (b) If an award is vacated, the case shall be remanded to the  
59-69 department [~~commission~~] for another arbitration proceeding.

60-1 SECTION 3.172. Subsection (b), Section 410.151, Labor Code,  
60-2 is amended to read as follows:

60-3 (b) An issue that was not raised at a benefit review  
60-4 conference or that was resolved at a benefit review conference may  
60-5 not be considered unless:

- 60-6 (1) the parties consent; or  
60-7 (2) if the issue was not raised, the commissioner  
60-8 [~~commission~~] determines that good cause existed for not raising the  
60-9 issue at the conference.

60-10 SECTION 3.173. Section 410.153, Labor Code, is amended to  
60-11 read as follows:

60-12 Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.  
60-13 Chapter 2001, Government Code, applies to a contested case hearing  
60-14 to the extent that the commissioner [~~commission~~] finds appropriate,  
60-15 except that the following do not apply:

- 60-16 (1) Section 2001.054;  
60-17 (2) Sections 2001.061 and 2001.062;  
60-18 (3) Section 2001.202; and  
60-19 (4) Subchapters F, G, I, and Z, except for Section  
60-20 2001.141(c).

60-21 SECTION 3.174. Section 410.154, Labor Code, is amended to  
60-22 read as follows:

60-23 Sec. 410.154. SCHEDULING OF HEARING. The department  
60-24 [~~commission~~] shall schedule a contested case hearing in accordance  
60-25 with Section 410.024 or 410.025(b).

60-26 SECTION 3.175. Section 410.155, Labor Code, is amended to  
60-27 read as follows:

60-28 Sec. 410.155. CONTINUANCE. (a) A written request by a  
60-29 party for a continuance of a contested case hearing to another date  
60-30 must be directed to the commissioner [~~commission~~].

60-31 (b) The commissioner [~~commission~~] may grant a continuance  
60-32 only if the commissioner [~~commission~~] determines that there is good  
60-33 cause for the continuance.

60-34 SECTION 3.176. Subsection (b), Section 410.156, Labor Code,  
60-35 is amended to read as follows:

60-36 (b) A party commits a violation if the party, without good  
60-37 cause as determined by the hearing officer, does not attend a  
60-38 contested case hearing. [~~A violation under this subsection is a~~  
60-39 ~~Class C administrative violation.~~]

60-40 SECTION 3.177. Section 410.157, Labor Code, is amended to  
60-41 read as follows:

60-42 Sec. 410.157. RULES. The commissioner [~~commission~~] shall  
60-43 adopt rules governing procedures under which contested case  
60-44 hearings are conducted.

60-45 SECTION 3.178. Subsection (a), Section 410.158, Labor Code,  
60-46 is amended to read as follows:

60-47 (a) Except as provided by Section 410.162, discovery is  
60-48 limited to:

- 60-49 (1) depositions on written questions to any health  
60-50 care provider;  
60-51 (2) depositions of other witnesses as permitted by the  
60-52 hearing officer for good cause shown; and  
60-53 (3) interrogatories as prescribed by the commissioner  
60-54 [~~commission~~].

60-55 SECTION 3.179. Section 410.159, Labor Code, is amended to  
60-56 read as follows:

60-57 Sec. 410.159. STANDARD INTERROGATORIES. (a) The  
60-58 commissioner [~~commission~~] by rule shall prescribe standard form  
60-59 sets of interrogatories to elicit information from claimants and  
60-60 insurance carriers.

60-61 (b) Standard interrogatories shall be answered by each  
60-62 party and served on the opposing party within the time prescribed by  
60-63 commissioner [~~commission~~] rule, unless the parties agree  
60-64 otherwise.

60-65 SECTION 3.180. Section 410.160, Labor Code, is amended to  
60-66 read as follows:

60-67 Sec. 410.160. EXCHANGE OF INFORMATION. Within the time  
60-68 prescribed by commissioner [~~commission~~] rule, the parties shall  
60-69 exchange:

61-1 (1) all medical reports and reports of expert  
61-2 witnesses who will be called to testify at the hearing;

61-3 (2) all medical records;

61-4 (3) any witness statements;

61-5 (4) the identity and location of any witness known to  
61-6 the parties to have knowledge of relevant facts; and

61-7 (5) all photographs or other documents that a party  
61-8 intends to offer into evidence at the hearing.

61-9 SECTION 3.181. Section 410.161, Labor Code, is amended to  
61-10 read as follows:

61-11 Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who  
61-12 fails to disclose information known to the party or documents that  
61-13 are in the party's possession, custody, or control at the time  
61-14 disclosure is required by Sections 410.158-410.160 may not  
61-15 introduce the evidence at any subsequent proceeding before the  
61-16 department [~~commission~~] or in court on the claim unless good cause  
61-17 is shown for not having disclosed the information or documents  
61-18 under those sections.

61-19 SECTION 3.182. Subsections (d) and (e), Section 410.168,  
61-20 Labor Code, are amended to read as follows:

61-21 (d) On a form that the commissioner [~~commission~~] by rule  
61-22 prescribes, the hearing officer shall issue a separate written  
61-23 decision regarding attorney's fees and any matter related to  
61-24 attorney's fees. The decision regarding attorney's fees and the  
61-25 form may not be made known to a jury in a judicial review of an  
61-26 award, including an appeal.

61-27 (e) The commissioner [~~commission~~] by rule shall prescribe  
61-28 the times within which the hearing officer must file the decisions  
61-29 with the division.

61-30 SECTION 3.183. Subsection (d), Section 410.203, Labor Code,  
61-31 is amended to read as follows:

61-32 (d) A hearing on remand shall be accelerated and the  
61-33 commissioner [~~commission~~] shall adopt rules to give priority to the  
61-34 hearing over other proceedings.

61-35 SECTION 3.184. Subsection (b), Section 410.204, Labor Code,  
61-36 is amended to read as follows:

61-37 (b) A copy of the decision of the appeals panel shall be sent  
61-38 to each party not later than the seventh day after the date the  
61-39 decision is filed with the department [~~commission~~].

61-40 SECTION 3.185. Section 410.206, Labor Code, is amended to  
61-41 read as follows:

61-42 Sec. 410.206. CLERICAL ERROR. The commissioner [~~executive~~  
61-43 ~~director~~] may revise a decision in a contested case hearing on a  
61-44 finding of clerical error.

61-45 SECTION 3.186. Section 410.207, Labor Code, is amended to  
61-46 read as follows:

61-47 Sec. 410.207. CONTINUATION OF DEPARTMENT [~~COMMISSION~~]  
61-48 JURISDICTION. During judicial review of an appeals panel decision  
61-49 on any disputed issue relating to a workers' compensation claim,  
61-50 the department [~~commission~~] retains jurisdiction of all other  
61-51 issues related to the claim.

61-52 SECTION 3.187. Section 410.208, Labor Code, is amended to  
61-53 read as follows:

61-54 Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION;  
61-55 ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to  
61-56 comply with an interlocutory order, final order, or decision of the  
61-57 commissioner [~~commission~~], the department [~~commission~~] may bring  
61-58 suit in Travis County to enforce the order or decision.

61-59 (b) If an insurance carrier refuses or fails to comply with  
61-60 an interlocutory order, a final order, or a decision of the  
61-61 commissioner [~~commission~~], the claimant may bring suit in the  
61-62 county of the claimant's residence or the county in which the injury  
61-63 occurred to enforce the order or decision.

61-64 (c) If the department [~~commission~~] brings suit to enforce an  
61-65 interlocutory order, final order, or decision of the commissioner  
61-66 [~~commission~~], the department [~~commission~~] is entitled to  
61-67 reasonable attorney's fees and costs for the prosecution and  
61-68 collection of the claim, in addition to a judgment enforcing the  
61-69 order or decision and any other remedy provided by law.

62-1 (d) A claimant who brings suit to enforce an interlocutory  
62-2 order, final order, or decision of the commissioner [~~commission~~] is  
62-3 entitled to a penalty equal to 12 percent of the amount of benefits  
62-4 recovered in the judgment, interest, and reasonable attorney's fees  
62-5 for the prosecution and collection of the claim, in addition to a  
62-6 judgment enforcing the order or decision.

62-7 (e) A person commits a violation if the person fails or  
62-8 refuses to comply with an interlocutory order, final order, or  
62-9 decision of the commissioner [~~commission~~] within 20 days after the  
62-10 date the order or decision becomes final. [~~A violation under this~~  
62-11 ~~subsection is a Class A administrative violation.~~]

62-12 SECTION 3.188. Section 410.209, Labor Code, is amended to  
62-13 read as follows:

62-14 Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. The  
62-15 subsequent injury fund shall reimburse an insurance carrier for any  
62-16 overpayments of benefits made under an interlocutory order or  
62-17 decision if that order or decision is reversed or modified by final  
62-18 arbitration, order, or decision of the commissioner [~~commission~~] or  
62-19 a court. The commissioner [~~commission~~] shall adopt rules to  
62-20 provide for a periodic reimbursement schedule, providing for  
62-21 reimbursement at least annually.

62-22 SECTION 3.189. Section 410.253, Labor Code, is amended to  
62-23 read as follows:

62-24 Sec. 410.253. SERVICE; NOTICE. (a) A party seeking  
62-25 judicial review shall simultaneously:

- 62-26 (1) file a copy of the party's petition with the court;  
62-27 (2) serve any opposing party to the suit; and  
62-28 (3) provide written notice of the suit or notice of  
62-29 appeal to the department [~~commission~~].

62-30 (b) A party may not seek judicial review under Section  
62-31 410.251 unless the party has provided written notice of the suit to  
62-32 the department [~~commission~~] as required by this section.

62-33 SECTION 3.190. Section 410.254, Labor Code, is amended to  
62-34 read as follows:

62-35 Sec. 410.254. [~~COMMISSION~~] INTERVENTION. On timely motion  
62-36 initiated by the commissioner [~~executive director~~], the department  
62-37 [~~commission~~] shall be permitted to intervene in any judicial  
62-38 proceeding under this subchapter or Subchapter G.

62-39 SECTION 3.191. The heading to Section 410.258, Labor Code,  
62-40 is amended to read as follows:

62-41 Sec. 410.258. NOTIFICATION OF DEPARTMENT [~~COMMISSION~~] OF  
62-42 PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

62-43 SECTION 3.192. Subsections (a) through (e), Section  
62-44 410.258, Labor Code, are amended to read as follows:

62-45 (a) The party who initiated a proceeding under this  
62-46 subchapter or Subchapter G must file any proposed judgment or  
62-47 settlement made by the parties to the proceeding, including a  
62-48 proposed default judgment, with the commissioner [~~executive~~  
62-49 ~~director of the commission~~] not later than the 30th day before the  
62-50 date on which the court is scheduled to enter the judgment or  
62-51 approve the settlement. The proposed judgment or settlement must  
62-52 be mailed to the department [~~executive director~~] by certified mail,  
62-53 return receipt requested.

62-54 (b) The department [~~commission~~] may intervene in a  
62-55 proceeding under Subsection (a) not later than the 30th day after  
62-56 the date of receipt of the proposed judgment or settlement.

62-57 (c) The commissioner [~~commission~~] shall review the proposed  
62-58 judgment or settlement to determine compliance with all appropriate  
62-59 provisions of the law. If the commissioner [~~commission~~] determines  
62-60 that the proposal is not in compliance with the law, the department  
62-61 [~~commission~~] may intervene as a matter of right in the proceeding  
62-62 not later than the 30th day after the date of receipt of the  
62-63 proposed judgment or settlement. The court may limit the extent of  
62-64 the department's [~~commission's~~] intervention to providing the  
62-65 information described by Subsection (e).

62-66 (d) If the department [~~commission~~] does not intervene  
62-67 before the 31st day after the date of receipt of the proposed  
62-68 judgment or settlement, the court shall enter the judgment or  
62-69 approve the settlement if the court determines that the proposed

63-1 judgment or settlement is in compliance with all appropriate  
63-2 provisions of the law.

63-3 (e) If the department [~~commission~~] intervenes in the  
63-4 proceeding, the commissioner [~~commission~~] shall inform the court of  
63-5 each reason the commissioner [~~commission~~] believes the proposed  
63-6 judgment or settlement is not in compliance with the law. The court  
63-7 shall give full consideration to the information provided by the  
63-8 commissioner [~~commission~~] before entering a judgment or approving a  
63-9 settlement.

63-10 SECTION 3.193. Subsection (a), Section 410.301, Labor Code,  
63-11 is amended to read as follows:

63-12 (a) Judicial review of a final decision of a department  
63-13 [~~commission~~] appeals panel regarding compensability or eligibility  
63-14 for or the amount of income or death benefits shall be conducted as  
63-15 provided by this subchapter.

63-16 SECTION 3.194. Section 410.302, Labor Code, is amended to  
63-17 read as follows:

63-18 Sec. 410.302. LIMITATION OF ISSUES. A trial under this  
63-19 subchapter is limited to issues decided by the department  
63-20 [~~commission~~] appeals panel and on which judicial review is sought.  
63-21 The pleadings must specifically set forth the determinations of the  
63-22 appeals panel by which the party is aggrieved.

63-23 SECTION 3.195. Section 410.304, Labor Code, is amended to  
63-24 read as follows:

63-25 Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION.

63-26 (a) In a jury trial, the court, before submitting the case to the  
63-27 jury, shall inform the jury in the court's instructions, charge, or  
63-28 questions to the jury of the department [~~commission~~] appeals panel  
63-29 decision on each disputed issue described by Section 410.301(a)  
63-30 that is submitted to the jury.

63-31 (b) In a trial to the court without a jury, the court in  
63-32 rendering its judgment on an issue described by Section 410.301(a)  
63-33 shall consider the decision of the department [~~commission~~] appeals  
63-34 panel.

63-35 SECTION 3.196. Subsections (b) and (c), Section 410.306,  
63-36 Labor Code, are amended to read as follows:

63-37 (b) The department [~~commission~~] on payment of a reasonable  
63-38 fee shall make available to the parties a certified copy of the  
63-39 department's [~~commission's~~] record. All facts and evidence the  
63-40 record contains are admissible to the extent allowed under the  
63-41 Texas Rules of [~~Civil~~] Evidence.

63-42 (c) Except as provided by Section 410.307, evidence of  
63-43 extent of impairment shall be limited to that presented to the  
63-44 department [~~commission~~]. The court or jury, in its determination  
63-45 of the extent of impairment, shall adopt one of the impairment  
63-46 ratings under Subchapter G, Chapter 408.

63-47 SECTION 3.197. Subsections (a) and (d), Section 410.307,  
63-48 Labor Code, are amended to read as follows:

63-49 (a) Evidence of the extent of impairment is not limited to  
63-50 that presented to the department [~~commission~~] if the court, after a  
63-51 hearing, finds that there is a substantial change of condition. The  
63-52 court's finding of a substantial change of condition may be based  
63-53 only on:

63-54 (1) medical evidence from the same doctor or doctors  
63-55 whose testimony or opinion was presented to the department  
63-56 [~~commission~~];

63-57 (2) evidence that has come to the party's knowledge  
63-58 since the contested case hearing;

63-59 (3) evidence that could not have been discovered  
63-60 earlier with due diligence by the party; and

63-61 (4) evidence that would probably produce a different  
63-62 result if it is admitted into evidence at the trial.

63-63 (d) If the court finds a substantial change of condition  
63-64 under this section, new medical evidence of the extent of  
63-65 impairment must be from and is limited to the same doctor or doctors  
63-66 who made impairment ratings before the department [~~commission~~]  
63-67 under Section 408.123.

63-68 SECTION 3.198. Subsection (a), Section 410.308, Labor Code,  
63-69 is amended to read as follows:

64-1 (a) The department [~~commission or the Texas Department of~~  
64-2 ~~Insurance~~] shall furnish any interested party in the claim with a  
64-3 certified copy of the notice of the employer securing compensation  
64-4 with the insurance carrier, filed with the department [~~commission~~].

64-5 SECTION 3.199. Subdivision (1), Section 411.001, Labor  
64-6 Code, is amended to read as follows:

64-7 (1) "Division" means the division of workers' health  
64-8 and safety of the department [~~commission~~].

64-9 SECTION 3.200. Section 411.013, Labor Code, is amended to  
64-10 read as follows:

64-11 Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. With the  
64-12 approval of the commissioner [~~commission~~], the division may:

64-13 (1) enter into contracts with the federal government  
64-14 to perform occupational safety projects; and

64-15 (2) apply for federal funds through any federal  
64-16 program relating to occupational safety.

64-17 SECTION 3.201. Section 411.032, Labor Code, is amended to  
64-18 read as follows:

64-19 Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE  
64-20 REPORT; ADMINISTRATIVE VIOLATION. (a) An employer shall file with  
64-21 the department [~~commission~~] a report of each:

64-22 (1) on-the-job injury that results in the employee's  
64-23 absence from work for more than one day; and

64-24 (2) occupational disease of which the employer has  
64-25 knowledge.

64-26 (b) The commissioner [~~commission~~] shall adopt rules and  
64-27 prescribe the form and manner of reports filed under this section.

64-28 (c) An employer commits an administrative violation if the  
64-29 employer fails to report to the department [~~commission~~] as required  
64-30 under Subsection (a) unless good cause exists, as determined by the  
64-31 commissioner [~~commission~~], for the failure. [~~A violation under~~  
64-32 ~~this subsection is a Class D administrative violation.~~]

64-33 SECTION 3.202. Section 411.035, Labor Code, is amended to  
64-34 read as follows:

64-35 Sec. 411.035. USE OF INJURY REPORT. A report made under  
64-36 Section 411.032 may not be considered to be an admission by or  
64-37 evidence against an employer or an insurance carrier in a  
64-38 proceeding before the department [~~commission~~] or a court in which  
64-39 the facts set out in the report are contradicted by the employer or  
64-40 insurance carrier.

64-41 SECTION 3.203. Section 411.0415, Labor Code, is amended to  
64-42 read as follows:

64-43 Sec. 411.0415. EXEMPTION FOR CERTAIN EMPLOYERS; HEARING.

64-44 (a) The commissioner [~~executive director~~] may exclude from  
64-45 identification as a hazardous employer an employer who presents  
64-46 evidence satisfactory to the commissioner [~~commission~~] that the  
64-47 injury frequencies of the employer substantially exceed those that  
64-48 may reasonably be expected in that employer's business or industry  
64-49 only because of a fatality that:

64-50 (1) occurred because of factors beyond the employer's  
64-51 control; or

64-52 (2) was outside the course and scope of the deceased  
64-53 individual's employment.

64-54 (b) The commissioner [~~commission~~] by rule shall analyze and  
64-55 list fatalities that may not be related to the work environment,  
64-56 including:

- 64-57 (1) heart attacks;
- 64-58 (2) common diseases of life;
- 64-59 (3) homicides;
- 64-60 (4) suicides;
- 64-61 (5) vehicle accidents involving a third party;
- 64-62 (6) common carrier accidents; and
- 64-63 (7) natural events.

64-64 (c) If the commissioner [~~commission~~] determines that the  
64-65 case history of the employee's fatality indicates that the employer  
64-66 or the work environment was a proximate cause of the fatality, the  
64-67 commissioner [~~commission~~] may request a hearing under Section  
64-68 411.049. If the hearing establishes that a proximate cause of the  
64-69 fatality was a factor or factors within the employer's control and



65-1 was within the course and scope of the employment, the commissioner  
65-2 [~~commission~~] may identify the employer for the hazardous employer  
65-3 program if that fatality causes the employer to be designated as a  
65-4 hazardous employer.

65-5 SECTION 3.204. Subsection (b), Section 411.042, Labor Code,  
65-6 is amended to read as follows:

65-7 (b) The commissioner [~~commission~~] by rule shall require a  
65-8 minimum interval of at least six months before a subsequent audit to  
65-9 identify an employer who was previously identified as a hazardous  
65-10 employer.

65-11 SECTION 3.205. Subsection (b), Section 411.043, Labor Code,  
65-12 is amended to read as follows:

65-13 (b) The safety consultant shall file a written report with  
65-14 the department [~~commission~~] and the employer setting out any  
65-15 hazardous conditions or practices identified by the safety  
65-16 consultation.

65-17 SECTION 3.206. Subsection (a), Section 411.045, Labor Code,  
65-18 is amended to read as follows:

65-19 (a) Not earlier than six months or later than nine months  
65-20 after the formulation of an accident prevention plan under Section  
65-21 411.043, the division shall conduct a follow-up inspection of the  
65-22 employer's premises. The department [~~commission~~] may require the  
65-23 participation of the safety consultant who performed the initial  
65-24 consultation and formulated the safety plan.

65-25 SECTION 3.207. Subsection (b), Section 411.046, Labor Code,  
65-26 is amended to read as follows:

65-27 (b) A violation under Subsection (a) is an [~~a Class B~~]  
65-28 administrative violation. [~~Each day of noncompliance constitutes a~~  
65-29 ~~separate violation.~~]

65-30 SECTION 3.208. Section 411.048, Labor Code, is amended to  
65-31 read as follows:

65-32 Sec. 411.048. COSTS CHARGED TO EMPLOYER. (a) The  
65-33 department [~~commission~~] shall charge an employer that is a  
65-34 political subdivision for reimbursement of the reasonable cost of  
65-35 services provided by the division, including a reasonable  
65-36 allocation of the department's [~~commission's~~] administrative  
65-37 costs, in formulating and monitoring the implementation of a plan  
65-38 under Section 411.043 or 411.047, investigating an accident under  
65-39 Section 411.044, or in conducting a follow-up inspection under  
65-40 Section 411.045.

65-41 (b) The department [~~commission~~] shall charge a private  
65-42 employer for reimbursement of the reasonable cost of services  
65-43 provided by the division, including a reasonable allocation of the  
65-44 department's [~~commission's~~] administrative costs, in providing  
65-45 safety and health services under this program at the request of the  
65-46 private employer. This subsection does not apply to services  
65-47 provided to the employer under Section 411.018.

65-48 SECTION 3.209. Subsection (a), Section 411.049, Labor Code,  
65-49 is amended to read as follows:

65-50 (a) An employer may request a hearing to contest findings  
65-51 made by the department [~~commission~~] under this subchapter.

65-52 SECTION 3.210. Section 411.050, Labor Code, is amended to  
65-53 read as follows:

65-54 Sec. 411.050. ADMISSIBILITY OF IDENTIFICATION AS HAZARDOUS  
65-55 EMPLOYER. The identification of an employer as a hazardous  
65-56 employer under this subchapter is not admissible in any judicial  
65-57 proceeding unless:

65-58 (1) the department [~~commission~~] has determined that  
65-59 the employer is not in compliance with this subchapter; and

65-60 (2) that determination has not been reversed or  
65-61 superseded at the time of the event giving rise to the judicial  
65-62 proceeding.

65-63 SECTION 3.211. Section 411.062, Labor Code, is amended to  
65-64 read as follows:

65-65 Sec. 411.062. FIELD SAFETY REPRESENTATIVE; QUALIFICATIONS.

65-66 (a) The commissioner [~~commission~~] by rule shall establish  
65-67 qualifications for field safety representatives. The rules must  
65-68 include education and experience requirements for those  
65-69 representatives.

66-1 (b) Each field safety representative must meet the  
66-2 qualifications established by the commissioner [commissioner].

66-3 SECTION 3.212. Subsection (c), Section 411.064, Labor Code,  
66-4 is amended to read as follows:

66-5 (c) The insurance company shall reimburse the department  
66-6 [commissioner] for the reasonable cost of the reinspection, including  
66-7 a reasonable allocation of the department's [commissioner's]  
66-8 administrative costs incurred in conducting the inspections.

66-9 SECTION 3.213. Subsection (b), Section 411.065, Labor Code,  
66-10 is amended to read as follows:

66-11 (b) The information must include:

66-12 (1) the amount of money spent by the insurance company  
66-13 on accident prevention services;

66-14 (2) the number and qualifications of field safety  
66-15 representatives employed by the insurance company;

66-16 (3) the number of site inspections performed;

66-17 (4) accident prevention services for which the  
66-18 insurance company contracts;

66-19 (5) a breakdown of the premium size of the risks to  
66-20 which services were provided;

66-21 (6) evidence of the effectiveness of and  
66-22 accomplishments in accident prevention; and

66-23 (7) any additional information required by the  
66-24 department [commissioner].

66-25 SECTION 3.214. The heading to Section 411.067, Labor Code,  
66-26 is amended to read as follows:

66-27 Sec. 411.067. DEPARTMENT [COMMISSIONER] PERSONNEL.

66-28 SECTION 3.215. Subsection (a), Section 411.067, Labor Code,  
66-29 is amended to read as follows:

66-30 (a) The department [commissioner] shall employ the personnel  
66-31 necessary to enforce this subchapter, including at least 10 safety  
66-32 inspectors to perform inspections at a job site and at an insurance  
66-33 company to determine the adequacy of the accident prevention  
66-34 services provided by the insurance company.

66-35 SECTION 3.216. Subsection (b), Section 411.068, Labor Code,  
66-36 is amended to read as follows:

66-37 (b) A violation under Subsection (a) is an an [a Class B]  
66-38 administrative violation. [Each day of noncompliance constitutes a  
66-39 separate violation.]

66-40 SECTION 3.2161. The heading to Subchapter F, Chapter 411,  
66-41 Labor Code, is amended to read as follows:

66-42 SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL  
66-43 MATERIALS

66-44 SECTION 3.217. Section 411.081, Labor Code, is amended to  
66-45 read as follows:

66-46 Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall  
66-47 maintain a 24-hour toll-free telephone service in English and  
66-48 Spanish for reports of violations of occupational health or safety  
66-49 law.

66-50 (b) Each employer shall notify its employees of this service  
66-51 in a manner prescribed by the department [commissioner]. The  
66-52 department shall, by rule, require the notice to be posted in  
66-53 English and Spanish, as appropriate.

66-54 (c) The department shall adopt rules requiring that the  
66-55 notice required by Subsection (b) be posted:

66-56 (1) in a conspicuous place in the employer's place of  
66-57 business; and

66-58 (2) in sufficient locations to be convenient to all  
66-59 employees.

66-60 SECTION 3.2171. Subchapter F, Chapter 411, Labor Code, is  
66-61 amended by adding Section 411.084 to read as follows:

66-62 Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) The division  
66-63 shall provide educational material, including books, pamphlets,  
66-64 brochures, films, videotapes, or other informational material.

66-65 (b) Educational material shall be provided to employees in  
66-66 English and Spanish.

66-67 (c) The department shall adopt minimum content requirements  
66-68 for the educational material required under this section,  
66-69 including:

67-1 (1) an employee's right to report an unsafe working  
 67-2 environment;

67-3 (2) instructions on how to report unsafe working  
 67-4 conditions and safety violations; and

67-5 (3) state laws regarding retaliation by employers.

67-6 SECTION 3.218. Section 411.092, Labor Code, is amended to  
 67-7 read as follows:

67-8 Sec. 411.092. ENFORCEMENT; RULES. The commissioner  
 67-9 [~~commission~~] shall enforce Section 411.091 and may adopt rules for  
 67-10 that purpose.

67-11 SECTION 3.219. Subsection (b), Section 411.104, Labor Code,  
 67-12 is amended to read as follows:

67-13 (b) In addition to the duties specified in this chapter, the  
 67-14 division shall perform other duties as required by the department  
 67-15 [~~commission~~].

67-16 SECTION 3.220. Section 411.105, Labor Code, is amended to  
 67-17 read as follows:

67-18 Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. (a) The  
 67-19 department [~~commission~~] and its employees may not disclose at a  
 67-20 public hearing or otherwise information relating to secret  
 67-21 processes, methods of manufacture, or products.

67-22 (b) The commissioner [~~A member~~] or an employee of the  
 67-23 department [~~commission~~] commits an offense if the commissioner  
 67-24 [~~member~~] or employee wilfully discloses or conspires to disclose  
 67-25 information made confidential under this section. An offense under  
 67-26 this subsection is a misdemeanor punishable by a fine not to exceed  
 67-27 \$1,000 and by forfeiture of the person's appointment as  
 67-28 commissioner [~~a member~~] or as an employee of the department  
 67-29 [~~commission~~].

67-30 SECTION 3.221. Section 411.106, Labor Code, is amended to  
 67-31 read as follows:

67-32 Sec. 411.106. SAFETY CLASSIFICATION. (a) To establish a  
 67-33 safety classification for employers, the department [~~commission~~]  
 67-34 shall:

67-35 (1) obtain medical and compensation cost information  
 67-36 regularly compiled by the Texas Department of Insurance in  
 67-37 performing that agency's rate-making duties and functions  
 67-38 regarding employer liability and workers' compensation insurance;  
 67-39 and

67-40 (2) collect and compile information relating to:  
 67-41 (A) the frequency rate of accidents;  
 67-42 (B) the existence and implementation of private  
 67-43 safety programs;  
 67-44 (C) the number of work-hour losses because of  
 67-45 injuries; and  
 67-46 (D) other facts showing accident experience.

67-47 (b) From the information obtained under Subsection (a), the  
 67-48 department [~~commission~~] shall classify employers as appropriate to  
 67-49 implement this subchapter.

67-50 SECTION 3.222. Section 411.107, Labor Code, is amended to  
 67-51 read as follows:

67-52 Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. The  
 67-53 department [~~commission~~] may endeavor to eliminate an impediment to  
 67-54 occupational or industrial safety that is reported to the  
 67-55 department [~~commission~~] by an affected employer. In attempting to  
 67-56 eliminate an impediment the department [~~commission~~] may advise and  
 67-57 consult with an employer, or a representative of an employer, who is  
 67-58 directly involved.

67-59 SECTION 3.223. Section 411.108, Labor Code, is amended to  
 67-60 read as follows:

67-61 Sec. 411.108. ACCIDENT REPORTS. The department  
 67-62 [~~commission~~] may require an employer and any other appropriate  
 67-63 person to report accidents, personal injuries, fatalities, or other  
 67-64 statistics and information relating to accidents on forms  
 67-65 prescribed by and covering periods designated by the department  
 67-66 [~~commission~~].

67-67 SECTION 3.224. Subsections (g), (i), and (l), Section  
 67-68 412.041, Labor Code, are amended to read as follows:

67-69 (g) The director shall act as an adversary before the

68-1 department [~~commission~~] and courts and present the legal defenses  
68-2 and positions of the state as an employer and insurer, as  
68-3 appropriate.

68-4 (i) In administering Chapter 501, the director is subject to  
68-5 the rules, orders, and decisions of the commissioner [~~commission~~]  
68-6 in the same manner as a private employer, insurer, or association.

68-7 (1) The director shall furnish copies of all rules to:

68-8 (1) the department [~~commission~~];

68-9 (2) the commissioner of the Texas Department of  
68-10 Insurance; and

68-11 (3) the administrative heads of all state agencies  
68-12 affected by this chapter and Chapter 501.

68-13 SECTION 3.225. Section 413.001, Labor Code, is amended to  
68-14 read as follows:

68-15 Sec. 413.001. DEFINITION. In this chapter, "division"  
68-16 means the division of medical review of the department  
68-17 [~~commission~~].

68-18 SECTION 3.226. Section 413.002, Labor Code, is amended to  
68-19 read as follows:

68-20 Sec. 413.002. DIVISION OF MEDICAL REVIEW. (a) The  
68-21 department [~~commission~~] shall maintain a division of medical review  
68-22 to ensure compliance with the rules and to implement this chapter  
68-23 under the policies adopted by the department [~~commission~~].

68-24 (b) The division shall monitor health care providers,  
68-25 insurance carriers, [~~and~~] workers' compensation claimants who  
68-26 receive medical services, and independent review organizations  
68-27 to ensure the compliance of those persons with rules adopted by the  
68-28 commissioner [~~commission~~] relating to health care, including  
68-29 medical policies and fee guidelines.

68-30 (c) In monitoring health care providers who serve as  
68-31 designated doctors under Chapter 408 and independent review  
68-32 organizations who provide services described by this chapter, the  
68-33 division shall evaluate:

68-34 (1) [~~the~~] compliance [~~of those providers~~] with this  
68-35 subtitle and with rules adopted by the commissioner [~~commission~~]  
68-36 relating to medical policies, fee guidelines, treatment  
68-37 guidelines, return-to-work guidelines, and impairment ratings; and

68-38 (2) the quality and timeliness of decisions made under  
68-39 Section 408.0041, 408.122, 408.151, or 413.031.

68-40 (d) The division shall report the results of the monitoring  
68-41 of independent review organizations under Subsection (c) to the  
68-42 Texas Department of Insurance on at least a quarterly basis.

68-43 (e) If the commissioner of the Texas Department of Insurance  
68-44 determines that an independent review organization is in violation  
68-45 of this chapter, rules adopted by the commissioner under this  
68-46 chapter, or applicable provisions of this code, or rules adopted  
68-47 under this code, or applicable provisions of the Insurance Code or  
68-48 rules adopted under that code, the commissioner of the Texas  
68-49 Department of Insurance or a designated representative shall notify  
68-50 the independent review organization of the alleged violation and  
68-51 may compel the production of any documents or other information as  
68-52 necessary to determine whether the violation occurred.

68-53 SECTION 3.227. Section 413.003, Labor Code, is amended to  
68-54 read as follows:

68-55 Sec. 413.003. AUTHORITY TO CONTRACT. The department  
68-56 [~~commission~~] may contract with a private or public entity to  
68-57 perform a duty or function of the division.

68-58 SECTION 3.228. Section 413.004, Labor Code, is amended to  
68-59 read as follows:

68-60 Sec. 413.004. COORDINATION WITH PROVIDERS. The division  
68-61 shall coordinate its activities with health care providers as  
68-62 necessary to perform its duties under this chapter. The  
68-63 coordination may include:

68-64 (1) conducting educational seminars on commissioner  
68-65 [~~commission~~] rules and procedures; or

68-66 (2) providing information to and requesting  
68-67 assistance from professional peer review organizations.

68-68 SECTION 3.229. Section 413.006, Labor Code, is amended to  
68-69 read as follows:

69-1 Sec. 413.006. ADVISORY COMMITTEES. The commissioner  
 69-2 [~~commission~~] may appoint advisory committees [~~in addition to the~~  
 69-3 ~~medical advisory committee~~] as the commissioner [~~it~~] considers  
 69-4 necessary.

69-5 SECTION 3.230. Subsections (a) and (c), Section 413.007,  
 69-6 Labor Code, are amended to read as follows:

69-7 (a) The division shall maintain a statewide data base of  
 69-8 medical charges, actual payments, and treatment protocols that may  
 69-9 be used by:

69-10 (1) the department [~~commission~~] in adopting the  
 69-11 medical policies and fee guidelines; and

69-12 (2) the division in administering the medical  
 69-13 policies, fee guidelines, or rules.

69-14 (c) The division shall ensure that the data base is  
 69-15 available for public access for a reasonable fee established by the  
 69-16 commissioner [~~commission~~]. The identities of injured workers and  
 69-17 beneficiaries may not be disclosed.

69-18 SECTION 3.231. Section 413.008, Labor Code, is amended to  
 69-19 read as follows:

69-20 Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS;  
 69-21 ADMINISTRATIVE VIOLATION. (a) On request from the department  
 69-22 [~~commission~~] for specific information, an insurance carrier shall  
 69-23 provide to the division any information in its possession, custody,  
 69-24 or control that reasonably relates to the department's  
 69-25 [~~commission's~~] duties under this subtitle and to health care:

- 69-26 (1) treatment;
- 69-27 (2) services;
- 69-28 (3) fees; and
- 69-29 (4) charges.

69-30 (b) The department [~~commission~~] shall keep confidential  
 69-31 information that is confidential by law.

69-32 (c) An insurance carrier commits a violation if the  
 69-33 insurance carrier fails or refuses to comply with a request or  
 69-34 violates a rule adopted to implement this section. [~~A violation~~  
 69-35 ~~under this subsection is a Class C administrative violation. Each~~  
 69-36 ~~day of noncompliance constitutes a separate violation.~~]

69-37 SECTION 3.232. Section 413.011, Labor Code, is amended to  
 69-38 read as follows:

69-39 Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES;  
 69-40 TREATMENT GUIDELINES AND PROTOCOLS. (a) The department  
 69-41 [~~commission~~] shall use health care reimbursement policies and  
 69-42 guidelines that reflect the standardized reimbursement structures  
 69-43 found in other health care delivery systems with minimal  
 69-44 modifications to those reimbursement methodologies as necessary to  
 69-45 meet occupational injury requirements. To achieve  
 69-46 standardization, the department [~~commission~~] shall adopt the most  
 69-47 current reimbursement methodologies, models, and values or weights  
 69-48 used by the federal Centers for Medicare and Medicaid Services  
 69-49 [~~Health Care Financing Administration~~], including applicable  
 69-50 payment policies relating to coding, billing, and reporting, and  
 69-51 may modify documentation requirements as necessary to meet the  
 69-52 requirements of Section 413.053.

69-53 (b) In determining the appropriate fees, the commissioner  
 69-54 [~~commission~~] shall also develop conversion factors or other payment  
 69-55 adjustment factors taking into account economic indicators in  
 69-56 health care and the requirements of Subsection (d). The  
 69-57 commissioner [~~commission~~] shall also provide for reasonable fees  
 69-58 for the evaluation and management of care as required by Section  
 69-59 408.025(c) and commissioner [~~commission~~] rules. This section does  
 69-60 not adopt the Medicare fee schedule, and the commissioner may  
 69-61 [~~commission shall~~] not adopt conversion factors or other payment  
 69-62 adjustment factors based solely on those factors as developed by  
 69-63 the federal Centers for Medicare and Medicaid Services [~~Health Care~~  
 69-64 ~~Financing Administration~~].

69-65 (c) This section may not be interpreted in a manner that  
 69-66 would discriminate in the amount or method of payment or  
 69-67 reimbursement for services in a manner prohibited by Section  
 69-68 1451.104 [~~3(d), Article 21.52~~], Insurance Code, or as restricting  
 69-69 the ability of chiropractors to serve as treating doctors as

70-1 authorized by this subtitle. The commissioner [~~commission~~] shall  
 70-2 also develop guidelines relating to fees charged or paid for  
 70-3 providing expert testimony relating to an issue arising under this  
 70-4 subtitle.

70-5 (d) Guidelines for medical services fees must be fair and  
 70-6 reasonable and designed to ensure the quality of medical care and to  
 70-7 achieve effective medical cost control. The guidelines may not  
 70-8 provide for payment of a fee in excess of the fee charged for  
 70-9 similar treatment of an injured individual of an equivalent  
 70-10 standard of living and paid by that individual or by someone acting  
 70-11 on that individual's behalf. The commissioner [~~commission~~] shall  
 70-12 consider the increased security of payment afforded by this  
 70-13 subtitle in establishing the fee guidelines.

70-14 (e) The commissioner [~~commission~~] by rule shall [~~may~~] adopt  
 70-15 treatment guidelines and [~~including~~] return-to-work guidelines [~~]~~  
 70-16 and may adopt individual treatment protocols. Treatment [~~Except as~~  
 70-17 ~~otherwise provided by this subsection, the treatment~~] guidelines  
 70-18 and protocols must be evidence-based [~~nationally recognized~~],  
 70-19 scientifically valid, and outcome-focused [~~outcome-based~~] and  
 70-20 designed to reduce excessive or inappropriate medical care while  
 70-21 safeguarding necessary medical care [~~If a nationally recognized~~  
 70-22 ~~treatment guideline or protocol is not available for adoption by~~  
 70-23 ~~the commission, the commission may adopt another treatment~~  
 70-24 ~~guideline or protocol as long as it is scientifically valid and~~  
 70-25 ~~outcome-based~~].

70-26 (f) In addition to complying with the requirements of  
 70-27 Subsection (e), [~~The commission by rule may establish medical~~  
 70-28 ~~policies or treatment guidelines or protocols relating to necessary~~  
 70-29 ~~treatments for injuries.~~

70-30 [~~(g) Any~~] medical policies or guidelines adopted by the  
 70-31 commissioner [~~commission~~] must be:

70-32 (1) designed to ensure the quality of medical care and  
 70-33 to achieve effective medical cost control;

70-34 (2) designed to enhance a timely and appropriate  
 70-35 return to work; and

70-36 (3) consistent with Sections 413.013, 413.020,  
 70-37 413.052, and 413.053.

70-38 (g) The commissioner may adopt rules relating to disability  
 70-39 management that are designed to promote appropriate health care at  
 70-40 the earliest opportunity after the injury to maximize injury  
 70-41 healing and improve stay-at-work and return-to-work outcomes  
 70-42 through appropriate management of work-related injuries or  
 70-43 conditions. The commissioner by rule may identify claims in which  
 70-44 application of disability management activities is required and  
 70-45 prescribe at what point in the claim process a treatment plan is  
 70-46 required. The determination may be based on any factor considered  
 70-47 relevant by the commissioner. Rules adopted under this subsection  
 70-48 do not apply to claims subject to workers' compensation health care  
 70-49 networks under Chapter 1305, Insurance Code.

70-50 (h) A dispute involving a treatment plan required under  
 70-51 Subsection (g) may be appealed to an independent review  
 70-52 organization in the manner described by Section 413.031.

70-53 SECTION 3.2321. Subchapter B, Chapter 413, Labor Code, is  
 70-54 amended by adding Section 413.0111 to read as follows:

70-55 Sec. 413.0111. PROCESSING AGENTS. The regulations adopted  
 70-56 by the commissioner for the reimbursement of prescription  
 70-57 medications and services shall authorize pharmacies to utilize  
 70-58 agents or assignees to process claims and act on their behalf  
 70-59 pursuant to terms and conditions as agreed upon by pharmacies.

70-60 SECTION 3.233. Section 413.013, Labor Code, is amended to  
 70-61 read as follows:

70-62 Sec. 413.013. PROGRAMS. The commissioner [~~commission~~] by  
 70-63 rule shall establish:

70-64 (1) a program for prospective, concurrent, and  
 70-65 retrospective review and resolution of a dispute regarding health  
 70-66 care treatments and services;

70-67 (2) a program for the systematic monitoring of the  
 70-68 necessity of treatments administered and fees charged and paid for  
 70-69 medical treatments or services, including the authorization of

71-1 prospective, concurrent, or retrospective review under the medical  
71-2 policies of the department [~~commission~~] to ensure that the medical  
71-3 policies or guidelines are not exceeded;

71-4 (3) a program to detect practices and patterns by  
71-5 insurance carriers in unreasonably denying authorization of  
71-6 payment for medical services requested or performed if  
71-7 authorization is required by the medical policies of the department  
71-8 [~~commission~~]; and

71-9 (4) a program to increase the intensity of review for  
71-10 compliance with the medical policies or fee guidelines for any  
71-11 health care provider that has established a practice or pattern in  
71-12 charges and treatments inconsistent with the medical policies and  
71-13 fee guidelines.

71-14 SECTION 3.234. Subsections (b) through (e), Section  
71-15 413.014, Labor Code, are amended to read as follows:

71-16 (b) The commissioner [~~commission~~] by rule shall specify  
71-17 which health care treatments and services require express  
71-18 preauthorization or concurrent review by the insurance carrier.  
71-19 Treatments and services for a medical emergency do not require  
71-20 express preauthorization.

71-21 (c) The commissioner's [~~commission~~] rules adopted under  
71-22 this section must provide that preauthorization and concurrent  
71-23 review are required at a minimum for:

71-24 (1) spinal surgery, as provided by Section 408.026;  
71-25 (2) work-hardening or work-conditioning services  
71-26 provided by a health care facility that is not credentialed by an  
71-27 organization recognized by commissioner [~~commission~~] rules;

71-28 (3) inpatient hospitalization, including any  
71-29 procedure and length of stay;

71-30 (4) outpatient or ambulatory surgical services, as  
71-31 defined by commissioner [~~commission~~] rule; ~~and~~

71-32 (5) any investigational or experimental services or  
71-33 devices; and

71-34 (6) physical therapy and occupational therapy  
71-35 services.

71-36 (d) The insurance carrier is not liable for those specified  
71-37 treatments and services requiring preauthorization unless  
71-38 preauthorization is sought by the claimant or health care provider  
71-39 and either obtained from the insurance carrier or ordered by the  
71-40 commissioner [~~commission~~].

71-41 (e) The commissioner [~~commission~~] may not prohibit an  
71-42 insurance carrier and a health care provider from voluntarily  
71-43 discussing health care treatment and treatment plans and  
71-44 pharmaceutical services, either prospectively or concurrently, and  
71-45 may not prohibit an insurance carrier from certifying or agreeing  
71-46 to pay for health care consistent with those agreements. The  
71-47 insurance carrier is liable for health care treatment and treatment  
71-48 plans and pharmaceutical services that are voluntarily  
71-49 preauthorized and may not dispute the certified or agreed-on  
71-50 preauthorized health care treatment and treatment plans and  
71-51 pharmaceutical services at a later date.

71-52 SECTION 3.235. Section 413.0141, Labor Code, is amended to  
71-53 read as follows:

71-54 Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The  
71-55 commissioner [~~commission~~] may by rule provide that an insurance  
71-56 carrier shall provide for payment of specified pharmaceutical  
71-57 services sufficient for the first seven days following the date of  
71-58 injury if the health care provider requests and receives  
71-59 verification of insurance coverage and a verbal confirmation of an  
71-60 injury from the employer or from the insurance carrier as provided  
71-61 by Section 413.014. The rules adopted by the commissioner  
71-62 [~~commission~~] shall provide that an insurance carrier is eligible  
71-63 for reimbursement for pharmaceutical services paid under this  
71-64 section from the subsequent injury fund in the event the injury is  
71-65 determined not to be compensable.

71-66 SECTION 3.236. Subsection (b), Section 413.015, Labor Code,  
71-67 is amended to read as follows:

71-68 (b) The commissioner [~~commission~~] shall provide by rule for  
71-69 the review and audit of the payment by insurance carriers of charges

72-1 for medical services provided under this subtitle to ensure  
72-2 compliance of health care providers and insurance carriers with the  
72-3 medical policies and fee guidelines adopted by the commissioner  
72-4 [~~commission~~].

72-5 SECTION 3.237. Subsection (b), Section 413.016, Labor Code,  
72-6 is amended to read as follows:

72-7 (b) If the division determines that an insurance carrier has  
72-8 paid medical charges that are inconsistent with the medical  
72-9 policies or fee guidelines adopted by the commissioner  
72-10 [~~commission~~], the division shall refer the insurance carrier  
72-11 alleged to have violated this subtitle to the division of  
72-12 compliance and practices. If the insurance carrier reduced a  
72-13 charge of a health care provider that was within the guidelines, the  
72-14 insurance carrier shall be directed to submit the difference to the  
72-15 provider unless the reduction is in accordance with an agreement  
72-16 between the health care provider and the insurance carrier.

72-17 SECTION 3.238. Section 413.017, Labor Code, is amended to  
72-18 read as follows:

72-19 Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following  
72-20 medical services are presumed reasonable:

72-21 (1) medical services consistent with the medical  
72-22 policies and fee guidelines adopted by the commissioner  
72-23 [~~commission~~]; and

72-24 (2) medical services that are provided subject to  
72-25 prospective, concurrent, or retrospective review as required by the  
72-26 medical policies of the department [~~commission~~] and that are  
72-27 authorized by an insurance carrier.

72-28 SECTION 3.239. Subsections (a), (c), (d), and (e), Section  
72-29 413.018, Labor Code, are amended to read as follows:

72-30 (a) The commissioner [~~commission~~] by rule shall provide for  
72-31 the periodic review of medical care provided in claims in which  
72-32 guidelines for expected or average return to work time frames are  
72-33 exceeded.

72-34 (c) The department [~~commission~~] shall implement a program  
72-35 to encourage employers and treating doctors to discuss the  
72-36 availability of modified duty to encourage the safe and more timely  
72-37 return to work of injured employees. The department [~~commission~~]  
72-38 may require a treating or examining doctor, on the request of the  
72-39 employer, insurance carrier, or department [~~commission~~], to  
72-40 provide a functional capacity evaluation of an injured employee and  
72-41 to determine the employee's ability to engage in physical  
72-42 activities found in the workplace or in activities that are  
72-43 required in a modified duty setting.

72-44 (d) The department [~~commission~~] shall provide through the  
72-45 department's [~~commission's~~] health and safety information and  
72-46 medical review outreach programs information to employers  
72-47 regarding effective return to work programs. This section does not  
72-48 require an employer to provide modified duty or an employee to  
72-49 accept a modified duty assignment. An employee who does not accept  
72-50 an employer's offer of modified duty determined by the department  
72-51 [~~commission~~] to be a bona fide job offer is subject to Section  
72-52 408.103(e).

72-53 (e) The commissioner [~~commission~~] may adopt rules and forms  
72-54 as necessary to implement this section.

72-55 SECTION 3.240. Section 413.020, Labor Code, is amended to  
72-56 read as follows:

72-57 Sec. 413.020. DEPARTMENT [~~COMMISSION~~] CHARGES. The  
72-58 commissioner [~~commission~~] by rule shall establish procedures to  
72-59 enable the department [~~commission~~] to charge:

72-60 (1) an insurance carrier a reasonable fee for access  
72-61 to or evaluation of health care treatment, fees, or charges under  
72-62 this subtitle; and

72-63 (2) a health care provider who exceeds a fee or  
72-64 utilization guideline established under this subtitle or an  
72-65 insurance carrier who unreasonably disputes charges that are  
72-66 consistent with a fee or utilization guideline established under  
72-67 this subtitle a reasonable fee for review of health care treatment,  
72-68 fees, or charges under this subtitle.

72-69 SECTION 3.241. Subsections (a), (d), and (e), Section



73-1 413.021, Labor Code, are amended to read as follows:

73-2 (a) An insurance carrier shall, with the agreement of a  
73-3 participating employer, provide the employer with return-to-work  
73-4 coordination services as necessary to facilitate an employee's  
73-5 return to employment. The insurance carrier shall notify the  
73-6 employer of the availability of return-to-work coordination  
73-7 services. In offering the services, insurance carriers and the  
73-8 department [~~commission~~] shall target employers without  
73-9 return-to-work programs and shall focus return-to-work efforts on  
73-10 workers who begin to receive temporary income benefits. These  
73-11 services may be offered by insurance carriers in conjunction with  
73-12 the accident prevention services provided under Section 411.061.  
73-13 Nothing in this section supersedes the provisions of a collective  
73-14 bargaining agreement between an employer and the employer's  
73-15 employees, and nothing in this section authorizes or requires an  
73-16 employer to engage in conduct that would otherwise be a violation of  
73-17 the employer's obligations under the National Labor Relations Act  
73-18 (29 U.S.C. Section 151 et seq.) [~~, and its subsequent amendments~~].

73-19 (d) The department [~~commission~~] shall use certified  
73-20 rehabilitation counselors or other appropriately trained or  
73-21 credentialed specialists to provide training to department  
73-22 [~~commission~~] staff regarding the coordination of return-to-work  
73-23 services under this section.

73-24 (e) The commissioner [~~commission~~] shall adopt rules  
73-25 necessary to collect data on return-to-work outcomes to allow full  
73-26 evaluations of successes and of barriers to achieving timely return  
73-27 to work after an injury.

73-28 SECTION 3.242. Subchapter B, Chapter 413, Labor Code, is  
73-29 amended by adding Section 413.022 to read as follows:

73-30 Sec. 413.022. RETURN-TO-WORK PILOT PROGRAM FOR SMALL  
73-31 EMPLOYERS; FUND. (a) In this section:

73-32 (1) "Account" means the workers' compensation  
73-33 return-to-work account.

73-34 (2) "Eligible employer" means any employer, other than  
73-35 this state or a political subdivision subject to Subtitle C, who  
73-36 employs at least two but not more than 50 employees on each business  
73-37 day during the preceding calendar year and who has workers'  
73-38 compensation insurance coverage.

73-39 (b) The commissioner shall establish by rule a  
73-40 return-to-work pilot program designed to promote the early and  
73-41 sustained return to work of an injured employee who sustains a  
73-42 compensable injury.

73-43 (c) The pilot program shall reimburse from the account an  
73-44 eligible employer for expenses incurred by the employer to make  
73-45 workplace modifications necessary to accommodate an injured  
73-46 employee's return to modified or alternative work. Reimbursement  
73-47 under this section to an eligible employer may not exceed \$2,500.  
73-48 The expenses must be incurred to allow the employee to perform  
73-49 modified or alternative work within doctor-imposed work  
73-50 restrictions. Allowable expenses may include:

73-51 (1) physical modifications to the worksite;  
73-52 (2) equipment, devices, furniture, or tools; and  
73-53 (3) other costs necessary for reasonable  
73-54 accommodation of the employee's restrictions.

73-55 (d) The account is established as a special account in the  
73-56 general revenue fund. From administrative penalties received by  
73-57 the department under this subtitle, the commissioner shall deposit  
73-58 in the account an amount not to exceed \$100,000 annually. Money in  
73-59 the account may be spent by the department, on appropriation by the  
73-60 legislature, only for the purposes of implementing this section.

73-61 (e) An employer who wilfully applies for or receives  
73-62 reimbursement from the account under this section knowing that the  
73-63 employer is not an eligible employer commits a violation.

73-64 (f) Notwithstanding Subsections (a)-(e), this section may  
73-65 be implemented only to the extent funds are available.

73-66 (g) This section expires September 1, 2009.

73-67 SECTION 3.243. Section 413.031, Labor Code, is amended by  
73-68 amending Subsections (a) through (d), (e-1), (f), (g), (h), (k),  
73-69 and (m) and adding Subsection (n) to read as follows:

74-1 (a) A party, including a health care provider, is entitled  
 74-2 to a review of a medical service provided or for which authorization  
 74-3 of payment is sought if a health care provider is:

74-4 (1) denied payment or paid a reduced amount for the  
 74-5 medical service rendered;

74-6 (2) denied authorization for the payment for the  
 74-7 service requested or performed if authorization is required or  
 74-8 allowed by this subtitle or commissioner [~~commission~~] rules;

74-9 (3) ordered by the commissioner [~~commission~~] to refund  
 74-10 a payment received; or

74-11 (4) ordered to make a payment that was refused or  
 74-12 reduced for a medical service rendered.

74-13 (b) A health care provider who submits a charge in excess of  
 74-14 the fee guidelines or treatment policies is entitled to a review of  
 74-15 the medical service to determine if reasonable medical  
 74-16 justification exists for the deviation. A claimant is entitled to a  
 74-17 review of a medical service for which preauthorization is sought by  
 74-18 the health care provider and denied by the insurance carrier. The  
 74-19 commissioner [~~commission~~] shall adopt rules to notify claimants of  
 74-20 their rights under this subsection.

74-21 (c) In resolving disputes over the amount of payment due for  
 74-22 services determined to be medically necessary and appropriate for  
 74-23 treatment of a compensable injury, the role of the department  
 74-24 [~~commission~~] is to adjudicate the payment given the relevant  
 74-25 statutory provisions and commissioner [~~commission~~] rules. The  
 74-26 department [~~commission~~] shall publish on its Internet website its  
 74-27 medical dispute decisions, including decisions of independent  
 74-28 review organizations, and any subsequent decisions by the State  
 74-29 Office of Administrative Hearings. Before publication, the  
 74-30 department [~~commission~~] shall redact only that information  
 74-31 necessary to prevent identification of the injured worker.

74-32 (d) A review of the medical necessity of a health care  
 74-33 service requiring preauthorization under Section 413.014 or  
 74-34 commissioner [~~commission~~] rules under that section or Section  
 74-35 413.011(g) shall be conducted by an independent review organization  
 74-36 under Article 21.58C, Insurance Code, in the same manner as reviews  
 74-37 of utilization review decisions by health maintenance  
 74-38 organizations. It is a defense for the insurance carrier if the  
 74-39 carrier timely complies with the decision of the independent review  
 74-40 organization.

74-41 (e-1) In performing a review of medical necessity under  
 74-42 Subsection (d) or (e), the independent review organization shall  
 74-43 consider the department's [~~commission's~~] health care reimbursement  
 74-44 policies and guidelines adopted under Section 413.011 [~~if those~~  
 74-45 ~~policies and guidelines are raised by one of the parties to the~~  
 74-46 ~~dispute~~]. If the independent review organization's decision is  
 74-47 contrary to the department's [~~commission's~~] policies or guidelines  
 74-48 adopted under Section 413.011, the independent review organization  
 74-49 must indicate in the decision the specific basis for its divergence  
 74-50 in the review of medical necessity. [~~This subsection does not~~  
 74-51 ~~prohibit an independent review organization from considering the~~  
 74-52 ~~payment policies adopted under Section 413.011 in any dispute,~~  
 74-53 ~~regardless of whether those policies are raised by a party to the~~  
 74-54 ~~dispute.~~]

74-55 (f) The commissioner [~~commission~~] by rule shall specify the  
 74-56 appropriate dispute resolution process for disputes in which a  
 74-57 claimant has paid for medical services and seeks reimbursement.

74-58 (g) In performing a review of medical necessity under  
 74-59 Subsection (d) or (e), an independent review organization may  
 74-60 request that the commissioner [~~commission~~] order an examination by  
 74-61 a designated doctor under Chapter 408.

74-62 (h) The insurance carrier shall pay the cost of the review  
 74-63 if the dispute arises in connection with:

74-64 (1) a request for health care services that require  
 74-65 preauthorization under Section 413.014 or commissioner  
 74-66 [~~commission~~] rules under that section; or

74-67 (2) a treatment plan under Section 413.011(g) or  
 74-68 commissioner rules under that section.

74-69 (k) Except as provided by Subsection (l), a party to a

75-1 medical dispute that remains unresolved after a review of the  
 75-2 medical service under this section [~~is entitled to a hearing. The~~  
 75-3 ~~hearing shall be conducted by the State Office of Administrative~~  
 75-4 ~~Hearings within 90 days of receipt of a request for a hearing in the~~  
 75-5 ~~manner provided for a contested case under Chapter 2001, Government~~  
 75-6 ~~Code (the administrative procedure law). A party who has exhausted~~  
 75-7 ~~the party's administrative remedies under this subtitle and who is~~  
 75-8 ~~aggrieved by a final decision of the State Office of Administrative~~  
 75-9 ~~Hearings]~~ may seek judicial review of the decision. The department  
 75-10 is not considered to be a party to the medical dispute for purposes  
 75-11 of this subsection. Judicial review under this subsection shall be  
 75-12 conducted in the manner provided for judicial review of contested  
 75-13 cases under Subchapter G, Chapter 2001, Government Code.

75-14 (m) The decision of an independent review organization  
 75-15 under Subsection (d) is binding during the pendency of a dispute.

75-16 (n) The commissioner [~~commission~~] by rule may prescribe an  
 75-17 alternate dispute resolution process to resolve disputes regarding  
 75-18 medical services costing less than the cost of a review of the  
 75-19 medical necessity of a health care service by an independent review  
 75-20 organization. The cost of a review under the alternate dispute  
 75-21 resolution process shall be paid by the nonprevailing party.

75-22 SECTION 3.244. Subsections (a), (b), and (d), Section  
 75-23 413.041, Labor Code, are amended to read as follows:

75-24 (a) Each health care practitioner shall disclose to the  
 75-25 department [~~commission~~] the identity of any health care provider in  
 75-26 which the health care practitioner, or the health care provider  
 75-27 that employs the health care practitioner, has a financial  
 75-28 interest. The health care practitioner shall make the disclosure  
 75-29 in the manner provided by commissioner [~~commission~~] rule.

75-30 (b) The commissioner [~~commission~~] shall require by rule  
 75-31 that a doctor disclose financial interests in other health care  
 75-32 providers as a condition of registration for the approved doctor  
 75-33 list established under Section 408.023 and shall define "financial  
 75-34 interest" for purposes of this subsection as provided by analogous  
 75-35 federal regulations. The commissioner [~~commission~~] by rule shall  
 75-36 adopt the federal standards that prohibit the payment or acceptance  
 75-37 of payment in exchange for health care referrals relating to fraud,  
 75-38 abuse, and antikickbacks.

75-39 (d) The department [~~commission~~] shall publish all final  
 75-40 disclosure enforcement orders issued under this section on the  
 75-41 department's [~~commission's~~] Internet website.

75-42 SECTION 3.245. Subsection (b), Section 413.042, Labor Code,  
 75-43 is amended to read as follows:

75-44 (b) A health care provider commits a violation if the  
 75-45 provider violates Subsection (a). [~~A violation under this~~  
 75-46 ~~subsection is a Class B administrative violation.~~]

75-47 SECTION 3.246. Section 413.044, Labor Code, is amended to  
 75-48 read as follows:

75-49 Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. (a) In  
 75-50 addition to or in lieu of an administrative penalty under Section  
 75-51 415.021 or a sanction imposed under Section 415.023, the  
 75-52 commissioner [~~commission~~] may impose sanctions against a person who  
 75-53 serves as a designated doctor under Chapter 408 who, after an  
 75-54 evaluation conducted under Section 413.002(c), is determined by the  
 75-55 division to be out of compliance with this subtitle or with rules  
 75-56 adopted by the commissioner [~~commission~~] relating to:

75-57 (1) medical policies, fee guidelines, and impairment  
 75-58 ratings; or

75-59 (2) the quality of decisions made under Section  
 75-60 408.0041 or Section 408.122.

75-61 (b) Sanctions imposed under Subsection (a) may include:

75-62 (1) removal or suspension from the department list of  
 75-63 designated doctors; or

75-64 (2) restrictions on the reviews made by the person as a  
 75-65 designated doctor.

75-66 SECTION 3.247. Subsections (a) through (d), Section  
 75-67 413.051, Labor Code, are amended to read as follows:

75-68 (a) The department [~~commission~~] may contract with a health  
 75-69 care provider, health care provider professional review

76-1 organization, or other entity to develop, maintain, or review  
76-2 medical policies or fee guidelines or to review compliance with the  
76-3 medical policies or fee guidelines.

76-4 (b) For purposes of review or resolution of a dispute as to  
76-5 compliance with the medical policies or fee guidelines, the  
76-6 department [~~commission~~] may contract with a health care provider,  
76-7 health care provider professional review organization, or other  
76-8 entity that includes in the review process health care  
76-9 practitioners who are licensed in the category under review and are  
76-10 of the same field or specialty as the category under review.

76-11 (c) The department [~~commission~~] may contract with a health  
76-12 care provider, health care provider professional review  
76-13 organization, or other entity for medical consultant services,  
76-14 including:

76-15 (1) independent medical examinations;  
76-16 (2) medical case reviews; or  
76-17 (3) establishment of medical policies and fee  
76-18 guidelines.

76-19 (d) The commissioner [~~commission~~] shall establish standards  
76-20 for contracts under this section.

76-21 SECTION 3.248. Section 413.0511, Labor Code, is amended to  
76-22 read as follows:

76-23 Sec. 413.0511. MEDICAL ADVISOR. (a) The department  
76-24 [~~commission~~] shall employ or contract with a medical advisor, who  
76-25 must be a doctor as that term is defined by Section 401.011.

76-26 (b) The medical advisor shall make recommendations  
76-27 regarding the adoption of rules and policies to:

76-28 (1) develop, maintain, and review guidelines as  
76-29 provided by Section 413.011, including rules regarding impairment  
76-30 ratings;

76-31 (2) review compliance with those guidelines;  
76-32 (3) regulate or perform other acts related to medical  
76-33 benefits as required by the commissioner [~~commission~~];

76-34 (4) impose sanctions or delete doctors from the  
76-35 department's [~~commission's~~] list of approved doctors under Section  
76-36 408.023 for:

76-37 (A) any reason described by Section 408.0231; or  
76-38 (B) noncompliance with commissioner [~~commission~~]  
76-39 rules;

76-40 (5) impose conditions or restrictions as authorized by  
76-41 Section 408.0231(f);

76-42 (6) receive, and share with the medical quality review  
76-43 panel established under Section 413.0512, confidential  
76-44 information, and other information to which access is otherwise  
76-45 restricted by law, as provided by Sections 413.0512, 413.0513, and  
76-46 413.0514 from the Texas State Board of Medical Examiners, the Texas  
76-47 Board of Chiropractic Examiners, or other occupational licensing  
76-48 boards regarding a physician, chiropractor, or other type of doctor  
76-49 who applies for registration or is registered with the department  
76-50 [~~commission~~] on the list of approved doctors; ~~and~~

76-51 (7) determine minimal modifications to the  
76-52 reimbursement methodology and model used by the Medicare system as  
76-53 necessary to meet occupational injury requirements; and

76-54 (8) monitor the quality and timeliness of decisions  
76-55 made by designated doctors and independent review organizations,  
76-56 and the imposition of sanctions regarding those decisions.

76-57 SECTION 3.249. Subsection (c), Section 413.0512, Labor  
76-58 Code, is amended to read as follows:

76-59 (c) The medical quality review panel shall recommend to the  
76-60 medical advisor:

76-61 (1) appropriate action regarding doctors, other  
76-62 health care providers, insurance carriers, ~~and~~ utilization  
76-63 review agents, and independent review organizations; and

76-64 (2) the addition or deletion of doctors from the list  
76-65 of approved doctors under Section 408.023 or the list of designated  
76-66 doctors established under Section 408.1225 [~~408.122~~].

76-67 SECTION 3.250. Section 413.0513, Labor Code, is amended to  
76-68 read as follows:

76-69 Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information

77-1 collected, assembled, or maintained by or on behalf of the  
 77-2 department [~~commission~~] under Section 413.0511 or 413.0512  
 77-3 constitutes an investigation file for purposes of Section 402.092  
 77-4 and may not be disclosed under Section 413.0511 or 413.0512 except  
 77-5 as provided by that section.

77-6 (b) Confidential information, and other information to  
 77-7 which access is restricted by law, developed by or on behalf of the  
 77-8 department [~~commission~~] under Section 413.0511 or 413.0512 is not  
 77-9 subject to discovery or court subpoena in any action other than:

77-10 (1) an action to enforce this subtitle brought by the  
 77-11 department [~~commission~~], an appropriate licensing or regulatory  
 77-12 agency, or an appropriate enforcement authority; or

77-13 (2) a criminal proceeding.

77-14 SECTION 3.251. Section 413.0514, Labor Code, is amended to  
 77-15 read as follows:

77-16 Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL  
 77-17 LICENSING BOARDS. (a) This section applies only to information  
 77-18 held by or for the department [~~commission~~], the Texas State Board of  
 77-19 Medical Examiners, and Texas Board of Chiropractic Examiners that  
 77-20 relates to a person who is licensed or otherwise regulated by any of  
 77-21 those state agencies.

77-22 (b) The department [~~commission~~] and the Texas State Board of  
 77-23 Medical Examiners on request or on its own initiative, may share  
 77-24 with each other confidential information or information to which  
 77-25 access is otherwise restricted by law. The department [~~commission~~]  
 77-26 and the Texas State Board of Medical Examiners shall cooperate with  
 77-27 and assist each other when either agency is conducting an  
 77-28 investigation by providing information to each other that the  
 77-29 sending agency determines is relevant to the investigation. Except  
 77-30 as provided by this section, confidential information that is  
 77-31 shared under this section remains confidential under law and legal  
 77-32 restrictions on access to the information remain in effect.  
 77-33 Furnishing information by the Texas State Board of Medical  
 77-34 Examiners to the department [~~commission~~] or by the department  
 77-35 [~~commission~~] to the Texas State Board of Medical Examiners under  
 77-36 this subsection does not constitute a waiver of privilege or  
 77-37 confidentiality as established by law.

77-38 (c) Information that is received by the department  
 77-39 [~~commission~~] from the Texas State Board of Medical Examiners or by  
 77-40 the Texas State Board of Medical Examiners from the department  
 77-41 [~~commission~~] remains confidential, may not be disclosed by the  
 77-42 department [~~commission~~] except as necessary to further the  
 77-43 investigation, and shall be exempt from disclosure under Sections  
 77-44 402.092 and 413.0513.

77-45 (d) The department [~~commission~~] and the Texas Board of  
 77-46 Chiropractic Examiners on request or on its own initiative, may  
 77-47 share with each other confidential information or information to  
 77-48 which access is otherwise restricted by law. The department  
 77-49 [~~commission~~] and the Texas Board of Chiropractic Examiners shall  
 77-50 cooperate with and assist each other when either agency is  
 77-51 conducting an investigation by providing information to each other  
 77-52 that is relevant to the investigation. Except as provided by this  
 77-53 section, confidential information that is shared under this section  
 77-54 remains confidential under law and legal restrictions on access to  
 77-55 the information remain in effect unless the agency sharing the  
 77-56 information approves use of the information by the receiving agency  
 77-57 for enforcement purposes. Furnishing information by the Texas  
 77-58 Board of Chiropractic Examiners to the department [~~commission~~] or  
 77-59 by the department [~~commission~~] to the Texas Board of Chiropractic  
 77-60 Examiners under this subsection does not constitute a waiver of  
 77-61 privilege or confidentiality as established by law.

77-62 (e) Information that is received by the department  
 77-63 [~~commission~~] from the Texas Board of Chiropractic Examiners or by  
 77-64 the Texas Board of Chiropractic Examiners remains confidential and  
 77-65 may not be disclosed by the department [~~commission~~] except as  
 77-66 necessary to further the investigation unless the agency sharing  
 77-67 the information and the agency receiving the information agree to  
 77-68 use of the information by the receiving agency for enforcement  
 77-69 purposes.

78-1 (f) The department [~~commission~~] and the Texas State Board of  
78-2 Medical Examiners shall provide information to each other on all  
78-3 disciplinary actions taken.

78-4 (g) The department [~~commission~~] and the Texas Board of  
78-5 Chiropractic Examiners shall provide information to each other on  
78-6 all disciplinary actions taken.

78-7 SECTION 3.252. Section 413.0515, Labor Code, is amended to  
78-8 read as follows:

78-9 Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR  
78-10 VIOLATIONS. (a) If the department [~~commission~~] or the Texas State  
78-11 Board of Medical Examiners discovers an act or omission by a  
78-12 physician that may constitute a felony, a misdemeanor involving  
78-13 moral turpitude, a violation of state or federal narcotics or  
78-14 controlled substance law, an offense involving fraud or abuse under  
78-15 the Medicare or Medicaid program, or a violation of this subtitle,  
78-16 the agency shall report that act or omission to the other agency.

78-17 (b) If the department [~~commission~~] or the Texas Board of  
78-18 Chiropractic Examiners discovers an act or omission by a  
78-19 chiropractor that may constitute a felony, a misdemeanor involving  
78-20 moral turpitude, a violation of state or federal narcotics or  
78-21 controlled substance law, an offense involving fraud or abuse under  
78-22 the Medicare or Medicaid program, or a violation of this subtitle,  
78-23 the agency shall report that act or omission to the other agency.

78-24 SECTION 3.253. Section 413.052, Labor Code, is amended to  
78-25 read as follows:

78-26 Sec. 413.052. PRODUCTION OF DOCUMENTS. The commissioner  
78-27 [~~commission~~] by rule shall establish procedures to enable the  
78-28 department [~~commission~~] to compel the production of documents.

78-29 SECTION 3.254. Section 413.053, Labor Code, is amended to  
78-30 read as follows:

78-31 Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The  
78-32 commissioner [~~commission~~] by rule shall establish standards of  
78-33 reporting and billing governing both form and content.

78-34 SECTION 3.255. Subsection (a), Section 413.054, Labor Code,  
78-35 is amended to read as follows:

78-36 (a) A person who performs services for the department  
78-37 [~~commission~~] as a designated doctor, an independent medical  
78-38 examiner, a doctor performing a medical case review, or a member of  
78-39 a peer review panel has the same immunity from liability as the  
78-40 commissioner [~~a commission member~~] under Section 402.011  
78-41 [~~402.010~~].

78-42 SECTION 3.256. Subsections (a) and (b), Section 413.055,  
78-43 Labor Code, are amended to read as follows:

78-44 (a) The department [~~executive director~~], as provided by  
78-45 commissioner [~~commission~~] rule, may enter an interlocutory order  
78-46 for the payment of all or part of medical benefits. The order may  
78-47 address accrued benefits, future benefits, or both accrued benefits  
78-48 and future benefits.

78-49 (b) The subsequent injury fund shall reimburse an insurance  
78-50 carrier for any overpayments of benefits made under an order  
78-51 entered under Subsection (a) if the order is reversed or modified by  
78-52 final arbitration, order, or decision of the commissioner  
78-53 [~~commission~~] or a court. The commissioner [~~commission~~] shall adopt  
78-54 rules to provide for a periodic reimbursement schedule, providing  
78-55 for reimbursement at least annually.

78-56 SECTION 3.257. Subsection (a), Section 414.002, Labor Code,  
78-57 is amended to read as follows:

78-58 (a) The division shall monitor for compliance with  
78-59 commissioner [~~commission~~] rules, this subtitle, and other laws  
78-60 relating to workers' compensation the conduct of persons subject to  
78-61 this subtitle, other than persons monitored by the division of  
78-62 medical review. Persons to be monitored include:

- 78-63 (1) persons claiming benefits under this subtitle;
- 78-64 (2) employers;
- 78-65 (3) insurance carriers; and
- 78-66 (4) attorneys and other representatives of parties.

78-67 SECTION 3.258. Section 414.003, Labor Code, is amended to  
78-68 read as follows:

78-69 Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The

79-1 division shall compile and maintain statistical and other  
 79-2 information as necessary to detect practices or patterns of conduct  
 79-3 by persons subject to monitoring under this chapter that:

79-4 (1) violate this subtitle, commissioner [~~or~~  
 79-5 ~~commission~~] rules, or a commissioner order or decision; or

79-6 (2) otherwise adversely affect the workers'  
 79-7 compensation system of this state.

79-8 (b) The department [~~commission~~] shall use the information  
 79-9 compiled under this section to impose appropriate penalties and  
 79-10 other sanctions under Chapters 415 and 416.

79-11 SECTION 3.259. Section 414.005, Labor Code, is amended to  
 79-12 read as follows:

79-13 Sec. 414.005. INVESTIGATION UNIT. The division shall  
 79-14 maintain an investigation unit to conduct investigations relating  
 79-15 to alleged violations of this subtitle, commissioner [~~or~~  
 79-16 ~~commission~~] rules, or a commissioner order or decision, with  
 79-17 particular emphasis on violations of Chapters 415 and 416.

79-18 SECTION 3.260. Section 414.007, Labor Code, is amended to  
 79-19 read as follows:

79-20 Sec. 414.007. REVIEW OF REFERRALS FROM DIVISION OF MEDICAL  
 79-21 REVIEW. The division shall review information and referrals  
 79-22 received from the division of medical review concerning alleged  
 79-23 violations of this subtitle, commissioner rules, or a commissioner  
 79-24 order or decision, and, under Sections 414.005 and 414.006 and  
 79-25 Chapters 415 and 416, may conduct investigations, make referrals to  
 79-26 other authorities, and initiate administrative violation  
 79-27 proceedings.

79-28 SECTION 3.261. Section 415.001, Labor Code, is amended to  
 79-29 read as follows:

79-30 Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE  
 79-31 OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee  
 79-32 or legal beneficiary commits an administrative violation if,  
 79-33 regardless of the person's mental state, the person [~~wilfully or~~  
 79-34 ~~intentionally~~]:

79-35 (1) fails without good cause to attend a dispute  
 79-36 resolution proceeding within the department [~~commission~~];

79-37 (2) attends a dispute resolution proceeding within the  
 79-38 department [~~commission~~] without complete authority or fails to  
 79-39 exercise authority to effectuate an agreement or settlement;

79-40 (3) commits an act of barratry under Section 38.12,  
 79-41 Penal Code;

79-42 (4) withholds from the employee's or legal  
 79-43 beneficiary's weekly benefits or from advances amounts not  
 79-44 authorized to be withheld by the department [~~commission~~];

79-45 (5) enters into a settlement or agreement without the  
 79-46 knowledge, consent, and signature of the employee or legal  
 79-47 beneficiary;

79-48 (6) takes a fee or withholds expenses in excess of the  
 79-49 amounts authorized by the department [~~commission~~];

79-50 (7) refuses or fails to make prompt delivery to the  
 79-51 employee or legal beneficiary of funds belonging to the employee or  
 79-52 legal beneficiary as a result of a settlement, agreement, order, or  
 79-53 award;

79-54 (8) violates the Texas Disciplinary Rules of  
 79-55 Professional Conduct of the State Bar of Texas;

79-56 (9) misrepresents the provisions of this subtitle to  
 79-57 an employee, an employer, a health care provider, or a legal  
 79-58 beneficiary;

79-59 (10) violates a commissioner [~~commission~~] rule; or

79-60 (11) fails to comply with this subtitle.

79-61 SECTION 3.262. Section 415.002, Labor Code, is amended to  
 79-62 read as follows:

79-63 Sec. 415.002. ADMINISTRATIVE VIOLATION BY AN INSURANCE  
 79-64 CARRIER. (a) An insurance carrier or its representative commits  
 79-65 an administrative violation if, regardless of the person's mental  
 79-66 state, that person [~~wilfully or intentionally~~]:

79-67 (1) misrepresents a provision of this subtitle to an  
 79-68 employee, an employer, a health care provider, or a legal  
 79-69 beneficiary;

80-1 (2) terminates or reduces benefits without  
80-2 substantiating evidence that the action is reasonable and  
80-3 authorized by law;

80-4 (3) instructs an employer not to file a document  
80-5 required to be filed with the department [~~commission~~];

80-6 (4) instructs or encourages an employer to violate a  
80-7 claimant's right to medical benefits under this subtitle;

80-8 (5) fails to tender promptly full death benefits if a  
80-9 legitimate dispute does not exist as to the liability of the  
80-10 insurance carrier;

80-11 (6) allows an employer, other than a self-insured  
80-12 employer, to dictate the methods by which and the terms on which a  
80-13 claim is handled and settled;

80-14 (7) fails to confirm medical benefits coverage to a  
80-15 person or facility providing medical treatment to a claimant if a  
80-16 legitimate dispute does not exist as to the liability of the  
80-17 insurance carrier;

80-18 (8) fails, without good cause, to attend a dispute  
80-19 resolution proceeding within the department [~~commission~~];

80-20 (9) attends a dispute resolution proceeding within the  
80-21 department [~~commission~~] without complete authority or fails to  
80-22 exercise authority to effectuate agreement or settlement;

80-23 (10) adjusts a workers' compensation claim in a manner  
80-24 contrary to license requirements for an insurance adjuster,  
80-25 including the requirements of Chapter 4101, Insurance Code [407,  
80-26 Acts of the 63rd Legislature, Regular Session, 1973 (Article  
80-27 21.07-4, Vernon's Texas Insurance Code)], or the rules of the  
80-28 commissioner [~~State Board~~] of insurance [~~Insurance~~];

80-29 (11) fails to process claims promptly in a reasonable  
80-30 and prudent manner;

80-31 (12) fails to initiate or reinstate benefits when due  
80-32 if a legitimate dispute does not exist as to the liability of the  
80-33 insurance carrier;

80-34 (13) misrepresents the reason for not paying benefits  
80-35 or terminating or reducing the payment of benefits;

80-36 (14) dates documents to misrepresent the actual date  
80-37 of the initiation of benefits;

80-38 (15) makes a notation on a draft or other instrument  
80-39 indicating that the draft or instrument represents a final  
80-40 settlement of a claim if the claim is still open and pending before  
80-41 the department [~~commission~~];

80-42 (16) fails or refuses to pay benefits from week to week  
80-43 as and when due directly to the person entitled to the benefits;

80-44 (17) fails to pay an order awarding benefits;

80-45 (18) controverts a claim if the evidence clearly  
80-46 indicates liability;

80-47 (19) unreasonably disputes the reasonableness and  
80-48 necessity of health care;

80-49 (20) violates a commissioner [~~commission~~] rule; ~~or~~

80-50 (21) makes a statement denying all future medical care  
80-51 for a compensable injury; or

80-52 (22) fails to comply with a provision of this  
80-53 subtitle.

80-54 (b) An insurance carrier or its representative does not  
80-55 commit an administrative violation under Subsection (a)(6) by  
80-56 allowing an employer to:

80-57 (1) freely discuss a claim;

80-58 (2) assist in the investigation and evaluation of a  
80-59 claim; or

80-60 (3) attend a proceeding of the department [~~commission~~]  
80-61 and participate at the proceeding in accordance with this subtitle.

80-62 SECTION 3.263. Section 415.003, Labor Code, is amended to  
80-63 read as follows:

80-64 Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE  
80-65 PROVIDER. A health care provider commits an administrative  
80-66 violation if, regardless of the person's mental state, the person  
80-67 [~~wilfully or intentionally~~]:

80-68 (1) submits a charge for health care that was not  
80-69 furnished;



81-1 (2) administers improper, unreasonable, or medically  
81-2 unnecessary treatment or services;

81-3 (3) makes an unnecessary referral;

81-4 (4) violates the department's [~~commission's~~] fee and  
81-5 treatment guidelines;

81-6 (5) violates a commissioner [~~commission~~] rule; or

81-7 (6) fails to comply with a provision of this subtitle.

81-8 SECTION 3.264. Subsections (a), (b), (e), and (f), Section  
81-9 415.0035, Labor Code, are amended to read as follows:

81-10 (a) An insurance carrier or its representative commits an  
81-11 administrative violation if, regardless of the person's mental  
81-12 state, that person:

81-13 (1) fails to submit to the department [~~commission~~] a  
81-14 settlement or agreement of the parties;

81-15 (2) fails to timely notify the department [~~commission~~]  
81-16 of the termination or reduction of benefits and the reason for that  
81-17 action; or

81-18 (3) denies preauthorization in a manner that is not in  
81-19 accordance with rules adopted by the commissioner [~~commission~~]  
81-20 under Section 413.014.

81-21 (b) A health care provider commits an administrative  
81-22 violation if, regardless of the person's mental state, that person:

81-23 (1) fails or refuses to timely file required reports  
81-24 or records; or

81-25 (2) fails to file with the department [~~commission~~] the  
81-26 annual disclosure statement required by Section 413.041.

81-27 (e) An insurance carrier or health care provider commits an  
81-28 administrative violation if that person violates this subtitle or a  
81-29 rule, order, or decision of the commissioner [~~commission~~].

81-30 (f) A subsequent administrative violation under this  
81-31 section, after prior notice to the insurance carrier or health care  
81-32 provider of noncompliance, is subject to penalties as provided by  
81-33 Section 415.021. Prior notice under this subsection is not  
81-34 required [~~if the violation was committed wilfully or intentionally,~~  
81-35 ~~or~~] if the violation was of a decision or order of the commissioner  
81-36 [~~commission~~].

81-37 SECTION 3.265. The heading to Section 415.005, Labor Code,  
81-38 is amended to read as follows:

81-39 Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS  
81-40 PROHIBITED[~~, ADMINISTRATIVE VIOLATION~~].

81-41 SECTION 3.266. Subsection (b), Section 415.005, Labor Code,  
81-42 is amended to read as follows:

81-43 (b) A violation under this section is an [~~a Class B~~]  
81-44 administrative violation. A health care provider may be liable for  
81-45 an administrative penalty regardless of whether a criminal action  
81-46 is initiated under Section 413.043.

81-47 SECTION 3.267. The heading to Section 415.006, Labor Code,  
81-48 is amended to read as follows:

81-49 Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED[~~+  
81-50 ADMINISTRATIVE VIOLATION~~].

81-51 SECTION 3.268. Subsection (c), Section 415.006, Labor Code,  
81-52 is amended to read as follows:

81-53 (c) A person commits a violation if the person violates  
81-54 Subsection (a). [~~A violation under this subsection is a Class C  
81-55 administrative violation.~~]

81-56 SECTION 3.269. Subsection (a), Section 415.007, Labor Code,  
81-57 is amended to read as follows:

81-58 (a) An attorney who represents a claimant before the  
81-59 department [~~commission~~] may not lend money to the claimant during  
81-60 the pendency of the workers' compensation claim.

81-61 SECTION 3.270. Subsection (e), Section 415.008, Labor Code,  
81-62 is amended to read as follows:

81-63 (e) If an administrative violation proceeding is pending  
81-64 under this section against an employee or person claiming death  
81-65 benefits, the department [~~commission~~] may not take final action on  
81-66 the person's benefits.

81-67 SECTION 3.271. Subsection (a), Section 415.009, Labor Code,  
81-68 is amended to read as follows:

81-69 (a) A person commits a violation if, regardless of the

82-1 person's mental state, the person [knowingly] brings, prosecutes,  
 82-2 or defends an action for benefits under this subtitle or requests  
 82-3 initiation of an administrative violation proceeding that does not  
 82-4 have a basis in fact or is not warranted by existing law or a good  
 82-5 faith argument for the extension, modification, or reversal of  
 82-6 existing law.

82-7 SECTION 3.272. Subsection (a), Section 415.010, Labor Code,  
 82-8 is amended to read as follows:

82-9 (a) A party to an agreement approved by the department  
 82-10 [commission] commits a violation if, regardless of the person's  
 82-11 mental state, the person [knowingly] breaches a provision of the  
 82-12 agreement.

82-13 SECTION 3.273. Section 415.021, Labor Code, is amended to  
 82-14 read as follows:

82-15 Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES.  
 82-16 (a) In addition to any other provisions in this subtitle relating  
 82-17 to violations, a person commits an administrative violation if the  
 82-18 person violates, fails to comply with, or refuses to comply with  
 82-19 this subtitle or a rule, order, or decision of the department. In  
 82-20 addition to any sanctions, administrative penalty, or other remedy  
 82-21 authorized by this subtitle, the commissioner [The commission] may  
 82-22 assess an administrative penalty against a person who commits an  
 82-23 administrative violation. The administrative penalty shall not  
 82-24 exceed \$25,000 per day per occurrence. Each day of noncompliance  
 82-25 constitutes a separate violation. The commissioner's authority  
 82-26 under this chapter is in addition to any other authority to enforce  
 82-27 a sanction, penalty, fine, forfeiture, denial, suspension, or  
 82-28 revocation otherwise authorized by law [Notwithstanding Subsection  
 82-29 (c), the commission by rule shall adopt a schedule of specific  
 82-30 monetary administrative penalties for specific violations under  
 82-31 this subtitle].

82-32 (b) The commissioner [~~commission~~ may assess an  
 82-33 administrative penalty not to exceed \$10,000 and] may enter a cease  
 82-34 and desist order against a person who:

- 82-35 (1) commits repeated administrative violations;  
 82-36 (2) allows, as a business practice, the commission of  
 82-37 repeated administrative violations; or  
 82-38 (3) violates an order or decision of the commissioner  
 82-39 [~~commission~~].

82-40 (c) In assessing an administrative penalty:  
 82-41 (1) [~~r~~] the commissioner [~~commission~~] shall consider:  
 82-42 (A) [~~(1)~~] the seriousness of the violation,  
 82-43 including the nature, circumstances, consequences, extent, and  
 82-44 gravity of the prohibited act;  
 82-45 (B) [~~(2)~~] the history and extent of previous  
 82-46 administrative violations;  
 82-47 (C) [~~(3)~~] the demonstrated good faith of the  
 82-48 violator, including actions taken to rectify the consequences of  
 82-49 the prohibited act;  
 82-50 (D) [~~(4) the economic benefit resulting from the~~  
 82-51 ~~prohibited act,~~  
 82-52 [~~(5)~~] the penalty necessary to deter future  
 82-53 violations; and  
 82-54 (E) [~~(6)~~] other matters that justice may  
 82-55 require; and

82-56 (2) the commissioner shall, to the extent reasonable,  
 82-57 consider the economic benefit resulting from the prohibited act.

82-58 (d) A penalty may be assessed only after the person charged  
 82-59 with an administrative violation has been given an opportunity for  
 82-60 a hearing under Subchapter C.

82-61 SECTION 3.274. Subsection (b), Section 415.023, Labor Code,  
 82-62 is amended to read as follows:

82-63 (b) The commissioner [~~commission~~] may adopt rules providing  
 82-64 for:

- 82-65 (1) a reduction or denial of fees;  
 82-66 (2) public or private reprimand by the commissioner  
 82-67 [~~commission~~];  
 82-68 (3) suspension from practice before the commissioner  
 82-69 [~~commission~~];

83-1 (4) restriction, suspension, or revocation of the  
83-2 right to receive reimbursement under this subtitle; or

83-3 (5) referral and petition to the appropriate licensing  
83-4 authority for appropriate disciplinary action, including the  
83-5 restriction, suspension, or revocation of the person's license.

83-6 SECTION 3.275. Section 415.024, Labor Code, is amended to  
83-7 read as follows:

83-8 Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT;  
83-9 ADMINISTRATIVE VIOLATION. A material and substantial breach of a  
83-10 settlement agreement that establishes a compliance plan is an [~~a~~  
83-11 ~~Class A~~] administrative violation. In determining the amount of  
83-12 the penalty, the commissioner [~~commission~~] shall consider the total  
83-13 volume of claims handled by the insurance carrier.

83-14 SECTION 3.2751. Subchapter B, Chapter 415, Labor Code, is  
83-15 amended by adding Section 415.025 to read as follows:

83-16 Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR  
83-17 PENALTY. A reference in this code or other law, or in rules of the  
83-18 Texas Workers' Compensation Commission or the department, to a  
83-19 particular class of violation, administrative violation, or  
83-20 penalty means that the penalty shall not exceed \$25,000 per day per  
83-21 occurrence and that each day of noncompliance constitutes a  
83-22 separate violation.

83-23 SECTION 3.276. Subsection (b), Section 415.032, Labor Code,  
83-24 is amended to read as follows:

83-25 (b) Not later than the 20th day after the date on which  
83-26 notice is received, the charged party shall:

83-27 (1) remit the amount of the penalty to the department  
83-28 [~~commission~~]; or

83-29 (2) submit to the department [~~commission~~] a written  
83-30 request for a hearing.

83-31 SECTION 3.277. Section 415.033, Labor Code, is amended to  
83-32 read as follows:

83-33 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a  
83-34 charged party fails to respond as required under Section 415.032,  
83-35 the penalty is due and the department [~~commission~~] shall initiate  
83-36 enforcement proceedings.

83-37 SECTION 3.278. Subsection (a), Section 415.034, Labor Code,  
83-38 is amended to read as follows:

83-39 (a) On the request of the charged party or the commissioner  
83-40 [~~executive director~~], the State Office of Administrative Hearings  
83-41 shall set a hearing. The hearing shall be conducted in the manner  
83-42 provided for a contested case under Chapter 2001, Government Code  
83-43 (the administrative procedure law).

83-44 SECTION 3.279. Subsections (b) and (d), Section 415.035,  
83-45 Labor Code, are amended to read as follows:

83-46 (b) If an administrative penalty is assessed, the person  
83-47 charged shall:

83-48 (1) forward the amount of the penalty to the  
83-49 commissioner [~~executive director~~] for deposit in an escrow account;  
83-50 or

83-51 (2) post with the commissioner [~~executive director~~] a  
83-52 bond for the amount of the penalty, effective until all judicial  
83-53 review of the determination is final.

83-54 (d) If the court determines that the penalty should not have  
83-55 been assessed or reduces the amount of the penalty, the  
83-56 commissioner [~~executive director~~] shall:

83-57 (1) remit the appropriate amount, plus accrued  
83-58 interest, if the administrative penalty was paid; or

83-59 (2) release the bond.

83-60 SECTION 3.280. Section 416.001, Labor Code, is amended to  
83-61 read as follows:

83-62 Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An  
83-63 action taken by an insurance carrier under an order of the  
83-64 commissioner [~~commission~~] or recommendations of a benefit review  
83-65 officer under Section 410.031, 410.032, or 410.033 may not be the  
83-66 basis of a cause of action against the insurance carrier for a  
83-67 breach of the duty of good faith and fair dealing.

83-68 SECTION 3.281. Subsections (c) and (d), Section 417.001,  
83-69 Labor Code, are amended to read as follows:

84-1 (c) If a claimant receives benefits from the subsequent  
84-2 injury fund, the department [~~commission~~] is:

84-3 (1) considered to be the insurance carrier under this  
84-4 section for purposes of those benefits;

84-5 (2) subrogated to the rights of the claimant; and

84-6 (3) entitled to reimbursement in the same manner as  
84-7 the insurance carrier.

84-8 (d) The department [~~commission~~] shall remit money recovered  
84-9 under this section to the comptroller for deposit to the credit of  
84-10 the subsequent injury fund.

84-11 SECTION 3.282. Subsection (b), Section 417.003, Labor Code,  
84-12 is amended to read as follows:

84-13 (b) An attorney who represents the claimant and is also to  
84-14 represent the subrogated insurance carrier shall make a full  
84-15 written disclosure to the claimant before employment as an attorney  
84-16 by the insurance carrier. The claimant must acknowledge the  
84-17 disclosure and consent to the representation. A signed copy of the  
84-18 disclosure shall be furnished to all concerned parties and made a  
84-19 part of the department [~~commission~~] file. A copy of the disclosure  
84-20 with the claimant's consent shall be filed with the claimant's  
84-21 pleading before a judgment is entered and approved by the court.  
84-22 The claimant's attorney may not receive a fee under this section to  
84-23 which the attorney is otherwise entitled under an agreement with  
84-24 the insurance carrier unless the attorney complies with the  
84-25 requirements of this subsection.

84-26 SECTION 3.283. Subdivisions (1) and (5), Section 501.001,  
84-27 Labor Code, are amended to read as follows:

84-28 (1) "Department" [~~"Commission"~~] means the Texas  
84-29 Department of Workers' Compensation [~~Commission~~].

84-30 (5) "Employee" means a person who is:

84-31 (A) in the service of the state pursuant to an  
84-32 election, appointment, or express oral or written contract of hire;

84-33 (B) paid from state funds but whose duties  
84-34 require that the person work and frequently receive supervision in  
84-35 a political subdivision of the state;

84-36 (C) a peace officer employed by a political  
84-37 subdivision, while the peace officer is exercising authority  
84-38 granted under:

84-39 (i) Article 2.12 [~~12~~], Code of Criminal  
84-40 Procedure; or

84-41 (ii) Articles 14.03(d) and (g), Code of  
84-42 Criminal Procedure;

84-43 (D) a member of the state military forces, as  
84-44 defined by Section 431.001, Government Code, who is engaged in  
84-45 authorized training or duty; or

84-46 (E) a Texas Task Force 1 member, as defined by  
84-47 Section 88.301, Education Code, who is activated by the governor's  
84-48 division of emergency management or is injured during any training  
84-49 session sponsored or sanctioned by Texas Task Force 1.

84-50 SECTION 3.284. Subsection (d), Section 501.026, Labor Code,  
84-51 is amended to read as follows:

84-52 (d) A person entitled to benefits under this section may  
84-53 receive the benefits only if the person seeks medical attention  
84-54 from a doctor for the injury not later than 48 hours after the  
84-55 occurrence of the injury or after the date the person knew or should  
84-56 have known the injury occurred. The person shall comply with the  
84-57 requirements of Section 409.001 by providing notice of the injury  
84-58 to the department [~~commission~~] or the state agency with which the  
84-59 officer or employee under Subsection (b) is associated.

84-60 SECTION 3.285. Subsection (a), Section 501.050, Labor Code,  
84-61 is amended to read as follows:

84-62 (a) In each case appealed from the department [~~commission~~]  
84-63 to a county or district court:

84-64 (1) the clerk of the court shall mail to the department  
84-65 [~~commission~~]:

84-66 (A) not later than the 20th day after the date the  
84-67 case is filed, a notice containing the style, number, and date of  
84-68 filing of the case; and

84-69 (B) not later than the 20th day after the date the

85-1 judgment is rendered, a certified copy of the judgment; and

85-2 (2) the attorney preparing the judgment shall file the  
85-3 original and a copy of the judgment with the clerk.

85-4 SECTION 3.286. The heading to Chapter 502, Labor Code, is  
85-5 amended to read as follows:

85-6 CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
85-7 EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM

85-8 AND EMPLOYEES OF INSTITUTIONS OF THE TEXAS A&M UNIVERSITY SYSTEM

85-9 SECTION 3.287. Subdivision (1), Section 502.001, Labor  
85-10 Code, is amended to read as follows:

85-11 (1) "Department" means the Texas Department of  
85-12 Workers' Compensation [~~"Commission" means the Texas Workers'~~  
85-13 ~~Compensation Commission~~].

85-14 SECTION 3.288. Subsection (b), Section 502.002, Labor Code,  
85-15 is amended to read as follows:

85-16 (b) For the purpose of applying the provisions listed by  
85-17 Subsection (a) to this chapter, "employer" means "the institution,"  
85-18 and "system" means the insurance carrier under Section 502.022.[""]

85-19 SECTION 3.289. Subsection (a), Section 502.021, Labor Code,  
85-20 is amended to read as follows:

85-21 (a) The system [~~institution~~] shall pay benefits as provided  
85-22 by this chapter to an employee with a compensable injury.

85-23 SECTION 3.290. Section 502.041, Labor Code, is amended to  
85-24 read as follows:

85-25 Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An  
85-26 employee may elect to use accrued sick leave before receiving  
85-27 income benefits. If an employee elects to use sick leave, the  
85-28 employee is not entitled to income benefits under this chapter  
85-29 until the employee has exhausted the employee's accrued sick leave  
85-30 [institution may provide that an injured employee may remain on the  
85-31 payroll until the employee's earned annual and sick leave is  
85-32 exhausted].

85-33 (b) An employee may elect to use all or any number of weeks  
85-34 of accrued annual leave after the employee's accrued sick leave is  
85-35 exhausted. If an employee elects to use annual leave, the employee  
85-36 is not entitled to income benefits under this chapter until the  
85-37 elected number of weeks of leave have been exhausted [While an  
85-38 injured employee remains on the payroll under Subsection (a),  
85-39 medical services remain available to the employee, but workers'  
85-40 compensation benefits do not accrue or become payable to the  
85-41 injured employee].

85-42 SECTION 3.291. Subsections (a) and (c), Section 502.061,  
85-43 Labor Code, are amended to read as follows:

85-44 (a) The system [~~Each institution~~] shall administer this  
85-45 chapter.

85-46 (c) The system [~~institution~~] may:

85-47 (1) adopt and publish rules and prescribe and furnish  
85-48 forms necessary for the administration of this chapter; and

85-49 (2) adopt and enforce rules necessary for the  
85-50 prevention of accidents and injuries.

85-51 SECTION 3.292. Section 502.063, Labor Code, is amended to  
85-52 read as follows:

85-53 Sec. 502.063. CERTIFIED COPIES OF DEPARTMENT [~~COMMISSION~~]  
85-54 DOCUMENTS. (a) The department [~~commission~~] shall furnish a  
85-55 certified copy of an order, award, decision, or paper on file in the  
85-56 department's [~~commission's~~] office to a person entitled to the copy  
85-57 on written request and payment of the fee for the copy. The fee is  
85-58 the same as that charged for similar services by the secretary of  
85-59 state's office.

85-60 (b) The system or an [~~An~~] institution may obtain certified  
85-61 copies under this section without charge.

85-62 (c) A fee or salary may not be paid to an [~~a member or~~]  
85-63 employee of the department [~~commission~~] for making a copy under  
85-64 Subsection (a) that exceeds the fee charged for the copy.

85-65 SECTION 3.293. Subsection (a), Section 502.065, Labor Code,  
85-66 is amended to read as follows:

85-67 (a) In addition to a report of an injury filed with the  
85-68 department [~~commission~~] under Section 409.005(a), an institution  
85-69 shall file a supplemental report that contains:

- 86-1 (1) the name, age, sex, and occupation of the injured
- 86-2 employee;
- 86-3 (2) the character of work in which the employee was
- 86-4 engaged at the time of the injury;
- 86-5 (3) the place, date, and hour of the injury; and
- 86-6 (4) the nature and cause of the injury.

86-7 SECTION 3.294. Subsections (a), (b), (d), and (e), Section  
86-8 502.066, Labor Code, are amended to read as follows:

86-9 (a) The department [~~commission~~] may require an employee who  
86-10 claims to have been injured to submit to an examination by the  
86-11 department [~~commission~~] or a person acting under the department's  
86-12 [~~commission's~~] authority at a reasonable time and place in this  
86-13 state.

86-14 (b) On the request of an employee or the system  
86-15 [~~institution~~], the employee, [~~or~~] the institution, or the system is  
86-16 entitled to have a physician or chiropractor selected by the  
86-17 employee, [~~or~~] the institution, or the system, as appropriate,  
86-18 present to participate in an examination under Subsection (a) or  
86-19 Section 408.004.

86-20 (d) The system or the institution may have an injured  
86-21 employee examined at a reasonable time and at a place suitable to  
86-22 the employee's condition and convenient and accessible to the  
86-23 employee by a physician or chiropractor selected by the system or  
86-24 the institution. The system or the institution shall pay for an  
86-25 examination under this subsection and for the employee's reasonable  
86-26 expenses incident to the examination. The employee is entitled to  
86-27 have a physician or chiropractor selected by the employee present  
86-28 to participate in an examination under this subsection.

86-29 (e) The system or the institution shall pay the fee set by  
86-30 the department [~~commission~~] of a physician or chiropractor selected  
86-31 by the employee under Subsection (b) or (d).

86-32 SECTION 3.295. Subsection (a), Section 502.067, Labor Code,  
86-33 is amended to read as follows:

86-34 (a) The commissioner of the Texas Department of Workers'  
86-35 Compensation [~~commission~~] may order or direct the system or the  
86-36 institution to reduce or suspend the compensation of an injured  
86-37 employee who:

86-38 (1) persists in insanitary or injurious practices that  
86-39 tend to imperil or retard the employee's recovery; or

86-40 (2) refuses to submit to medical, surgical,  
86-41 chiropractic, or other remedial treatment recognized by the state  
86-42 that is reasonably essential to promote the employee's recovery.

86-43 SECTION 3.296. Section 502.068, Labor Code, is amended to  
86-44 read as follows:

86-45 Sec. 502.068. POSTPONEMENT OF HEARING. If an injured  
86-46 employee is receiving benefits under this chapter and the system or  
86-47 the institution is providing hospitalization, medical treatment,  
86-48 or chiropractic care to the employee, the department [~~commission~~]  
86-49 may postpone the hearing on the employee's claim. An appeal may not  
86-50 be taken from a department [~~commission~~] order under this section.

86-51 SECTION 3.297. Subsection (a), Section 502.069, Labor Code,  
86-52 is amended to read as follows:

86-53 (a) In each case appealed from the department [~~commission~~]  
86-54 to a county or district court:

86-55 (1) the clerk of the court shall mail to the department  
86-56 [~~commission~~]:

86-57 (A) not later than the 20th day after the date the  
86-58 case is filed, a notice containing the style, number, and date of  
86-59 filing of the case; and

86-60 (B) not later than the 20th day after the date the  
86-61 judgment is rendered, a certified copy of the judgment; and

86-62 (2) the attorney preparing the judgment shall file the  
86-63 original and a copy of the judgment with the clerk.

86-64 SECTION 3.298. The heading to Chapter 503, Labor Code, is  
86-65 amended to read as follows:

86-66 CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
86-67 EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND  
86-68 EMPLOYEES OF INSTITUTIONS OF THE UNIVERSITY OF TEXAS SYSTEM

86-69 SECTION 3.299. Section 503.001, Labor Code, is amended by

87-1 amending Subdivision (1) and by adding Subdivision (1-a) to read as  
87-2 follows:

87-3 (1) "Commissioner" means the commissioner of the Texas  
87-4 Department of Workers' Compensation [~~"Commission" means the Texas~~  
87-5 ~~Workers' Compensation Commission~~].

87-6 (1-a) "Department" means the Texas Department of  
87-7 Workers' Compensation.

87-8 SECTION 3.300. Subsection (b), Section 503.002, Labor Code,  
87-9 is amended to read as follows:

87-10 (b) For the purpose of applying the provisions listed by  
87-11 Subsection (a) to this chapter, "employer" means "the institution,"  
87-12 and "system" means the insurance carrier under Section 503.022. [~~"~~

87-13 SECTION 3.301. Subsection (a), Section 503.021, Labor Code,  
87-14 is amended to read as follows:

87-15 (a) The system [~~institution~~] shall pay benefits as provided  
87-16 by this chapter to an employee with a compensable injury.

87-17 SECTION 3.302. Section 503.022, Labor Code, is amended to  
87-18 read as follows:

87-19 Sec. 503.022. AUTHORITY TO SELF-INSURE. An institution may  
87-20 self-insure as part of a system insurance plan.

87-21 SECTION 3.303. Section 503.041, Labor Code, is amended to  
87-22 read as follows:

87-23 Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An  
87-24 employee may elect to use accrued sick leave before receiving  
87-25 income benefits. If an employee elects to use sick leave, the  
87-26 employee is not entitled to income benefits under this chapter  
87-27 until the employee has exhausted the employee's accrued sick leave  
87-28 [~~An institution may provide that an injured employee may remain on~~  
87-29 ~~the payroll until the employee's earned annual and sick leave is~~  
87-30 ~~exhausted].~~

87-31 (b) An employee may elect to use all or any number of weeks  
87-32 of accrued annual leave after the employee's accrued sick leave is  
87-33 exhausted. If an employee elects to use annual leave, the employee  
87-34 is not entitled to income benefits under this chapter until the  
87-35 elected number of weeks of leave have been exhausted [~~While an~~  
87-36 ~~injured employee remains on the payroll under Subsection (a), the~~  
87-37 ~~employee is entitled to medical benefits but income benefits do not~~  
87-38 ~~accrue].~~

87-39 SECTION 3.304. Subsections (a) and (c), Section 503.061,  
87-40 Labor Code, are amended to read as follows:

87-41 (a) The system [~~Each institution~~] shall administer this  
87-42 chapter.

87-43 (c) The system [~~institution~~] may:

87-44 (1) adopt and publish rules and prescribe and furnish  
87-45 forms necessary for the administration of this chapter; and

87-46 (2) adopt and enforce rules necessary for the  
87-47 prevention of accidents and injuries.

87-48 SECTION 3.305. Section 503.063, Labor Code, is amended to  
87-49 read as follows:

87-50 Sec. 503.063. CERTIFIED COPIES OF DEPARTMENT [~~COMMISSION~~]  
87-51 DOCUMENTS. (a) The department [~~commission~~] shall furnish a  
87-52 certified copy of an order, award, decision, or paper on file in the  
87-53 department's [~~commission's~~] office to a person entitled to the copy  
87-54 on written request and payment of the fee for the copy. The fee is  
87-55 the same as that charged for similar services by the secretary of  
87-56 state's office.

87-57 (b) The system or the institution may obtain certified  
87-58 copies under this section without charge.

87-59 (c) A fee or salary may not be paid to an [~~a member or~~]  
87-60 employee of the department [~~commission~~] for making a copy under  
87-61 Subsection (a) that exceeds the fee charged for the copy.

87-62 SECTION 3.306. Subsection (a), Section 503.065, Labor Code,  
87-63 is amended to read as follows:

87-64 (a) In addition to a report of an injury filed with the  
87-65 department [~~commission~~] under Section 409.005(a), an institution  
87-66 shall file a supplemental report that contains:

87-67 (1) the name, age, sex, and occupation of the injured  
87-68 employee;

87-69 (2) the character of work in which the employee was

88-1 engaged at the time of the injury;

88-2 (3) the place, date, and hour of the injury; and

88-3 (4) the nature and cause of the injury.

88-4 SECTION 3.307. Subsections (a), (b), (d), and (e), Section  
88-5 503.066, Labor Code, are amended to read as follows:

88-6 (a) The department [~~commission~~] may require an employee who  
88-7 claims to have been injured to submit to an examination by the  
88-8 department [~~commission~~] or a person acting under the department's  
88-9 [~~commission's~~] authority at a reasonable time and place in this  
88-10 state.

88-11 (b) On the request of an employee, the system, or the  
88-12 institution, the employee, the system, or the institution is  
88-13 entitled to have a physician selected by the employee, the system,  
88-14 or the institution, as appropriate, present to participate in an  
88-15 examination under Subsection (a) or Section 408.004.

88-16 (d) The system or the institution may have an injured  
88-17 employee examined at a reasonable time and at a place suitable to  
88-18 the employee's condition and convenient and accessible to the  
88-19 employee by a physician selected by the system or the institution.  
88-20 The system or the institution shall pay for an examination under  
88-21 this subsection and for the employee's reasonable expenses incident  
88-22 to the examination. The employee is entitled to have a physician  
88-23 selected by the employee present to participate in an examination  
88-24 under this subsection.

88-25 (e) The system or the institution shall pay the fee, as set  
88-26 by the department [~~commission~~], of a physician selected by the  
88-27 employee under Subsection (b) or (d).

88-28 SECTION 3.308. Subsection (a), Section 503.067, Labor Code,  
88-29 is amended to read as follows:

88-30 (a) The commissioner [~~commission~~] may order or direct the  
88-31 system or the institution to reduce or suspend the compensation of  
88-32 an injured employee who:

88-33 (1) persists in insanitary or injurious practices that  
88-34 tend to imperil or retard the employee's recovery; or

88-35 (2) refuses to submit to medical, surgical, or other  
88-36 remedial treatment recognized by the state that is reasonably  
88-37 essential to promote the employee's recovery.

88-38 SECTION 3.309. Section 503.068, Labor Code, is amended to  
88-39 read as follows:

88-40 Sec. 503.068. POSTPONEMENT OF HEARING. If an injured  
88-41 employee is receiving benefits under this chapter and the system or  
88-42 the institution is providing hospitalization or medical treatment  
88-43 to the employee, the department [~~commission~~] may postpone the  
88-44 hearing on the employee's claim. An appeal may not be taken from a  
88-45 commissioner [~~commission~~] order under this section.

88-46 SECTION 3.310. Subsection (a), Section 503.069, Labor Code,  
88-47 is amended to read as follows:

88-48 (a) In each case appealed from the department [~~commission~~]  
88-49 to a county or district court:

88-50 (1) the clerk of the court shall mail to the department  
88-51 [~~commission~~]:

88-52 (A) not later than the 20th day after the date the  
88-53 case is filed, a notice containing the style, number, and date of  
88-54 filing of the case; and

88-55 (B) not later than the 20th day after the date the  
88-56 judgment is rendered, a certified copy of the judgment; and

88-57 (2) the attorney preparing the judgment shall file the  
88-58 original and a copy of the judgment with the clerk.

88-59 SECTION 3.311. Subsection (a), Section 503.070, Labor Code,  
88-60 is amended to read as follows:

88-61 (a) A party who does not consent to abide by the final  
88-62 decision of the commissioner [~~commission~~] shall file notice with  
88-63 the department [~~commission~~] as required by Section 410.253 and  
88-64 bring suit in the county in which the injury occurred to set aside  
88-65 the final decision of the commissioner [~~commission~~].

88-66 SECTION 3.312. Section 504.001, Labor Code, is amended by  
88-67 amending Subdivision (1) and adding Subdivision (4) to read as  
88-68 follows:

88-69 (1) "Department" means the Texas Department of



89-1 Workers' Compensation [~~"Commission" means the Texas Workers'~~  
89-2 ~~Compensation Commission~~].

89-3 (4) "Pool" means two or more political subdivisions  
89-4 collectively self-insuring under an interlocal contract under  
89-5 Chapter 791, Government Code.

89-6 SECTION 3.313. Subsection (a), Section 504.002, Labor Code,  
89-7 is amended to read as follows:

89-8 (a) The following provisions of Subtitles A and B apply to  
89-9 and are included in this chapter except to the extent that they are  
89-10 inconsistent with this chapter:

89-11 (1) Chapter 401, other than Section 401.011(18)  
89-12 defining "employer" and Section 401.012 defining "employee";

89-13 (2) Chapter 402;

89-14 (3) Chapter 403, other than Sections 403.001-403.005;

89-15 (4) Sections 406.006-406.009 and Subchapters B and  
89-16 D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035,  
89-17 406.091, and 406.096;

89-18 (5) Chapter 408, other than Sections 408.001(b) and  
89-19 (c);

89-20 (6) Chapters 409-412 [~~409-417~~]; [~~and~~]

89-21 (7) Chapter 413, except as provided by Section  
89-22 504.053;

89-23 (8) Chapters 414-417; and

89-24 (9) Chapter 451.

89-25 SECTION 3.314. The heading to Section 504.018, Labor Code,  
89-26 is amended to read as follows:

89-27 Sec. 504.018. NOTICE TO DEPARTMENT [~~COMMISSION~~] AND  
89-28 EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

89-29 SECTION 3.315. Subsection (a), Section 504.018, Labor Code,  
89-30 is amended to read as follows:

89-31 (a) A political subdivision shall notify the department  
89-32 [~~commission~~] of the method by which its employees will receive  
89-33 benefits, the approximate number of employees covered, and the  
89-34 estimated amount of payroll.

89-35 SECTION 3.316. Subchapter C, Chapter 504, Labor Code, is  
89-36 amended by adding Section 504.053 to read as follows:

89-37 Sec. 504.053. ELECTION. (a) A political subdivision that  
89-38 self-insures either individually or collectively shall provide  
89-39 workers' compensation medical benefits to the injured employees of  
89-40 the political subdivision or the injured employees of the members  
89-41 of a pool:

89-42 (1) in the manner provided by Chapter 1305, Insurance  
89-43 Code;

89-44 (2) in the manner provided by Chapter 408, other than  
89-45 Sections 408.001(b) and (c) and Section 408.002, and by Subchapters  
89-46 B and C, Chapter 413; or

89-47 (3) by direct contracting with health care providers  
89-48 or by contracting through a health benefits pool established under  
89-49 Chapter 172, Local Government Code.

89-50 (b) If the political subdivision or pool provides medical  
89-51 benefits in the manner authorized under Subsection (a)(3), the  
89-52 following do not apply:

89-53 (1) Sections 408.004 and 408.0041, unless use of a  
89-54 required medical examination or designated doctor is necessary to  
89-55 resolve an issue relating to the entitlement to or amount of income  
89-56 benefits under this title;

89-57 (2) Subchapter B, Chapter 408, except for Section  
89-58 408.021;

89-59 (3) Chapter 413, except for Section 413.042; and

89-60 (4) Chapter 1305, Insurance Code, except for Sections  
89-61 1305.501, 1305.502, and 1305.503.

89-62 (c) If the political subdivision or pool provides medical  
89-63 benefits in the manner authorized under Subsection (a)(3), the  
89-64 following standards apply:

89-65 (1) the political subdivision or pool must ensure that  
89-66 workers' compensation medical benefits are reasonably available to  
89-67 all injured workers of the political subdivision or the injured  
89-68 workers of the members of the pool within a designed service area;

89-69 (2) the political subdivision or pool must ensure that

90-1 all necessary health care services are provided in a manner that  
 90-2 will ensure the availability of and accessibility to adequate  
 90-3 health care providers, specialty care, and facilities;

90-4 (3) the political subdivision or pool must have an  
 90-5 internal review process for resolving complaints relating to the  
 90-6 manner of providing medical benefits, including an appeal to the  
 90-7 governing body or its designee and appeal to an independent review  
 90-8 organization;

90-9 (4) the political subdivision or pool must establish  
 90-10 reasonable procedures for the transition of injured workers to  
 90-11 contract providers and for the continuity of treatment, including  
 90-12 notice of impending termination of providers and a current list of  
 90-13 contract providers;

90-14 (5) the political subdivision or pool shall provide  
 90-15 for emergency care if an injured worker cannot reasonably reach a  
 90-16 contact provider and the care is for medical screening or other  
 90-17 evaluation that is necessary to determine whether a medical  
 90-18 emergency condition exists, necessary emergency care services  
 90-19 including treatment and stabilization, and services originating in  
 90-20 a hospital emergency facility following treatment or stabilization  
 90-21 of an emergency medical condition;

90-22 (6) prospective or concurrent review of the medical  
 90-23 necessity and appropriateness of health care services must comply  
 90-24 with Article 21.58A, Insurance Code;

90-25 (7) the political subdivision or pool shall continue  
 90-26 to report data to the appropriate agency as required by Title 5 of  
 90-27 this code and Chapter 1305, Insurance Code; and

90-28 (8) a political subdivision or pool is subject to the  
 90-29 requirements under Sections 1305.501, 1305.502, and 1305.503,  
 90-30 Insurance Code.

90-31 (d) Nothing in this chapter waives sovereign immunity or  
 90-32 creates a new cause of action.

90-33 SECTION 3.317. The heading to Section 505.053, Labor Code,  
 90-34 is amended to read as follows:

90-35 Sec. 505.053. CERTIFIED COPIES OF TEXAS DEPARTMENT OF  
 90-36 WORKERS' COMPENSATION [COMMISSION] DOCUMENTS.

90-37 SECTION 3.318. Subsections (a) and (c), Section 505.053,  
 90-38 Labor Code, are amended to read as follows:

90-39 (a) The Texas Department of Workers' Compensation  
 90-40 [commission] shall furnish a certified copy of an order, award,  
 90-41 decision, or paper on file in that department's [the commission's]  
 90-42 office to a person entitled to the copy on written request and  
 90-43 payment of the fee for the copy. The fee shall be the same as that  
 90-44 charged for similar services by the secretary of state's office.

90-45 (c) A fee or salary may not be paid to a person in the Texas  
 90-46 Department of Workers' Compensation [commission] for making the  
 90-47 copies that exceeds the fee charged for the copies.

90-48 SECTION 3.319. Subsection (d), Section 505.054, Labor Code,  
 90-49 is amended to read as follows:

90-50 (d) A physician designated under Subsection (c) who  
 90-51 conducts an examination shall file with the department a complete  
 90-52 transcript of the examination on a form furnished by the  
 90-53 department. The department shall maintain all reports under this  
 90-54 subsection as part of the department's permanent records. A report  
 90-55 under this subsection is admissible in evidence before the Texas  
 90-56 Department of Workers' Compensation [commission] and in an appeal  
 90-57 from a final award or ruling of that department [the commission] in  
 90-58 which the individual named in the examination is a claimant for  
 90-59 compensation under this chapter. A report under this subsection  
 90-60 that is admitted is prima facie evidence of the facts stated in the  
 90-61 report.

90-62 SECTION 3.320. Section 505.055, Labor Code, is amended to  
 90-63 read as follows:

90-64 Sec. 505.055. REPORTS OF INJURIES. (a) A report of an  
 90-65 injury filed with the Texas Department of Workers' Compensation  
 90-66 [commission] under Section 409.005, in addition to the information  
 90-67 required by commissioner of workers' compensation [commission]  
 90-68 rules, must contain:

90-69 (1) the name, age, sex, and occupation of the injured

91-1 employee;  
 91-2 (2) the character of work in which the employee was  
 91-3 engaged at the time of the injury;  
 91-4 (3) the place, date, and hour of the injury; and  
 91-5 (4) the nature and cause of the injury.

91-6 (b) In addition to subsequent reports of an injury filed  
 91-7 with the Texas Department of Workers' Compensation [~~commission~~]  
 91-8 under Section 409.005(e), the department shall file a subsequent  
 91-9 report on a form obtained for that purpose:

91-10 (1) on the termination of incapacity of the injured  
 91-11 employee; or  
 91-12 (2) if the incapacity extends beyond 60 days.

91-13 SECTION 3.321. Subsections (a) and (d), Section 505.056,  
 91-14 Labor Code, are amended to read as follows:

91-15 (a) The Texas Department of Workers' Compensation  
 91-16 [~~commission~~] may require an employee who claims to have been  
 91-17 injured to submit to an examination by that department [~~the~~  
 91-18 ~~commission~~] or a person acting under the [~~commission's~~] authority  
 91-19 of that department at a reasonable time and place in this state.

91-20 (d) On the request of an employee or the department, the  
 91-21 employee or the department is entitled to have a physician selected  
 91-22 by the employee or the department present to participate in an  
 91-23 examination under Subsection (a) or Section 408.004. The employee  
 91-24 is entitled to have a physician selected by the employee present to  
 91-25 participate in an examination under Subsection (c). The department  
 91-26 shall pay the fee set by the commissioner of the Texas Department of  
 91-27 Workers' Compensation [~~commission~~] of a physician selected by the  
 91-28 employee under this subsection.

91-29 SECTION 3.322. Subsection (a), Section 505.057, Labor Code,  
 91-30 is amended to read as follows:

91-31 (a) The commissioner of the Texas Department of Workers'  
 91-32 Compensation [~~commission~~] may order or direct the department to  
 91-33 reduce or suspend the compensation of an injured employee if the  
 91-34 employee:

91-35 (1) persists in insanitary or injurious practices that  
 91-36 tend to imperil or retard the employee's recovery; or  
 91-37 (2) refuses to submit to medical, surgical, or other  
 91-38 remedial treatment recognized by the state that is reasonably  
 91-39 essential to promote the employee's recovery.

91-40 SECTION 3.323. Section 505.058, Labor Code, is amended to  
 91-41 read as follows:

91-42 Sec. 505.058. POSTPONEMENT OF HEARING. If an injured  
 91-43 employee is receiving benefits under this chapter and the  
 91-44 department is providing hospitalization or medical treatment to the  
 91-45 employee, the Texas Department of Workers' Compensation  
 91-46 [~~commission~~] may postpone the hearing of the employee's claim. An  
 91-47 appeal may not be taken from an [~~a~~ ~~commission~~] order of the  
 91-48 commissioner of the Texas Department of Workers' Compensation under  
 91-49 this section.

91-50 SECTION 3.324. Subsection (a), Section 505.059, Labor Code,  
 91-51 is amended to read as follows:

91-52 (a) In each case appealed from the Texas Department of  
 91-53 Workers' Compensation [~~commission~~] to a county or district court:

91-54 (1) the clerk of the court shall mail to the Texas  
 91-55 Department of Workers' Compensation [~~commission~~]:

91-56 (A) not later than the 20th day after the date the  
 91-57 case is filed, a notice containing the style, number, and date of  
 91-58 filing of the case; and

91-59 (B) not later than the 20th day after the date the  
 91-60 judgment is rendered, a certified copy of the judgment; and

91-61 (2) the attorney preparing the judgment shall file the  
 91-62 original and a copy of the judgment with the clerk.

91-63 ARTICLE 4. PROVISION OF WORKERS' COMPENSATION MEDICAL BENEFITS  
 91-64 THROUGH PROVIDER NETWORKS

91-65 SECTION 4.01. The heading to Subtitle D, Title 8, Insurance  
 91-66 Code, as effective April 1, 2005, is amended to read as follows:

91-67 SUBTITLE D. [~~PREFERRED~~] PROVIDER [~~BENEFIT~~] PLANS

91-68 SECTION 4.02. Subtitle D, Title 8, Insurance Code, as  
 91-69 effective April 1, 2005, is amended by adding Chapter 1305 to read

92-1 as follows:

92-2 CHAPTER 1305. WORKERS' COMPENSATION HEALTH CARE NETWORKS

92-3 SUBCHAPTER A. GENERAL PROVISIONS

92-4 Sec. 1305.001. SHORT TITLE. This chapter may be cited as  
 92-5 the Workers' Compensation Health Care Network Act.

92-6 Sec. 1305.002. PURPOSE. The purpose of this chapter is to:

92-7 (1) authorize the establishment of workers'  
 92-8 compensation health care networks for the provision of workers'  
 92-9 compensation medical benefits; and

92-10 (2) provide standards for the certification,  
 92-11 administration, evaluation, and enforcement of the delivery of  
 92-12 health care services to injured employees by networks contracting  
 92-13 with or established by:

92-14 (A) workers' compensation insurance carriers;

92-15 (B) employers certified to self-insure under  
 92-16 Chapter 407, Labor Code;

92-17 (C) groups of employers certified to self-insure  
 92-18 under Chapter 407A, Labor Code; and

92-19 (D) governmental entities that self-insure,  
 92-20 either individually or collectively.

92-21 Sec. 1305.003. LIMITATIONS ON APPLICABILITY. (a) This  
 92-22 chapter does not affect the authority of the Texas Department of  
 92-23 Workers' Compensation to exercise the powers granted to that agency  
 92-24 under Title 5, Labor Code, that do not conflict with this chapter.

92-25 (b) In the event of a conflict between Title 5, Labor Code,  
 92-26 and this chapter as to the operation and regulation of health care  
 92-27 networks that provide workers' compensation medical benefits or the  
 92-28 provision of health care to injured employees who are subject to  
 92-29 workers' compensation health care networks, this chapter prevails.

92-30 Sec. 1305.004. DEFINITIONS. (a) In this chapter, unless  
 92-31 the context clearly indicates otherwise:

92-32 (1) "Adverse determination" means a determination,  
 92-33 made through utilization review or retrospective review, that the  
 92-34 health care services furnished or proposed to be furnished to an  
 92-35 employee are not medically necessary or appropriate.

92-36 (2) "Affiliate" means a person that directly, or  
 92-37 indirectly through one or more intermediaries, controls or is  
 92-38 controlled by, or is under common control with, the person  
 92-39 specified.

92-40 (3) "Capitation" means a method of compensation for  
 92-41 arranging for or providing health care services to employees for a  
 92-42 specified period that is based on a predetermined payment for each  
 92-43 employee for the specified period, without regard to the quantity  
 92-44 of services provided for the compensable injury.

92-45 (4) "Complainant" means a person who files a complaint  
 92-46 under this chapter. The term includes:

92-47 (A) an employee;

92-48 (B) an employer;

92-49 (C) a health care provider; and

92-50 (D) another person designated to act on behalf of  
 92-51 an employee.

92-52 (5) "Complaint" means any dissatisfaction expressed  
 92-53 orally or in writing by a complainant to a network regarding any  
 92-54 aspect of the network's operation. The term includes  
 92-55 dissatisfaction relating to medical fee disputes and the network's  
 92-56 administration and the manner in which a service is provided. The  
 92-57 term does not include:

92-58 (A) a misunderstanding or a problem of  
 92-59 misinformation that is resolved promptly by clearing up the  
 92-60 misunderstanding or supplying the appropriate information to the  
 92-61 satisfaction of the complainant; or

92-62 (B) an oral or written expression of  
 92-63 dissatisfaction or disagreement with an adverse determination.

92-64 (6) "Credentialing" means the review, under  
 92-65 nationally recognized standards to the extent that those standards  
 92-66 do not conflict with other laws of this state, of qualifications and  
 92-67 other relevant information relating to a health care provider who  
 92-68 seeks a contract with a network.

92-69 (7) "Emergency" means either a medical or mental

93-1 health emergency.

93-2 (8) "Employee" has the meaning assigned by Section  
93-3 401.012, Labor Code.

93-4 (9) "Fee dispute" means a dispute over the amount of  
93-5 payment due for health care services determined to be medically  
93-6 necessary and appropriate for treatment of a compensable injury.

93-7 (10) "Independent review" means a system for final  
93-8 administrative review by an independent review organization of the  
93-9 medical necessity and appropriateness of health care services being  
93-10 provided, proposed to be provided, or that have been provided to an  
93-11 employee.

93-12 (11) "Independent review organization" means an  
93-13 entity that is certified by the commissioner to conduct independent  
93-14 review under Article 21.58C and rules adopted by the commissioner.

93-15 (12) "Life-threatening" has the meaning assigned by  
93-16 Section 2, Article 21.58A.

93-17 (13) "Medical emergency" means the sudden onset of a  
93-18 medical condition manifested by acute symptoms of sufficient  
93-19 severity, including severe pain, that the absence of immediate  
93-20 medical attention could reasonably be expected to result in:

93-21 (A) placing the patient's health or bodily  
93-22 functions in serious jeopardy; or

93-23 (B) serious dysfunction of any body organ or  
93-24 part.

93-25 (14) "Medical records" means the history of diagnosis  
93-26 and treatment for an injury, including medical, dental, and other  
93-27 health care records from each health care practitioner who provides  
93-28 care to an injured employee.

93-29 (15) "Mental health emergency" means a condition that  
93-30 could reasonably be expected to present danger to the person  
93-31 experiencing the mental health condition or another person.

93-32 (16) "Network" or "workers' compensation health care  
93-33 network" means an organization that is:

93-34 (A) formed as a health care provider network to  
93-35 provide health care services to injured employees;

93-36 (B) certified in accordance with this chapter and  
93-37 commissioner rules; and

93-38 (C) established by, or operates under contract  
93-39 with, an insurance carrier.

93-40 (17) "Nurse" has the meaning assigned by Section 2,  
93-41 Article 21.58A.

93-42 (18) "Person" means any natural or artificial person,  
93-43 including an individual, partnership, association, corporation,  
93-44 organization, trust, hospital district, community mental health  
93-45 center, mental retardation center, mental health and mental  
93-46 retardation center, limited liability company, or limited  
93-47 liability partnership.

93-48 (19) "Preauthorization" means the process required to  
93-49 request approval from the network to provide a specific treatment  
93-50 or service before the treatment or service is provided.

93-51 (20) "Quality improvement program" means a system  
93-52 designed to continuously examine, monitor, and revise processes and  
93-53 systems that support and improve administrative and clinical  
93-54 functions.

93-55 (21) "Retrospective review" means the process of  
93-56 reviewing the medical necessity and reasonableness of health care  
93-57 that has been provided to an injured employee.

93-58 (22) "Rural area" means:

93-59 (A) a county with a population of 50,000 or less;

93-60 (B) an area that is not designated as an  
93-61 urbanized area by the United States Census Bureau; or

93-62 (C) any other area designated as rural under  
93-63 rules adopted by the commissioner.

93-64 (23) "Screening criteria" means the written policies,  
93-65 decision rules, medical protocols, and treatment guidelines used by  
93-66 a network as part of utilization review or retrospective review.

93-67 (24) "Service area" means a geographic area within  
93-68 which health care services from network providers are available and  
93-69 accessible to employees who live within that geographic area.

94-1 (25) "Texas Workers' Compensation Act" means Subtitle  
 94-2 A, Title 5, Labor Code.

94-3 (26) "Transfer of risk" means, for purposes of this  
 94-4 chapter only, an insurance carrier's transfer of financial risk for  
 94-5 the provision of health care services to a network through  
 94-6 capitation or other means.

94-7 (27) "Utilization review" has the meaning assigned by  
 94-8 Section 2, Article 21.58A.

94-9 (28) "Utilization review agent" has the meaning  
 94-10 assigned by Article 21.58A.

94-11 (29) "Utilization review plan" means the screening  
 94-12 criteria and utilization review procedures of a workers'  
 94-13 compensation health care network or utilization review agent.

94-14 (b) In this chapter, the following terms have the meanings  
 94-15 assigned by Section 401.011, Labor Code:

94-16 (1) "compensable injury";

94-17 (2) "doctor";

94-18 (3) "employer";

94-19 (4) "health care";

94-20 (5) health care facility;

94-21 (6) health care practitioner;

94-22 (7) health care provider;

94-23 (8) "injury";

94-24 (9) "insurance carrier"; and

94-25 (10) "treating doctor."

94-26 Sec. 1305.005. PARTICIPATION IN NETWORK; NOTICE OF NETWORK  
 94-27 REQUIREMENTS. (a) An employer that elects to provide workers'  
 94-28 compensation insurance coverage under the Texas Workers'  
 94-29 Compensation Act may receive workers' compensation health care  
 94-30 services for the employer's injured employees through a workers'  
 94-31 compensation health care network.

94-32 (b) An insurance carrier may establish or contract with  
 94-33 networks certified under this chapter to provide health care  
 94-34 services under the Texas Workers' Compensation Act. If an employer  
 94-35 elects to contract with an insurance company for the provision of  
 94-36 health care services through a network, or if a self-insured  
 94-37 employer under Chapter 407, Labor Code, a group of employers  
 94-38 certified to self-insure under Chapter 407A, Labor Code, or a  
 94-39 public employer under Subtitle C, Title 5, Labor Code, elects to  
 94-40 establish or contract with a network, the employer's employees who  
 94-41 live within the network's service area are required to obtain  
 94-42 medical treatment for a compensable injury within the network,  
 94-43 except as provided by Section 1305.006(a)(1) and (3).

94-44 (c) The insurance carrier shall provide to the employer, and  
 94-45 the employer shall provide to the employer's employees, notice of  
 94-46 network requirements, including all information required by  
 94-47 Section 1305.451. The employer shall:

94-48 (1) obtain a signed acknowledgment from each employee,  
 94-49 written in English, Spanish, and any other language common to the  
 94-50 employer's employees, that the employee has received information  
 94-51 concerning the network and the network's requirements; and

94-52 (2) post notice of the network requirements at each  
 94-53 place of employment.

94-54 (d) The employer shall provide to each employee hired after  
 94-55 the notice is given under Subsection (c) the notice and information  
 94-56 required under that subsection not later than the third day after  
 94-57 the date of hire.

94-58 (e) An injured employee who has received notice of network  
 94-59 requirements but refuses to sign the acknowledgment form required  
 94-60 under Subsection (c) remains subject to the network requirements  
 94-61 established under this chapter.

94-62 (f) The employer shall notify an injured employee of the  
 94-63 network requirements at the time the employer receives actual or  
 94-64 constructive notice of an injury.

94-65 (g) An injured employee is not required to comply with the  
 94-66 network requirements until the employee receives the notice under  
 94-67 Subsection (c) or (d). An insurance carrier that establishes or  
 94-68 contracts with a network is liable for the payment of medical care  
 94-69 under the requirements of Title 5, Labor Code, for an injured

95-1 employee who does not receive the notice under Subsection (c) or (d)  
 95-2 until the employee receives notice of network requirements under  
 95-3 this section.

95-4 (h) The commissioner may adopt rules as necessary to  
 95-5 implement this section.

95-6 Sec. 1305.006. INSURANCE CARRIER LIABILITY FOR  
 95-7 OUT-OF-NETWORK HEALTH CARE. (a) An insurance carrier that  
 95-8 establishes or contracts with a network is liable for the following  
 95-9 out-of-network health care that is provided to an injured employee:

95-10 (1) emergency care;

95-11 (2) health care provided to an injured employee who  
 95-12 does not live within the service area of any network established by  
 95-13 the insurance carrier or with which the insurance carrier has a  
 95-14 contract; and

95-15 (3) health care provided by an out-of-network provider  
 95-16 pursuant to a referral from the injured employee's treating doctor  
 95-17 that has been approved by the network pursuant to Section 1305.103.

95-18 (b) If an accident or health insurance carrier or other  
 95-19 person obligated for the cost of health care services has paid for  
 95-20 health care services for an employee for an injury for which a  
 95-21 workers' compensation insurance carrier denies compensability, and  
 95-22 the injury is later determined to be compensable, the accident or  
 95-23 health insurance carrier or other person may recover the amounts  
 95-24 paid for such services from the workers' compensation insurance  
 95-25 carrier.

95-26 Sec. 1305.007. RULES. The commissioner may adopt rules as  
 95-27 necessary to implement this chapter.

95-28 [Sections 1305.008-1305.050 reserved for expansion]

95-29 SUBCHAPTER B. CERTIFICATION

95-30 Sec. 1305.051. CERTIFICATION REQUIRED. (a) A person may  
 95-31 not operate a workers' compensation health care network in this  
 95-32 state unless the person holds a certificate issued under this  
 95-33 chapter and rules adopted by the commissioner.

95-34 (b) A person may not perform any act of a workers'  
 95-35 compensation health care network except in accordance with the  
 95-36 specific authorization of this chapter or rules adopted by the  
 95-37 commissioner.

95-38 (c) A health maintenance organization regulated under  
 95-39 Chapter 843 or an organization of physicians and providers that  
 95-40 operates as a preferred provider benefit plan, as defined by  
 95-41 Chapter 1301, may obtain a certification as a workers' compensation  
 95-42 health care network in the same manner as any other person if that  
 95-43 entity meets the requirements of this chapter and rules adopted by  
 95-44 the commissioner under this chapter.

95-45 Sec. 1305.052. CERTIFICATE APPLICATION. (a) A person who  
 95-46 seeks to operate as a workers' compensation health care network  
 95-47 shall apply to the department for a certificate to organize and  
 95-48 operate as a network.

95-49 (b) A certificate application must be:

95-50 (1) filed with the department in the form prescribed  
 95-51 by the commissioner;

95-52 (2) verified by the applicant or an officer or other  
 95-53 authorized representative of the applicant; and

95-54 (3) accompanied by a nonrefundable fee set by  
 95-55 commissioner rule.

95-56 Sec. 1305.053. CONTENTS OF APPLICATION. Each certificate  
 95-57 application must include:

95-58 (1) a description or a copy of the applicant's basic  
 95-59 organizational structure documents and other related documents,  
 95-60 including organizational charts or lists that show:

95-61 (A) the relationships and contracts between the  
 95-62 applicant and any affiliates of the applicant; and

95-63 (B) the internal organizational structure of the  
 95-64 applicant's management and administrative staff;

95-65 (2) biographical information regarding each person  
 95-66 who governs or manages the affairs of the applicant, accompanied by  
 95-67 information sufficient to allow the commissioner to determine the  
 95-68 competence, fitness, and reputation of each officer or director of  
 95-69 the applicant or other person having control of the applicant;

96-1           (3) a copy of the form of any contract between the  
 96-2 applicant and any provider or group of providers, and with any third  
 96-3 party performing services on behalf of the applicant under  
 96-4 Subchapter D;

96-5           (4) a copy of the form of each contract with an  
 96-6 insurance carrier, as described by Section 1305.154;

96-7           (5) a financial statement, current as of the date of  
 96-8 the application, that is prepared using generally accepted  
 96-9 accounting practices and includes:

96-10           (A) a balance sheet that reflects a solvent  
 96-11 financial position;

96-12           (B) an income statement;

96-13           (C) a cash flow statement; and

96-14           (D) the sources and uses of all funds;

96-15           (6) a statement acknowledging that lawful process in a  
 96-16 legal action or proceeding against the network on a cause of action  
 96-17 arising in this state is valid if served in the manner provided by  
 96-18 Chapter 804 for a domestic company;

96-19           (7) a description and a map of the applicant's service  
 96-20 area or areas, with key and scale, that identifies each county or  
 96-21 part of a county to be served;

96-22           (8) a description of programs and procedures to be  
 96-23 utilized, including:

96-24           (A) a complaint system, as required under  
 96-25 Subchapter I;

96-26           (B) a quality improvement program, as required  
 96-27 under Subchapter G; and

96-28           (C) the utilization review and retrospective  
 96-29 review programs described in Subchapter H;

96-30           (9) a list of all contracted network providers that  
 96-31 demonstrates the adequacy of the network to provide comprehensive  
 96-32 health care services sufficient to serve the population of injured  
 96-33 employees within the service area and maps that demonstrate that  
 96-34 the access and availability standards under Subchapter G are met;  
 96-35 and

96-36           (10) any other information that the commissioner  
 96-37 requires by rule to implement this chapter.

96-38           Sec. 1305.054. ACTION ON APPLICATION; RENEWAL OF  
 96-39 CERTIFICATION. (a) The commissioner shall approve or disapprove  
 96-40 an application for certification as a network not later than the  
 96-41 60th day after the date the completed application is received by the  
 96-42 department. An application is considered complete on receipt of  
 96-43 all information required by this chapter and any commissioner  
 96-44 rules, including receipt of any additional information requested by  
 96-45 the commissioner as needed to make the determination.

96-46           (b) Additional information requested by the commissioner  
 96-47 under Subsection (a) may include information derived from an  
 96-48 on-site quality-of-care examination.

96-49           (c) The department shall notify the applicant of any  
 96-50 deficiencies in the application and may allow the applicant to  
 96-51 request additional time to revise the application, in which case  
 96-52 the 60-day period for approval or disapproval is tolled. The  
 96-53 commissioner may grant or deny requests for additional time at the  
 96-54 commissioner's discretion.

96-55           (d) An order issued by the commissioner disapproving an  
 96-56 application must specify in what respects the application does not  
 96-57 comply with applicable statutes and rules. An applicant whose  
 96-58 application is disapproved may request a hearing not later than the  
 96-59 30th day after the date of the commissioner's disapproval order.  
 96-60 The hearing is a contested case hearing under Chapter 2001,  
 96-61 Government Code.

96-62           (e) A certificate issued under this subchapter is valid  
 96-63 until revoked or suspended.

96-64           Sec. 1305.055. USE OF CERTAIN INSURANCE TERMS BY NETWORK  
 96-65 PROHIBITED. A network is not an insurer and may not use in the  
 96-66 network's name or informational literature the word "insurance,"  
 96-67 "casualty," "surety," or "mutual" or any other word that is:

96-68           (1) descriptive of the insurance, casualty, or surety  
 96-69 business; or



97-1 (2) deceptively similar to the name or description of  
 97-2 an insurer or surety corporation engaging in the business of  
 97-3 insurance in this state.

97-4 Sec. 1305.056. RESTRAINT OF TRADE; APPLICATION OF CERTAIN  
 97-5 LAWS. (a) A network that contracts with a provider or providers  
 97-6 practicing individually or as a group is not, because of the  
 97-7 contract or arrangement, considered to have entered into a  
 97-8 conspiracy in restraint of trade in violation of Chapter 15,  
 97-9 Business & Commerce Code.

97-10 (b) Notwithstanding any other law, a person who contracts  
 97-11 under this chapter with one or more providers in the process of  
 97-12 conducting activities that are permitted by law but that do not  
 97-13 require a certificate of authority or other authorization under  
 97-14 this code is not, because of the contract, considered to have  
 97-15 entered into a conspiracy in restraint of trade in violation of  
 97-16 Chapter 15, Business & Commerce Code.

97-17 (c) A network is subject to Articles 21.28 and 21.28-A and  
 97-18 is considered an insurer or insurance company, as applicable, for  
 97-19 purposes of those laws.

97-20 [Sections 1305.057-1305.100 reserved for expansion]

97-21 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION  
 97-22 HEALTH CARE NETWORKS

97-23 Sec. 1305.101. PROVIDING OR ARRANGING FOR HEALTH CARE.

97-24 (a) Except for emergencies and out-of-network referrals, a  
 97-25 network shall provide or arrange for health care services only  
 97-26 through providers or provider groups that are under contract with  
 97-27 or are employed by the network.

97-28 (b) A network doctor may not serve as a designated doctor or  
 97-29 perform a required medical examination, as those terms are used  
 97-30 under the Texas Workers' Compensation Act, for an employee  
 97-31 receiving medical care through a network with which the doctor  
 97-32 contracts or is employed.

97-33 (c) Notwithstanding any other provision of this chapter,  
 97-34 prescription medication or services, as defined by Section  
 97-35 401.011(19)(E), Labor Code, may not be delivered through a workers'  
 97-36 compensation health care network. Prescription medication and  
 97-37 services shall be reimbursed as provided by the Texas Workers'  
 97-38 Compensation Act and applicable rules of the commissioner of the  
 97-39 Texas Department of Workers' Compensation.

97-40 Sec. 1305.102. MANAGEMENT CONTRACTS. (a) A network may  
 97-41 not enter into a contract with another entity for management  
 97-42 services unless the proposed contract is first filed with the  
 97-43 department and approved by the commissioner.

97-44 (b) The commissioner shall approve or disapprove the  
 97-45 contract not later than the 30th day after the date the contract is  
 97-46 filed, or within a reasonable extended period that the commissioner  
 97-47 specifies by notice given within the 30-day period.

97-48 (c) The contract must state that:

97-49 (1) the contract may not be canceled without cause  
 97-50 without at least 90 days' prior written notice;

97-51 (2) notice of any cancellation must be sent  
 97-52 simultaneously to the commissioner by certified mail; and

97-53 (3) the network is responsible for ensuring that all  
 97-54 functions delegated by the contract are performed in accordance  
 97-55 with applicable statutes and rules, subject to the carrier's  
 97-56 oversight and monitoring of the network's performance.

97-57 (d) The management contractor proposing to contract shall  
 97-58 provide to the commissioner information sufficient to allow the  
 97-59 commissioner to determine the competence, fitness, or reputation of  
 97-60 each of the contractor's officers and directors or other person  
 97-61 having control of the contractor, including criminal history  
 97-62 information demonstrating that none of those individuals has been  
 97-63 convicted of a felony involving moral turpitude or breach of  
 97-64 fiduciary duty.

97-65 (e) The commissioner shall disapprove the proposed contract  
 97-66 if the commissioner determines that the contract authorizes a  
 97-67 person who is not sufficiently trustworthy, competent,  
 97-68 experienced, and free from conflict of interest to manage the  
 97-69 network with due regard for the interests of employers, employees,

98-1 creditors, or the public.

98-2 (f) The commissioner may not approve a proposed management  
 98-3 contract unless the management contractor has in force in the  
 98-4 management contractor's own name a fidelity bond on the  
 98-5 contractor's officers and employees in the amount of \$250,000 or a  
 98-6 greater amount prescribed by the commissioner.

98-7 (g) The fidelity bond must be issued by an insurer  
 98-8 authorized to engage in business in this state and must be filed  
 98-9 with the department. If the commissioner determines that a  
 98-10 fidelity bond is not available from an insurer authorized to engage  
 98-11 in business in this state, the management contractor may obtain a  
 98-12 fidelity bond procured by a surplus lines agent under Chapter 981.

98-13 (h) The fidelity bond must obligate the surety to pay any  
 98-14 loss of money or other property or damage that the network sustains  
 98-15 because of an act of fraud or dishonesty by an employee or officer  
 98-16 of the management contractor during the period that the management  
 98-17 contract is in effect.

98-18 (i) In lieu of a fidelity bond, and at the commissioner's  
 98-19 discretion, the management contractor may deposit with the  
 98-20 comptroller cash or readily marketable liquid securities  
 98-21 acceptable to the commissioner. The deposit must be maintained in  
 98-22 the amount of, and is subject to the same conditions required for, a  
 98-23 fidelity bond under this section.

98-24 (j) A management contract approved by the commissioner  
 98-25 under this section may not be assigned to any other entity.

98-26 (k) A management contract filed with the department under  
 98-27 this section is confidential and is not subject to disclosure as  
 98-28 public information under Chapter 552, Government Code.

98-29 Sec. 1305.103. TREATING DOCTOR; REFERRALS. (a) A network  
 98-30 shall determine the specialty or specialties of doctors who may  
 98-31 serve as treating doctors.

98-32 (b) For each injury, an injured employee shall select a  
 98-33 treating doctor from the list of all treating doctors under  
 98-34 contract with the network in that service area.

98-35 (c) An employee being treated by a non-network provider for  
 98-36 an injury that occurred before the employer's insurance carrier  
 98-37 contracted with the network shall select a network treating doctor  
 98-38 on notification by the carrier that health care services are being  
 98-39 provided through the network. The carrier shall provide to the  
 98-40 employee all information required by Section 1305.451. If the  
 98-41 employee fails to select a treating doctor on or before the 14th day  
 98-42 after the date of receipt of the information required by Section  
 98-43 1305.451, the network may assign the employee a network treating  
 98-44 doctor.

98-45 (d) Each network shall, by contract, require treating  
 98-46 doctors to provide, at a minimum, the functions and services for  
 98-47 injured employees described by this section.

98-48 (e) A treating doctor shall provide health care to the  
 98-49 employee for the employee's compensable injury and shall make  
 98-50 referrals to other network providers, or request referrals to  
 98-51 out-of-network providers if medically necessary services are not  
 98-52 available within the network. Referrals to out-of-network  
 98-53 providers must be approved by the network. The network shall  
 98-54 approve a referral to an out-of-network provider not later than the  
 98-55 seventh day after the date on which the referral is requested, or  
 98-56 sooner if circumstances and the condition of the employee require  
 98-57 expedited approval. If the network denies the referral request,  
 98-58 the employee may appeal the decision through the network's  
 98-59 complaint process under Subchapter I.

98-60 (f) The treating doctor shall participate in the medical  
 98-61 case management process as required by the network, including  
 98-62 participation in return-to-work planning.

98-63 Sec. 1305.104. SELECTION OF TREATING DOCTOR. (a) An  
 98-64 injured employee is entitled to the employee's initial choice of a  
 98-65 treating doctor from the list provided by the network of all  
 98-66 treating doctors under contract with the network who provide  
 98-67 services within the service area in which the injured employee  
 98-68 lives. The following does not constitute an initial choice of  
 98-69 treating doctor:

99-1                   (1) a doctor salaried by the employer;  
 99-2                   (2) a doctor providing emergency care; or  
 99-3                   (3) any doctor who provides care before the employee  
 99-4 is enrolled in the network, except for a doctor selected under  
 99-5 Section 1305.105.

99-6                   (b) An employee who is dissatisfied with the initial choice  
 99-7 of a treating doctor is entitled to select an alternate treating  
 99-8 doctor from the network's list of treating doctors who provide  
 99-9 services within the service area in which the injured employee  
 99-10 lives by notifying the network in the manner prescribed by the  
 99-11 network. The network may not deny a selection of an alternate  
 99-12 treating doctor.

99-13                   (c) An employee who is dissatisfied with an alternate  
 99-14 treating doctor must obtain authorization from the network to  
 99-15 select any subsequent treating doctor. The network shall establish  
 99-16 procedures and criteria to be used in authorizing an employee to  
 99-17 select subsequent treating doctors. The criteria must include, at  
 99-18 a minimum, whether:

99-19                   (1) treatment by the current treating doctor is  
 99-20 medically inappropriate;

99-21                   (2) the employee is receiving appropriate medical care  
 99-22 to reach maximum medical improvement or medical care in compliance  
 99-23 with the network's treatment guidelines; and

99-24                   (3) a conflict exists between the employee and the  
 99-25 current treating doctor to the extent that the doctor-patient  
 99-26 relationship is jeopardized or impaired.

99-27                   (d) Denial of a request for any subsequent treating doctor  
 99-28 is subject to the appeal process for a complaint filed under  
 99-29 Subchapter I.

99-30                   (e) For purposes of this section, the following do not  
 99-31 constitute the selection of an alternate or any subsequent treating  
 99-32 doctor:

99-33                   (1) a referral made by the treating doctor, including  
 99-34 a referral for a second or subsequent opinion;

99-35                   (2) the selection of a treating doctor because the  
 99-36 original treating doctor:

99-37                   (A) dies;

99-38                   (B) retires; or

99-39                   (C) leaves the network; or

99-40                   (3) a change of treating doctor required because of a  
 99-41 change of residence by the employee to a location outside the  
 99-42 service area distance requirements, as described by Section  
 99-43 1305.302(g).

99-44                   (f) A network shall provide that an injured employee with a  
 99-45 chronic, life-threatening injury or chronic pain related to a  
 99-46 compensable injury may apply to the network's medical director to  
 99-47 use a nonprimary care physician specialist that is in the network as  
 99-48 the injured employee's treating doctor.

99-49                   (g) An application under Subsection (f) must:

99-50                   (1) include information specified by the network,  
 99-51 including certification of the medical need provided by the  
 99-52 nonprimary care physician specialist; and

99-53                   (2) be signed by the injured employee and the  
 99-54 nonprimary care physician specialist interested in serving as the  
 99-55 injured employee's treating doctor.

99-56                   (h) To be eligible to serve as the injured employee's  
 99-57 treating doctor, a physician specialist must agree to accept the  
 99-58 responsibility to coordinate all of the injured employee's health  
 99-59 care needs.

99-60                   (i) If a network denies a request under Subsection (f), the  
 99-61 injured employee may appeal the decision through the network's  
 99-62 established complaint resolution process under Subchapter I.

99-63                   Sec. 1305.105. TREATMENT BY A PRIMARY CARE PHYSICIAN OR  
 99-64 PROVIDER UNDER CHAPTER 843. (a) Notwithstanding any other  
 99-65 provision of this chapter, an injured employee required to receive  
 99-66 health care services within a network may select as the employee's  
 99-67 treating doctor a doctor who the employee selected, prior to  
 99-68 injury, as the employee's primary care physician or provider under  
 99-69 Chapter 843, as the terms "physician" and "provider" are defined in

100-1 that chapter.

100-2 (b) A doctor serving as an employee's treating doctor under  
 100-3 Subsection (a) must agree to abide by the terms of the network's  
 100-4 contract and comply with the provisions of this subchapter and  
 100-5 Subchapters D and G. Services provided by such a doctor are  
 100-6 considered to be network services and are subject to Subchapters H  
 100-7 and I.

100-8 (c) Any change of doctor requested by an employee being  
 100-9 treated by a doctor under Subsection (a) must be to a network doctor  
 100-10 and is subject to the requirements of this chapter.

100-11 Sec. 1305.106. PAYMENT OF HEALTH CARE PROVIDER. (a) The  
 100-12 commissioner shall adopt rules regarding the payment of claims by  
 100-13 health care providers in workers' compensation health care  
 100-14 networks.

100-15 (b) Rules adopted under this section shall as closely as  
 100-16 possible follow those adopted for payment of claims by Health  
 100-17 Maintenance Organizations pursuant to Subchapter J, Chapter 843.  
 100-18 Rules adopted under this section may vary from those adopted under  
 100-19 Subchapter J, Chapter 843, to consider factors specific to the  
 100-20 payment of claims in the workers' compensation system.

100-21 Sec. 1305.107. TELEPHONE ACCESS. (a) Each network shall  
 100-22 have appropriate personnel reasonably available through a  
 100-23 toll-free telephone service at least 40 hours per week during  
 100-24 normal business hours, in both time zones in this state if  
 100-25 applicable, to discuss an employee's care and to allow response to  
 100-26 requests for information, including information regarding adverse  
 100-27 determinations.

100-28 (b) A network must have a telephone system capable of  
 100-29 accepting or recording or providing instructions to incoming calls  
 100-30 during other than normal business hours. The network shall respond  
 100-31 to those calls not later than two business days after the date:

100-32 (1) the call was received by the network; or

100-33 (2) the details necessary to respond were received by  
 100-34 the network from the caller.

100-35 [Sections 1305.108-1305.150 reserved for expansion]

#### 100-36 SUBCHAPTER D. CONTRACTING PROVISIONS

100-37 Sec. 1305.151. TRANSFER OF RISK. A contract under this  
 100-38 subchapter may not involve a transfer of risk.

100-39 Sec. 1305.152. NETWORK CONTRACTS WITH PROVIDERS. (a) A  
 100-40 network shall enter into a written contract with each provider or  
 100-41 group of providers that participates in the network. A provider  
 100-42 contract under this section is confidential and is not subject to  
 100-43 disclosure as public information under Chapter 552, Government  
 100-44 Code.

100-45 (b) A network is not required to accept an application for  
 100-46 participation in the network from a health care provider who  
 100-47 otherwise meets the requirements specified in this chapter for  
 100-48 participation if the network determines that the network has  
 100-49 contracted with a sufficient number of qualified health care  
 100-50 providers.

100-51 (c) Provider contracts and subcontracts must include, at a  
 100-52 minimum, the following provisions:

100-53 (1) a hold-harmless clause stating that the network  
 100-54 and the network's contracted providers are prohibited from billing  
 100-55 or attempting to collect any amounts from employees for health care  
 100-56 services under any circumstances, including the insolvency of the  
 100-57 insurance carrier or the network, except as provided by Section  
 100-58 1305.451(b)(6);

100-59 (2) a statement that the provider agrees to follow  
 100-60 treatment guidelines adopted by the network under Section 1305.304,  
 100-61 as applicable to an employee's injury;

100-62 (3) a continuity of treatment clause that states that  
 100-63 if a provider leaves the network, the insurance carrier or network  
 100-64 is obligated to continue to reimburse the provider for a period not  
 100-65 to exceed 90 days at the contracted rate for care of an employee  
 100-66 with a life-threatening condition or an acute condition for which  
 100-67 disruption of care would harm the employee;

100-68 (4) a clause regarding appeal by the provider of  
 100-69 termination of provider status and applicable written notification

101-1 to employees regarding such a termination, including provisions  
101-2 determined by the commissioner; and

101-3 (5) any other provisions required by the commissioner  
101-4 by rule.

101-5 (d) Continued care as described by Subsection (c)(3) must be  
101-6 requested by a provider. A dispute involving continuity of care is  
101-7 subject to the dispute resolution process under Subchapter I.

101-8 (e) An insurance carrier and a network may not use any  
101-9 financial incentive or make a payment to a health care provider that  
101-10 acts directly or indirectly as an inducement to limit medically  
101-11 necessary services.

101-12 Sec. 1305.153. PROVIDER REIMBURSEMENT. (a) The amount of  
101-13 reimbursement for services provided by a network provider is  
101-14 determined by the contract between the network and the provider or  
101-15 group of providers.

101-16 (b) If a network has preauthorized a health care service,  
101-17 the insurance carrier or network or the network's agent or other  
101-18 representative may not deny payment to a provider except for  
101-19 reasons other than medical necessity.

101-20 (c) Out-of-network providers who provide care as described  
101-21 by Section 1305.006(a) shall be reimbursed as provided by the Texas  
101-22 Workers' Compensation Act and applicable rules of the commissioner  
101-23 of the Texas Department of Workers' Compensation.

101-24 (d) Subject to Subsection (a), billing by, and  
101-25 reimbursement to, contracted and out-of-network providers is  
101-26 subject to standard reimbursement requirements as provided by the  
101-27 Texas Workers' Compensation Act and applicable rules of the  
101-28 commissioner of the Texas Department of Workers' Compensation, as  
101-29 consistent with this chapter. This subsection may not be construed  
101-30 to require application of rules of the commissioner of the Texas  
101-31 Department of Workers' Compensation regarding reimbursement if  
101-32 application of those rules would negate reimbursement amounts  
101-33 negotiated by the network.

101-34 (e) An insurance carrier shall notify in writing a network  
101-35 provider if the carrier contests the compensability of the injury  
101-36 for which the provider provides health care services. A carrier may  
101-37 not deny payment for health care services provided by a network  
101-38 provider before that notification on the grounds that the injury  
101-39 was not compensable. Payment for medically necessary health care  
101-40 services provided prior to written notification of a compensability  
101-41 denial is not subject to denial, recoupment, or refund from a  
101-42 network provider based on compensability.

101-43 (f) If an insurance carrier contests the compensability of  
101-44 an injury and the injury is determined not to be compensable, the  
101-45 carrier may recover the amounts paid for health care services from  
101-46 the employee's accident or health insurance carrier, to the extent  
101-47 covered under the employee's accident or health benefit plan, or  
101-48 any other person who may be obligated for the cost of the health  
101-49 care services.

101-50 Sec. 1305.154. NETWORK-CARRIER CONTRACTS. (a) Except for  
101-51 emergencies and out-of-network referrals, a network may provide  
101-52 health care services to employees only through a written contract  
101-53 with an insurance carrier. A network-carrier contract under this  
101-54 section is confidential and is not subject to disclosure as public  
101-55 information under Chapter 552, Government Code.

101-56 (b) A carrier and a network may negotiate the functions to  
101-57 be provided by the network, except that the network shall contract  
101-58 with providers for the provision of health care functions related  
101-59 to the operation of a quality improvement program, and  
101-60 credentialing in accordance with the requirements of this chapter.

101-61 (c) A network's contract with a carrier must include:  
101-62 (1) a description of the functions that the carrier  
101-63 delegates to the network, consistent with the requirements of  
101-64 Subsection (b), and the reporting requirements for each function;  
101-65 (2) a statement that the network and any management  
101-66 contractor or third party to which the network delegates a function  
101-67 will perform all delegated functions in full compliance with all  
101-68 requirements of this chapter, the Texas Workers' Compensation Act,  
101-69 and rules of the commissioner of insurance or the commissioner of

102-1 the Texas Department of Workers' Compensation;

102-2 (3) a provision that the contract:

102-3 (A) may not be terminated without cause by either  
 102-4 party without 90 days' prior written notice; and

102-5 (B) must be terminated immediately if cause  
 102-6 exists;

102-7 (4) a hold-harmless provision stating that the  
 102-8 network, a management contractor, a third party to which the  
 102-9 network delegates a function, and the network's contracted  
 102-10 providers are prohibited from billing or attempting to collect any  
 102-11 amounts from employees for health care services under any  
 102-12 circumstances, including the insolvency of the carrier or the  
 102-13 network, except as provided by Section 1305.451(b)(6);

102-14 (5) a statement that the carrier retains ultimate  
 102-15 responsibility for ensuring that all delegated functions and all  
 102-16 management contractor functions are performed in accordance with  
 102-17 applicable statutes and rules and that the contract may not be  
 102-18 construed to limit in any way the carrier's responsibility,  
 102-19 including financial responsibility, to comply with all statutory  
 102-20 and regulatory requirements;

102-21 (6) a statement that the network's role is to provide  
 102-22 the services described under Subsection (b) as well as any other  
 102-23 services or functions delegated by the carrier, including functions  
 102-24 delegated to a management contractor, subject to the carrier's  
 102-25 oversight and monitoring of the network's performance;

102-26 (7) a requirement that the network provide the  
 102-27 carrier, at least monthly and in a form usable for audit purposes,  
 102-28 the data necessary for the carrier to comply with reporting  
 102-29 requirements of the department and the Texas Department of Workers'  
 102-30 Compensation with respect to any services provided under the  
 102-31 contract, as determined by commissioner rules;

102-32 (8) a requirement that the carrier, the network, any  
 102-33 management contractor, and any third party to which the network  
 102-34 delegates a function comply with the data reporting requirements of  
 102-35 the Texas Workers' Compensation Act and rules of the commissioner  
 102-36 of the Texas Department of Workers' Compensation;

102-37 (9) a contingency plan under which the carrier would,  
 102-38 in the event of termination of the contract or a failure to perform,  
 102-39 reassume one or more functions of the network under the contract,  
 102-40 including functions related to:

102-41 (A) payments to providers and notification to  
 102-42 employees;

102-43 (B) quality of care;

102-44 (C) utilization review;

102-45 (D) retrospective review; and

102-46 (E) continuity of care, including a plan for  
 102-47 identifying and transitioning employees to new providers;

102-48 (10) a provision that requires that any agreement by  
 102-49 which the network delegates any function to a management contractor  
 102-50 or any third party be in writing, and that such an agreement require  
 102-51 the delegated third party or management contractor to be subject to  
 102-52 all the requirements of this subchapter;

102-53 (11) a provision that requires the network to provide  
 102-54 to the department the license number of a management contractor or  
 102-55 any delegated third party who performs a function that requires a  
 102-56 license as a utilization review agent under Article 21.58A or any  
 102-57 other license under this code or another insurance law of this  
 102-58 state;

102-59 (12) an acknowledgment that:

102-60 (A) any management contractor or third party to  
 102-61 whom the network delegates a function must perform in compliance  
 102-62 with this chapter and other applicable statutes and rules, and that  
 102-63 the management contractor or third party is subject to the  
 102-64 carrier's and the network's oversight and monitoring of its  
 102-65 performance; and

102-66 (B) if the management contractor or the third  
 102-67 party fails to meet monitoring standards established to ensure that  
 102-68 functions delegated to the management contractor or the third party  
 102-69 under the delegation contract are in full compliance with all

103-1 statutory and regulatory requirements, the carrier or the network  
 103-2 may cancel the delegation of one or more delegated functions;

103-3 (13) a requirement that the network and any management  
 103-4 contractor or third party to which the network delegates a function  
 103-5 provide all necessary information to allow the carrier to provide  
 103-6 information to employees as required by Section 1305.451; and

103-7 (14) a provision that requires the network, in  
 103-8 contracting with a third party directly or through another third  
 103-9 party, to require the third party to permit the commissioner to  
 103-10 examine at any time any information the commissioner believes is  
 103-11 relevant to the third party's financial condition or the ability of  
 103-12 the network to meet the network's responsibilities in connection  
 103-13 with any function the third party performs or has been delegated.

103-14 (d) An insurance carrier, a network, and any management  
 103-15 contractor or third party to which the network delegates a function  
 103-16 may not use any financial incentive or make a payment to a health  
 103-17 care provider that acts directly or indirectly as an inducement to  
 103-18 limit medically necessary services.

103-19 Sec. 1305.155. COMPLIANCE REQUIREMENTS. (a) An insurance  
 103-20 carrier that becomes aware of any information that indicates that  
 103-21 the network, any management contractor, or any third party to which  
 103-22 the network delegates a function is not operating in accordance  
 103-23 with the contract or is operating in a condition that renders the  
 103-24 continuance of the network's business hazardous to employees shall:

103-25 (1) notify the network in writing of those findings;

103-26 (2) request in writing a written explanation, with  
 103-27 documentation supporting the explanation, of:

103-28 (A) the network's apparent noncompliance with  
 103-29 the contract; or

103-30 (B) the existence of the condition that  
 103-31 apparently renders the continuance of the network's business  
 103-32 hazardous to employees; and

103-33 (3) notify the commissioner and provide the department  
 103-34 with copies of all notices and requests submitted to the network and  
 103-35 the responses and other documentation the carrier generates or  
 103-36 receives in response to the notices and requests.

103-37 (b) A network shall respond to a request from a carrier  
 103-38 under Subsection (a) in writing not later than the 30th day after  
 103-39 the date the request is received.

103-40 (c) The carrier shall cooperate with the network to correct  
 103-41 any failure by the network to comply with any regulatory  
 103-42 requirement of the department.

103-43 (d) On receipt of a notice under Subsection (a), or if a  
 103-44 complaint is filed with the department, on receipt of that  
 103-45 complaint, the commissioner or the commissioner's designated  
 103-46 representative shall examine the matters contained in the notice or  
 103-47 complaint as well as any other matter relating to the financial  
 103-48 solvency of the network or the network's ability to meet its  
 103-49 responsibilities in connection with any function performed by the  
 103-50 network or delegated to the network by the carrier.

103-51 (e) Except as provided by this subsection, on completion of  
 103-52 the examination, the department shall report to the network and the  
 103-53 carrier the results of the examination and any action the  
 103-54 department determines is necessary to ensure that the carrier meets  
 103-55 its responsibilities under this chapter, this code, and rules  
 103-56 adopted by the commissioner, and that the network can meet the  
 103-57 network's responsibilities in connection with any function  
 103-58 delegated by the carrier or performed by the network, any  
 103-59 management contractor, or any third party to which the network  
 103-60 delegates a function. The department may not report to the carrier  
 103-61 any information regarding fee schedules, prices, cost of care, or  
 103-62 other information not relevant to the monitoring plan.

103-63 (f) The network and the carrier shall respond to the  
 103-64 department's report and submit a corrective plan to the department  
 103-65 not later than the 30th day after the date of receipt of the report.

103-66 (g) The commissioner may order a carrier to take any action  
 103-67 the commissioner determines is necessary to ensure that the carrier  
 103-68 can provide all health care services under the Texas Workers'  
 103-69 Compensation Act, including:

104-1 (1) reassuming the functions performed by or delegated  
 104-2 to the network, including claims payments for services previously  
 104-3 provided to injured employees;

104-4 (2) temporarily or permanently ceasing coverage of  
 104-5 employees through the network;

104-6 (3) complying with the contingency plan required by  
 104-7 Section 1305.154(c)(9), including permitting an injured employee  
 104-8 to select a treating doctor in the manner provided by Section  
 104-9 408.022, Labor Code; or

104-10 (4) terminating the carrier's contract with the  
 104-11 network.

104-12 (h) The carrier retains ultimate responsibility for  
 104-13 ensuring that all delegated functions and all management contractor  
 104-14 functions are performed in accordance with applicable statutes and  
 104-15 rules and nothing in this section may be construed to limit in any  
 104-16 way the carrier's responsibility, including financial  
 104-17 responsibility, to comply with all statutory and regulatory  
 104-18 requirements.

104-19 [Sections 1305.156-1305.200 reserved for expansion]

104-20 SUBCHAPTER E. FINANCIAL REQUIREMENTS

104-21 Sec. 1305.201. NETWORK FINANCIAL REQUIREMENTS. (a) Each  
 104-22 network shall prepare financial statements in accordance with  
 104-23 generally accepted accounting standards, which must include  
 104-24 adequate provisions for liabilities, including incurred but not  
 104-25 reported obligations relating to providing benefits or services.

104-26 (b) Each network shall file the financial statement under  
 104-27 Subsection (a) with the department in the manner prescribed by  
 104-28 commissioner rule.

104-29 [Sections 1305.202-1305.250 reserved for expansion]

104-30 SUBCHAPTER F. EXAMINATIONS

104-31 Sec. 1305.251. EXAMINATION OF NETWORK. (a) As often as  
 104-32 the commissioner considers necessary, the commissioner or the  
 104-33 commissioner's designated representative may review the operations  
 104-34 of a network to determine compliance with this chapter. The review  
 104-35 may include on-site visits to the network's premises.

104-36 (b) During on-site visits, the network must make available  
 104-37 to the department all records relating to the network's operations.

104-38 Sec. 1305.252. EXAMINATION OF PROVIDER OR THIRD PARTY. If  
 104-39 requested by the commissioner or the commissioner's  
 104-40 representative, each provider, provider group, or third party with  
 104-41 which the network has contracted to provide health care services or  
 104-42 any other services delegated to the network by an insurance carrier  
 104-43 shall make available for examination by the department that portion  
 104-44 of the books and records of the provider, provider group, or third  
 104-45 party that is relevant to the relationship with the network of the  
 104-46 provider, provider group, or third party.

104-47 [Sections 1305.253-1305.300 reserved for expansion]

104-48 SUBCHAPTER G. PROVISION OF SERVICES BY NETWORK; QUALITY  
 104-49 IMPROVEMENT PROGRAM

104-50 Sec. 1305.301. NETWORK ORGANIZATION; SERVICE AREAS.  
 104-51 (a) The chief executive officer, operations officer, or governing  
 104-52 body of a network is responsible for:

104-53 (1) the development, approval, implementation, and  
 104-54 enforcement of:

104-55 (A) administrative, operational, personnel, and  
 104-56 patient care policies; and

104-57 (B) network procedures; and

104-58 (2) the development of any documents necessary for the  
 104-59 operation of the network.

104-60 (b) Each network shall have a chief executive officer or  
 104-61 operations officer who:

104-62 (1) is accountable for the day-to-day administration  
 104-63 of the network; and

104-64 (2) shall ensure compliance with all applicable  
 104-65 statutes and rules pertaining to the operation of the network.

104-66 (c) Each network shall have a medical director, who must be  
 104-67 an occupational medicine specialist or employ or contract with an  
 104-68 occupational medicine specialist, and who must be licensed to  
 104-69 practice medicine in the United States. The medical director



shall:

(1) be available at all times to address complaints, clinical issues, and any quality improvement issues on behalf of the network;

(2) be actively involved in all quality improvement activities; and

(3) comply with the network's credentialing requirements.

(d) The network shall establish one or more service areas within this state. For each defined service area, the network must:

(1) demonstrate to the satisfaction of the department the ability to provide continuity, accessibility, availability, and quality of services;

(2) specify the counties and zip code areas, or any parts of a county or zip code area, included in the service area; and

(3) provide a complete provider directory to all policyholders who have selected a network in the service area.

Sec. 1305.302. ACCESSIBILITY AND AVAILABILITY REQUIREMENTS. (a) All services specified by this section must be provided by a provider who holds an appropriate license, unless the provider is exempt from license requirements.

(b) The network shall ensure that the network's provider panel includes an adequate number of treating doctors and specialists, who must be available and accessible to employees 24 hours a day, seven days a week, within the network's service area. An adequate number of the treating doctors and specialists must have admitting privileges at one or more network hospitals located within the network's service area to ensure that any necessary hospital admissions are made.

(c) Hospital services must be available and accessible 24 hours a day, seven days a week, within the network's service area. The network shall provide for the necessary hospital services by contracting with general, special, and psychiatric hospitals.

(d) Physical and occupational therapy services and chiropractic services must be available and accessible within the network's service area.

(e) Emergency care must be available and accessible 24 hours a day, seven days a week, without restrictions as to where the services are rendered.

(f) Except for emergencies, a network shall arrange for services, including referrals to specialists, to be accessible to employees on a timely basis on request, but not later than the last day of the third week after the date of the request.

(g) Each network shall provide that network services are sufficiently accessible and available as necessary to ensure that the distance from any point in the network's service area to a point of service by a treating doctor or general hospital is not greater than 30 miles in nonrural areas and 60 miles in rural areas and that the distance from any point in the network's service area to a point of service by a specialist or specialty hospital is not greater than 75 miles in nonrural areas and 75 miles in rural areas. For portions of the service area in which the network identifies noncompliance with this subsection, the network must file an access plan with the department in accordance with Subsection (h).

(h) The network shall submit an access plan, as required by commissioner rules, to the department for approval at least 30 days before implementation of the plan if any health care service or a network provider is not available to an employee within the distance specified by Subsection (g) because:

(1) providers are not located within that distance;

(2) the network is unable to obtain provider contracts after good faith attempts; or

(3) providers meeting the network's minimum quality of care and credentialing requirements are not located within that distance.

(i) The network may make arrangements with providers outside the service area to enable employees to receive a skill or specialty not available within the network service area.

106-1 (j) The network may not be required to expand services  
 106-2 outside the network's service area to accommodate employees who  
 106-3 live outside the service area.

106-4 Sec. 1305.303. QUALITY OF CARE REQUIREMENTS. (a) A  
 106-5 network shall develop and maintain an ongoing quality improvement  
 106-6 program designed to objectively and systematically monitor and  
 106-7 evaluate the quality and appropriateness of care and services and  
 106-8 to pursue opportunities for improvement. The quality improvement  
 106-9 program must include return-to-work and medical case management  
 106-10 programs.

106-11 (b) The network's governing body is ultimately responsible  
 106-12 for the quality improvement program. The governing body shall:

106-13 (1) appoint a quality improvement committee that  
 106-14 includes network providers;

106-15 (2) approve the quality improvement program;

106-16 (3) approve an annual quality improvement plan;

106-17 (4) meet at least annually to receive and review  
 106-18 reports of the quality improvement committee or group of  
 106-19 committees, and take action as appropriate; and

106-20 (5) review the annual written report on the quality  
 106-21 improvement program.

106-22 (c) The quality improvement committee or committees shall  
 106-23 evaluate the overall effectiveness of the quality improvement  
 106-24 program as determined by commissioner rules.

106-25 (d) The quality improvement program must be continuous and  
 106-26 comprehensive and must address both the quality of clinical care  
 106-27 and the quality of services. The network shall dedicate adequate  
 106-28 resources, including adequate personnel and information systems,  
 106-29 to the quality improvement program.

106-30 (e) The network shall develop a written description of the  
 106-31 quality improvement program that outlines the organizational  
 106-32 structure of the program, the functional responsibilities of the  
 106-33 program, and the frequency of committee meetings.

106-34 (f) The network shall develop an annual quality improvement  
 106-35 work plan designed to reflect the type of services and the  
 106-36 populations served by the network in terms of age groups, disease or  
 106-37 injury categories, and special risk status, such as type of  
 106-38 industry.

106-39 (g) The network shall prepare an annual written report to  
 106-40 the department on the quality improvement program. The report must  
 106-41 include:

106-42 (1) completed activities;

106-43 (2) the trending of clinical and service goals;

106-44 (3) an analysis of program performance; and

106-45 (4) conclusions regarding the effectiveness of the  
 106-46 program.

106-47 (h) Each network shall implement a documented process for  
 106-48 the selection and retention of contracted providers, in accordance  
 106-49 with rules adopted by the commissioner.

106-50 (i) The quality improvement program must provide for a peer  
 106-51 review action procedure for providers, as described by Section  
 106-52 151.002, Occupations Code.

106-53 (j) The network shall have a medical case management program  
 106-54 with certified case managers. Case managers shall work with  
 106-55 treating doctors, referral providers, and employers to facilitate  
 106-56 cost-effective care and employee return-to-work.

106-57 Sec. 1305.304. GUIDELINES AND PROTOCOLS. Each network  
 106-58 shall adopt treatment guidelines, return-to-work guidelines, and  
 106-59 individual treatment protocols. The treatment guidelines and  
 106-60 individual treatment protocols must be evidence-based,  
 106-61 scientifically valid, and outcome-focused and be designed to reduce  
 106-62 inappropriate or unnecessary health care while safeguarding  
 106-63 necessary care.

106-64 [Sections 1305.305-1305.350 reserved for expansion]

106-65 SUBCHAPTER H. UTILIZATION REVIEW; RETROSPECTIVE REVIEW

106-66 Sec. 1305.351. UTILIZATION REVIEW AND RETROSPECTIVE REVIEW  
 106-67 IN NETWORK. (a) The requirements of Article 21.58A apply to  
 106-68 utilization review conducted in relation to claims in a workers'  
 106-69 compensation health care network. In the event of a conflict

107-1 between Article 21.58A and this chapter, this chapter controls.

107-2 (b) Any screening criteria used for utilization review or  
 107-3 retrospective review related to a workers' compensation health care  
 107-4 network must be consistent with the network's treatment guidelines.

107-5 Sec. 1305.352. GENERAL STANDARDS FOR RETROSPECTIVE REVIEW.

107-6 (a) Retrospective review of a health care service shall be based  
 107-7 on written screening criteria established and periodically updated  
 107-8 with appropriate involvement from doctors, including actively  
 107-9 practicing doctors, and other health care providers.

107-10 (b) Retrospective review must be performed under the  
 107-11 direction of a physician.

107-12 Sec. 1305.353. NOTICE OF CERTAIN UTILIZATION REVIEW  
 107-13 DETERMINATIONS; PREAUTHORIZATION REQUIREMENTS. (a) The entity  
 107-14 performing utilization review or retrospective review shall notify  
 107-15 the employee or the employee's representative, if any, and the  
 107-16 requesting provider of a determination made in a utilization review  
 107-17 or retrospective review.

107-18 (b) Notification of an adverse determination must include:

107-19 (1) the principal reasons for the adverse  
 107-20 determination;

107-21 (2) the clinical basis for the adverse determination;

107-22 (3) a description of or the source of the screening  
 107-23 criteria that were used as guidelines in making the determination;

107-24 (4) a description of the procedure for the  
 107-25 reconsideration process; and

107-26 (5) notification of the availability of independent  
 107-27 review in the form prescribed by the commissioner.

107-28 (c) On receipt of a preauthorization request from a provider  
 107-29 for proposed services that require preauthorization, the  
 107-30 utilization review agent shall issue and transmit a determination  
 107-31 indicating whether the proposed health care services are  
 107-32 preauthorized. The utilization review agent shall respond to  
 107-33 requests for preauthorization within the periods prescribed by this  
 107-34 section.

107-35 (d) For services not described under Subsection (e) or (f),  
 107-36 the determination under Subsection (c) must be issued and  
 107-37 transmitted not later than the third calendar day after the date the  
 107-38 request is received.

107-39 (e) If the proposed services are for concurrent  
 107-40 hospitalization care, the utilization review agent shall, within 24  
 107-41 hours of receipt of the request, transmit a determination  
 107-42 indicating whether the proposed services are preauthorized.

107-43 (f) If the proposed health care services involve  
 107-44 poststabilization treatment or a life-threatening condition, the  
 107-45 utilization review agent shall transmit to the requesting provider  
 107-46 a determination indicating whether the proposed services are  
 107-47 preauthorized within the time appropriate to the circumstances  
 107-48 relating to the delivery of the services and the condition of the  
 107-49 patient, not to exceed one hour from receipt of the request. If the  
 107-50 utilization review agent issues an adverse determination in  
 107-51 response to a request for poststabilization treatment or a request  
 107-52 for treatment involving a life-threatening condition, the  
 107-53 utilization review agent shall provide to the employee or the  
 107-54 employee's representative, if any, and the employee's treating  
 107-55 provider the notification required under Subsection (a).

107-56 (g) For life-threatening conditions, the notification of  
 107-57 adverse determination must include notification of the  
 107-58 availability of independent review in the form prescribed by the  
 107-59 commissioner.

107-60 (h) Treatments and services for an emergency do not require  
 107-61 preauthorization.

107-62 Sec. 1305.354. RECONSIDERATION OF ADVERSE DETERMINATION.

107-63 (a) A utilization review agent shall maintain and make available a  
 107-64 written description of the reconsideration procedures involving an  
 107-65 adverse determination. The reconsideration procedures must be  
 107-66 reasonable and must include:

107-67 (1) a provision stating that reconsideration must be  
 107-68 performed by a provider other than the provider who made the  
 107-69 original adverse determination;

108-1 (2) a provision that an employee, a person acting on  
 108-2 behalf of the employee, or the employee's requesting provider may,  
 108-3 not later than the 30th day after the date of issuance of written  
 108-4 notification of an adverse determination, request reconsideration  
 108-5 of the adverse determination either orally or in writing;

108-6 (3) a provision that, not later than the fifth  
 108-7 calendar day after the date of receipt of the request, the network  
 108-8 shall send to the requesting party a letter acknowledging the date  
 108-9 of the receipt of the request that includes a reasonable list of  
 108-10 documents the requesting party is required to submit;

108-11 (4) a provision that, after completion of the review  
 108-12 of the request for reconsideration of the adverse determination,  
 108-13 the utilization review agent shall issue a response letter to the  
 108-14 employee or person acting on behalf of the employee, and the  
 108-15 employee's requesting provider, that:

108-16 (A) explains the resolution of the  
 108-17 reconsideration; and

108-18 (B) includes:

108-19 (i) a statement of the specific medical or  
 108-20 clinical reasons for the resolution;

108-21 (ii) the medical or clinical basis for the  
 108-22 decision;

108-23 (iii) the professional specialty of any  
 108-24 provider consulted; and

108-25 (iv) notice of the requesting party's right  
 108-26 to seek review of the denial by an independent review organization  
 108-27 and the procedures for obtaining that review; and

108-28 (5) written notification to the requesting party of  
 108-29 the determination of the request for reconsideration as soon as  
 108-30 practicable, but not later than the 30th day after the date the  
 108-31 utilization review agent received the request.

108-32 (b) In addition to the written request for reconsideration,  
 108-33 the reconsideration procedures must include a method for expedited  
 108-34 reconsideration procedures for denials of proposed health care  
 108-35 services involving poststabilization treatment or life-threatening  
 108-36 conditions, and for denials of continued stays for hospitalized  
 108-37 employees. The procedures must include a review by a provider who  
 108-38 has not previously reviewed the case and who is of the same or a  
 108-39 similar specialty as a provider who typically manages the  
 108-40 condition, procedure, or treatment under review. The period during  
 108-41 which that reconsideration must be completed shall be based on the  
 108-42 medical or clinical immediacy of the condition, procedure, or  
 108-43 treatment, but may not exceed one calendar day from the date of  
 108-44 receipt of all information necessary to complete the  
 108-45 reconsideration.

108-46 (c) Notwithstanding Subsection (a) or (b), an employee with  
 108-47 a life-threatening condition is entitled to an immediate review by  
 108-48 an independent review organization and is not required to comply  
 108-49 with the procedures for a reconsideration of an adverse  
 108-50 determination.

108-51 Sec. 1305.355. INDEPENDENT REVIEW OF ADVERSE  
 108-52 DETERMINATION. (a) The utilization review agent shall:

108-53 (1) permit the employee or person acting on behalf of  
 108-54 the employee and the employee's requesting provider whose  
 108-55 reconsideration of an adverse determination is denied to seek  
 108-56 review of that determination within the period prescribed by  
 108-57 Subsection (b) by an independent review organization assigned in  
 108-58 accordance with Article 21.58C and commissioner rules; and

108-59 (2) provide to the appropriate independent review  
 108-60 organization, not later than the third business day after the date  
 108-61 the utilization review agent receives notification of the  
 108-62 assignment of the request to an independent review organization:

108-63 (A) any medical records of the employee that are  
 108-64 relevant to the review;

108-65 (B) any documents used by the utilization review  
 108-66 agent in making the determination;

108-67 (C) the response letter described by Section  
 108-68 1305.354(a)(4);

108-69 (D) any documentation and written information

submitted in support of the request for reconsideration; and  
 (E) a list of the providers who provided care to the employee and who may have medical records relevant to the review.

(b) A request for independent review under Subsection (a) must be timely filed by the requestor as follows:

(1) for a request for preauthorization or concurrent review by an independent review organization, not later than the 45th day after the date of denial of a reconsideration for health care requiring preauthorization or concurrent review; or

(2) for a request for retrospective medical necessity review, not later than the 45th day after the denial of reconsideration.

(c) The insurance carrier shall pay for the independent review provided under this subchapter.

(d) The department shall assign the review request to an independent review organization.

(e) A party to a medical dispute that remains unresolved after a review under this section may seek judicial review of the decision. The department is not considered a party to the medical dispute.

(f) A determination of an independent review organization related to a request for preauthorization or concurrent review is binding during the pendency of any appeal, and the carrier and network shall comply with the determination.

(g) If judicial review is not sought under this section, the carrier and network shall comply with the independent review organization's determination.

[Sections 1305.356-1305.400 reserved for expansion]

#### SUBCHAPTER I. COMPLAINT RESOLUTION

Sec. 1305.401. COMPLAINT SYSTEM REQUIRED. (a) Each network shall implement and maintain a complaint system that provides reasonable procedures to resolve an oral or written complaint.

(b) The network may require a complainant to file the complaint not later than the 90th day after the date of the event or occurrence that is the basis for the complaint.

(c) The complaint system must include a process for the notice and appeal of a complaint.

(d) The commissioner may adopt rules as necessary to implement this section.

Sec. 1305.402. COMPLAINT INITIATION AND INITIAL RESPONSE; DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant notifies a network of a complaint, the network, not later than the seventh calendar day after the date the network receives the complaint, shall respond to the complainant, acknowledging the date of receipt of the complaint and providing a description of the network's complaint procedures and deadlines.

(b) The network shall investigate and resolve a complaint not later than the 30th calendar day after the date the network receives the complaint.

Sec. 1305.403. RECORD OF COMPLAINTS. (a) Each network shall maintain a complaint and appeal log regarding each complaint. The commissioner shall adopt rules designating the classification of network complaints under this section.

(b) Each network shall maintain a record of and documentation on each complaint, complaint proceeding, and action taken on the complaint until the third anniversary of the date the complaint was received.

(c) A complainant is entitled to a copy of the network's record regarding the complaint and any proceeding relating to that complaint.

(d) The department, during any investigation or examination of a network, may review documentation maintained under this subchapter, including original documentation, regarding a complaint and action taken on the complaint.

Sec. 1305.404. RETALIATORY ACTION PROHIBITED. A network may not engage in any retaliatory action against an employer or employee because the employer or employee or a person acting on

110-1 behalf of the employer or employee has filed a complaint against the  
 110-2 network.

110-3 Sec. 1305.405. POSTING OF INFORMATION ON COMPLAINT PROCESS  
 110-4 REQUIRED. (a) A contract between a network and a provider must  
 110-5 require the provider to post, in the provider's office, a notice to  
 110-6 injured employees on the process for resolving complaints with the  
 110-7 network.

110-8 (b) The notice required under Subsection (a) must include  
 110-9 the department's toll-free telephone number for filing a complaint.

110-10 [Sections 1305.406-1305.450 reserved for expansion]

110-11 SUBCHAPTER J. EMPLOYEE INFORMATION AND RESPONSIBILITIES

110-12 Sec. 1305.451. EMPLOYEE INFORMATION; RESPONSIBILITIES OF  
 110-13 EMPLOYEE. (a) An insurance carrier that establishes or contracts  
 110-14 with a network shall provide to employers, and the employer shall  
 110-15 provide to its employees, an accurate written description of the  
 110-16 terms and conditions for obtaining health care within the network's  
 110-17 service area.

110-18 (b) The written description required under Subsection (a)  
 110-19 must be in English, Spanish, and any additional language common to  
 110-20 an employer's employees, must be in plain language and in a readable  
 110-21 and understandable format, and must include, in a clear, complete,  
 110-22 and accurate format:

110-23 (1) a statement that the entity providing health care  
 110-24 to employees is a workers' compensation health care network;

110-25 (2) the network's toll-free number and address for  
 110-26 obtaining additional information about the network, including  
 110-27 information about network providers;

110-28 (3) a statement that in the event of an injury, the  
 110-29 employee must select a treating doctor:

110-30 (A) from a list of all the network's treating  
 110-31 doctors who have contracts with the network in that service area; or

110-32 (B) as described by Section 1305.105;

110-33 (4) a statement that, except for emergency services,  
 110-34 the employee shall obtain all health care and specialist referrals  
 110-35 through the employee's treating doctor;

110-36 (5) an explanation that network providers have agreed  
 110-37 to look only to the network or insurance carrier and not to  
 110-38 employees for payment of providing health care, except as provided  
 110-39 by Subdivision (6);

110-40 (6) a statement that if the employee obtains health  
 110-41 care from non-network providers without network approval, except as  
 110-42 provided by Section 1305.006(a), the insurance carrier may not be  
 110-43 liable, and the employee may be liable, for payment for that health  
 110-44 care;

110-45 (7) information about how to obtain emergency care  
 110-46 services, including emergency care outside the service area, and  
 110-47 after-hours care;

110-48 (8) a list of the health care services for which the  
 110-49 network requires preauthorization;

110-50 (9) an explanation regarding continuity of treatment  
 110-51 in the event of the termination from the network of a treating  
 110-52 doctor;

110-53 (10) a description of the network's complaint system,  
 110-54 including a statement that the network is prohibited from  
 110-55 retaliating against:

110-56 (A) an employee if the employee files a complaint  
 110-57 against the network or appeals a decision of the network; or

110-58 (B) a provider if the provider, on behalf of an  
 110-59 employee, reasonably files a complaint against the network or  
 110-60 appeals a decision of the network;

110-61 (11) a summary of the network's procedures relating to  
 110-62 adverse determinations and the availability of the independent  
 110-63 review process;

110-64 (12) a list of network providers updated at least  
 110-65 quarterly, including:

110-66 (A) the names and addresses of the providers;

110-67 (B) a statement of limitations of accessibility  
 110-68 and referrals to specialists; and

110-69 (C) a disclosure of which providers are accepting

111-1 new patients; and

111-2 (13) a description of the network's service area.

111-3 (c) The network and the network's representatives and  
111-4 agents may not cause or knowingly permit the use or distribution to  
111-5 employees of information that is untrue or misleading.

111-6 (d) A network that contracts with an insurance carrier shall  
111-7 provide all the information necessary to allow the carrier to  
111-8 comply with this section.

111-9 [Sections 1305.452-1305.500 reserved for expansion]

111-10 SUBCHAPTER K. EVALUATION OF NETWORKS; CONSUMER REPORT CARD

111-11 Sec. 1305.501. EVALUATION OF NETWORKS. (a) In accordance  
111-12 with the research duties assigned to the department under Chapter  
111-13 405, Labor Code, the department shall:

111-14 (1) objectively evaluate the cost and the quality of  
111-15 medical care provided by networks certified under this chapter; and

111-16 (2) report the department's findings to the governor,  
111-17 the lieutenant governor, the speaker of the house of  
111-18 representatives, and the members of the legislature not later than  
111-19 September 1 of each even-numbered year.

111-20 (b) At the minimum, the report required under Subsection (a)  
111-21 must evaluate:

111-22 (1) the average medical and indemnity cost per claim  
111-23 for health care services provided through networks;

111-24 (2) the access to care and utilization by injured  
111-25 employees of health care provided through networks;

111-26 (3) injured employee return-to-work outcomes;

111-27 (4) injured employee satisfaction and health-related  
111-28 functional outcomes; and

111-29 (5) the frequency, duration, and outcome of disputes  
111-30 regarding medical benefits.

111-31 (c) The department shall include in the report a comparison  
111-32 of the administrative burdens incurred by health care providers who  
111-33 provide workers' compensation medical benefits through networks  
111-34 with those incurred by providers who provide analogous medical  
111-35 benefits outside the network structure.

111-36 Sec. 1305.502. CONSUMER REPORT CARDS. (a) The department  
111-37 shall annually issue consumer report cards that identify and  
111-38 compare, on an objective basis, the networks certified by the  
111-39 department under this chapter.

111-40 (b) The department shall ensure that consumer report cards  
111-41 issued by the department under this section are accessible to the  
111-42 public on the department's Internet website and available to any  
111-43 person on request. The commissioner, by rule, may set a reasonable  
111-44 fee to obtain a paper copy of consumer report cards.

111-45 Sec. 1305.503. CONFIDENTIALITY REQUIREMENTS. (a) As  
111-46 necessary to implement this subchapter, the department is entitled  
111-47 to information that is otherwise confidential under any law of this  
111-48 state, including the Texas Workers' Compensation Act.

111-49 (b) Confidential information provided to or obtained by the  
111-50 department under this section remains confidential and is not  
111-51 subject to disclosure under Chapter 552, Government Code. The  
111-52 department may not release, and a person may not gain access to, any  
111-53 information that:

111-54 (1) could reasonably be expected to reveal the  
111-55 identity of an injured employee; or

111-56 (2) discloses provider discounts or differentials  
111-57 between payments and billed charges for individual providers or  
111-58 networks.

111-59 (c) Information that is in the possession of the department  
111-60 and that relates to an individual injured employee, and any  
111-61 compilation, report, or analysis produced from the information that  
111-62 identifies an individual injured employee, are not:

111-63 (1) subject to discovery, subpoena, or other means of  
111-64 legal compulsion for release to any person; or

111-65 (2) admissible in any civil, administrative, or  
111-66 criminal proceeding.

111-67 [Sections 1305.504-1305.550 reserved for expansion]

111-68 SUBCHAPTER L. DISCIPLINARY ACTIONS

111-69 Sec. 1305.551. DETERMINATION OF VIOLATION; NOTICE. (a) If

112-1 the commissioner determines that a network, insurance carrier, or  
 112-2 any other person or third party operating under this chapter,  
 112-3 including a third party to which a network delegates a function, or  
 112-4 any third party with which a network contracts for management  
 112-5 services, is in violation of this chapter, rules adopted by the  
 112-6 commissioner under this chapter, or applicable provisions of the  
 112-7 Labor Code or rules adopted under that code, the commissioner or a  
 112-8 designated representative may notify the network, insurance  
 112-9 carrier, person, or third party of the alleged violation and may  
 112-10 compel the production of any documents or other information as  
 112-11 necessary to determine whether the violation occurred.

112-12 (b) The commissioner's designated representative may  
 112-13 initiate the proceedings under this section.

112-14 (c) A proceeding under this section is a contested case  
 112-15 under Chapter 2001, Government Code.

112-16 Sec. 1305.552. DISCIPLINARY ACTIONS. If under Section  
 112-17 1305.551 the commissioner determines that a network, insurance  
 112-18 carrier, or other person or third party described under Section  
 112-19 1305.551 has violated or is violating this chapter, rules adopted  
 112-20 by the commissioner under this chapter, or the Labor Code or rules  
 112-21 adopted under that code, the commissioner may:

112-22 (1) suspend or revoke a certificate issued under this  
 112-23 code;

112-24 (2) impose sanctions under Chapter 82;

112-25 (3) issue a cease and desist order under Chapter 83;

112-26 (4) impose administrative penalties under Chapter 84;

112-27 or

112-28 (5) take any combination of these actions.

#### 112-29 ARTICLE 5. RATES AND UNDERWRITING REQUIREMENTS

112-30 SECTION 5.01. Section 1, Article 5.55, Insurance Code, is  
 112-31 amended by amending Subdivision (2) and adding Subdivision (2-a) to  
 112-32 read as follows:

112-33 (2) "Insurer" means a person authorized and admitted  
 112-34 by the department [~~Texas Department of Insurance~~] to engage in the  
 112-35 [~~do insurance~~] business of insurance in this state under a  
 112-36 certificate of authority that includes authorization to write  
 112-37 workers' compensation insurance. The term includes:

112-38 (A) the Texas Mutual Insurance Company;

112-39 (B) a Lloyd's plan under Chapter 941 of this

112-40 code;

112-41 (C) a reciprocal and interinsurance exchange  
 112-42 under Chapter 942 of this code; and

112-43 (D) a workers' compensation self-insurance group  
 112-44 required to file rates under Chapter 407A, Labor Code.

112-45 (2-a) "Premium" means the amount charged for a  
 112-46 workers' compensation insurance policy, including any  
 112-47 endorsements, after the application of individual risk variations  
 112-48 based on loss or expense considerations.

112-49 SECTION 5.02. Subsections (b) and (d), Section 2, Article  
 112-50 5.55, Insurance Code, are amended to read as follows:

112-51 (b) In setting rates, an insurer shall consider:

112-52 (1) past and prospective loss cost experience;

112-53 (2) operation expenses;

112-54 (3) investment income;

112-55 (4) a reasonable margin for profit and contingencies;

112-56 [and]

112-57 (5) the effect on premiums of individual risk  
 112-58 variations based on loss or expense considerations; and

112-59 (6) any other relevant factors.

112-60 (d) Rates and premiums established under this article may  
 112-61 not be excessive, inadequate, or unfairly discriminatory.

112-62 SECTION 5.03. Section 3, Article 5.55, Insurance Code, is  
 112-63 amended by adding Subsections (e) through (h) to read as follows:

112-64 (e) Not later than December 1 of each even-numbered year,  
 112-65 the commissioner shall report to the governor, lieutenant governor,  
 112-66 and speaker of the house of representatives regarding the impact  
 112-67 that legislation enacted during the regular session of the 79th  
 112-68 Legislature reforming the workers' compensation system of this  
 112-69 state has had on the affordability and availability of workers'



113-1 compensation insurance for the employers of this state. The report  
113-2 must include an analysis of:

113-3 (1) the projected workers' compensation premium  
113-4 savings realized by employers as a result of the reforms;

113-5 (2) the impact of the reforms on:  
113-6 (A) the percentage of employers who provide  
113-7 workers' compensation insurance coverage for their employees; and

113-8 (B) to the extent possible, economic development  
113-9 and job creation;

113-10 (3) the effects of the reforms on market competition  
113-11 and carrier financial solvency, including an analysis of how  
113-12 carrier loss ratios, combined ratios, and use of individual risk  
113-13 variations have changed since implementation of the reforms; and

113-14 (4) the extent of participation in workers'  
113-15 compensation health care networks by small and medium-sized  
113-16 employers.

113-17 (f) If the commissioner determines that workers'  
113-18 compensation rate filings or premium levels analyzed by the  
113-19 department do not appropriately reflect the savings associated with  
113-20 the reforms described by Subsection (e) of this section, the  
113-21 commissioner shall include in the report required under Subsection  
113-22 (e) of this section any recommendations, including any recommended  
113-23 legislative changes, necessary to identify the tools needed by the  
113-24 department to more effectively regulate workers' compensation  
113-25 rates.

113-26 (g) At the request of the department, each insurer shall  
113-27 submit to the department all data and other information considered  
113-28 necessary by the commissioner to generate the report required under  
113-29 Subsection (e) of this section. Failure by an insurer to submit the  
113-30 data and information in a timely fashion, as determined by  
113-31 commissioner rule, constitutes grounds for sanctions under Chapter  
113-32 82 of this code.

113-33 (h) In reviewing rates under this article, the commissioner  
113-34 shall consider any state or federal legislation that has been  
113-35 enacted and that may impact rates and premiums for workers'  
113-36 compensation insurance coverage in this state.

113-37 SECTION 5.04. Subsection (b), Section 6, Article 5.55,  
113-38 Insurance Code, is amended to read as follows:

113-39 (b) The disapproval order must be issued not later than the  
113-40 15th day after the close of a hearing and must specify how the rate  
113-41 fails to meet the requirements of this article. The disapproval  
113-42 order must state the date on which the further use of that rate is  
113-43 prohibited. ~~[A disapproval order does not affect a policy made or~~  
113-44 ~~issued in accordance with this code before the expiration of the~~  
113-45 ~~period established in the order.]~~

113-46 SECTION 5.05. Section 7, Article 5.55, Insurance Code, is  
113-47 amended to read as follows:

113-48 Sec. 7. EFFECT OF DISAPPROVAL; PENALTY. (a) If a policy is  
113-49 issued and the commissioner ~~board~~ subsequently disapproves the  
113-50 rate or filing that governs the premium charged on the policy:

113-51 (1) the policyholder may continue the policy at the  
113-52 original rate;

113-53 (2) the policyholder may cancel the policy without  
113-54 penalty; or

113-55 (3) the policyholder and the insurer may agree to  
113-56 amend the policy to reflect the premium that would have been charged  
113-57 based on the insurer's most recently approved rate; the amendment  
113-58 may not take effect before the date on which further use of the rate  
113-59 is prohibited under the disapproval order.

113-60 (b) If a policy is issued and the commissioner subsequently  
113-61 disapproves the rate or filing on which the premium is based, the  
113-62 commissioner, after notice and the opportunity for a hearing, may:

113-63 (1) impose sanctions under Chapter 82 of this code;

113-64 (2) issue a cease and desist order under Chapter 83 of  
113-65 this code;

113-66 (3) impose administrative penalties under Chapter 84  
113-67 of this code; or

113-68 (4) take any combination of these actions [If the  
113-69 board determines, based on a pattern of charges for premiums, that

114-1 ~~an insurer is consistently overcharging or undercharging, the board~~  
114-2 ~~may assess an administrative penalty. The penalty shall be~~  
114-3 ~~assessed in accordance with Article 10, Texas Workers' Compensation~~  
114-4 ~~Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes),~~  
114-5 ~~and set by the board in an amount reasonable and necessary to deter~~  
114-6 ~~the overcharging or undercharging of policyholders].~~

114-7 SECTION 5.055. Article 5.55, Insurance Code, is amended by  
114-8 adding Section 8 to read as follows:

114-9 Sec. 8. EXCLUSIVE JURISDICTION. The department has  
114-10 exclusive jurisdiction over all rates and premiums subject to this  
114-11 article.

114-12 SECTION 5.06. Subchapter D, Chapter 5, Insurance Code, is  
114-13 amended by adding Article 5.55A to read as follows:

114-14 Art. 5.55A. UNDERWRITING GUIDELINES

114-15 Sec. 1. DEFINITIONS. In this article:

114-16 (1) "Insurer" has the meaning assigned by Section  
114-17 1(2), Article 5.55, of this code.

114-18 (2) "Underwriting guideline" means a rule, standard,  
114-19 guideline, or practice, whether written, oral, or electronic, that  
114-20 is used by an insurer or its agent to decide whether to accept or  
114-21 reject an application for coverage under a workers' compensation  
114-22 insurance policy or to determine how to classify those risks that  
114-23 are accepted for the purpose of determining a rate.

114-24 Sec. 2. UNDERWRITING GUIDELINES. Each underwriting  
114-25 guideline used by an insurer in writing workers' compensation  
114-26 insurance must be sound, actuarially justified, or otherwise  
114-27 substantially commensurate with the contemplated risk. An  
114-28 underwriting guideline may not be unfairly discriminatory.

114-29 Sec. 3. ENFORCEMENT. This article may be enforced in the  
114-30 manner provided by Section 38.003(g) of this code.

114-31 Sec. 4. FILING REQUIREMENTS. Each insurer shall file with  
114-32 the department a copy of the insurer's underwriting guidelines.  
114-33 The insurer shall update its filing each time the underwriting  
114-34 guidelines are changed. If a group of insurers files one set of  
114-35 underwriting guidelines for the group, the group shall identify  
114-36 which underwriting guidelines apply to each insurer in the group.

114-37 Sec. 5. APPLICABILITY OF SECTION 38.003. Section 38.003 of  
114-38 this code applies to this article to the extent consistent with this  
114-39 article.

114-40 SECTION 5.07. Subsection (b), Article 5.58, Insurance Code,  
114-41 is amended to read as follows:

114-42 (b) Standards and Procedures. For purposes of Subsection  
114-43 (c) of this article, the commissioner shall establish standards and  
114-44 procedures for categorizing insurance and medical benefits  
114-45 reported on each workers' compensation claim. The commissioner  
114-46 shall consult with the Texas Department of Workers' Compensation  
114-47 [~~Commission and the Research and Oversight Council on Workers'~~  
114-48 ~~Compensation]~~ in establishing these standards to ensure that the  
114-49 data collection methodology will also yield data necessary for  
114-50 research and medical cost containment efforts.

114-51 ARTICLE 6. REPEALER

114-52 SECTION 6.001. The following provisions of the Labor Code  
114-53 are repealed:

- 114-54 (1) Section 402.025;
- 114-55 (2) Subsection (b), Section 402.062;
- 114-56 (3) Sections 402.063 and 402.070;
- 114-57 (4) Section 406.012;
- 114-58 (5) Subsection (g), Section 408.004;
- 114-59 (6) Sections 408.0221, 408.0222, and 408.0223;
- 114-60 (7) Section 413.005;
- 114-61 (8) Subsections (c) and (d), Section 415.0035;
- 114-62 (9) Section 415.004;
- 114-63 (10) Subsection (b), Section 415.008;
- 114-64 (11) Subsection (b), Section 415.009;
- 114-65 (12) Subsection (b), Section 415.010;
- 114-66 (13) Section 415.022; and
- 114-67 (14) Subdivision (1), Section 505.001.

114-68 ARTICLE 7. TRANSITION; EFFECTIVE DATE

114-69 SECTION 7.001. EFFECT OF CHANGE IN DESIGNATION. The change

115-1 in designation of the Texas Workers' Compensation Commission to the  
 115-2 Texas Department of Workers' Compensation does not affect or impair  
 115-3 any act done or taken, any rule, standard, or rate adopted, any  
 115-4 order or certificate issued, or any form approved by the Texas  
 115-5 Workers' Compensation Commission as a state agency, or any penalty  
 115-6 assessed by the Texas Workers' Compensation Commission as a state  
 115-7 agency before the change in designation made by this Act.

115-8 SECTION 7.002. ABOLITION OF TEXAS WORKERS' COMPENSATION  
 115-9 COMMISSION. (a) The Texas Workers' Compensation Commission is  
 115-10 abolished on the effective date of this Act. The term of a person  
 115-11 who is serving on the Texas Workers' Compensation Commission on the  
 115-12 effective date of this Act expires on the date the commissioner of  
 115-13 workers' compensation is appointed.

115-14 (b) All appropriations made by the legislature for the use  
 115-15 and benefit of the Texas Workers' Compensation Commission are  
 115-16 available for the use and benefit of the Texas Department of  
 115-17 Workers' Compensation.

115-18 (c) The divisions of the Texas Workers' Compensation  
 115-19 Commission established under Section 402.021, Labor Code, as that  
 115-20 section existed prior to amendment by this Act, are abolished on the  
 115-21 effective date of this Act.

115-22 SECTION 7.003. COMMISSIONER. The governor shall appoint  
 115-23 the commissioner of workers' compensation not later than September  
 115-24 30, 2005.

115-25 SECTION 7.0031. OFFICE OF INJURED EMPLOYEE COUNSEL.  
 115-26 (a) The office of injured employee counsel created under Chapter  
 115-27 404, Labor Code, as added by this Act, is established September 1,  
 115-28 2005.

115-29 (b) The governor shall appoint the injured employee public  
 115-30 counsel of the office of injured employee counsel not later than  
 115-31 October 1, 2005.

115-32 (c) The injured employee public counsel of the office of  
 115-33 injured employee counsel shall adopt initial rules for the office  
 115-34 under Section 404.006, Labor Code, as added by this Act, not later  
 115-35 than March 1, 2006.

115-36 (d) The Texas Department of Workers' Compensation shall  
 115-37 provide, in Austin and in each regional office operated by the  
 115-38 department to administer Subtitle A, Title 5, Labor Code, as  
 115-39 amended by this Act, suitable office space, personnel, computer  
 115-40 support, and other administrative support to the office of injured  
 115-41 employee counsel as required by Chapter 404, Labor Code, as added by  
 115-42 this Act. The department shall provide the facilities and support  
 115-43 not later than October 1, 2005.

115-44 (e) All powers, duties, obligations, rights, contracts,  
 115-45 funds, unspent appropriations, records, real or personal property,  
 115-46 and personnel of the Texas Workers' Compensation Commission  
 115-47 relating to the operation of the workers' compensation ombudsman  
 115-48 program under Subchapter C, Chapter 409, Labor Code, as that  
 115-49 subchapter existed before amendment by this Act, shall be  
 115-50 transferred to the office of injured employee counsel not later  
 115-51 than March 1, 2006. An ombudsman transferred to the office of  
 115-52 injured employee counsel under this section shall begin providing  
 115-53 services under Chapter 404, Labor Code, as added by this Act, not  
 115-54 later than March 1, 2006.

115-55 SECTION 7.0032. BUDGET EXECUTION AUTHORITY.  
 115-56 Notwithstanding Subsection (e), Section 317.005, Government Code,  
 115-57 the Legislative Budget Board may adopt an order under Section  
 115-58 317.005, Government Code, affecting any portion of the total  
 115-59 appropriation of the Texas Department of Workers' Compensation or  
 115-60 office of injured employee counsel if necessary to implement the  
 115-61 provisions of this Act. This section expires March 31, 2006.

115-62 SECTION 7.004. RULES REGARDING MEDICAL EXAMINATIONS. The  
 115-63 commissioner of workers' compensation shall adopt rules to  
 115-64 implement the changes in law made to Sections 408.004 and 408.0041,  
 115-65 Labor Code, as amended by this Act, on or before February 1, 2006.  
 115-66 The changes in law made to Sections 408.004 and 408.0041, Labor  
 115-67 Code, are effective on the date provided by commissioner rule.

115-68 SECTION 7.005. ELECTRONIC BILLING RULES. The commissioner  
 115-69 of workers' compensation shall adopt rules under Section 408.0251,

116-1 Labor Code, as added by this Act, not later than January 1, 2006.

116-2 SECTION 7.006. ACCRUAL OF RIGHT TO INCOME BENEFITS.  
116-3 Subsection (c), Section 408.082, Labor Code, as amended by this  
116-4 Act, applies only to a claim for workers' compensation benefits  
116-5 based on a compensable injury that occurs on or after the effective  
116-6 date of this Act. A claim based on a compensable injury that occurs  
116-7 before that date is governed by the law in effect on the date that  
116-8 the compensable injury occurred, and the former law is continued in  
116-9 effect for that purpose.

116-10 SECTION 7.007. ELIGIBILITY FOR PILOT PROGRAM. The pilot  
116-11 program established under Section 413.022, Labor Code, as added by  
116-12 this Act, takes effect January 1, 2006.

116-13 SECTION 7.008. REPORTS. (a) Not later than October 1,  
116-14 2006, the commissioner of workers' compensation shall report to the  
116-15 governor, the lieutenant governor, the speaker of the house of  
116-16 representatives, and the members of the 79th Legislature regarding  
116-17 the implementation of Section 408.1225, Labor Code, as added by  
116-18 this Act.

116-19 (b) Not later than October 1, 2008, the commissioner of  
116-20 workers' compensation shall report to the governor, the lieutenant  
116-21 governor, the speaker of the house of representatives, and the  
116-22 members of the legislature regarding the implementation of the  
116-23 pilot program established by Section 413.022, Labor Code, as added  
116-24 by this Act, and the results of the pilot program. The report must  
116-25 include any recommendations regarding the continuation of the pilot  
116-26 program, including any changes required to enhance the  
116-27 effectiveness of the program.

116-28 (c) The commissioner of insurance shall submit the initial  
116-29 report required under Subsection (e), Section 3, Article 5.55,  
116-30 Insurance Code, as added by this Act, not later than December 1,  
116-31 2006.

116-32 (d) The commissioner of insurance shall submit to the  
116-33 governor, the lieutenant governor, the speaker of the house of  
116-34 representatives, and the members of the legislature the first  
116-35 report under Subsection (a), Section 1305.501, Insurance Code, as  
116-36 added by this Act, not later than December 1, 2008.

116-37 SECTION 7.009. ABOLITION OF MEDICAL ADVISORY COMMITTEE.  
116-38 The medical advisory committee established under Section 413.005,  
116-39 Labor Code, as that section existed prior to repeal by this Act, is  
116-40 abolished on the effective date of this Act.

116-41 SECTION 7.010. STATE OFFICE OF ADMINISTRATIVE HEARINGS  
116-42 REVIEW. (a) This section applies to a hearing conducted by the  
116-43 State Office of Administrative Hearings under Subsection (k),  
116-44 Section 413.031, Labor Code, as that subsection existed prior to  
116-45 amendment by this Act.

116-46 (b) Effective September 1, 2005, the State Office of  
116-47 Administrative Hearings may not accept for hearing a medical  
116-48 dispute that remains unresolved pursuant to Section 413.031, Labor  
116-49 Code. A medical dispute that is not pending for a hearing by the  
116-50 State Office of Administrative Hearings on or before August 31,  
116-51 2005, is subject to Subsection (k), Section 413.031, Labor Code, as  
116-52 amended by this Act, and is not subject to a hearing before the  
116-53 State Office of Administrative Hearings.

116-54 SECTION 7.011. IMPLEMENTATION OF PROVIDER NETWORKS.  
116-55 (a) Except as provided by Subsection (c) of this section, the  
116-56 commissioner of insurance and the commissioner of workers'  
116-57 compensation shall adopt rules as necessary to implement Chapter  
116-58 1305, Insurance Code, as added by this Act, not later than December 1,  
116-59 2005. The Texas Department of Insurance shall accept applications  
116-60 from a network seeking certification under Chapter 1305, Insurance  
116-61 Code, as added by this Act, beginning December 15, 2005.

116-62 (b) An insurance carrier may begin to offer workers'  
116-63 compensation medical benefits through a network under Chapter 1305,  
116-64 Insurance Code, as added by this Act, on certification of the  
116-65 network by the commissioner of insurance.

116-66 (c) The commissioner of insurance shall adopt rules to  
116-67 implement Section 1305.106, Insurance Code, as added by this Act,  
116-68 on or before January 1, 2007.

116-69 SECTION 7.012. CONSUMER REPORT CARD. The Texas Department

117-1 of Insurance shall issue the first annual workers' compensation  
117-2 consumer report card under Section 1305.502, Insurance Code, as  
117-3 added by this Act, not later than 18 months after the date on which  
117-4 that department certifies the first workers' compensation health  
117-5 care network under Chapter 1305, Insurance Code, as added by this  
117-6 Act.

117-7 SECTION 7.013. APPLICATION TO MEDICAL BENEFITS.

117-8 (a) Article 4 of this Act applies to a claim for workers'  
117-9 compensation medical benefits based on a compensable injury  
117-10 incurred by an employee whose employer elects to provide workers'  
117-11 compensation insurance coverage if the insurance carrier of the  
117-12 employer enters into a contract to provide workers' compensation  
117-13 medical benefits through a network certified under Chapter 1305,  
117-14 Insurance Code, as added by this Act.

117-15 (b) A claim for workers' compensation medical benefits  
117-16 based on a compensable injury that occurs on or after the effective  
117-17 date of a contract described by Subsection (a) of this section is  
117-18 subject to the provisions of Chapter 1305, Insurance Code, as added  
117-19 by this Act.

117-20 (c) Notwithstanding Subsection (a) of this section, an  
117-21 injured employee who receives workers' compensation medical  
117-22 benefits based on a compensable injury that occurs before the  
117-23 effective date of this Act is subject to the provisions of Chapter  
117-24 1305, Insurance Code, as added by this Act, and must receive  
117-25 treatment through a network health care provider if the insurer  
117-26 liable for the payment of benefits on that claim elects to use a  
117-27 workers' compensation health care network to provide medical  
117-28 benefits and the claimant lives in a network service area. The  
117-29 insurer shall notify affected injured employees in writing of the  
117-30 election.

117-31 SECTION 7.014. APPLICATION TO SANCTIONS AND VIOLATIONS.

117-32 (a) The changes in law made by this Act apply only to a penalty or  
117-33 sanction for an offense or violation committed on or after the  
117-34 effective date of this Act.

117-35 (b) For purposes of this section, an offense or violation is  
117-36 committed before the effective date of this Act if any element of  
117-37 the offense occurs before that date.

117-38 (c) An offense committed before the effective date of this  
117-39 Act is governed by the law in effect when the offense was committed,  
117-40 and the former law is continued in effect for that purpose.

117-41 SECTION 7.015. EFFECT OF UPDATE ACT. To the extent of any  
117-42 conflict, this Act prevails over another Act of the 79th  
117-43 Legislature, Regular Session, 2005, relating to nonsubstantive  
117-44 additions to and corrections in enacted codes (the General Code  
117-45 Update bill).

117-46 SECTION 7.016. EFFECTIVE DATE. This Act takes effect  
117-47 September 1, 2005.

117-48 \* \* \* \* \*