

By: Staples, Nelson

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the continuation and operation of the workers'  
3 compensation system of this state, including changing the name of  
4 the Texas Workers' Compensation Commission to the Texas Department  
5 of Workers' Compensation, the powers and duties of the governing  
6 authority of that department, the provision of workers'  
7 compensation benefits to injured employees, and the regulation of  
8 workers' compensation insurers; providing administrative and  
9 criminal penalties.

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

11 ARTICLE 1. ORGANIZATION OF DEPARTMENT

12 SECTION 1.001. Subchapter A, Chapter 402, Labor Code, is  
13 amended to read as follows:

14 SUBCHAPTER A. ORGANIZATION

15 Sec. 402.001. DUTIES OF DEPARTMENT. In addition to the  
16 other duties required of the Texas Department of Workers'  
17 Compensation, the department shall:

18 (1) regulate the business of workers' compensation in  
19 this state; and

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

22 Sec. 402.002. COMPOSITION OF DEPARTMENT. The department is  
23 composed of the commissioner and other officers and employees as  
24 required to efficiently implement:

- 1           (1) this title;  
2           (2) other workers' compensation laws of this state;  
3 and  
4           (3) other laws granting jurisdiction or applicable to  
5 the department or the commissioner.

6           Sec. 402.003. CHIEF EXECUTIVE. (a) The commissioner is  
7 the department's chief executive and administrative officer. The  
8 commissioner shall administer and enforce this title, other  
9 workers' compensation laws of this state, and other laws granting  
10 jurisdiction to or applicable to the department or the  
11 commissioner.

12           (b) The commissioner has the powers and duties vested in the  
13 department by this title and other workers' compensation laws of  
14 this state.

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

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

22           Sec. 402.005. QUALIFICATIONS. The commissioner must:

- 23           (1) be a competent and experienced administrator;  
24           (2) be well informed and qualified in the field of  
25 workers' compensation; and  
26           (3) have at least five years of experience as an  
27 executive in the administration of business or government or as a

1 practicing attorney, physician, or certified public accountant.

2 Sec. 402.006. INELIGIBILITY FOR PUBLIC OFFICE. The  
3 commissioner is ineligible to be a candidate for a public elective  
4 office in this state unless the commissioner has resigned and the  
5 governor has accepted the resignation.

6 Sec. 402.007. COMPENSATION. The commissioner is entitled  
7 to compensation as provided by the General Appropriations Act.

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

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

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

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

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

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

1 ~~employer or wage earner;~~

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

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

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

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

12 ~~[Sec. 402.0015. TRAINING PROGRAM FOR COMMISSION MEMBERS.~~

13 ~~(a) Before a member of the commission may assume the member's~~  
14 ~~duties, the member must complete the training program established~~  
15 ~~under this section.~~

16 ~~[(b) A training program established under this section must~~  
17 ~~provide information to the member regarding:~~

18 ~~[(1) the enabling legislation that created the~~  
19 ~~commission;~~

20 ~~[(2) the programs operated by the commission;~~

21 ~~[(3) the role and functions of the commission;~~

22 ~~[(4) the rules of the commission, with an emphasis on~~  
23 ~~the rules that relate to disciplinary and investigatory authority;~~

24 ~~[(5) the current budget for the commission;~~

25 ~~[(6) the results of the most recent formal audit of the~~  
26 ~~commission;~~

27 ~~[(7) the requirements of:~~

1                   ~~[(A) the open meetings law, Chapter 551,~~  
2 ~~Government Code,~~

3                   ~~[(B) the open records law, Chapter 552,~~  
4 ~~Government Code, and~~

5                   ~~[(C) the administrative procedure law, Chapter~~  
6 ~~2001, Government Code,~~

7                   ~~[(8) the requirements of the conflict of interest laws~~  
8 ~~and other laws relating to public officials, and~~

9                   ~~[(9) any applicable ethics policies adopted by the~~  
10 ~~commission or the Texas Ethics Commission.~~

11                   ~~[Sec. 402.002. TERMS; VACANCY. (a) Members of the~~  
12 ~~commission hold office for staggered two-year terms, with the terms~~  
13 ~~of three members expiring on February 1 of each year.~~

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

17                   Sec. 402.008 ~~[402.003]~~. EFFECT OF LOBBYING ACTIVITY. A  
18 person may not serve as commissioner ~~[a member of the commission]~~ or  
19 act as the general counsel to the department ~~[commission]~~ if the  
20 person is required to register as a lobbyist under Chapter 305,  
21 Government Code, because of the person's activities for  
22 compensation on behalf of a profession that is regulated by or that  
23 has fees regulated by the department ~~[commission]~~.

24                   ~~[Sec. 402.004. VOTING REQUIREMENTS. (a) The commission~~  
25 ~~may take action only by a majority vote of its membership.~~

26                   ~~[(b) Decisions regarding the employment of an executive~~  
27 ~~director require the affirmative vote of at least two commissioners~~

1 ~~representing employers and two commissioners representing wage~~  
2 ~~earners.]~~

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

6           (1) does not have at the time of appointment the  
7 qualifications required by Section 402.005 [~~for appointment to the~~  
8 ~~commission~~];

9           (2) does not maintain during service as commissioner  
10 [~~on the commission~~] the qualifications required by Section 402.005  
11 [~~for appointment to the commission~~];

12           (3) violates a prohibition established by Section  
13 402.008 [~~402.003~~] or 402.012; or

14           (4) cannot because of illness or incapacity discharge  
15 the commissioner's [~~member's~~] duties for a substantial part of the  
16 commissioner's term [~~for which the member is appointed; or~~

17           [~~(5) is absent from more than half of the regularly~~  
18 ~~scheduled commission meetings that the member is eligible to attend~~  
19 ~~during a calendar year].~~

20           (b) The validity of an action of the commissioner or the  
21 department [~~commission~~] is not affected by the fact that it is taken  
22 when a ground for removal of the commissioner [~~a commission member~~]  
23 exists.

24           [~~(c) If the executive director of the commission knows that~~  
25 ~~a potential ground for removal exists, the executive director shall~~  
26 ~~notify the chairman of the commission of the potential ground. The~~  
27 ~~chairman shall then notify the governor and the attorney general~~

1 ~~that a potential ground for removal exists. If the potential ground~~  
2 ~~for removal involves the chairman, the executive director shall~~  
3 ~~notify the next highest officer of the commission, who shall notify~~  
4 ~~the governor and the attorney general that a potential ground for~~  
5 ~~removal exists.]~~

6       Sec. 402.010 [~~402.006~~]. PROHIBITED GIFTS; ADMINISTRATIVE  
7 VIOLATION. (a) The commissioner [~~A member~~] or an employee of the  
8 department [~~commission~~] may not accept a gift, gratuity, or  
9 entertainment from a person having an interest in a matter or  
10 proceeding pending before the department [~~commission~~].

11       (b) A violation of Subsection (a) is an [~~a Class A~~]  
12 administrative violation and constitutes a ground for removal from  
13 office or termination of employment.

14       [~~Sec. 402.007. MEETINGS. The commission shall meet at~~  
15 ~~least once in each calendar quarter and may meet at other times at~~  
16 ~~the call of the chairman or as provided by the rules of the~~  
17 ~~commission.~~

18       [~~Sec. 402.008. CHAIRMAN. (a) The governor shall designate~~  
19 ~~a member of the commission as the chairman of the commission to~~  
20 ~~serve in that capacity for a two-year term expiring February 1 of~~  
21 ~~each odd-numbered year. The governor shall alternate the~~  
22 ~~chairmanship between the members who are employers and the members~~  
23 ~~who are wage earners.~~

24       [~~(b) The chairman may vote on all matters before the~~  
25 ~~commission.~~

26       [~~Sec. 402.009. LEAVE OF ABSENCE. (a) An employer may not~~  
27 ~~terminate the employment of an employee who is appointed as a member~~

1 ~~of the commission because of the exercise by the employee of duties~~  
2 ~~required as a commission member.~~

3 ~~[(b) A member of the commission is entitled to a leave of~~  
4 ~~absence from employment for the time required to perform commission~~  
5 ~~duties. During the leave of absence, the member may not be~~  
6 ~~subjected to loss of time, vacation time, or other benefits of~~  
7 ~~employment, other than salary.]~~

8 Sec. 402.011 [~~402.010~~]. CIVIL LIABILITY OF THE  
9 COMMISSIONER [~~MEMBER~~]. The commissioner [~~A member of the~~  
10 ~~commission~~] is not liable in a civil action for an act performed in  
11 good faith in the execution of duties as commissioner [~~a commission~~  
12 ~~member~~].

13 [~~Sec. 402.011. REIMBURSEMENT. (a) A member of the~~  
14 ~~commission is entitled to reimbursement for actual and necessary~~  
15 ~~expenses incurred in performing functions as a member of the~~  
16 ~~commission. Reimbursement under this subsection may not exceed a~~  
17 ~~limit established in the General Appropriations Act.~~

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

20 [~~(1) attendance at commission meetings and hearings,~~

21 [~~(2) preparation for a commission meeting, not to~~  
22 ~~exceed two days in each calendar quarter,~~

23 [~~(3) attendance at a subcommittee meeting, not to~~  
24 ~~exceed one day each month,~~

25 [~~(4) attendance by the chair or vice chair of the~~  
26 ~~commission at a legislative committee meeting if attendance is~~  
27 ~~requested by the committee chair, and~~



1           ~~[(5) attendance at a meeting by a member appointed to~~  
2 ~~the Research and Oversight Council on Workers' Compensation or the~~  
3 ~~Texas Certified Self-Insured Guaranty Association.]~~

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

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

9           ~~[(1) the member is invited as a representative of the~~  
10 ~~commission to participate in a program offered at the seminar; and~~

11           ~~[(2) the member's participation is approved by the~~  
12 ~~chair of the commission.]~~

13           Sec. 402.012. CONFLICT OF INTEREST. (a) An officer,  
14 employee, or paid consultant of a Texas trade association whose  
15 members provide services subject to regulation by the department  
16 ~~[commission]~~ or provide services whose fees are subject to  
17 regulation by the department ~~[commission]~~ may not be the  
18 commissioner ~~[a member of the commission]~~ or an employee of the  
19 department ~~[commission]~~ who is exempt from the state's position  
20 classification plan or is compensated at or above the amount  
21 prescribed by the General Appropriations Act for step 1, salary  
22 group A17 ~~[17]~~, of the position classification salary schedule.

23           (b) On acceptance of appointment as commissioner ~~[to the~~  
24 ~~commission]~~, a commissioner ~~[an appointee]~~ who is an officer,  
25 employee, or paid consultant of a Texas trade association described  
26 by Subsection (a) must resign the position or terminate the  
27 contract with the trade association.

1 (c) For the purposes of this section, "Texas trade  
2 association" means a nonprofit, cooperative, and voluntarily  
3 joined association of business or professional competitors in this  
4 state designed to assist its members and its industry or profession  
5 in dealing with mutual business or professional problems and in  
6 promoting their common interest. The term does not include a labor  
7 union or an employees' association.

8 Sec. 402.0125. PROHIBITION ON EMPLOYMENT OR  
9 REPRESENTATION. (a) The commissioner or an employee of the  
10 department involved in hearing department cases may not:

11 (1) be employed by an insurance carrier that was in the  
12 scope of the commissioner's or employee's official responsibility  
13 while the commissioner or employee was associated with the  
14 department; or

15 (2) represent a person before the department or a  
16 court in a matter:

17 (A) in which the commissioner or employee was  
18 personally involved while associated with the department; or

19 (B) that was within the commissioner's or  
20 employee's official responsibility while the commissioner or  
21 employee was associated with the department.

22 (b) The prohibition of Subsection (a)(1) applies until the:

23 (1) second anniversary of the date the commissioner  
24 ceases to serve as the commissioner; and

25 (2) first anniversary of the date the employee's  
26 employment with the department ceases.

27 (c) The prohibition of Subsection (a)(2) applies while the

1 commissioner or employee of the department involved in hearing  
2 insurance cases is associated with the department and at any time  
3 thereafter.

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

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

- 10 (1) the legislation that created the department;  
11 (2) the programs operated by the department;  
12 (3) the role and functions of the department;  
13 (4) the rules of the department, with an emphasis on  
14 the rules that relate to disciplinary and investigatory authority;  
15 (5) the current budget for the department;  
16 (6) the results of the most recent formal audit of the  
17 department;  
18 (7) the requirements of:  
19 (A) the open meetings law, Chapter 551,  
20 Government Code;  
21 (B) the public information law, Chapter 552,  
22 Government Code;  
23 (C) the administrative procedure law, Chapter  
24 2001, Government Code; and  
25 (D) other laws relating to public officials,  
26 including conflict-of-interest laws; and  
27 (8) any applicable ethics policies adopted by the

1 department or the Texas Ethics Commission.

2 Sec. 402.014. GENERAL POWERS AND DUTIES OF COMMISSIONER.

3 (a) The commissioner shall conduct the day-to-day operations of  
4 the department and otherwise implement department policy.

5 (b) The commissioner may:

6 (1) investigate misconduct;

7 (2) hold hearings;

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

10 (4) administer oaths;

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

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

15 (7) enter appropriate orders as authorized by this  
16 title;

17 (8) institute an action in the department's name to  
18 enjoin the violation of this subtitle;

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

21 (10) prescribe the form, manner, and procedure for the  
22 transmission of information to the department;

23 (11) correct clerical errors in the entry of the  
24 orders; and

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

27 (c) The commissioner is the agent for service of process on

1 out-of-state employers.

2 SECTION 1.002. Subchapter C, Chapter 402, Labor Code, is  
3 amended to read as follows:

4 SUBCHAPTER C. DEPARTMENT [~~EXECUTIVE DIRECTOR AND~~] PERSONNEL

5 Sec. 402.041. APPOINTMENTS. (a) Subject to the General  
6 Appropriations Act or other law, the commissioner shall appoint  
7 deputies, assistants, division directors, and other personnel as  
8 necessary to carry out the powers and duties of the commissioner and  
9 the department under this title, other workers' compensation laws  
10 of this state, and other laws granting jurisdiction or applicable  
11 to the department or the commissioner.

12 (b) A person appointed under this section must have the  
13 professional, administrative, and workers' compensation experience  
14 necessary to qualify the person for the position to which the person  
15 is appointed.

16 (c) A person appointed as an associate or deputy  
17 commissioner or to hold an equivalent position must have at least  
18 five years of the experience required for appointment as  
19 commissioner under Section 402.005. At least two years of that  
20 experience must be in work related to the position to be held.

21 Sec. 402.042. DIVISION OF RESPONSIBILITIES. The  
22 commissioner shall develop and implement policies that clearly  
23 define the respective responsibilities of the commissioner and the  
24 staff of the department. [~~EXECUTIVE DIRECTOR. (a) The executive~~  
25 ~~director is the executive officer and administrative head of the~~  
26 ~~commission. The executive director exercises all rights, powers,~~  
27 ~~and duties imposed or conferred by law on the commission, except for~~

1 ~~rulemaking and other rights, powers, and duties specifically~~  
2 ~~reserved under this subtitle to members of the commission.~~

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

5 ~~[(c) The executive director serves at the pleasure of the~~  
6 ~~commission.~~

7 ~~[(d) The commission shall develop and implement policies~~  
8 ~~that clearly separate the policymaking responsibilities of the~~  
9 ~~commission and the management responsibilities of the executive~~  
10 ~~director and the staff of the commission.~~

11 ~~[Sec. 402.042. GENERAL POWERS AND DUTIES OF EXECUTIVE~~  
12 ~~DIRECTOR. (a) The executive director shall conduct the day-to-day~~  
13 ~~operations of the commission in accordance with policies~~  
14 ~~established by the commission and otherwise implement commission~~  
15 ~~policy.~~

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

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

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

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

21 ~~[(4) administer oaths,~~

22 ~~[(5) take testimony directly or by deposition or~~  
23 ~~interrogatory,~~

24 ~~[(6) assess and enforce penalties established under~~  
25 ~~this subtitle,~~

26 ~~[(7) enter appropriate orders as authorized by this~~  
27 ~~subtitle,~~

1           ~~[(8) correct clerical errors in the entry of orders,~~

2           ~~[(9) institute an action in the commission's name to~~  
3 ~~enjoin the violation of this subtitle,~~

4           ~~[(10) initiate an action under Section 410.254 to~~  
5 ~~intervene in a judicial proceeding,~~

6           ~~[(11) prescribe the form, manner, and procedure for~~  
7 ~~transmission of information to the commission; and~~

8           ~~[(12) delegate all powers and duties as necessary.~~

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

11           ~~[Sec. 402.043. ADMINISTRATIVE ASSISTANTS. The executive~~  
12 ~~director shall employ and supervise:~~

13           ~~[(1) one person representing wage earners permanently~~  
14 ~~assigned to act as administrative assistant to the members of the~~  
15 ~~commission who represent wage earners; and~~

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

19           Sec. 402.043 [~~402.044~~]. CAREER LADDER; ANNUAL PERFORMANCE  
20 EVALUATIONS. (a) The commissioner or the commissioner's designee  
21 [~~executive director~~] shall develop an intra-agency career ladder  
22 program that addresses opportunities for mobility and advancement  
23 for employees within the department [~~commission~~]. The program  
24 shall require intra-agency postings of all positions concurrently  
25 with any public posting.

26           (b) The commissioner or the commissioner's designee  
27 [~~executive director~~] shall develop a system of annual performance

1 evaluations that are based on documented employee performance. All  
2 merit pay for department [~~commission~~] employees must be based on  
3 the system established under this subsection.

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

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

15 (2) a comprehensive analysis of the department  
16 [~~commission~~] work force that meets federal and state guidelines;

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

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

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

24 (1) cover an annual period;

25 (2) be updated annually;

26 (3) be reviewed by the civil rights division of the  
27 Texas Workforce Commission [~~on Human Rights~~] for compliance with



1 Subsection (a)(1); and

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

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

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

10 SECTION 2.001. The heading to Chapter 402, Labor Code, is  
11 amended to read as follows:

12 CHAPTER 402. TEXAS DEPARTMENT OF WORKERS' COMPENSATION  
13 [~~COMMISSION~~]

14 SECTION 2.002. Section 402.021, Labor Code, is amended to  
15 read as follows:

16 Sec. 402.021. DEPARTMENT [~~COMMISSION~~] DIVISIONS. (a) The  
17 commissioner [~~commission shall have:~~

18 [~~(1) a division of workers' health and safety,~~

19 [~~(2) a division of medical review,~~

20 [~~(3) a division of compliance and practices, and~~

21 [~~(4) a division of hearings.~~

22 [~~(b) In addition to the divisions listed by Subsection (a),~~  
23 ~~the executive director, with the approval of the commission,~~] may  
24 establish divisions within the department [~~commission~~] for  
25 effective administration and performance of department  
26 [~~commission~~] functions. The commissioner [~~executive director~~] may  
27 allocate and reallocate functions among the divisions.

1           **(b)** [~~(c)~~] The commissioner [~~executive director~~] shall  
2 appoint the directors of the divisions of the department  
3 [~~commission~~]. The directors serve at the pleasure of the  
4 commissioner [~~executive director~~].

5           **(c)** A reference in this title or any other law to the  
6 division of workers' health and safety, the division of medical  
7 review, the division of compliance and practices, the division of  
8 hearings, and the division of self-insurance regulation of the  
9 former Texas Workers' Compensation Commission means the  
10 department.

11           SECTION 2.003. Section 402.022, Labor Code, is amended to  
12 read as follows:

13           Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The  
14 commissioner [~~executive director~~] shall prepare information of  
15 public interest describing the functions of the department  
16 [~~commission~~] and the procedures by which complaints are filed with  
17 and resolved by the department [~~commission~~].

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

20           SECTION 2.004. Section 402.023, Labor Code, is amended to  
21 read as follows:

22           Sec. 402.023. COMPLAINT INFORMATION. (a) The commissioner  
23 [~~executive director~~] shall keep an information file about each  
24 written complaint filed with the department [~~commission~~] that is  
25 unrelated to a specific workers' compensation claim. The  
26 information must include:

- 27           (1) the date the complaint is received;

- 1           (2) the name of the complainant;
- 2           (3) the subject matter of the complaint;
- 3           (4) a record of all persons contacted in relation to  
4 the complaint;
- 5           (5) a summary of the results of the review or  
6 investigation of the complaint; and
- 7           (6) for complaints for which the department  
8 [~~commission~~] took no action, an explanation of the reason the  
9 complaint was closed without action.

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

21           SECTION 2.005. Section 402.024, Labor Code, is amended to  
22 read as follows:

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

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

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

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

10 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DEPARTMENT  
11 [~~COMMISSION~~]

12 SECTION 2.007. Section 402.061, Labor Code, is amended to  
13 read as follows:

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

17 SECTION 2.008. Subsection (a), Section 402.062, Labor Code,  
18 is amended to read as follows:

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

22 SECTION 2.009. Section 402.064, Labor Code, is amended to  
23 read as follows:

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

1 Subchapter E.

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

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

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

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

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

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

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

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

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

1 SECTION 2.014. Section 402.068, Labor Code, is amended to  
2 read as follows:

3 Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. Except as  
4 expressly provided by this subchapter, the department [~~commission~~]  
5 may not delegate rights and duties imposed on it by this subchapter.

6 SECTION 2.015. Section 402.069, Labor Code, is amended to  
7 read as follows:

8 Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT  
9 INFORMATION. The commissioner or the commissioner's designee  
10 [~~executive director~~] shall provide to department [~~members of the~~  
11 ~~commission and commission~~] employees, as often as necessary,  
12 information regarding their:

13 (1) qualifications for office or employment under this  
14 subtitle; and

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

17 SECTION 2.016. Subsection (a), Section 402.071, Labor Code,  
18 is amended to read as follows:

19 (a) The commissioner [~~commission~~] shall establish  
20 qualifications for a representative and shall adopt rules  
21 establishing procedures for authorization of representatives.

22 SECTION 2.017. Section 402.072, Labor Code, is amended to  
23 read as follows:

24 Sec. 402.072. SANCTIONS. Only the commissioner  
25 [~~commission~~] may impose:

26 (1) a sanction that deprives a person of the right to  
27 practice before the department [~~commission~~] or of the right to

1 receive remuneration under this subtitle for a period exceeding 30  
2 days; or

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

6 SECTION 2.018. Subsections (a) and (c), Section 402.073,  
7 Labor Code, are amended to read as follows:

8 (a) The commissioner [~~commission~~] and the chief  
9 administrative law judge of the State Office of Administrative  
10 Hearings by rule shall adopt a memorandum of understanding  
11 governing administrative procedure law hearings under this  
12 subtitle conducted by the State Office of Administrative Hearings  
13 in the manner provided for a contested case hearing under Chapter  
14 2001, Government Code [~~(the administrative procedure law)~~].

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

22 SECTION 2.019. Section 402.081, Labor Code, is amended to  
23 read as follows:

24 Sec. 402.081. DEPARTMENT [~~COMMISSION~~] RECORDS. (a) The  
25 commissioner [~~executive director~~] is the custodian of the  
26 department's [~~commission's~~] records and shall perform the duties of  
27 a custodian required by law, including providing copies and the

1 certification of records.

2 (b) The commissioner [~~executive director~~] may destroy a  
3 record maintained by the department [~~commission~~] pertaining to an  
4 injury after the 50th anniversary of the date of the injury to which  
5 the record refers unless benefits are being paid on the claim on  
6 that date.

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

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

23 SECTION 2.020. Section 402.082, Labor Code, is amended to  
24 read as follows:

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



- 1 (1) race, ethnicity, and sex of the claimant;
- 2 (2) classification of the injury;
- 3 (3) identification of whether the claimant is
- 4 receiving medical care through a workers' compensation health care
- 5 network certified under Chapter 1305, Insurance Code;
- 6 (4) amount of wages earned by the claimant before the
- 7 injury; and
- 8 (5) ~~(4)~~ amount of compensation received by the
- 9 claimant.

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

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

15 SECTION 2.022. Subsections (a), (b), and (d), Section  
16 402.084, Labor Code, are amended to read as follows:

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

- 20 (1) the claim is:
  - 21 (A) open or pending before the department
  - 22 ~~[commission]~~;
  - 23 (B) on appeal to a court of competent
  - 24 jurisdiction; or
  - 25 (C) the subject of a subsequent suit in which the
  - 26 insurance carrier or the subsequent injury fund is subrogated to
  - 27 the rights of the named claimant; and

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

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

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

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

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

10                (4) the insurance carrier;

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

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

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

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

24           (d) Information on a claim relating to a subclaimant under  
25 Subsection (b)(8) may include information, in an electronic data  
26 format, on all workers' compensation claims necessary to determine  
27 if a subclaim exists. The information on a claim remains subject to

1 confidentiality requirements while in the possession of a  
2 subclaimant or representative. The commissioner [~~commission~~] by  
3 rule may establish a reasonable fee for all information requested  
4 under this subsection in an electronic data format by subclaimants  
5 or authorized representatives of subclaimants. The commissioner  
6 [~~commission~~] shall adopt rules under Section 401.024(d) to  
7 establish:

8 (1) reasonable security parameters for all transfers  
9 of information requested under this subsection in electronic data  
10 format; and

11 (2) requirements regarding the maintenance of  
12 electronic data in the possession of a subclaimant or the  
13 subclaimant's representative.

14 SECTION 2.023. Section 402.085, Labor Code, is amended to  
15 read as follows:

16 Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The  
17 department [~~commission~~] shall release information on a claim to:

18 (1) the Texas Department of Insurance for any  
19 statutory or regulatory purpose, including a research purpose under  
20 Chapter 405;

21 (2) a legislative committee for legislative purposes;

22 (3) a state or federal elected official requested in  
23 writing to provide assistance by a constituent who qualifies to  
24 obtain injury information under Section 402.084(b), if the request  
25 for assistance is provided to the department [~~commission~~]; or

26 (4) [~~the Research and Oversight Council on Workers'~~  
27 ~~Compensation for research purposes; or~~

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

4           (A) establishing, modifying, or enforcing a  
5 child support or medical support obligation; or

6           (B) locating an absent parent.

7           (b) The department ~~[commission]~~ may release information on  
8 a claim to a governmental agency, political subdivision, or  
9 regulatory body to use to:

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

12           (2) provide:

13           (A) unemployment compensation benefits;

14           (B) crime victims compensation benefits;

15           (C) vocational rehabilitation services; or

16           (D) health care benefits;

17           (3) investigate occupational safety or health  
18 violations;

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

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

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

25           (B) establish paternity;

26           (C) locate an absent parent; or

27           (D) cooperate with another state in an action

1 authorized under Part D, Title IV, Social Security Act (42 U.S.C.  
2 Section 651 et seq.), or Chapter 231, Family [~~76, Human Resources~~]  
3 Code.

4 SECTION 2.024. Subsections (a), (b), and (d), Section  
5 402.088, Labor Code, are amended to read as follows:

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

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

13 (d) If the employer requests information on three or more  
14 applicants at the same time, the department [~~commission~~] may refuse  
15 to release information until it receives the written authorization  
16 from each applicant.

17 SECTION 2.025. Section 402.089, Labor Code, is amended to  
18 read as follows:

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

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

27 SECTION 2.026. Section 402.090, Labor Code, is amended to

1 read as follows:

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

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

9           (a) A person commits an offense if the person knowingly,  
10 intentionally, or recklessly publishes, discloses, or distributes  
11 information that is confidential under this subchapter to a person  
12 not authorized to receive the information directly from the  
13 department [~~commission~~].

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

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

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

27           (b) Department [~~Commission~~] investigation files are not

1 open records for purposes of Chapter 552, Government Code.

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

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

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

10 or

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

12 or

13 (3) the complaint is frivolous; or

14 (4) the complaint is done specifically for competitive

15 or economic advantage.

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

22 ARTICLE 3. GENERAL OPERATION OF WORKERS' COMPENSATION SYSTEM;

23 CONFORMING AMENDMENTS WITHIN LABOR CODE

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

26 (b) In particular, the Texas Workforce Commission, the  
27 Texas Department of Insurance, the Texas Department of Workers'

1 Compensation [~~Commission~~], the Department of Assistive and  
2 Rehabilitative Services, and the attorney general's office shall  
3 assist in the implementation of this chapter and shall provide  
4 information to the department on request.

5 SECTION 3.002. Section 401.002, Labor Code, is amended to  
6 read as follows:

7 Sec. 401.002. APPLICATION OF SUNSET ACT. The Texas  
8 Department of Workers' Compensation [~~Commission~~] is subject to  
9 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
10 in existence as provided by that chapter, the department  
11 [~~commission~~] is abolished September 1, 2017 [~~2005~~].

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

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

17 (1) the structure and internal controls of the  
18 department;

19 (2) the level and quality of service provided by the  
20 department to employers, injured employees, insurance carriers,  
21 self-insured governmental entities, and other participants;

22 (3) the implementation of statutory mandates by the  
23 department;

24 (4) employee turnover;

25 (5) information management systems, including public  
26 access to nonconfidential information;

27 (6) the adoption and implementation of administrative



1 rules by the commissioner; and

2 (7) assessment of administrative violations and the  
3 penalties for those violations.

4 SECTION 3.004. Section 401.011, Labor Code, is amended by  
5 amending Subdivisions (2), (8), (15), (37), (38), and (39) and by  
6 adding Subdivisions (18-a), (22-a), (45), and (46) to read as  
7 follows:

8 (2) "Administrative violation" means a violation of  
9 this subtitle, ~~[or]~~ a rule adopted under this subtitle, or an order  
10 or decision of the department that is subject to penalties and  
11 sanctions as provided by this subtitle.

12 (8) "Commissioner" means the commissioner of workers'  
13 compensation [~~"Commission" means the Texas Workers' Compensation~~  
14 ~~Commission~~].

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

19 (18-a) "Evidence-based medicine" means the use of  
20 current best quality scientific and medical evidence in making  
21 decisions about the care of individual patients. The practice of  
22 evidence-based medicine means integrating best available clinical  
23 scientific evidence with individual clinical expertise.

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

1           (A) evidence-based medicine, formulated from  
2 credible scientific studies, including peer-reviewed medical  
3 literature and other current scientifically based texts, and  
4 treatment and practice guidelines; or

5           (B) if that evidence is not available, generally  
6 accepted standards of medical practice recognized in the medical  
7 community.

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

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

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

22           (45) "Department" means the Texas Department of  
23 Workers' Compensation.

24           (46) "Violation" means an administrative violation  
25 subject to penalties and sanctions as provided by this subtitle.

26           SECTION 3.0041. Section 401.013, Labor Code, is amended by  
27 adding Subsection (c) to read as follows:

1        (c) Upon the voluntary introduction into the body of any  
2 substance listed under Subsection (a)(2)(b), based upon a blood  
3 test or urinalysis, it is a rebuttable presumption that a person is  
4 intoxicated and not having the normal use of mental or physical  
5 faculties.

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

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

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

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

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

17                (C) Sections 2001.056 through 2001.062; and

18                (D) Section 2001.141(c);

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

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

25                (A) a benefit review conference;

26                (B) a contested case hearing;

27                (C) an appeals panel proceeding;

1 (D) arbitration; or

2 (E) another proceeding involving a determination  
3 on a workers' compensation claim; and

4 (4) Chapter 552, Government Code, applies to a record  
5 of the department [~~commission~~] or a record of the Texas Department  
6 of Insurance regarding workers' compensation [~~the~~] research  
7 [~~center~~].

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

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

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

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

1 or procedure for the transmission, including standards adopted by  
2 the Department of Information Resources.

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

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

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

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

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

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

23 CHAPTER 403. DEPARTMENT [~~COMMISSION~~] FINANCING

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

26 Sec. 403.001. DEPARTMENT [~~COMMISSION~~] FUNDS. (a) Except  
27 as provided by Sections 403.006 and 403.007 or as otherwise

1 provided by law, money collected under this subtitle, including  
2 administrative penalties and advance deposits for purchase of  
3 services, shall be deposited in the general revenue fund of the  
4 state treasury to the credit of the department [~~commission~~].

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

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

11 SECTION 3.011. Section 403.003, Labor Code, is amended to  
12 read as follows:

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

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

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

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

23 (2) projected employee benefits paid from general  
24 revenues;

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

27 (4) revenue recovered from other sources, including

1 reappropriated receipts, grants, payments, fees, gifts, and  
2 penalties recovered under this subtitle; and

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

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

7 (1) the State Office of Risk Management;

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

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

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

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

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

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

1 (b) If the tax rate set by the commissioner [~~commission~~] for  
2 a year produces revenue that exceeds the amount required to make all  
3 expenditures authorized by the legislature, the excess shall be  
4 deposited in the general revenue fund to the credit of the  
5 department [~~commission~~].

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

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

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

15 (1) the payment of compensation as provided by Section  
16 408.162;

17 (2) reimbursement of insurance carrier claims of  
18 overpayment of benefits made under an interlocutory order or  
19 decision of the commissioner [~~commission~~] as provided by this  
20 subtitle, consistent with the priorities established by rule by the  
21 commissioner [~~commission~~]; and

22 (3) reimbursement of insurance carrier claims as  
23 provided by Sections 408.042 and 413.0141, consistent with the  
24 priorities established by rule by the commissioner [~~commission, and~~

25 [~~(4) the payment of an assessment of feasibility and~~  
26 ~~the development of regional networks established under Section~~  
27 ~~408.0221]~~.



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

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

7 SECTION 3.015. Section 403.007, Labor Code, is amended to  
8 read as follows:

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

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

20 (c) If a claim for death benefits is not filed with the  
21 department [~~commission~~] by a legal beneficiary on or before the  
22 first anniversary of the date of the death of the employee, it is  
23 presumed, for purposes of this section only, that no legal  
24 beneficiary survived the deceased employee. The presumption does  
25 not apply against a minor beneficiary or an incompetent beneficiary  
26 for whom a guardian has not been appointed.

27 (d) If the insurance carrier makes payment to the subsequent

1 injury fund and it is later determined by a final award of the  
2 commissioner [~~commission~~] or the final judgment of a court of  
3 competent jurisdiction that a legal beneficiary is entitled to the  
4 death benefits, the commissioner [~~commission~~] shall order the fund  
5 to reimburse the insurance carrier for the amount overpaid to the  
6 fund.

7 (e) If the commissioner [~~commission~~] determines that the  
8 funding under Subsection (a) is not adequate to meet the expected  
9 obligations of the subsequent injury fund established under Section  
10 403.006, the fund shall be supplemented by the collection of a  
11 maintenance tax paid by insurance carriers, other than a  
12 governmental entity, as provided by Sections 403.002 and 403.003.  
13 The rate of assessment must be adequate to provide 120 percent of  
14 the projected unfunded liabilities of the fund for the next  
15 biennium as certified by an independent actuary or financial  
16 advisor.

17 (f) The commissioner's [~~commission's~~] actuary or financial  
18 advisor shall report biannually to the Texas Department of  
19 Insurance [~~Research and Oversight Council on Workers'~~  
20 ~~Compensation~~] on the financial condition and projected assets and  
21 liabilities of the subsequent injury fund. The commissioner  
22 [~~commission~~] shall make the reports available to members of the  
23 legislature and the public. The department [~~commission~~] may  
24 purchase annuities to provide for payments due to claimants under  
25 this subtitle if the commissioner [~~commission~~] determines that the  
26 purchase of annuities is financially prudent for the administration  
27 of the fund.

1 SECTION 3.0151. Subtitle A, Title 5, Labor Code, is amended  
2 by adding Chapter 404 to read as follows:

3 CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

4 SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

5 Sec. 404.001. DEFINITIONS. In this chapter:

6 (1) "Office" means the office of injured employee  
7 counsel.

8 (2) "Public counsel" means the injured employee public  
9 counsel.

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

14 (b) The office is administratively attached to the  
15 department but is independent of direction by the commissioner and  
16 the department.

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

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

22 (2) personnel services; and

23 (3) computer equipment and support.

24 (d) The public counsel and the commissioner may enter into  
25 interagency contracts and other agreements as necessary to  
26 implement this chapter.

27 Sec. 404.003. SUNSET PROVISION. The office of injured

1 employee counsel is subject to Chapter 325, Government Code (Texas  
2 Sunset Act). Unless continued in existence as provided by that  
3 chapter, the office is abolished and this chapter expires  
4 September 1, 2017.

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

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

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

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

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

18 (b) Rulemaking under this section is subject to Chapter  
19 2001, Government Code.

20 [Sections 404.007-404.050 reserved for expansion]

21 SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

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

26 (b) The governor shall appoint the public counsel without  
27 regard to the race, color, disability, sex, religion, age, or

1 national origin of the appointee.

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

4 (d) In appointing the public counsel, the governor may  
5 consider recommendations made by groups that represent wage  
6 earners.

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

9 (1) be a resident of Texas;

10 (2) be licensed to practice law in this state;

11 (3) have management experience;

12 (4) posses knowledge and experience with the workers'  
13 compensation system; and

14 (5) have experience with legislative procedures and  
15 administrative law.

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

19 (1) is employed by or participates in the management  
20 of a business entity or other organization that holds a license,  
21 certificate of authority, or other authorization from the  
22 department or that receives funds from the department;

23 (2) owns or controls, directly or indirectly, more  
24 than a 10 percent interest in a business entity or other  
25 organization regulated by or receiving funds from the department or  
26 the office; or

27 (3) uses or receives a substantial amount of tangible

1 goods, services, or funds from the department or the office, other  
2 than compensation or reimbursement authorized by law.

3 Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve  
4 as public counsel if the person is required to register as a  
5 lobbyist under Chapter 305, Government Code, because of the  
6 person's activities for compensation related to the operation of  
7 the department or the office.

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

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

13 (2) violates a prohibition established by Section  
14 404.053, 404.054, 404.056, or 404.057; or

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

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

21 Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT.

22 (a) A former public counsel may not make any communication to or  
23 appearance before the Texas Department of Workers' Compensation,  
24 Texas Department of Insurance, commissioner of workers'  
25 compensation, commissioner of insurance, or an employee of the  
26 Texas Department of Workers' Compensation or Texas Department of  
27 Insurance before the second anniversary of the date the person

1 ceases to serve as public counsel if the communication or  
2 appearance is made:

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

5 (2) with the intent to influence the commissioner of  
6 workers' compensation or commissioner of insurance decision or  
7 action, unless the person is acting on the person's own behalf and  
8 without remuneration.

9 (b) A former public counsel may not represent any person or  
10 receive compensation for services rendered on behalf of any person  
11 regarding a matter before the Texas Department of Workers'  
12 Compensation or the Texas Department of Insurance before the second  
13 anniversary of the date the person ceases to serve as public  
14 counsel.

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

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

18 (1) be employed by an insurance carrier regarding a  
19 matter that was in the scope of the employee's official  
20 responsibility while the employee was associated with the office;  
21 or

22 (2) represent a person before the Texas Department of  
23 Workers' Compensation or the Texas Department of Insurance or a  
24 court in a matter:

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

27 (B) that was within the employee's official

1 responsibility while the employee was associated with the office.

2 (e) The prohibition of Subsection (d)(1) applies until the  
3 first anniversary of the date the employee's employment with the  
4 office ceases.

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

8 Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section,  
9 "trade association" means a nonprofit, cooperative, and  
10 voluntarily joined association of business or professional  
11 competitors designed to assist its members and its industry or  
12 profession in dealing with mutual business or professional problems  
13 and in promoting their common interest.

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

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

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

21 [Sections 404.058-404.100 reserved for expansion]

22 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

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

25 (1) provide assistance to workers' compensation  
26 claimants as provided by this subtitle;

27 (2) advocate on behalf of the public regarding



1 rulemaking by the commissioner of workers' compensation and  
2 commissioner of insurance relating to workers' compensation;

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

6 (4) assist injured employees with referral to local,  
7 state, and federal financial assistance, rehabilitation, and work  
8 placement programs, as well as other social services that the  
9 office considers appropriate.

10 (b) The office:

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

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

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

18 (B) assist injured employees, through the  
19 ombudsman program, with the resolution of complaints pending at the  
20 department;

21 (C) assist injured workers, through the  
22 ombudsman program, in the department's administrative dispute  
23 resolution system; and

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

27 (c) The office may not appear or intervene, as a party or

1 otherwise, before the commissioner of workers' compensation,  
2 commissioner of insurance, Texas Department of Workers'  
3 Compensation, or Texas Department of Insurance on behalf of an  
4 individual injured employee.

5 Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL.

6 The public counsel shall administer and enforce this chapter,  
7 including preparing and submitting to the legislature a budget for  
8 the office and approving expenditures for professional services,  
9 travel, per diem, and other actual and necessary expenses incurred  
10 in administering the office.

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

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

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

18 (1) may appear or intervene, as a party or otherwise,  
19 as a matter of right before the commissioner of workers'  
20 compensation, commissioner of insurance, Texas Department of  
21 Workers' Compensation, or Texas Department of Insurance on behalf  
22 of injured employees as a class in matters involving rates, rules,  
23 and forms affecting workers' compensation insurance for which the  
24 commissioner of workers' compensation or the commissioner of  
25 insurance promulgates rates or adopts or approves rules or forms;

26 (2) may intervene as a matter of right or otherwise  
27 appear in a judicial proceeding involving or arising from an action

1 taken by an administrative agency in a proceeding in which the  
2 public counsel previously appeared under the authority granted by  
3 this chapter;

4 (3) may appear or intervene, as a party or otherwise,  
5 as a matter of right on behalf of injured employees as a class in any  
6 proceeding in which the public counsel determines that injured  
7 employees are in need of representation, except that the public  
8 counsel may not intervene in an enforcement or parens patriae  
9 proceeding brought by the attorney general; and

10 (4) may appear or intervene before the commissioner of  
11 workers' compensation, commissioner of insurance, Texas Department  
12 of Workers' Compensation, or Texas Department of Insurance, as a  
13 party or otherwise, on behalf of injured employees as a class in a  
14 matter involving rates, rules, or forms affecting injured employees  
15 as a class in any proceeding in which the public counsel determines  
16 that injured employees are in need of representation.

17 Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN  
18 ADMINISTRATIVE PROCEDURES. The office, through the ombudsman  
19 program, may appear before the commissioner or department on behalf  
20 of an individual injured employee during an administrative dispute  
21 resolution process.

22 Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall  
23 report to the governor, lieutenant governor, speaker of the house  
24 of representatives, and the chairs of the legislative committees  
25 with appropriate jurisdiction not later than December 31 of each  
26 even-numbered year. The report must include:

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

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

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

8           (b) The office shall coordinate with the workers'  
9 compensation research and evaluation group to obtain needed  
10 information and data to make the evaluations required for the  
11 report.

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

15           Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. The  
16 public counsel:

17           (1) is entitled to the same access as a party, other  
18 than Texas Department of Workers' Compensation or Texas Department  
19 of Insurance staff, to Texas Department of Workers' Compensation or  
20 Texas Department of Insurance records available in a proceeding  
21 before the commissioner of workers' compensation, commissioner of  
22 insurance, Texas Department of Workers' Compensation or Texas  
23 Department of Insurance under the authority granted to the public  
24 counsel by this chapter; and

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

1 the commissioner of workers' compensation, commissioner of  
2 insurance, Texas Department of Workers' Compensation, or Texas  
3 Department of Insurance as authorized by this chapter.

4 Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public  
5 counsel may recommend proposed legislation to the legislature that  
6 the public counsel determines would positively affect the interests  
7 of injured employees.

8 Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public  
9 counsel shall submit to the Texas Department of Workers'  
10 Compensation and Texas Department of Insurance for adoption by the  
11 commissioners a notice of injured employee rights and  
12 responsibilities to be distributed as provided by commissioner of  
13 workers' compensation and commissioner of insurance rules.

14 Sec. 404.110. APPLICABILITY OF CONFIDENTIALITY REQUIREMENTS.  
15 Confidentiality requirements applicable to examination reports  
16 under Article 1.18, Insurance Code, and to the commissioner under  
17 Section 3A, Article 21.28-A, Insurance Code, apply to the public  
18 counsel.

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

- 22 (1) Section 843.006, Insurance Code;
- 23 (2) Chapter 108, Health and Safety Code; and
- 24 (3) Chapter 552, Government Code.

25 (b) On request by the public counsel, the Texas Department  
26 of Workers' Compensation or Texas Department of Insurance shall  
27 provide any information or data requested by the office in

1 furtherance of the duties of the office under this chapter.

2 (c) The office may not make public any confidential  
3 information provided to the office under this chapter but may  
4 disclose a summary of the information that does not directly or  
5 indirectly identify the individual or entity that is the subject of  
6 the information. The office may not release, and an individual or  
7 entity may not gain access to, any information that:

8 (1) could reasonably be expected to reveal the  
9 identity of a doctor or an injured employee;

10 (2) reveals the zip code of an injured employee's  
11 primary residence;

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

14 (4) relates to an actual payment made by a payer to an  
15 identified provider.

16 (d) Information collected or used by the office under this  
17 chapter is subject to the confidentiality provisions and criminal  
18 penalties of:

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

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

21 (3) Chapter 159, Occupations Code.

22 (e) Information on doctors and injured employees that is in  
23 the possession of the office, and any compilation, report, or  
24 analysis produced from the information that identifies doctors and  
25 injured employees is not:

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

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

3           (f) Notwithstanding Subsection (c)(2), the office may use  
4 zip code information to analyze information on a geographical  
5 basis.

6           SECTION. 3.0152. Subchapter C, Chapter 409, Labor Code, is  
7 redesignated as Subchapter D, Chapter 404, Labor Code, and Sections  
8 409.041 through 409.044, Labor Code, are renumbered as Sections  
9 404.151 through 404.154, Labor Code, and amended to read as  
10 follows:

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

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

17           (b) An ombudsman shall:

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

20                   (2) investigate complaints;

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

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

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

1           Sec. 404.151 [~~409.042~~]. DESIGNATION AS OMBUDSMAN;  
2 ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION  
3 REQUIREMENTS. (a) At least one specially qualified employee in  
4 each department [~~commission~~] office shall be an ombudsman  
5 designated by the office of injured employee counsel, [~~an~~  
6 ~~ombudsman~~] who shall perform the duties under this subchapter  
7 [~~section~~] as the person's primary responsibility.

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

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

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

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

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

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

20           (3) possess strong interpersonal skills; and

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

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

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



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

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

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

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

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

15 SECTION 3.016. Section 405.001, Labor Code, is amended to  
16 read as follows:

17 Sec. 405.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

18 (1) "Commissioner" means the commissioner of  
19 insurance.

20 (2) "Department" [~~,"department"~~] means the Texas  
21 Department of Insurance.

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

25 (a) The department shall conduct professional studies and  
26 research related to:

27 (1) the delivery of benefits;

1           (2) litigation and controversy related to workers'  
2 compensation;

3           (3) insurance rates and rate-making procedures;

4           (4) rehabilitation and reemployment of injured  
5 workers;

6           (5) workplace health and safety issues;

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

8           (7) the impact of workers' compensation health care  
9 networks certified under Chapter 1305, Insurance Code, on claims  
10 costs and injured employee outcomes; and

11           (8) other matters relevant to the cost, quality, and  
12 operational effectiveness of the workers' compensation system.

13           (d) In accordance with Subchapter K, Chapter 1305,  
14 Insurance Code, the department shall:

15           (1) biennially evaluate the cost and quality of health  
16 care provided by workers' compensation health care networks; and

17           (2) issue annual consumer report cards comparing  
18 workers' compensation health care networks certified by the  
19 department under Chapter 1305, Insurance Code, with each other and  
20 with care provided outside of networks. The report cards should  
21 include comparisons on costs, medical outcomes, and return-to-work  
22 rates.

23           (e) The commissioner of insurance shall adopt rules as  
24 necessary to establish data reporting requirements to support the  
25 research duties of the department under this chapter. Nothing in  
26 this section shall be construed to require additional reporting  
27 requirements on nonsubscribing companies.

1 SECTION 3.018. Chapter 405, Labor Code, is amended by  
2 adding Section 405.0021 to read as follows:

3 Sec. 405.0021. RESEARCH AGENDA. (a) The department shall  
4 prepare and publish annually in the Texas Register a proposed  
5 workers' compensation research agenda for commissioner review and  
6 approval.

7 (b) The commissioner shall:

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

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

11 SECTION 3.019. Section 406.004, Labor Code, is amended to  
12 read as follows:

13 Sec. 406.004. EMPLOYER NOTICE TO DEPARTMENT [~~COMMISSION,~~  
14 ~~ADMINISTRATIVE VIOLATION~~]. (a) An employer who does not obtain  
15 workers' compensation insurance coverage shall notify the  
16 department [~~commission~~] in writing, in the time and as prescribed  
17 by commissioner [~~commission~~] rule, that the employer elects not to  
18 obtain coverage.

19 (b) The commissioner [~~commission~~] shall prescribe forms to  
20 be used for the employer notification and shall require the  
21 employer to provide reasonable information to the department  
22 [~~commission~~] about the employer's business.

23 (c) The department [~~commission~~] may contract with the Texas  
24 Workforce [~~Employment~~] Commission or the comptroller for  
25 assistance in collecting the notification required under this  
26 section. Those agencies shall cooperate with the department  
27 [~~commission~~] in enforcing this section.

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

4 (e) An employer commits a violation if the employer fails to  
5 comply with this section. [~~A violation under this subsection is a  
6 Class D administrative violation. Each day of noncompliance  
7 constitutes a separate violation.~~]

8 SECTION 3.020. Subsections (c) and (e), Section 406.005,  
9 Labor Code, are amended to read as follows:

10 (c) Each employer shall post a notice of whether the  
11 employer has workers' compensation insurance coverage at  
12 conspicuous locations at the employer's place of business as  
13 necessary to provide reasonable notice to the employees. The  
14 commissioner [~~commission~~] may adopt rules relating to the form and  
15 content of the notice. The employer shall revise the notice when  
16 the information contained in the notice is changed.

17 (e) An employer commits a violation if the employer fails to  
18 comply with this section. [~~A violation under this subsection is a  
19 Class D administrative violation.~~]

20 SECTION 3.021. Subsections (a), (b), and (c), Section  
21 406.006, Labor Code, are amended to read as follows:

22 (a) An insurance company from which an employer has obtained  
23 workers' compensation insurance coverage, a certified  
24 self-insurer, a workers' compensation self-insurance group under  
25 Chapter 407A, and a political subdivision shall file notice of the  
26 coverage and claim administration contact information with the  
27 department [~~commission~~] not later than the 10th day after the date

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

10 (b) The notice required under this section shall be filed  
11 with the department [~~commission~~] in accordance with Section  
12 406.009.

13 (c) An insurance company, a certified self-insurer, a  
14 workers' compensation self-insurance group under Chapter 407A, or a  
15 political subdivision commits a violation if the person fails to  
16 file notice with the department [~~commission~~] as provided by this  
17 section. [~~A violation under this subsection is a Class C~~  
18 ~~administrative violation. Each day of noncompliance constitutes a~~  
19 ~~separate violation.~~]

20 SECTION 3.022. Subsections (a), (b), and (c), Section  
21 406.007, Labor Code, are amended to read as follows:

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

1 provided or will be provided to affected employees under Section  
2 406.005.

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

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

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

9 (2) the cancellation date of the policy.

10 SECTION 3.023. Section 406.008, Labor Code, is amended to  
11 read as follows:

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

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

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

24 (A) fraud in obtaining coverage;

25 (B) misrepresentation of the amount of payroll  
26 for purposes of premium calculation;

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

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

5 (i) reasonable recommendations for loss  
6 control; or

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

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

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

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

19 SECTION 3.024. Section 406.009, Labor Code, is amended to  
20 read as follows:

21 Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION;  
22 MONITORING AND ENFORCING COMPLIANCE. (a) The department  
23 [~~commission~~] shall collect and maintain the information required  
24 under this subchapter and shall monitor compliance with the  
25 requirements of this subchapter.

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

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

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

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

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

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

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

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

25           Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE  
26 VIOLATION. (a) The commissioner [~~commission~~] by rule may require  
27 an insurance carrier to designate a representative in Austin to act



1 as the insurance carrier's agent before the department [~~commission~~]  
2 in Austin. Notice to the designated agent constitutes notice to the  
3 insurance carrier.

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

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

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

13 (1) is knowing and voluntary;

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

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

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

26 (c) The employer may not transfer:

27 (1) the obligation to accept a report of injury under

1 Section 409.001;

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

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

6 (4) liability for a violation of Section 415.006 or  
7 415.008 or of Chapter 451; or

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

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

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

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

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

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

22 (1) conflicts of jurisdiction;

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

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

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

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

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

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

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

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

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

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

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

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

1 the department [~~commission~~].

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

6 SECTION 3.034. Subsections (a) through (d) and (f), Section  
7 406.145, Labor Code, are amended to read as follows:

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

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

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

27 (d) The department [~~commission~~] shall maintain a system for

1 accepting and maintaining the joint agreements.

2 (f) If a subsequent hiring agreement is made to which the  
3 joint agreement does not apply, the hiring contractor and  
4 independent contractor shall notify the department [~~commission~~]  
5 and the hiring contractor's workers' compensation insurance carrier  
6 in writing.

7 SECTION 3.035. Subsection (b), Section 406.162, Labor Code,  
8 is amended to read as follows:

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

14 SECTION 3.036. Subdivision (3), Section 407.001, Labor  
15 Code, is amended to read as follows:

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

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

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

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

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

26 SECTION 3.037. Section 407.021, Labor Code, is amended to  
27 read as follows:

1           Sec. 407.021. DIVISION. The division of self-insurance  
2 regulation is a division of the department [~~commission~~].

3           SECTION 3.038. Section 407.022, Labor Code, is amended to  
4 read as follows:

5           Sec. 407.022. DIRECTOR. (a) The commissioner [~~executive~~  
6 ~~director of the commission~~] shall appoint the director of the  
7 division.

8           (b) The director shall exercise all the rights, powers, and  
9 duties imposed or conferred on the department [~~commission~~] by this  
10 chapter, other than by Section 407.023.

11           SECTION 3.039. Section 407.023, Labor Code, is amended to  
12 read as follows:

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

16           (1) approve or deny a recommendation by the director  
17 concerning the issuance or revocation of a certificate of authority  
18 to self-insure; and

19           (2) certify that a certified self-insurer has  
20 suspended payment of compensation or has otherwise become an  
21 impaired employer.

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

24           SECTION 3.040. Subsections (a), (b), and (c), Section  
25 407.041, Labor Code, are amended to read as follows:

26           (a) An employer who desires to self-insure under this  
27 chapter must submit an application to the department [~~commission~~]

1 for a certificate of authority to self-insure.

2 (b) The application must be:

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

5 (2) accompanied by a nonrefundable \$1,000 application  
6 fee.

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

10 SECTION 3.041. Section 407.042, Labor Code, is amended to  
11 read as follows:

12 Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval  
13 of the Texas Certified Self-Insurer Guaranty Association, [~~and by~~  
14 ~~majority vote,~~] the commissioner [~~commission~~] shall issue a  
15 certificate of authority to self-insure to an applicant who meets  
16 the certification requirements under this chapter and pays the  
17 required fee.

18 SECTION 3.042. Section 407.043, Labor Code, is amended to  
19 read as follows:

20 Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If  
21 the commissioner [~~commission~~] determines that an applicant for a  
22 certificate of authority to self-insure does not meet the  
23 certification requirements, the commissioner [~~commission~~] shall  
24 notify the applicant in writing of the commissioner's [~~its~~]  
25 determination, stating the specific reasons for the denial and the  
26 conditions to be met before approval may be granted.

27 (b) The applicant is entitled to a reasonable period, as

1 determined by the commissioner [~~commission~~], to meet the conditions  
2 for approval before the application is considered rejected for  
3 purposes of appeal.

4 SECTION 3.043. Subsection (a), Section 407.044, Labor Code,  
5 is amended to read as follows:

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

9 SECTION 3.044. Section 407.045, Labor Code, is amended to  
10 read as follows:

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

21 (b) A certified self-insurer who withdraws from  
22 self-insurance shall surrender to the department [~~commission~~] the  
23 certificate of authority to self-insure.

24 SECTION 3.045. Subsections (a), (b), and (d), Section  
25 407.046, Labor Code, are amended to read as follows:

26 (a) The commissioner [~~commission by majority vote~~] may  
27 revoke the certificate of authority to self-insure of a certified



1 self-insurer who fails to comply with requirements or conditions  
2 established by this chapter or a rule adopted by the commissioner  
3 [~~commission~~] under this chapter.

4 (b) If the commissioner [~~commission~~] believes that a ground  
5 exists to revoke a certificate of authority to self-insure, the  
6 commissioner [~~commission~~] shall refer the matter to the State  
7 Office of Administrative Hearings. That office shall hold a  
8 hearing to determine if the certificate should be revoked. The  
9 hearing shall be conducted in the manner provided for a contested  
10 case hearing under Chapter 2001, Government Code [~~(the~~  
11 ~~administrative procedure law)~~].

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

15 SECTION 3.046. Subsection (b), Section 407.047, Labor Code,  
16 is amended to read as follows:

17 (b) The security required under Sections 407.064 and  
18 407.065 shall be maintained with the department [~~commission~~] or  
19 under the department's [~~commission's~~] control until each claim for  
20 workers' compensation benefits is paid, is settled, or lapses under  
21 this subtitle.

22 SECTION 3.047. Subsections (a), (c), (e), and (f), Section  
23 407.061, Labor Code, are amended to read as follows:

24 (a) To be eligible for a certificate of authority to  
25 self-insure, an applicant for an initial or renewal certificate  
26 must present evidence satisfactory to the commissioner  
27 [~~commission~~] and the association of sufficient financial strength

1 and liquidity, under standards adopted by the commissioner  
2 [~~commission~~], to ensure that all workers' compensation obligations  
3 incurred by the applicant under this chapter are met promptly.

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

7 (e) The applicant must provide to the commissioner  
8 [~~commission~~] a copy of each contract entered into with a person that  
9 provides claims services, underwriting services, or accident  
10 prevention services if the provider of those services is not an  
11 employee of the applicant. The contract must be acceptable to the  
12 commissioner [~~commission~~] and must be submitted in a standard form  
13 adopted by the commissioner [~~commission~~], if the commissioner  
14 [~~commission~~] adopts such a form.

15 (f) The commissioner [~~commission~~] shall adopt rules for the  
16 requirements for the financial statements required by Subsection  
17 (b)(2).

18 SECTION 3.048. Section 407.062, Labor Code, is amended to  
19 read as follows:

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

23 (1) the applicant's organizational structure and  
24 management background;

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

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

27 (4) the source and reliability of the financial

1 information submitted by the applicant;

2 (5) the number of employees affected by  
3 self-insurance;

4 (6) the applicant's access to excess insurance  
5 markets;

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

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

10 SECTION 3.049. Subsection (a), Section 407.063, Labor Code,  
11 is amended to read as follows:

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

18 SECTION 3.050. Subsection (b), Section 407.064, Labor Code,  
19 is amended to read as follows:

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

27 SECTION 3.051. Subsection (d), Section 407.067, Labor Code,

1 is amended to read as follows:

2 (d) A person commits a violation if the person violates  
3 Subsection (c). [~~A violation under this subsection is a Class B~~  
4 ~~administrative violation. Each day of noncompliance constitutes a~~  
5 ~~separate violation.~~]

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

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

12 (b) The report must:

13 (1) include payroll information, in the form  
14 prescribed by this chapter and the department [~~commission~~];

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

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

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

26 (d) The department [~~commission~~] may require that the report  
27 include additional financial and statistical information.

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

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

10 SECTION 3.053. Subsections (a), (c), (d), and (e), Section  
11 407.082, Labor Code, are amended to read as follows:

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

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

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

26 (e) An unreasonable refusal on the part of a certified  
27 self-insurer to make available for inspection the books, records,

1 payroll information, or other required information constitutes  
2 grounds for the revocation of the certificate of authority to  
3 self-insure and is an [~~a Class A~~] administrative violation. [~~Each~~  
4 ~~day of noncompliance constitutes a separate violation.~~]

5 SECTION 3.054. Subsection (b), Section 407.101, Labor Code,  
6 is amended to read as follows:

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

11 SECTION 3.055. Section 407.102, Labor Code, is amended to  
12 read as follows:

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

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

24 SECTION 3.056. Subsections (a) and (d), Section 407.103,  
25 Labor Code, are amended to read as follows:

26 (a) Each certified self-insurer shall pay a self-insurer  
27 maintenance tax for the administration of the department

1 ~~[commission]~~ and to support the prosecution of workers'  
2 compensation insurance fraud in this state. Not more than two  
3 percent of the total tax base of all certified self-insurers, as  
4 computed under Subsection (b), may be assessed for a maintenance  
5 tax under this section.

6 (d) In setting the rate of maintenance tax assessment for  
7 insurance companies, the commissioner ~~[commission]~~ may not  
8 consider revenue or expenditures related to the division.

9 SECTION 3.057. Subsections (b) through (e), Section  
10 407.104, Labor Code, are amended to read as follows:

11 (b) The department ~~[commission]~~ shall compute the fee and  
12 taxes of a certified self-insurer and notify the certified  
13 self-insurer of the amounts due. The taxes and fees shall be  
14 remitted to the department ~~[commission]~~.

15 (c) The regulatory fee imposed under Section 407.102 shall  
16 be deposited in the state treasury to the credit of the workers'  
17 compensation self-insurance fund. The self-insurer maintenance  
18 tax shall be deposited in the state treasury to the credit of the  
19 department ~~[commission]~~.

20 (d) A certified self-insurer commits a violation if the  
21 self-insurer does not pay the taxes and fee imposed under Sections  
22 407.102 and 407.103 in a timely manner. ~~[A violation under this~~  
23 ~~subsection is a Class B administrative violation. Each day of~~  
24 ~~noncompliance constitutes a separate violation.]~~

25 (e) If the certificate of authority to self-insure of a  
26 certified self-insurer is terminated, the insurance commissioner  
27 or the commissioner ~~[executive director of the commission]~~ shall

1 proceed immediately to collect taxes due under this subtitle, using  
2 legal process as necessary.

3 SECTION 3.058. Subsections (b) and (c), Section 407.122,  
4 Labor Code, are amended to read as follows:

5 (b) The board of directors is composed of the following  
6 voting members:

7 (1) three certified self-insurers;

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

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

11 and

12 (3) [~~(4)~~] the public counsel of the office of public  
13 insurance counsel.

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

17 SECTION 3.059. Subsection (b), Section 407.123, Labor Code,  
18 is amended to read as follows:

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

21 SECTION 3.060. Subsections (a) and (c), Section 407.124,  
22 Labor Code, are amended to read as follows:

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

27 (1) the amount of additional funds needed to



1 supplement the security deposit;

2 (2) the available assets of the impaired employer for  
3 the purpose of making payment of all incurred liabilities for  
4 compensation; and

5 (3) the funds maintained by the association for the  
6 emergency payment of compensation liabilities.

7 (c) A certified self-insurer designated as an impaired  
8 employer is exempt from assessments beginning on the date of the  
9 designation until the commissioner [~~commission~~] determines that  
10 the employer is no longer impaired.

11 SECTION 3.061. Subsection (d), Section 407.126, Labor Code,  
12 is amended to read as follows:

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

15 SECTION 3.062. Subsection (a), Section 407.127, Labor Code,  
16 is amended to read as follows:

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

23 SECTION 3.063. Subsection (a), Section 407.133, Labor Code,  
24 is amended to read as follows:

25 (a) The commissioner [~~commission, after notice and hearing~~  
26 ~~and by majority vote,~~] may suspend or revoke the certificate of  
27 authority to self-insure of a certified self-insurer who fails to

1 pay an assessment. The association promptly shall report such a  
2 failure to the director.

3 SECTION 3.064. Subsection (d), Section 407A.053, Labor  
4 Code, is amended to read as follows:

5 (d) Any securities posted must be deposited in the state  
6 treasury and must be assigned to and made negotiable by the  
7 commissioner of the Texas Department of Workers' Compensation  
8 [~~executive director of the commission~~] under a trust document  
9 acceptable to the commissioner of insurance. Interest accruing on  
10 a negotiable security deposited under this subsection shall be  
11 collected and transmitted to the depositor if the depositor is not  
12 in default.

13 SECTION 3.065. Subsection (c), Section 407A.201, Labor  
14 Code, is amended to read as follows:

15 (c) The membership of an individual member of a group is  
16 subject to cancellation by the group as provided by the bylaws of  
17 the group. An individual member may also elect to terminate  
18 participation in the group. The group shall notify the  
19 commissioner and the Texas Department of Workers' Compensation  
20 [~~commission~~] of the cancellation or termination of a membership not  
21 later than the 10th day after the date on which the cancellation or  
22 termination takes effect and shall maintain coverage of each  
23 canceled or terminated member until the 30th day after the date of  
24 the notice, at the terminating member's expense, unless before that  
25 date the Texas Department of Workers' Compensation [~~commission~~]  
26 notifies the group that the canceled or terminated member has:

27 (1) obtained workers' compensation insurance

1 coverage;

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

3 (3) become a member of another group.

4 SECTION 3.066. The heading to Section 407A.301, Labor Code,  
5 is amended to read as follows:

6 Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT OF WORKERS'  
7 COMPENSATION [~~COMMISSION~~] AND RESEARCH FUNCTIONS OF DEPARTMENT OF  
8 INSURANCE [~~AND OVERSIGHT COUNCIL~~].

9 SECTION 3.067. Subsection (a), Section 407A.301, Labor  
10 Code, is amended to read as follows:

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

13 (1) the administration of the Texas Department of  
14 Workers' Compensation [~~commission~~];

15 (2) the prosecution of workers' compensation insurance  
16 fraud in this state; and

17 (3) the research functions of the department under  
18 Chapter 405 [~~Research and Oversight Council on Workers'~~  
19 ~~Compensation~~].

20 SECTION 3.068. Section 407A.303, Labor Code, is amended to  
21 read as follows:

22 Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The  
23 group shall remit the taxes for deposit in the state treasury to the  
24 credit of the Texas Department of Workers' Compensation  
25 [~~commission~~].

26 (b) A group commits a violation if the group does not pay the  
27 taxes imposed under Sections 407A.301 and 407A.302 in a timely

1 manner. [~~A violation under this subsection is a Class B~~  
2 ~~administrative violation. Each day of noncompliance constitutes a~~  
3 ~~separate violation.~~]

4 (c) If the certificate of approval of a group is terminated,  
5 the commissioner of insurance or the commissioner [~~executive~~  
6 ~~director~~] of the Texas Department of Workers' Compensation  
7 [~~commission~~] shall immediately notify the comptroller to collect  
8 taxes as directed under Sections 407A.301 and 407A.302.

9 SECTION 3.069. Subsection (b), Section 407A.357, Labor  
10 Code, is amended to read as follows:

11 (b) The guaranty association advisory committee is composed  
12 of the following voting members:

13 (1) three members who represent different groups under  
14 this chapter, subject to Subsection (c);

15 (2) one member designated by the commissioner of the  
16 Texas Department of Workers' Compensation [~~one commission member~~  
17 ~~who represents wage earners~~];

18 (3) one member designated by the insurance  
19 commissioner; and

20 (4) the public counsel of the office of public  
21 insurance counsel.

22 SECTION 3.070. Subsection (c), Section 408.003, Labor Code,  
23 is amended to read as follows:

24 (c) The employer shall notify the department [~~commission~~]  
25 and the insurance carrier on forms prescribed by the commissioner  
26 [~~commission~~] of the initiation of and amount of payments made under  
27 this section.

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

4 (a) The commissioner [~~commission~~] may require an employee  
5 to submit to medical examinations to resolve any question about [+  
6 [~~(1)~~] the appropriateness of the health care received  
7 by the employee [~~, or~~  
8 [~~(2)~~ similar issues].

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

1 ~~[commission]~~.

2 (d) An injured employee is entitled to have a doctor of the  
3 employee's choice present at an examination required by the  
4 department ~~[commission]~~ at the request of an insurance carrier.  
5 The insurance carrier shall pay a fee set by the commissioner  
6 ~~[commission]~~ to the doctor selected by the employee.

7 (e) An employee who, without good cause as determined by the  
8 commissioner ~~[commission]~~, fails or refuses to appear at the time  
9 scheduled for an examination under Subsection (a) or (b) commits a  
10 violation. ~~[A violation under this subsection is a Class D~~  
11 ~~administrative violation. An employee is not entitled to temporary~~  
12 ~~income benefits, and an insurance carrier may suspend the payment~~  
13 ~~of temporary income benefits, during and for a period in which the~~  
14 ~~employee fails to submit to an examination under Subsection (a) or~~  
15 ~~(b) unless the commission determines that the employee had good~~  
16 ~~cause for the failure to submit to the examination. The commission~~  
17 ~~may order temporary income benefits to be paid for the period that~~  
18 ~~the commission determines the employee had good cause.]~~ The  
19 commissioner ~~[commission]~~ by rule shall ensure that an employee  
20 receives reasonable notice of an examination ~~[and of the insurance~~  
21 ~~carrier's basis for suspension of payment,~~] and that the employee  
22 is provided a reasonable opportunity to reschedule an examination  
23 missed by the employee for good cause.

24 (f) This section does not apply to health care provided  
25 through a workers' compensation health care network established  
26 under Chapter 1305, Insurance Code ~~[If the report of a doctor~~  
27 ~~selected by an insurance carrier indicates that an employee can~~

1 ~~return to work immediately or has reached maximum medical~~  
2 ~~improvement, the insurance carrier may suspend or reduce the~~  
3 ~~payment of temporary income benefits on the 14th day after the date~~  
4 ~~on which the insurance carrier files a notice of suspension with the~~  
5 ~~commission as provided by this subsection. The commission shall~~  
6 ~~hold an expedited benefit review conference, by personal appearance~~  
7 ~~or by telephone, not later than the 10th day after the date on which~~  
8 ~~the commission receives the insurance carrier's notice of~~  
9 ~~suspension. If a benefit review conference is not held by the 14th~~  
10 ~~day after the date on which the commission receives the insurance~~  
11 ~~carrier's notice of suspension, an interlocutory order, effective~~  
12 ~~from the date of the report certifying maximum medical improvement,~~  
13 ~~is automatically entered for the continuation of temporary income~~  
14 ~~benefits until a benefit review conference is held, and the~~  
15 ~~insurance carrier is eligible for reimbursement for any overpayment~~  
16 ~~of benefits as provided by Chapter 410. The commission is not~~  
17 ~~required to automatically schedule a contested case hearing as~~  
18 ~~required by Section 410.025(b) if a benefit review conference is~~  
19 ~~scheduled under this subsection. If a benefit review conference is~~  
20 ~~held not later than the 14th day, the commission may enter an~~  
21 ~~interlocutory order for the continuation of benefits, and the~~  
22 ~~insurance carrier is eligible for reimbursement for any~~  
23 ~~overpayments of benefits as provided by Chapter 410. The~~  
24 ~~commission shall adopt rules as necessary to implement this~~  
25 ~~subsection under which:~~

26           ~~[(1) an insurance carrier is required to notify the~~  
27 ~~employee and the treating doctor of the suspension of benefits~~

1 ~~under this subsection by certified mail or another verifiable~~  
2 ~~delivery method,~~

3 ~~[(2) the commission makes a reasonable attempt to~~  
4 ~~obtain the treating doctor's opinion before the commission makes a~~  
5 ~~determination regarding the entry of an interlocutory order, and~~

6 ~~[(3) the commission may allow abbreviated contested~~  
7 ~~case hearings by personal appearance or telephone to consider~~  
8 ~~issues relating to overpayment of benefits under this section].~~

9 (g) An insurance carrier who unreasonably requests a  
10 medical examination under Subsection (b) commits a violation. [~~A~~  
11 ~~violation under this subsection is a Class B administrative~~  
12 ~~violation.]~~

13 (h) A person who makes a frivolous request for a medical  
14 examination under Subsection (b), as determined by the  
15 commissioner, commits a violation. An injured employee may not be  
16 finned more than \$10,000 for a violation of this subsection.

17 SECTION 3.072. Section 408.0041, Labor Code, is amended to  
18 read as follows:

19 Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the  
20 request of an insurance carrier or an employee, or on the  
21 commissioner's own order, the commissioner may [~~commission shall~~]  
22 order a medical examination to resolve any question about:

- 23 (1) the impairment caused by the compensable injury;  
24 [~~or~~]  
25 (2) the attainment of maximum medical improvement;  
26 (3) the extent of the employee's compensable injury;  
27 (4) whether the injured employee's disability is a



1 direct result of the work-related injury;

2 (5) the ability of the employee to return to work; or

3 (6) issues similar to those described by Subdivisions  
4 (1)-(5).

5 (b) A medical examination requested under Subsection (a)  
6 shall be performed by the next available doctor on the department's  
7 ~~[commission's]~~ list of designated doctors whose credentials are  
8 appropriate for the issue in question and the injured employee's  
9 medical condition as determined by commissioner rule. [The

10 ~~designated doctor doing the review must be trained and experienced~~  
11 ~~with the treatment and procedures used by the doctor treating the~~  
12 ~~patient's medical condition, and the treatment and procedures~~  
13 ~~performed must be within the scope of practice of the designated~~  
14 ~~doctor.] The department ~~[commission]~~ shall assign a designated~~

15 doctor not later than the 10th day after the date on which the  
16 request under Subsection (a) is received, and the examination must  
17 be conducted not later than the 21st day after the date on which the  
18 commissioner ~~[commission]~~ issues the order under Subsection (a).

19 An examination under this section may not be conducted more  
20 frequently than every 60 days, unless good cause for more frequent  
21 examinations exists, as defined by commissioner ~~[commission]~~  
22 rules.

23 (c) The treating doctor and the insurance carrier are both  
24 responsible for sending to the designated doctor all of the injured  
25 employee's medical records relating to the issue to be evaluated by  
26 the designated doctor that are in their possession. The treating  
27 doctor and insurance carrier may send the records without a signed

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

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

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

27 (f) Unless otherwise ordered by the department, the

1 insurance carrier shall pay benefits based on the opinion of the  
2 designated doctor during the pendency of any dispute. If an  
3 insurance carrier is not satisfied with the opinion rendered by a  
4 designated doctor under this section, the insurance carrier may  
5 request the commissioner [~~commission~~] to order an employee to  
6 attend an examination by a doctor selected by the insurance  
7 carrier. [~~The commission shall allow the insurance carrier~~  
8 ~~reasonable time to obtain and present the opinion of the doctor~~  
9 ~~selected under this subsection before the commission makes a~~  
10 ~~decision on the merits of the issue in question.~~]

11 (g) Except as otherwise provided by this subsection, an  
12 injured employee is entitled to have a doctor of the employee's  
13 choice present at an examination requested by an insurance carrier  
14 under Subsection (f). The insurance carrier shall pay a fee set by  
15 the commissioner to the doctor selected by the employee. If the  
16 injured employee is subject to a workers' compensation health care  
17 network under Chapter 1305, Insurance Code, the doctor must be the  
18 employee's treating doctor.

19 (h) The insurance carrier shall pay for:

20 (1) an examination required under Subsection (a) or  
21 (f); and

22 (2) the reasonable expenses incident to the employee  
23 in submitting to the examination.

24 (i) [~~(h)~~] An employee who, without good cause as determined  
25 by the commissioner, fails or refuses to appear at the time  
26 scheduled for an examination under Subsection (a) or (f) commits a  
27 violation. An injured employee may not be fined more than \$10,000

1 for a violation of this subsection.

2       (j) An employee is not entitled to temporary income benefits  
3 ~~[compensation]~~, and an insurance carrier is authorized to suspend  
4 the payment of temporary income benefits, during and for a period in  
5 which the employee fails to submit to an examination required by  
6 Subsection (a) or (f) ~~[this chapter]~~ unless the commissioner  
7 ~~[commission]~~ determines that the employee had good cause for the  
8 failure to submit to the examination. The commissioner  
9 ~~[commission]~~ may order temporary income benefits to be paid for the  
10 period for which the commissioner ~~[commission]~~ determined that the  
11 employee had good cause. The commissioner ~~[commission]~~ by rule  
12 shall ensure that:

13           (1) an employee receives reasonable notice of an  
14 examination and the insurance carrier's basis for suspension; and

15           (2) the employee is provided a reasonable opportunity  
16 to reschedule an examination for good cause.

17       (k) ~~(i)~~ If the report of a designated doctor indicates  
18 that an employee has reached maximum medical improvement or is  
19 otherwise able to return to work immediately, the insurance carrier  
20 may suspend or reduce the payment of temporary income benefits  
21 immediately.

22       (l) A person who makes a frivolous request for a medical  
23 examination under Subsection (a) or (f), as determined by the  
24 commissioner, commits a violation.

25       SECTION 3.073. Subsection (e), Section 408.005, Labor Code,  
26 is amended to read as follows:

27       (e) The director of the division of hearings shall approve a

1 settlement if the director is satisfied that:

2 (1) the settlement accurately reflects the agreement  
3 between the parties;

4 (2) the settlement reflects adherence to all  
5 appropriate provisions of law and the policies of the commissioner  
6 [~~commission~~]; and

7 (3) under the law and facts, the settlement is in the  
8 best interest of the claimant.

9 SECTION 3.074. Section 408.022, Labor Code, is amended by  
10 amending Subsections (a), (b), and (c) and adding Subsection (f) to  
11 read as follows:

12 (a) Except in an emergency, the department [~~commission~~]  
13 shall require an employee to receive medical treatment from a  
14 doctor chosen from a list of doctors approved by the commissioner  
15 [~~commission~~]. A doctor may perform only those procedures that are  
16 within the scope of the practice for which the doctor is licensed.  
17 The employee is entitled to the employee's initial choice of a  
18 doctor from the department's [~~commission's~~] list.

19 (b) If an employee is dissatisfied with the initial choice  
20 of a doctor from the department's [~~commission's~~] list, the employee  
21 may notify the department [~~commission~~] and request authority to  
22 select an alternate doctor. The notification must be in writing  
23 stating the reasons for the change, except notification may be by  
24 telephone when a medical necessity exists for immediate change.

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

1 (1) whether treatment by the current doctor is  
2 medically inappropriate;

3 (2) the professional reputation of the doctor;

4 (3) whether the employee is receiving appropriate  
5 medical care to reach maximum medical improvement; and

6 (4) whether a conflict exists between the employee and  
7 the doctor to the extent that the doctor-patient relationship is  
8 jeopardized or impaired.

9 (f) This section does not apply to requirements regarding  
10 the selection of a doctor under a workers' compensation health care  
11 network established under Chapter 1305, Insurance Code, except as  
12 provided by that chapter.

13 SECTION 3.075. Section 408.023, Labor Code, is amended to  
14 read as follows:

15 Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING  
16 DOCTORS. (a) The department [~~commission~~] shall develop a list of  
17 doctors licensed in this state who are approved to provide health  
18 care services under this subtitle. A [~~Each~~] doctor [~~licensed in~~  
19 ~~this state on September 1, 2001,~~] is eligible to be included on the  
20 department's [~~commission's~~] list of approved doctors if the doctor:

21 (1) registers with the department [~~commission~~] in the  
22 manner prescribed by commissioner [~~commission~~] rules; and

23 (2) complies with the requirements adopted by the  
24 commissioner [~~commission~~] under this section.

25 (b) The commissioner [~~commission~~] by rule shall establish  
26 reasonable requirements for doctors and health care providers  
27 financially related to those doctors regarding training,

1 impairment rating testing, and disclosure of financial interests as  
2 required by Section 413.041, and for monitoring of those doctors  
3 and health care providers as provided by Sections 408.0231 and  
4 413.0512. The commissioner [~~commission~~] by rule shall provide a  
5 reasonable period, not to exceed 18 months after the adoption of  
6 rules under this section, for doctors to comply with the  
7 registration and training requirements of this subchapter. Except  
8 as otherwise provided by this section, the requirements under this  
9 subsection apply to doctors and other health care providers who:

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

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

27 (d) A certificate of registration issued under this section

1 is valid, unless revoked, suspended, or revised, for the period  
2 provided by commissioner [~~commission~~] rule and may be renewed on  
3 application to the department [~~commission~~]. The department  
4 [~~commission~~] shall provide notice to each doctor on the approved  
5 doctor list of the pending expiration of the doctor's certificate  
6 of registration not later than the 60th day before the date of  
7 expiration of the certificate.

8 (e) Notwithstanding other provisions of this section, a  
9 doctor not licensed in this state but licensed in another state or  
10 jurisdiction who treats employees or performs utilization review of  
11 health care for an insurance carrier may apply for a certificate of  
12 registration under this section to be included on the department's  
13 [~~commission's~~] list of approved doctors.

14 (f) A doctor who contracts with a workers' compensation  
15 health care network certified under Chapter 1305, Insurance Code,  
16 is not subject to the registration requirements of this section for  
17 the purpose of treating injured employees who are required to seek  
18 medical care from a network. However, a doctor who contracts with a  
19 workers' compensation health care network shall:

20 (1) comply with the requirements of Section 413.041  
21 regarding the disclosure of financial interests; and

22 (2) if the doctor intends to provide certifications of  
23 maximum medical improvement or assign impairment ratings, comply  
24 with the impairment rating training and testing requirements  
25 established by commissioner rule.

26 (g) A person required to comply with Subsection (f) who does  
27 not comply commits a violation.



1        (h) An insurance carrier may not use a certification of  
 2 maximum medical improvement or an impairment rating assigned by a  
 3 doctor who fails to comply with Subsection (f)(2) for the purpose of  
 4 suspending temporary income benefits or computing impairment  
 5 income benefits.

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

13        (j) [~~(g)~~] The commissioner [~~commission~~] by rule shall  
 14 modify registration and training requirements for doctors who  
 15 infrequently provide health care or [~~7~~] who perform utilization  
 16 review or peer review functions for insurance carriers [~~, or who~~  
 17 ~~participate in regional networks established under this~~  
 18 ~~subchapter,~~] as necessary to ensure that those doctors are informed  
 19 of the regulations that affect health care benefit delivery under  
 20 this subtitle.

21        (k) [~~(h)~~] Notwithstanding Section 4(h), Article 21.58A,  
 22 Insurance Code, a utilization review agent that uses doctors to  
 23 perform reviews of health care services provided under this  
 24 subtitle may use doctors licensed by another state to perform the  
 25 reviews, but the reviews must be performed under the direction of a  
 26 doctor licensed to practice in this state.

27        (l) [~~(i)~~] The commissioner [~~commission~~] may grant

1 exceptions to the requirement imposed under Subsection (i) [~~(f)~~] as  
2 necessary to ensure that:

- 3 (1) employees have access to health care; and  
4 (2) insurance carriers have access to evaluations of  
5 an employee's health care and income benefit eligibility as  
6 provided by this subtitle.

7 (m) [~~(j)~~] The injured employee's treating doctor is  
8 responsible for the efficient management of medical care as  
9 required by Section 408.025(c) and commissioner [~~commission~~]  
10 rules. The department [~~commission~~] shall collect information  
11 regarding:

- 12 (1) return-to-work outcomes;  
13 (2) patient satisfaction; and  
14 (3) cost and utilization of health care provided or  
15 authorized by a treating doctor on the list of approved doctors.

16 (n) [~~(k)~~] The commissioner [~~commission~~] may adopt rules to  
17 define the role of the treating doctor and to specify outcome  
18 information to be collected for a treating doctor.

19 SECTION 3.076. Section 408.0231, Labor Code, is amended to  
20 read as follows:

21 Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS;  
22 SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. (a) The  
23 commissioner [~~executive director~~] shall delete from the list of  
24 approved doctors a doctor:

- 25 (1) who fails to register with the department  
26 [~~commission~~] as provided by this chapter and commissioner  
27 [~~commission~~] rules;

1 (2) who is deceased;

2 (3) whose license to practice in this state is  
3 revoked, suspended, or not renewed by the appropriate licensing  
4 authority; or

5 (4) who requests to be removed from the list.

6 (b) The commissioner [~~commission~~] by rule shall establish  
7 criteria for:

8 (1) deleting or suspending a doctor from the list of  
9 approved doctors;

10 (2) imposing sanctions on a doctor or an insurance  
11 carrier as provided by this section;

12 (3) monitoring of utilization review agents, as  
13 provided by a memorandum of understanding between the department  
14 [~~commission~~] and the Texas Department of Insurance; and

15 (4) authorizing increased or reduced utilization  
16 review and preauthorization controls on a doctor.

17 (c) Rules adopted under Subsection (b) are in addition to,  
18 and do not affect, the rules adopted under Section 415.023(b). The  
19 criteria for deleting a doctor from the list or for recommending or  
20 imposing sanctions may include anything the commissioner  
21 [~~commission~~] considers relevant, including:

22 (1) a sanction of the doctor by the commissioner  
23 [~~commission~~] for a violation of Chapter 413 or Chapter 415;

24 (2) a sanction by the Medicare or Medicaid program  
25 for:

26 (A) substandard medical care;

27 (B) overcharging;

1 (C) overutilization of medical services; or

2 (D) any other substantive noncompliance with  
3 requirements of those programs regarding professional practice or  
4 billing;

5 (3) evidence from the department's [~~commission's~~]  
6 medical records that the applicable insurance carrier's  
7 utilization review practices or the doctor's charges, fees,  
8 diagnoses, treatments, evaluations, or impairment ratings are  
9 substantially different from those the commissioner [~~commission~~]  
10 finds to be fair and reasonable based on either a single  
11 determination or a pattern of practice;

12 (4) a suspension or other relevant practice  
13 restriction of the doctor's license by an appropriate licensing  
14 authority;

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

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

21 (7) a criminal conviction.

22 (d) The commissioner [~~commission~~] by rule shall establish  
23 procedures under which a doctor may apply for:

24 (1) reinstatement to the list of approved doctors; or

25 (2) restoration of doctor practice privileges removed  
26 by the commissioner [~~commission~~] based on sanctions imposed under  
27 this section.

1           (e) The commissioner [~~commission~~] shall act on a  
2 recommendation by the medical advisor selected under Section  
3 413.0511 and, after notice and the opportunity for a hearing, may  
4 impose sanctions under this section on a doctor or an insurance  
5 carrier or may recommend action regarding a utilization review  
6 agent. The department [~~commission~~] and the Texas Department of  
7 Insurance shall enter into a memorandum of understanding to  
8 coordinate the regulation of insurance carriers and utilization  
9 review agents as necessary to ensure:

- 10                   (1) compliance with applicable regulations; and  
11                   (2) that appropriate health care decisions are reached  
12 under this subtitle and under Article 21.58A, Insurance Code.

13           (f) The sanctions the commissioner [~~commission~~] may  
14 recommend or impose under this section include:

- 15                   (1) reduction of allowable reimbursement;  
16                   (2) mandatory preauthorization of all or certain  
17 health care services;  
18                   (3) required peer review monitoring, reporting, and  
19 audit;  
20                   (4) deletion or suspension from the approved doctor  
21 list and the designated doctor list;  
22                   (5) restrictions on appointment under this chapter;  
23                   (6) conditions or restrictions on an insurance carrier  
24 regarding actions by insurance carriers under this subtitle in  
25 accordance with the memorandum of understanding adopted between the  
26 department [~~commission~~] and the Texas Department of Insurance  
27 regarding Article 21.58A, Insurance Code; and

1           (7) mandatory participation in training classes or  
2 other courses as established or certified by the department  
3 [~~commission~~].

4           (g) The commissioner shall adopt rules regarding doctors  
5 who perform peer review functions for insurance carriers. Those  
6 rules may include standards for peer review, imposition of  
7 sanctions on doctors performing peer review functions, including  
8 restriction, suspension, or removal of the doctor's ability to  
9 perform peer review on behalf of insurance carriers in the workers'  
10 compensation system, and other issues important to the quality of  
11 peer review, as determined by the commissioner.

12           SECTION 3.077. Section 408.024, Labor Code, is amended to  
13 read as follows:

14           Sec. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS.  
15 Except as otherwise provided, and after notice and an opportunity  
16 for hearing, the commissioner [~~commission~~] may relieve an insurance  
17 carrier of liability for health care that is furnished by a health  
18 care provider or another person selected in a manner inconsistent  
19 with the requirements of this subchapter.

20           SECTION 3.078. Subsections (a), (b), and (d), Section  
21 408.025, Labor Code, are amended to read as follows:

22           (a) The commissioner [~~commission~~] by rule shall adopt  
23 requirements for reports and records that are required to be filed  
24 with the department [~~commission~~] or provided to the injured  
25 employee, the employee's attorney, or the insurance carrier by a  
26 health care provider.

27           (b) The commissioner [~~commission~~] by rule shall adopt

1 requirements for reports and records that are to be made available  
2 by a health care provider to another health care provider to prevent  
3 unnecessary duplication of tests and examinations.

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

15 SECTION 3.079. Subchapter B, Chapter 408, Labor Code, is  
16 amended by adding Section 408.0251 to read as follows:

17 Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) The  
18 commissioner by rule shall establish requirements regarding:

19 (1) the electronic submission and processing of  
20 medical bills by health care providers to insurance carriers; and

21 (2) the electronic payment of medical bills by  
22 insurance carriers to health care providers.

23 (b) Insurance carriers shall accept medical bills submitted  
24 electronically by health care providers in accordance with  
25 commissioner rule.

26 (c) The commissioner shall by rule establish criteria for  
27 granting exceptions to insurance carriers and health care providers

1 who are unable to submit, accept, or pay medical bills  
2 electronically.

3 SECTION 3.080. Section 408.026, Labor Code, is amended to  
4 read as follows:

5 Sec. 408.026. SPINAL SURGERY. Except in a medical  
6 emergency, an insurance carrier is liable for medical costs related  
7 to spinal surgery only as provided by Section 413.014 and  
8 commissioner [~~commission~~] rules.

9 SECTION 3.081. Subsection (d), Section 408.027, Labor Code,  
10 is amended to read as follows:

11 (d) If an insurance carrier disputes the amount of payment  
12 or the health care provider's entitlement to payment, the insurance  
13 carrier shall send to the department [~~commission~~], the health care  
14 provider, and the injured employee a report that sufficiently  
15 explains the reasons for the reduction or denial of payment for  
16 health care services provided to the employee. The insurance  
17 carrier is entitled to a hearing as provided by Section 413.031(d).

18 SECTION 3.082. Section 408.028, Labor Code, is amended by  
19 amending Subsections (b), (d), and (e) and adding Subsection (f) to  
20 read as follows:

21 (b) The commissioner [~~commission~~] by rule shall require  
22 [~~develop an open formulary under Section 413.011 that requires~~] the  
23 use of generic pharmaceutical medications and clinically  
24 appropriate over-the-counter alternatives to prescription  
25 medications unless otherwise specified by the prescribing doctor,  
26 in accordance with applicable state law. The department by rule may  
27 adopt a closed formulary under Section 413.011. Rules adopted by



1 the department shall allow an appeals process for claims in which a  
2 treating doctor determines and documents that a drug not included  
3 in the formulary is necessary to treat an injured employee's  
4 compensable injury.

5 (d) The commissioner [~~commission~~] shall adopt rules to  
6 allow an employee to purchase over-the-counter alternatives to  
7 prescription medications prescribed or ordered under Subsection  
8 (a) or (b) and to obtain reimbursement from the insurance carrier  
9 for those medications.

10 (e) Notwithstanding Subsection (b), the commissioner  
11 [~~commission~~] by rule shall allow an employee to purchase a brand  
12 name drug rather than a generic pharmaceutical medication or  
13 over-the-counter alternative to a prescription medication if a  
14 health care provider prescribes a generic pharmaceutical  
15 medication or an over-the-counter alternative to a prescription  
16 medication. The employee shall be responsible for paying the  
17 difference between the cost of the brand name drug and the cost of  
18 the generic pharmaceutical medication or of an over-the-counter  
19 alternative to a prescription medication. The employee may not  
20 seek reimbursement for the difference in cost from an insurance  
21 carrier and is not entitled to use the medical dispute resolution  
22 provisions of Chapter 413 with regard to the prescription. A  
23 payment described by this subsection by an employee to a health care  
24 provider does not violate Section 413.042. This subsection does  
25 not affect the duty of a health care provider to comply with the  
26 requirements of Subsection (b) when prescribing medications or  
27 ordering over-the-counter alternatives to prescription

1 medications.

2 (f) Notwithstanding any other provision of this title, the  
3 commissioner by rule shall adopt a fee schedule for pharmacy and  
4 pharmaceutical services that will:

5 (1) provide reimbursement rates that are fair and  
6 reasonable;

7 (2) assure adequate access to medications and services  
8 for injured workers; and

9 (3) minimize costs to employees and insurance  
10 carriers.

11 SECTION 3.083. Section 408.030, Labor Code, is amended to  
12 read as follows:

13 Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. If the  
14 department [~~commission~~] discovers an act or omission by a physician  
15 that may constitute a felony, a misdemeanor involving moral  
16 turpitude, a violation of a state or federal narcotics or  
17 controlled substance law, an offense involving fraud or abuse under  
18 the Medicare or Medicaid program, or a violation of this subtitle,  
19 the department [~~commission~~] shall immediately report that act or  
20 omission to the Texas State Board of Medical Examiners.

21 SECTION 3.084. Subchapter B, Chapter 408, Labor Code, is  
22 amended by adding Section 408.031 to read as follows:

23 Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS.

24 (a) Notwithstanding any other provision of this chapter, an  
25 injured employee may receive benefits under a workers' compensation  
26 health care network established under Chapter 1305, Insurance Code,  
27 in the manner provided by that chapter.

1       (b) In the event of a conflict between this title and  
2 Chapter 1305, Insurance Code, as to the operation and regulation of  
3 workers' compensation health care networks, regulation of the  
4 health care providers who contract with those networks, or the  
5 resolution of disputes regarding medical benefits provided through  
6 those networks, Chapter 1305, Insurance Code, prevails.

7       SECTION 3.0841. Subchapter B, Chapter 408, Labor Code, is  
8 amended by adding Section 408.032 to read as follows:

9       Sec. 408.032. INTERDISCIPLINARY REHABILITATION PROGRAMS  
10 AND FACILITIES; ACCREDITATION REQUIRED. The commissioner shall  
11 adopt a rule that requires that an interdisciplinary rehabilitation  
12 program or facility that provides services to injured employees be  
13 appropriately accredited, after determining that adequate access  
14 to accredited rehabilitation care is available.

15       SECTION 3.085. Subsection (c), Section 408.041, Labor Code,  
16 is amended to read as follows:

17       (c) If Subsection (a) or (b) cannot reasonably be applied  
18 because the employee's employment has been irregular or because the  
19 employee has lost time from work during the 13-week period  
20 immediately preceding the injury because of illness, weather, or  
21 another cause beyond the control of the employee, the commissioner  
22 [~~commission~~] may determine the employee's average weekly wage by  
23 any method that the commissioner [~~commission~~] considers fair, just,  
24 and reasonable to all parties and consistent with the methods  
25 established under this section.

26       SECTION 3.086. Subsections (d), (f), and (g), Section  
27 408.042, Labor Code, are amended to read as follows:

1 (d) The commissioner [~~commission~~] shall:

2 (1) prescribe a form to collect information regarding  
3 the wages of employees with multiple employment; and

4 (2) by rule, determine the manner by which the  
5 department [~~commission~~] collects and distributes wage information  
6 to implement this section.

7 (f) If the commissioner [~~commission~~] determines that  
8 computing the average weekly wage for an employee as provided by  
9 Subsection (c) is impractical or unreasonable, the commissioner  
10 [~~commission~~] shall set the average weekly wage in a manner that more  
11 fairly reflects the employee's average weekly wage and that is fair  
12 and just to both parties or is in the manner agreed to by the  
13 parties. The commissioner [~~commission~~] by rule may define methods  
14 to determine a fair and just average weekly wage consistent with  
15 this section.

16 (g) An insurance carrier is entitled to apply for and  
17 receive reimbursement at least annually from the subsequent injury  
18 fund for the amount of income benefits paid to a worker under this  
19 section that are based on employment other than the employment  
20 during which the compensable injury occurred. The commissioner  
21 [~~commission~~] may adopt rules that govern the documentation,  
22 application process, and other administrative requirements  
23 necessary to implement this subsection.

24 SECTION 3.087. Subsection (c), Section 408.043, Labor Code,  
25 is amended to read as follows:

26 (c) If, for good reason, the commissioner [~~commission~~]  
27 determines that computing the average weekly wage for a seasonal

1 employee as provided by this section is impractical, the  
2 commissioner [~~commission~~] shall compute the average weekly wage as  
3 of the time of the injury in a manner that is fair and just to both  
4 parties.

5 SECTION 3.088. Subsection (b), Section 408.0445, Labor  
6 Code, is amended to read as follows:

7 (b) For purposes of computing income benefits or death  
8 benefits under Section 88.303, Education Code, the average weekly  
9 wage of a Texas Task Force 1 member, as defined by Section 88.301,  
10 Education Code, who is engaged in authorized training or duty is an  
11 amount equal to the sum of the member's regular weekly wage at any  
12 employment, including self-employment, that the member holds in  
13 addition to serving as a member of Texas Task Force 1, except that  
14 the amount may not exceed 100 percent of the state average weekly  
15 wage as determined under Section 408.047. A member for whom an  
16 average weekly wage cannot be computed shall be paid the minimum  
17 weekly benefit established by the commissioner [~~commission~~].

18 SECTION 3.089. Subsections (d) and (e), Section 408.0446,  
19 Labor Code, are amended to read as follows:

20 (d) If the commissioner [~~commission~~] determines that  
21 computing the average weekly wage of a school district employee as  
22 provided by this section is impractical because the employee did  
23 not earn wages during the 12 months immediately preceding the date  
24 of the injury, the commissioner [~~commission~~] shall compute the  
25 average weekly wage in a manner that is fair and just to both  
26 parties.

27 (e) The commissioner [~~commission~~] shall adopt rules as

1 necessary to implement this section.

2 SECTION 3.090. Section 408.045, Labor Code, is amended to  
3 read as follows:

4 Sec. 408.045. NONPECUNIARY WAGES. The commissioner  
5 [~~commission~~] may not include nonpecuniary wages in computing an  
6 employee's average weekly wage during a period in which the  
7 employer continues to provide the nonpecuniary wages.

8 SECTION 3.091. Section 408.047, Labor Code, is amended to  
9 read as follows:

10 Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On and after  
11 October 1, 2006, the state average weekly wage is equal to 85  
12 percent of the average weekly wage in covered employment computed  
13 by the Texas Workforce Commission under Section 207.002(c).

14 (b) The state average weekly wage for the period [~~fiscal~~  
15 ~~year~~] beginning September 1, 2005 [~~2003~~], and ending September 30,  
16 2006 [~~August 31, 2004~~], is \$540 [~~\$537, and for the fiscal year~~  
17 ~~beginning September 1, 2004, and ending August 31, 2005, is \$539~~].  
18 This subsection expires October 1, 2006.

19 SECTION 3.092. Subsection (f), Section 408.061, Labor Code,  
20 is amended to read as follows:

21 (f) The commissioner [~~commission~~] shall compute the maximum  
22 weekly income benefits for each state fiscal year not later than  
23 October [~~September~~] 1 of each year.

24 SECTION 3.093. Subsection (b), Section 408.062, Labor Code,  
25 is amended to read as follows:

26 (b) The commissioner [~~commission~~] shall compute the minimum  
27 weekly income benefit for each state fiscal year not later than

1 October [~~September~~] 1 of each year.

2 SECTION 3.094. Subsections (a) and (c), Section 408.063,  
3 Labor Code, are amended to read as follows:

4 (a) To expedite the payment of income benefits, the  
5 commissioner [~~commission~~] may by rule establish reasonable  
6 presumptions relating to the wages earned by an employee, including  
7 the presumption that an employee's last paycheck accurately  
8 reflects the employee's usual wage.

9 (c) An employer who fails to file a wage statement in  
10 accordance with Subsection (b) commits a violation. [~~A violation~~  
11 ~~under this subsection is a Class D administrative violation.~~]

12 SECTION 3.095. Subsections (b) and (c), Section 408.081,  
13 Labor Code, are amended to read as follows:

14 (b) Except as otherwise provided by this section or this  
15 subtitle, income benefits shall be paid weekly as and when they  
16 accrue without order from the commissioner [~~commission~~]. Interest  
17 on accrued but unpaid benefits shall be paid, without order of the  
18 commissioner [~~commission~~], at the time the accrued benefits are  
19 paid.

20 (c) The commissioner [~~commission~~] by rule shall establish  
21 requirements for agreements under which income benefits may be paid  
22 monthly. Income benefits may be paid monthly only:

23 (1) on the request of the employee and the agreement of  
24 the employee and the insurance carrier; and

25 (2) in compliance with the requirements adopted by the  
26 commissioner [~~commission~~].

27 SECTION 3.096. Subsection (c), Section 408.082, Labor Code,

1 is amended to read as follows:

2 (c) If the disability continues for two [~~four~~] weeks or  
3 longer after the date it begins, compensation shall be computed  
4 from the date the disability begins.

5 SECTION 3.097. Subsections (a) and (b), Section 408.084,  
6 Labor Code, are amended to read as follows:

7 (a) At the request of the insurance carrier, the  
8 commissioner [~~commission~~] may order that impairment income  
9 benefits and supplemental income benefits be reduced in a  
10 proportion equal to the proportion of a documented impairment that  
11 resulted from earlier compensable injuries.

12 (b) The commissioner [~~commission~~] shall consider the  
13 cumulative impact of the compensable injuries on the employee's  
14 overall impairment in determining a reduction under this section.

15 SECTION 3.098. Section 408.085, Labor Code, is amended to  
16 read as follows:

17 Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If  
18 there is a likelihood that income benefits will be paid, the  
19 commissioner [~~commission~~] may grant an employee suffering  
20 financial hardship advances as provided by this subtitle against  
21 the amount of income benefits to which the employee may be entitled.  
22 An advance may be ordered before or after the employee attains  
23 maximum medical improvement. An insurance carrier shall pay the  
24 advance ordered.

25 (b) An employee must apply to the department [~~commission~~]  
26 for an advance on a form prescribed by the commissioner  
27 [~~commission~~]. The application must describe the hardship that is



1 the grounds for the advance.

2 (c) An advance under this section may not exceed an amount  
3 equal to four times the maximum weekly benefit for temporary income  
4 benefits as computed in Section 408.061. The commissioner  
5 [~~commission~~] may not grant more than three advances to a particular  
6 employee based on the same injury.

7 (d) The commissioner [~~commission~~] may not grant an advance  
8 to an employee who is receiving, on the date of the application  
9 under Subsection (b), at least 90 percent of the employee's net  
10 preinjury wages under Section 408.003 or 408.129.

11 SECTION 3.099. Section 408.086, Labor Code, is amended to  
12 read as follows:

13 Sec. 408.086. DEPARTMENT [~~COMMISSION~~] DETERMINATION OF  
14 EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) During the period  
15 that impairment income benefits or supplemental income benefits are  
16 being paid to an employee, the commissioner [~~commission~~] shall  
17 determine at least annually whether any extended unemployment or  
18 underemployment is a direct result of the employee's impairment.

19 (b) To make this determination, the commissioner  
20 [~~commission~~] may require periodic reports from the employee and the  
21 insurance carrier and, at the insurance carrier's expense, may  
22 require physical or other examinations, vocational assessments, or  
23 other tests or diagnoses necessary to perform the commissioner's  
24 [~~its~~] duty under this section and Subchapter H.

25 SECTION 3.100. Subsection (b), Section 408.102, Labor Code,  
26 is amended to read as follows:

27 (b) The commissioner [~~commission~~] by rule shall establish a

1 presumption that maximum medical improvement has been reached based  
2 on a lack of medical improvement in the employee's condition.

3 SECTION 3.101. Subsection (b), Section 408.103, Labor Code,  
4 is amended to read as follows:

5 (b) A temporary income benefit under Subsection (a)(2) may  
6 not exceed the employee's actual earnings for the previous year. It  
7 is presumed that the employee's actual earnings for the previous  
8 year are equal to:

9 (1) the sum of the employee's wages as reported in the  
10 most recent four quarterly wage reports to the Texas Workforce  
11 [~~Employment~~] Commission divided by 52;

12 (2) the employee's wages in the single quarter of the  
13 most recent four quarters in which the employee's earnings were  
14 highest, divided by 13, if the commissioner [~~commission~~] finds that  
15 the employee's most recent four quarters' earnings reported in the  
16 Texas Workforce [~~Employment~~] Commission wage reports are not  
17 representative of the employee's usual earnings; or

18 (3) the amount the commissioner [~~commission~~]  
19 determines from other credible evidence to be the actual earnings  
20 for the previous year if the Texas Workforce [~~Employment~~]  
21 Commission does not have a wage report reflecting at least one  
22 quarter's earnings because the employee worked outside the state  
23 during the previous year.

24 SECTION 3.102. Subsections (a) and (c), Section 408.104,  
25 Labor Code, are amended to read as follows:

26 (a) On application by either the employee or the insurance  
27 carrier, the commissioner [~~commission~~] by order may extend the

1 104-week period described by Section 401.011(30)(B) if the employee  
 2 has had spinal surgery, or has been approved for spinal surgery  
 3 under Section 408.026 and commissioner [~~commission~~] rules, within  
 4 12 weeks before the expiration of the 104-week period. If an order  
 5 is issued under this section, the order shall extend the statutory  
 6 period for maximum medical improvement to a date certain, based on  
 7 medical evidence presented to the commissioner [~~commission~~].

8 (c) The commissioner [~~commission~~] shall adopt rules to  
 9 implement this section, including rules establishing procedures  
 10 for requesting and disputing an extension.

11 SECTION 3.103. Subchapter G, Chapter 408, Labor Code, is  
 12 amended by amending Section 408.122 and adding Section 408.1225 to  
 13 read as follows:

14 Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS [~~+~~  
 15 ~~DESIGNATED DOCTOR~~]. [~~(a)~~] A claimant may not recover impairment  
 16 income benefits unless evidence of impairment based on an objective  
 17 clinical or laboratory finding exists. If the finding of  
 18 impairment is made by a doctor chosen by the claimant and the  
 19 finding is contested, a designated doctor or a doctor selected by  
 20 the insurance carrier must be able to confirm the objective  
 21 clinical or laboratory finding on which the finding of impairment  
 22 is based.

23 Sec. 408.1225. DESIGNATED DOCTOR. (a) [~~(b)~~] To be  
 24 eligible to serve as a designated doctor, a doctor must meet  
 25 specific qualifications, including training in the determination  
 26 of impairment ratings and demonstrated expertise in performing  
 27 examinations and making evaluations as described by Section

1 408.0041. The commissioner [~~executive director~~] shall develop  
2 qualification standards and administrative policies to implement  
3 this subsection[~~7~~] and [~~the commission~~] may adopt rules as  
4 necessary.

5 (b) The commissioner shall ensure the quality of designated  
6 doctor decisions and reviews through active monitoring of the  
7 decisions and reviews, and may take action as necessary to:

8 (1) restrict the participation of a designated doctor;  
9 or

10 (2) remove a doctor from inclusion on the department's  
11 list of designated doctors. [~~The designated doctor doing the~~  
12 ~~review must be trained and experienced with the treatment and~~  
13 ~~procedures used by the doctor treating the patient's medical~~  
14 ~~condition, and the treatment and procedures performed must be~~  
15 ~~within the scope of practice of the designated doctor. A designated~~  
16 ~~doctor's credentials must be appropriate for the issue in question~~  
17 ~~and the injured employee's medical condition.~~]

18 (c) The report of the designated doctor has presumptive  
19 weight, and the department [~~commission~~] shall base its  
20 determination of whether the employee has reached maximum medical  
21 improvement on the report unless the preponderance [~~great weight~~]  
22 of the other medical evidence is to the contrary.

23 (d) The commissioner shall develop rules to ensure that a  
24 designated doctor called on to conduct an examination under Section  
25 408.0041 has no conflict of interest in serving as a designated  
26 doctor in performing any examination.

27 SECTION 3.104. Section 408.123, Labor Code, is amended and

1 reenacted to read as follows:

2           Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL  
3 IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an  
4 employee has been certified by a doctor as having reached maximum  
5 medical improvement, the certifying doctor shall evaluate the  
6 condition of the employee and assign an impairment rating using the  
7 impairment rating guidelines described by Section 408.124. If the  
8 certification and evaluation are performed by a doctor other than  
9 the employee's treating doctor, the certification and evaluation  
10 shall be submitted to the treating doctor, and the treating doctor  
11 shall indicate agreement or disagreement with the certification and  
12 evaluation.

13           (b) A certifying doctor shall issue a written report  
14 certifying that maximum medical improvement has been reached,  
15 stating the employee's impairment rating, and providing any other  
16 information required by the commissioner [~~commission~~] to:

- 17                   (1) the department [~~commission~~];  
18                   (2) the employee; and  
19                   (3) the insurance carrier.

20           (c) The department shall adopt a rule that provides that, at  
21 the conclusion of any examination in which maximum medical  
22 improvement is certified and any impairment rating is assigned by  
23 the treating doctor, written notice shall be given to the employee  
24 that the employee may dispute the certification of maximum medical  
25 improvement and assigned impairment rating. The notice to the  
26 employee must state how to dispute the certification of maximum  
27 medical improvement and impairment rating.

1        (d) If an employee is not certified as having reached  
2 maximum medical improvement before the expiration of 102 weeks  
3 after the date income benefits begin to accrue, the department  
4 [~~commission~~] shall notify the treating doctor of the requirements  
5 of this subchapter.

6        (e) [~~(d)~~] Except as otherwise provided by this section, an  
7 employee's first valid certification of maximum medical  
8 improvement and first valid assignment of an impairment rating is  
9 final if the certification or assignment is not disputed before the  
10 91st day after the date written notification of the certification  
11 or assignment is provided to the employee and the carrier by  
12 verifiable means.

13        (f) [~~(e)~~] An employee's first certification of maximum  
14 medical improvement or assignment of an impairment rating may be  
15 disputed after the period described by Subsection (e) [~~(d)~~] if:

16            (1) compelling medical evidence exists of:

17                    (A) a significant error by the certifying doctor  
18 in applying the appropriate American Medical Association  
19 guidelines or in calculating the impairment rating;

20                    (B) a clearly mistaken diagnosis or a previously  
21 undiagnosed medical condition; or

22                    (C) improper or inadequate treatment of the  
23 injury before the date of the certification or assignment that  
24 would render the certification or assignment invalid; or

25            (2) other compelling circumstances exist as  
26 prescribed by commissioner [~~commission~~] rule.

27        (g) [~~(f)~~] If an employee has not been certified as having

1 reached maximum medical improvement before the expiration of 104  
2 weeks after the date income benefits begin to accrue or the  
3 expiration date of any extension of benefits under Section 408.104,  
4 the impairment rating assigned after the expiration of either of  
5 those periods is final if the impairment rating is not disputed  
6 before the 91st day after the date written notification of the  
7 certification or assignment is provided to the employee and the  
8 carrier by verifiable means. A certification or assignment may be  
9 disputed after the 90th day only as provided by Subsection (f)  
10 [~~(e)~~].

11 (h) [~~(g)~~] If an employee's disputed certification of  
12 maximum medical improvement or assignment of impairment rating is  
13 finally modified, overturned, or withdrawn, the first  
14 certification or assignment made after the date of the  
15 modification, overturning, or withdrawal becomes final if the  
16 certification or assignment is not disputed before the 91st day  
17 after the date notification of the certification or assignment is  
18 provided to the employee and the carrier by verifiable means. A  
19 certification or assignment may be disputed after the 90th day only  
20 as provided by Subsection (f) [~~(e)~~].

21 SECTION 3.105. Section 408.124, Labor Code, is amended to  
22 read as follows:

23 Sec. 408.124. IMPAIRMENT RATING GUIDELINES. (a) An award  
24 of an impairment income benefit, whether by the commissioner  
25 [~~commission~~] or a court, shall be made on an impairment rating  
26 determined using the impairment rating guidelines described in this  
27 section.

1 (b) For determining the existence and degree of an  
2 employee's impairment, the commissioner [~~commission~~] shall use  
3 "Guides to the Evaluation of Permanent Impairment," third edition,  
4 second printing, dated February 1989, published by the American  
5 Medical Association.

6 (c) Notwithstanding Subsection (b), the commissioner  
7 [~~commission~~] by rule may adopt the fourth edition of the "Guides to  
8 the Evaluation of Permanent Impairment," published by the American  
9 Medical Association, for determining the existence and degree of an  
10 employee's impairment.

11 SECTION 3.106. Subsections (a) through (d) and (f), Section  
12 408.125, Labor Code, are amended to read as follows:

13 (a) If an impairment rating is disputed, the commissioner  
14 [~~commission~~] shall direct the employee to the next available doctor  
15 on the department's [~~commission's~~] list of designated doctors, as  
16 provided by Section 408.0041.

17 (b) The designated doctor shall report in writing to the  
18 department [~~commission~~].

19 (c) The report of the designated doctor shall have  
20 presumptive weight, and the department [~~commission~~] shall base the  
21 impairment rating on that report unless the preponderance [~~great~~  
22 ~~weight~~] of the other medical evidence is to the contrary. If the  
23 preponderance [~~great weight~~] of the medical evidence contradicts  
24 the impairment rating contained in the report of the designated  
25 doctor chosen by the department [~~commission~~], the department  
26 [~~commission~~] shall adopt the impairment rating of one of the other  
27 doctors.



1 (d) To avoid undue influence on a person selected as a  
2 designated doctor under this section, only the injured employee or  
3 an appropriate member of the staff of the department [~~commission~~]  
4 may communicate with the designated doctor about the case regarding  
5 the injured employee's medical condition or history before the  
6 examination of the injured employee by the designated doctor.  
7 After that examination is completed, communication with the  
8 designated doctor regarding the injured employee's medical  
9 condition or history may be made only through appropriate  
10 department [~~commission~~] staff members. The designated doctor may  
11 initiate communication with any doctor who has previously treated  
12 or examined the injured employee for the work-related injury.

13 (f) A violation of Subsection (d) is an [~~a Class C~~]  
14 administrative violation.

15 SECTION 3.107. Subsection (c), Section 408.127, Labor Code,  
16 is amended to read as follows:

17 (c) The commissioner [~~commission~~] shall adopt rules and  
18 forms to ensure the full reporting and the accuracy of reductions  
19 and reimbursements made under this section.

20 SECTION 3.108. Subsections (a), (b), and (d), Section  
21 408.129, Labor Code, are amended to read as follows:

22 (a) On approval by the commissioner [~~commission~~] of a  
23 written request received from an employee, an insurance carrier  
24 shall accelerate the payment of impairment income benefits to the  
25 employee. The accelerated payment may not exceed a rate of payment  
26 equal to that of the employee's net preinjury wage.

27 (b) The commissioner [~~commission~~] shall approve the request

1 and order the acceleration of the benefits if the commissioner  
2 [~~commission~~] determines that the acceleration is:

- 3 (1) required to relieve hardship; and  
4 (2) in the overall best interest of the employee.

5 (d) The commissioner [~~commission~~] may prescribe forms  
6 necessary to implement this section.

7 SECTION 3.109. Section 408.141, Labor Code, is amended to  
8 read as follows:

9 Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An  
10 award of a supplemental income benefit, whether by the commissioner  
11 [~~commission~~] or a court, shall be made in accordance with this  
12 subchapter.

13 SECTION 3.110. Subsections (a) and (b), Section 408.143,  
14 Labor Code, are amended to read as follows:

15 (a) After the commissioner's [~~commission's~~] initial  
16 determination of supplemental income benefits, the employee must  
17 file a statement with the insurance carrier stating:

18 (1) that the employee has earned less than 80 percent  
19 of the employee's average weekly wage as a direct result of the  
20 employee's impairment;

21 (2) the amount of wages the employee earned in the  
22 filing period provided by Subsection (b); and

23 (3) that the employee has in good faith sought  
24 employment commensurate with the employee's ability to work.

25 (b) The statement required under this section must be filed  
26 quarterly on a form and in the manner provided by the commissioner  
27 [~~commission~~]. The commissioner [~~commission~~] may modify the filing

1 period as appropriate to an individual case.

2 SECTION 3.111. Subsection (c), Section 408.147, Labor Code,  
3 is amended to read as follows:

4 (c) If an insurance carrier disputes the commissioner's [~~a~~  
5 ~~commissioner~~] determination that an employee is entitled to  
6 supplemental income benefits or the amount of supplemental income  
7 benefits due and the employee prevails on any disputed issue, the  
8 insurance carrier is liable for reasonable and necessary attorney's  
9 fees incurred by the employee as a result of the insurance carrier's  
10 dispute and for supplemental income benefits accrued but not paid  
11 and interest on that amount, according to Section 408.064.  
12 Attorney's fees awarded under this subsection are not subject to  
13 Sections 408.221(b), (f), and (i).

14 SECTION 3.112. Section 408.148, Labor Code, is amended to  
15 read as follows:

16 Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. The  
17 commissioner [~~commissioner~~] may reinstate supplemental income  
18 benefits to an employee who is discharged within 12 months of the  
19 date of losing entitlement to supplemental income benefits under  
20 Section 408.146(c) if the commissioner [~~commissioner~~] finds that the  
21 employee was discharged at that time with the intent to deprive the  
22 employee of supplemental income benefits.

23 SECTION 3.113. Section 408.149, Labor Code, is amended to  
24 read as follows:

25 Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE.  
26 (a) Not more than once in each period of 12 calendar months, an  
27 employee and an insurance carrier each may request the commissioner

1 ~~[commission]~~ to review the status of the employee and determine  
2 whether the employee's unemployment or underemployment is a direct  
3 result of impairment from the compensable injury.

4 (b) Either party may request a benefit review conference to  
5 contest a determination of the commissioner ~~[commission]~~ at any  
6 time, subject only to the limits placed on the insurance carrier by  
7 Section 408.147.

8 SECTION 3.114. Section 408.150, Labor Code, is amended to  
9 read as follows:

10 Sec. 408.150. VOCATIONAL REHABILITATION. (a) The  
11 department ~~[commission]~~ shall refer an employee to the Department  
12 of Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
13 ~~Commission~~] with a recommendation for appropriate services if the  
14 department ~~[commission]~~ determines that an employee [~~entitled to~~  
15 ~~supplemental income benefits~~] could be materially assisted by  
16 vocational rehabilitation or training in returning to employment or  
17 returning to employment more nearly approximating the employee's  
18 preinjury employment. The department ~~[commission]~~ shall also  
19 notify insurance carriers of the need for vocational rehabilitation  
20 or training services. The insurance carrier may provide services  
21 through a private provider of vocational rehabilitation services  
22 under Section 409.012.

23 (b) An employee who refuses services or refuses to cooperate  
24 with services provided under this section by the Department of  
25 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
26 ~~Commission~~] or a private provider loses entitlement to supplemental  
27 income benefits.

1 SECTION 3.115. Section 408.151, Labor Code, is amended to  
2 read as follows:

3 Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME  
4 BENEFITS. (a) On or after the second anniversary of the date the  
5 commissioner [~~commission~~] makes the initial award of supplemental  
6 income benefits, an insurance carrier may not require an employee  
7 who is receiving supplemental income benefits to submit to a  
8 medical examination more than annually if, in the preceding year,  
9 the employee's medical condition resulting from the compensable  
10 injury has not improved sufficiently to allow the employee to  
11 return to work.

12 (b) If a dispute exists as to whether the employee's medical  
13 condition has improved sufficiently to allow the employee to return  
14 to work, the commissioner [~~commission~~] shall direct the employee to  
15 be examined by a designated doctor chosen by the department  
16 [~~commission~~]. The designated doctor shall report to the department  
17 [~~commission~~]. The report of the designated doctor has presumptive  
18 weight, and the department [~~commission~~] shall base its  
19 determination of whether the employee's medical condition has  
20 improved sufficiently to allow the employee to return to work on  
21 that report unless the preponderance [~~great weight~~] of the other  
22 medical evidence is to the contrary.

23 [~~(c) The commission may require an employee to whom  
24 Subsection (a) applies to submit to a medical examination under  
25 Section 408.004 only to determine whether the employee's medical  
26 condition is a direct result of impairment from a compensable  
27 injury.]~~

1 SECTION 3.116. Subsection (d), Section 408.161, Labor Code,  
2 is amended to read as follows:

3 (d) An insurance carrier may pay lifetime income benefits  
4 through an annuity if the annuity agreement meets the terms and  
5 conditions for annuity agreements adopted by the commissioner  
6 [~~commission~~] by rule. The establishment of an annuity under this  
7 subsection does not relieve the insurance carrier of the liability  
8 under this title for ensuring that the lifetime income benefits are  
9 paid.

10 SECTION 3.117. Subsections (c) and (d), Section 408.181,  
11 Labor Code, are amended to read as follows:

12 (c) The commissioner [~~commission~~] by rule shall establish  
13 requirements for agreements under which death benefits may be paid  
14 monthly. Death benefits may be paid monthly only:

15 (1) on the request of the legal beneficiary and the  
16 agreement of the legal beneficiary and the insurance carrier; and

17 (2) in compliance with the requirements adopted by the  
18 commissioner [~~commission~~].

19 (d) An insurance carrier may pay death benefits through an  
20 annuity if the annuity agreement meets the terms and conditions for  
21 annuity agreements adopted by the commissioner [~~commission~~] by  
22 rule. The establishment of an annuity under this subsection does  
23 not relieve the insurance carrier of the liability under this title  
24 for ensuring that the death benefits are paid.

25 SECTION 3.118. Subsection (f), Section 408.182, Labor Code,  
26 is amended to read as follows:

27 (f) In this section:

1           (1) "Eligible child" means a child of a deceased  
2 employee if the child is:

3                   (A) a minor;

4                   (B) enrolled as a full-time student in an  
5 accredited educational institution and is less than 25 years of  
6 age; or

7                   (C) a dependent of the deceased employee at the  
8 time of the employee's death.

9           (2) "Eligible grandchild" means a grandchild of a  
10 deceased employee who is a dependent of the deceased employee and  
11 whose parent is not an eligible child.

12           (3) "Eligible spouse" means the surviving spouse of a  
13 deceased employee unless the spouse abandoned the employee for  
14 longer than the year immediately preceding the death without good  
15 cause, as determined by the department [~~commission~~].

16           SECTION 3.119. Subsection (b), Section 408.183, Labor Code,  
17 is amended to read as follows:

18           (b) An eligible spouse is entitled to receive death benefits  
19 for life or until remarriage. On remarriage, the eligible spouse is  
20 entitled to receive 104 weeks of death benefits, commuted as  
21 provided by commissioner [~~commission~~] rule.

22           SECTION 3.120. Subsection (c), Section 408.187, Labor Code,  
23 is amended to read as follows:

24           (c) The commissioner [~~commission~~] shall require the  
25 insurance carrier to pay the costs of a procedure ordered under this  
26 section.

27           SECTION 3.121. Section 408.202, Labor Code, is amended to

1 read as follows:

2 Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not  
3 assignable, except a legal beneficiary may, with the commissioner's  
4 ~~[commission]~~ approval, assign the right to death benefits.

5 SECTION 3.122. Subsections (a) through (g), Section  
6 408.221, Labor Code, are amended to read as follows:

7 (a) An attorney's fee, including a contingency fee, for  
8 representing a claimant before the department ~~[commission]~~ or court  
9 under this subtitle must be approved by the commissioner  
10 ~~[commission]~~ or court.

11 (b) Except as otherwise provided, an attorney's fee under  
12 this section is based on the attorney's time and expenses according  
13 to written evidence presented to the department ~~[commission]~~ or  
14 court. Except as provided by Subsection (c) or Section 408.147(c),  
15 the attorney's fee shall be paid from the claimant's recovery.

16 (c) An insurance carrier that seeks judicial review under  
17 Subchapter G, Chapter 410, of a final decision of a department  
18 ~~[commission]~~ appeals panel regarding compensability or eligibility  
19 for, or the amount of, income or death benefits is liable for  
20 reasonable and necessary attorney's fees as provided by Subsection  
21 (d) incurred by the claimant as a result of the insurance carrier's  
22 appeal if the claimant prevails on an issue on which judicial review  
23 is sought by the insurance carrier in accordance with the  
24 limitation of issues contained in Section 410.302. If the carrier  
25 appeals multiple issues and the claimant prevails on some, but not  
26 all, of the issues appealed, the court shall apportion and award  
27 fees to the claimant's attorney only for the issues on which the



1 claimant prevails. In making that apportionment, the court shall  
2 consider the factors prescribed by Subsection (d). This subsection  
3 does not apply to attorney's fees for which an insurance carrier may  
4 be liable under Section 408.147. An award of attorney's fees under  
5 this subsection is not subject to commissioner [~~commission~~] rules  
6 adopted under Subsection (f). [~~This subsection expires September~~  
7 ~~1, 2005.~~]

8 (d) In approving an attorney's fee under this section, the  
9 commissioner [~~commission~~] or court shall consider:

- 10 (1) the time and labor required;  
11 (2) the novelty and difficulty of the questions  
12 involved;  
13 (3) the skill required to perform the legal services  
14 properly;  
15 (4) the fee customarily charged in the locality for  
16 similar legal services;  
17 (5) the amount involved in the controversy;  
18 (6) the benefits to the claimant that the attorney is  
19 responsible for securing; and  
20 (7) the experience and ability of the attorney  
21 performing the services.

22 (e) The commissioner [~~commission~~] by rule or the court may  
23 provide for the commutation of an attorney's fee, except that the  
24 attorney's fee shall be paid in periodic payments in a claim  
25 involving death benefits if the only dispute is as to the proper  
26 beneficiary or beneficiaries.

27 (f) The commissioner [~~commission~~] by rule shall provide

1 guidelines for maximum attorney's fees for specific services in  
2 accordance with this section.

3 (g) An attorney's fee may not be allowed in a case involving  
4 a fatal injury or lifetime income benefit if the insurance carrier  
5 admits liability on all issues and tenders payment of maximum  
6 benefits in writing under this subtitle while the claim is pending  
7 before the department [~~commission~~].

8 SECTION 3.123. Section 408.222, Labor Code, is amended to  
9 read as follows:

10 Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL.

11 (a) The amount of an attorney's fee for defending an insurance  
12 carrier in a workers' compensation action brought under this  
13 subtitle must be approved by the commissioner [~~commission~~] or court  
14 and determined by the commissioner [~~commission~~] or court to be  
15 reasonable and necessary.

16 (b) In determining whether a fee is reasonable under this  
17 section, the commissioner [~~commission~~] or court shall consider  
18 issues analogous to those listed under Section 408.221(d). The  
19 defense counsel shall present written evidence to the commissioner  
20 [~~commission~~] or court relating to:

21 (1) the time spent and expenses incurred in defending  
22 the case; and

23 (2) other evidence considered necessary by the  
24 commissioner [~~commission~~] or court in making a determination under  
25 this section.

26 SECTION 3.124. Section 409.002, Labor Code, is amended to  
27 read as follows:

1           Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to  
2 notify an employer as required by Section 409.001(a) relieves the  
3 employer and the employer's insurance carrier of liability under  
4 this subtitle unless:

5           (1) the employer, a person eligible to receive notice  
6 under Section 409.001(b), or the employer's insurance carrier has  
7 actual knowledge of the employee's injury;

8           (2) the commissioner [~~commission~~] determines that  
9 good cause exists for failure to provide notice in a timely manner;  
10 or

11           (3) the employer or the employer's insurance carrier  
12 does not contest the claim.

13           SECTION 3.125. Section 409.003, Labor Code, is amended to  
14 read as follows:

15           Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a  
16 person acting on the employee's behalf shall file with the  
17 department [~~commission~~] a claim for compensation for an injury not  
18 later than one year after the date on which:

19           (1) the injury occurred; or

20           (2) if the injury is an occupational disease, the  
21 employee knew or should have known that the disease was related to  
22 the employee's employment.

23           SECTION 3.126. Section 409.004, Labor Code, is amended to  
24 read as follows:

25           Sec. 409.004. FAILURE TO FILE CLAIM FOR COMPENSATION.  
26 Failure to file a claim for compensation with the department  
27 [~~commission~~] as required under Section 409.003 relieves the

1 employer and the employer's insurance carrier of liability under  
2 this subtitle unless:

3 (1) good cause exists for failure to file a claim in a  
4 timely manner; or

5 (2) the employer or the employer's insurance carrier  
6 does not contest the claim.

7 SECTION 3.127. Subsections (d), (e), (f), and (h) through  
8 (l), Section 409.005, Labor Code, are amended to read as follows:

9 (d) The insurance carrier shall file the report of the  
10 injury on behalf of the policyholder. Except as provided by  
11 Subsection (e), the insurance carrier must electronically file the  
12 report with the department [~~commission~~] not later than the seventh  
13 day after the date on which the carrier receives the report from the  
14 employer.

15 (e) The commissioner [~~executive director~~] may waive the  
16 electronic filing requirement under Subsection (d) and allow an  
17 insurance carrier to mail or deliver the report to the department  
18 [~~commission~~] not later than the seventh day after the date on which  
19 the carrier receives the report from the employer.

20 (f) A report required under this section may not be  
21 considered to be an admission by or evidence against an employer or  
22 an insurance carrier in a proceeding before the department  
23 [~~commission~~] or a court in which the facts set out in the report are  
24 contradicted by the employer or insurance carrier.

25 (h) The commissioner [~~commission~~] may adopt rules relating  
26 to:

27 (1) the information that must be contained in a report

1 required under this section, including the summary of rights and  
2 responsibilities required under Subsection (g); and

3 (2) the development and implementation of an  
4 electronic filing system for injury reports under this section.

5 (i) An employer and insurance carrier shall file subsequent  
6 reports as required by commissioner [~~commission~~] rule.

7 (j) The employer shall, on the written request of the  
8 employee, a doctor, the insurance carrier, or the commissioner  
9 [~~commission~~], notify the employee, the employee's treating doctor  
10 if known to the employer, and the insurance carrier of the existence  
11 or absence of opportunities for modified duty or a modified duty  
12 return-to-work program available through the employer. If those  
13 opportunities or that program exists, the employer shall identify  
14 the employer's contact person and provide other information to  
15 assist the doctor, the employee, and the insurance carrier to  
16 assess modified duty or return-to-work options.

17 (k) This section does not prohibit the commissioner  
18 [~~commission~~] from imposing requirements relating to return-to-work  
19 under other authority granted to the department [~~commission~~] in  
20 this subtitle.

21 (l) A person commits a violation if the person fails to  
22 comply with this section unless good cause exists. [~~A violation~~  
23 ~~under this subsection is a Class D administrative violation.~~]

24 SECTION 3.128. Subsections (b), (c), and (e), Section  
25 409.006, Labor Code, are amended to read as follows:

26 (b) The record shall be available to the department  
27 [~~commission~~] at reasonable times and under conditions prescribed by

1 the commissioner [~~commission~~].

2 (c) The commissioner [~~commission~~] may adopt rules relating  
3 to the information that must be contained in an employer record  
4 under this section.

5 (e) A person commits a violation if the person fails to  
6 comply with this section. [~~A violation under this subsection is a  
7 Class D administrative violation.~~]

8 SECTION 3.129. Subsection (a), Section 409.007, Labor Code,  
9 is amended to read as follows:

10 (a) A person must file a claim for death benefits with the  
11 department [~~commission~~] not later than the first anniversary of the  
12 date of the employee's death.

13 SECTION 3.130. Section 409.009, Labor Code, is amended to  
14 read as follows:

15 Sec. 409.009. SUBCLAIMS. A person may file a written claim  
16 with the department [~~commission~~] as a subclaimant if the person  
17 has:

18 (1) provided compensation, including health care  
19 provided by a health care insurer, directly or indirectly, to or for  
20 an employee or legal beneficiary; and

21 (2) sought and been refused reimbursement from the  
22 insurance carrier.

23 SECTION 3.131. Section 409.010, Labor Code, is amended to  
24 read as follows:

25 Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL  
26 BENEFICIARY. Immediately on receiving notice of an injury or death  
27 from any person, the department [~~commission~~] shall mail to the

1 employee or legal beneficiary a clear and concise description of:

2 (1) the services provided by the department  
3 [~~commission~~], including the services of the ombudsman program;

4 (2) the department's [~~commission's~~] procedures; and

5 (3) the person's rights and responsibilities under  
6 this subtitle.

7 SECTION 3.132. Subsections (a) and (c), Section 409.011,  
8 Labor Code, are amended to read as follows:

9 (a) Immediately on receiving notice of an injury or death  
10 from any person, the department [~~commission~~] shall mail to the  
11 employer a description of:

12 (1) the services provided by the department  
13 [~~commission~~];

14 (2) the department's [~~commission's~~] procedures; and

15 (3) the employer's rights and responsibilities under  
16 this subtitle.

17 (c) The department [~~commission~~] is not required to provide  
18 the information to an employer more than once during a calendar  
19 year.

20 SECTION 3.133. Section 409.012, Labor Code, is amended to  
21 read as follows:

22 Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION.

23 (a) The commissioner [~~commission~~] shall analyze each report of  
24 injury received from an employer under this chapter to determine  
25 whether the injured employee would be assisted by vocational  
26 rehabilitation.

27 (b) If the commissioner [~~commission~~] determines that an

1 injured employee would be assisted by vocational rehabilitation,  
2 the department [~~commission~~] shall notify the injured employee in  
3 writing of the services and facilities available through the  
4 Department of Assistive and Rehabilitative Services [~~Texas~~  
5 ~~Rehabilitation Commission~~] and private providers of vocational  
6 rehabilitation. The department [~~commission~~] shall notify the  
7 Department of Assistive and Rehabilitative Services [~~Texas~~  
8 ~~Rehabilitation Commission~~] and the affected insurance carrier that  
9 the injured employee has been identified as one who could be  
10 assisted by vocational rehabilitation.

11 (c) The department [~~commission~~] shall cooperate with the  
12 Department of Assistive and Rehabilitative Services [~~Texas~~  
13 ~~Rehabilitation Commission~~] and private providers of vocational  
14 rehabilitation in the provision of services and facilities to  
15 employees by the Department of Assistive and Rehabilitative  
16 Services [~~Texas Rehabilitation Commission~~].

17 (d) A private provider of vocational rehabilitation  
18 services may register with the department [~~commission~~].

19 (e) The commissioner [~~commission~~] by rule may require that a  
20 private provider of vocational rehabilitation services maintain  
21 certain credentials and qualifications in order to provide services  
22 in connection with a workers' compensation insurance claim.

23 (f) The department and the Department of Assistive and  
24 Rehabilitative Services shall report to the legislature not later  
25 than August 1, 2006, on their actions to improve access to and the  
26 effectiveness of vocational rehabilitation programs for injured  
27 employees. The report must include:



1           (1) a description of the actions each agency has taken  
2 to improve communication regarding and coordination of vocational  
3 rehabilitation programs;

4           (2) an analysis identifying the population of injured  
5 employees that have the poorest return-to-work outcomes and are in  
6 the greatest need for vocational rehabilitation services;

7           (3) any changes recommended to improve the access to  
8 and effectiveness of vocational rehabilitation programs for the  
9 populations identified in Subdivision (2); and

10           (4) a plan to implement these changes.

11           SECTION 3.134. Section 409.013, Labor Code, is amended to  
12 read as follows:

13           Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF  
14 INJURED WORKER. (a) The department [~~commission~~] shall develop  
15 information for public dissemination about the benefit process and  
16 the compensation procedures established under this chapter. The  
17 information must be written in plain language and must be available  
18 in English and Spanish.

19           (b) On receipt of a report under Section 409.005, the  
20 department [~~commission~~] shall contact the affected employee by mail  
21 or by telephone and shall provide the information required under  
22 Subsection (a) to that employee, together with any other  
23 information that may be prepared by the department [~~commission~~] for  
24 public dissemination that relates to the employee's situation, such  
25 as information relating to back injuries or occupational diseases.

26           SECTION 3.135. Subsections (a) and (b), Section 409.021,  
27 Labor Code, are amended to read as follows:

1 (a) An insurance carrier shall initiate compensation under  
2 this subtitle promptly. Not later than the 15th day after the date  
3 on which an insurance carrier receives written notice of an injury,  
4 the insurance carrier shall:

5 (1) begin the payment of benefits as required by this  
6 subtitle; or

7 (2) notify the department [~~commission~~] and the  
8 employee in writing of its refusal to pay and advise the employee  
9 of:

10 (A) the right to request a benefit review  
11 conference; and

12 (B) the means to obtain additional information  
13 from the department [~~commission~~].

14 (b) An insurance carrier shall notify the department  
15 [~~commission~~] in writing of the initiation of income or death  
16 benefit payments in the manner prescribed by commissioner  
17 [~~commission~~] rules.

18 SECTION 3.136. Subsection (c), Section 409.022, Labor Code,  
19 is amended to read as follows:

20 (c) An insurance carrier commits a violation if the  
21 insurance carrier does not have reasonable grounds for a refusal to  
22 pay benefits, as determined by the commissioner [~~commission. A~~  
23 ~~violation under this subsection is a Class B administrative~~  
24 ~~violation~~].

25 SECTION 3.137. Subsections (a), (c), and (d), Section  
26 409.023, Labor Code, are amended to read as follows:

27 (a) An insurance carrier shall continue to pay benefits

1 promptly as and when the benefits accrue without a final decision,  
2 order, or other action of the commissioner [~~commission~~], except as  
3 otherwise provided.

4 (c) An insurance carrier commits a violation if the  
5 insurance carrier fails to comply with this section. [~~A violation  
6 under this subsection is a Class B administrative violation. Each  
7 day of noncompliance constitutes a separate violation.~~]

8 (d) An insurance carrier that commits multiple violations  
9 of this section commits an additional [~~a Class A~~] administrative  
10 violation and is subject to:

- 11 (1) the sanctions provided under Section 415.023; and  
12 (2) revocation of the right to do business under the  
13 workers' compensation laws of this state.

14 SECTION 3.138. Subsection (b), Section 409.0231, Labor  
15 Code, is amended to read as follows:

16 (b) The commissioner [~~commission~~] shall adopt rules in  
17 consultation with the Texas Department of Information Resources as  
18 necessary to implement this section, including rules prescribing a  
19 period of benefits that is of sufficient duration to allow payment  
20 by electronic funds transfer.

21 SECTION 3.139. Section 409.024, Labor Code, is amended to  
22 read as follows:

23 Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE;  
24 ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file  
25 with the department [~~commission~~] a notice of termination or  
26 reduction of benefits, including the reasons for the termination or  
27 reduction, not later than the 10th day after the date on which

1 benefits are terminated or reduced.

2 (b) An insurance carrier commits a violation if the  
3 insurance carrier does not have reasonable grounds to terminate or  
4 reduce benefits, as determined by the commissioner [~~commission~~. A  
5 ~~violation under this subsection is a Class B administrative~~  
6 ~~violation~~].

7 SECTION 3.140. Subsection (a), Section 409.041, Labor Code,  
8 is amended to read as follows:

9 (a) The department [~~commission~~] shall maintain an ombudsman  
10 program as provided by this subchapter to assist injured workers  
11 and persons claiming death benefits in obtaining benefits under  
12 this subtitle.

13 SECTION 3.141. Subsections (a) and (c), Section 409.042,  
14 Labor Code, are amended to read as follows:

15 (a) At least one specially qualified employee in each  
16 department [~~commission~~] office shall be designated an ombudsman who  
17 shall perform the duties under this section as the person's primary  
18 responsibility.

19 (c) The commissioner [~~commission~~] by rule shall adopt  
20 training guidelines and continuing education requirements for  
21 ombudsmen. Training provided under this subsection must:

22 (1) include education regarding this subtitle, rules  
23 adopted under this subtitle, and appeals panel decisions, with  
24 emphasis on benefits and the dispute resolution process; and

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

1 SECTION 3.142. Section 409.043, Labor Code, is amended to  
2 read as follows:

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

7 (b) An employer commits a violation if the employer fails to  
8 comply with this section. [~~A violation under this section is a~~  
9 ~~Class C administrative violation.~~]

10 SECTION 3.143. Section 409.044, Labor Code, is amended to  
11 read as follows:

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

15 SECTION 3.144. Section 410.002, Labor Code, is amended to  
16 read as follows:

17 Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A  
18 proceeding before the department [~~commission~~] to determine the  
19 liability of an insurance carrier for compensation for an injury or  
20 death under this subtitle is governed by this chapter.

21 SECTION 3.145. Section 410.004, Labor Code, is amended to  
22 read as follows:

23 Sec. 410.004. DIVISION OF HEARINGS. The division shall  
24 conduct benefit review conferences, contested case hearings,  
25 arbitration, and appeals within the department [~~commission~~]  
26 related to workers' compensation claims.

27 SECTION 3.146. Subsection (a), Section 410.005, Labor Code,

1 is amended to read as follows:

2 (a) Unless the commissioner [~~commission~~] determines that  
3 good cause exists for the selection of a different location, a  
4 benefit review conference or a contested case hearing may not be  
5 conducted at a site more than 75 miles from the claimant's residence  
6 at the time of the injury.

7 SECTION 3.147. Section 410.021, Labor Code, is amended to  
8 read as follows:

9 Sec. 410.021. PURPOSE. A benefit review conference is a  
10 nonadversarial, informal dispute resolution proceeding designed  
11 to:

12 (1) explain, orally and in writing, the rights of the  
13 respective parties to a workers' compensation claim and the  
14 procedures necessary to protect those rights;

15 (2) discuss the facts of the claim, review available  
16 information in order to evaluate the claim, and delineate the  
17 disputed issues; and

18 (3) mediate and resolve disputed issues by agreement  
19 of the parties in accordance with this subtitle and the policies of  
20 the department [~~commission~~].

21 SECTION 3.148. Subsections (b) and (c), Section 410.022,  
22 Labor Code, are amended to read as follows:

23 (b) A benefit review officer must:

24 (1) be an employee of the department [~~commission~~]; and

25 (2) be trained in the principles and procedures of  
26 dispute mediation.

27 (c) The department [~~commission~~] shall institute and

1 maintain an education and training program for benefit review  
2 officers and shall consult or contract with the Federal Mediation  
3 and Conciliation Service or other appropriate organizations for  
4 this purpose.

5 SECTION 3.149. Section 410.023, Labor Code, is amended to  
6 read as follows:

7 Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. On  
8 receipt of a request from a party or on its own motion, the  
9 department [~~commission~~] may direct the parties to a disputed  
10 workers' compensation claim to meet in a benefit review conference  
11 to attempt to reach agreement on disputed issues involved in the  
12 claim.

13 SECTION 3.150. Section 410.024, Labor Code, is amended to  
14 read as follows:

15 Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO  
16 FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise  
17 provided by law or commissioner [~~commission~~] rule, the parties to a  
18 disputed compensation claim are not entitled to a contested case  
19 hearing or arbitration on the claim unless a benefit review  
20 conference is conducted as provided by this subchapter.

21 (b) The commissioner [~~commission~~] by rule shall adopt  
22 guidelines relating to claims that do not require a benefit review  
23 conference and may proceed directly to a contested case hearing or  
24 arbitration.

25 SECTION 3.151. Section 410.025, Labor Code, is amended to  
26 read as follows:

27 Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE;

1 NOTICE. (a) The commissioner [~~commission~~] by rule shall prescribe  
2 the time within which a benefit review conference must be  
3 scheduled.

4 (b) At the time a benefit review conference is scheduled,  
5 the department [~~commission~~] shall schedule a contested case hearing  
6 to be held not later than the 60th day after the date of the benefit  
7 review conference if the disputed issues are not resolved at the  
8 benefit review conference.

9 (c) The department [~~commission~~] shall send written notice  
10 of the benefit review conference to the parties to the claim and the  
11 employer.

12 (d) The commissioner [~~commission~~] by rule shall provide for  
13 expedited proceedings in cases in which compensability or liability  
14 for essential medical treatment is in dispute.

15 SECTION 3.152. Subsection (a), Section 410.026, Labor Code,  
16 is amended to read as follows:

17 (a) A benefit review officer shall:

18 (1) mediate disputes between the parties and assist in  
19 the adjustment of the claim consistent with this subtitle and the  
20 policies of the department [~~commission~~];

21 (2) thoroughly inform all parties of their rights and  
22 responsibilities under this subtitle, especially in a case in which  
23 the employee is not represented by an attorney or other  
24 representative; and

25 (3) ensure that all documents and information relating  
26 to the employee's wages, medical condition, and any other  
27 information pertinent to the resolution of disputed issues are



1 contained in the claim file at the conference, especially in a case  
2 in which the employee is not represented by an attorney or other  
3 representative.

4 SECTION 3.153. Subsection (a), Section 410.027, Labor Code,  
5 is amended to read as follows:

6 (a) The commissioner [~~commission~~] shall adopt rules for  
7 conducting benefit review conferences.

8 SECTION 3.154. Subsection (b), Section 410.028, Labor Code,  
9 is amended to read as follows:

10 (b) A party commits a violation if the party fails to attend  
11 a benefit review conference without good cause as determined by the  
12 benefit review officer. [~~A violation under this subsection is a  
13 Class D administrative violation.~~]

14 SECTION 3.155. Section 410.030, Labor Code, is amended to  
15 read as follows:

16 Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An  
17 agreement signed in accordance with Section 410.029 is binding on  
18 the insurance carrier through the conclusion of all matters  
19 relating to the claim, unless the department [~~commission~~] or a  
20 court, on a finding of fraud, newly discovered evidence, or other  
21 good and sufficient cause, relieves the insurance carrier of the  
22 effect of the agreement.

23 (b) The agreement is binding on the claimant, if represented  
24 by an attorney, to the same extent as on the insurance carrier. If  
25 the claimant is not represented by an attorney, the agreement is  
26 binding on the claimant through the conclusion of all matters  
27 relating to the claim while the claim is pending before the

1 department [~~commission~~], unless the commissioner [~~commission~~] for  
2 good cause relieves the claimant of the effect of the agreement.

3 SECTION 3.156. Subsection (b), Section 410.034, Labor Code,  
4 is amended to read as follows:

5 (b) The commissioner [~~commission~~] by rule shall prescribe  
6 the times within which the agreement and report must be filed.

7 SECTION 3.157. Section 410.102, Labor Code, is amended to  
8 read as follows:

9 Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An  
10 arbitrator must be an employee of the department [~~commission~~],  
11 except that the department [~~commission~~] may contract with qualified  
12 arbitrators on a determination of special need.

13 (b) An arbitrator must:

14 (1) be a member of the National Academy of  
15 Arbitrators;

16 (2) be on an approved list of the American Arbitration  
17 Association or Federal Mediation and Conciliation Service; or

18 (3) meet qualifications established by the  
19 commissioner [~~commission~~] by rule [~~and be approved by an~~  
20 ~~affirmative vote of at least two commission members representing~~  
21 ~~employers of labor and at least two commission members representing~~  
22 ~~wage earners~~].

23 (c) The department [~~commission~~] shall require that each  
24 arbitrator have appropriate training in the workers' compensation  
25 laws of this state. The commissioner [~~commission~~] shall establish  
26 procedures to carry out this subsection.

27 SECTION 3.158. Section 410.103, Labor Code, is amended to

1 read as follows:

2 Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

3 (1) protect the interests of all parties;

4 (2) ensure that all relevant evidence has been  
5 disclosed to the arbitrator and to all parties; and

6 (3) render an award consistent with this subtitle and  
7 the policies of the department [~~commission~~].

8 SECTION 3.159. Subsections (b) and (c), Section 410.104,  
9 Labor Code, are amended to read as follows:

10 (b) To elect arbitration, the parties must file the election  
11 with the department [~~commission~~] not later than the 20th day after  
12 the last day of the benefit review conference. The commissioner  
13 [~~commission~~] shall prescribe a form for that purpose.

14 (c) An election to engage in arbitration under this  
15 subchapter is irrevocable and binding on all parties for the  
16 resolution of all disputes arising out of the claims that are under  
17 the jurisdiction of the department [~~commission~~].

18 SECTION 3.160. Section 410.105, Labor Code, is amended to  
19 read as follows:

20 Sec. 410.105. LISTS OF ARBITRATORS. (a) The department  
21 [~~commission~~] shall establish regional lists of arbitrators who meet  
22 the qualifications prescribed under Sections 410.102(a) and (b).  
23 Each regional list shall be initially prepared in a random name  
24 order, and subsequent additions to a list shall be added  
25 chronologically.

26 (b) The commissioner [~~commission~~] shall review the lists of  
27 arbitrators annually and determine if each arbitrator is fair and

1 impartial and makes awards that are consistent with and in  
2 accordance with this subtitle and the rules of the commissioner  
3 [~~commission. The commission shall remove an arbitrator if after~~  
4 ~~review the arbitrator does not receive an affirmative vote of at~~  
5 ~~least two commission members representing employers of labor and at~~  
6 ~~least two commission members representing wage earners].~~

7 (c) The department's [~~commission's~~] lists are confidential  
8 and are not subject to disclosure under Chapter 552, Government  
9 Code. The lists may not be revealed by any department [~~commission~~]  
10 employee to any person who is not a department [~~commission~~]  
11 employee. The lists are exempt from discovery in civil litigation  
12 unless the party seeking the discovery establishes reasonable cause  
13 to believe that a violation of the requirements of this section or  
14 Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that  
15 the violation is relevant to the issues in dispute.

16 SECTION 3.161. Section 410.106, Labor Code, is amended to  
17 read as follows:

18 Sec. 410.106. SELECTION OF ARBITRATOR. The department  
19 [~~commission~~] shall assign the arbitrator for a particular case by  
20 selecting the next name after the previous case's selection in  
21 consecutive order. The department [~~commission~~] may not change the  
22 order of names once the order is established under this subchapter,  
23 except that once each arbitrator on the list has been assigned to a  
24 case, the names shall be randomly reordered.

25 SECTION 3.162. Subsection (a), Section 410.107, Labor Code,  
26 is amended to read as follows:

27 (a) The department [~~commission~~] shall assign an arbitrator

1 to a pending case not later than the 30th day after the date on which  
2 the election for arbitration is filed with the department  
3 [~~commission~~].

4 SECTION 3.163. Subsection (a), Section 410.108, Labor Code,  
5 is amended to read as follows:

6 (a) Each party is entitled, in its sole discretion, to one  
7 rejection of the arbitrator in each case. If a party rejects the  
8 arbitrator, the department [~~commission~~] shall assign another  
9 arbitrator as provided by Section 410.106.

10 SECTION 3.164. Section 410.109, Labor Code, is amended to  
11 read as follows:

12 Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The  
13 arbitrator shall schedule arbitration to be held not later than the  
14 30th day after the date of the arbitrator's assignment and shall  
15 notify the parties and the department [~~commission~~] of the scheduled  
16 date.

17 (b) If an arbitrator is unable to schedule arbitration in  
18 accordance with Subsection (a), the department [~~commission~~] shall  
19 appoint the next arbitrator on the applicable list. Each party is  
20 entitled to reject the arbitrator appointed under this subsection  
21 in the manner provided under Section 410.108.

22 SECTION 3.165. Section 410.111, Labor Code, is amended to  
23 read as follows:

24 Sec. 410.111. RULES. The commissioner [~~commission~~] shall  
25 adopt rules for arbitration consistent with generally recognized  
26 arbitration principles and procedures.

27 SECTION 3.166. Subsection (b), Section 410.112, Labor Code,

1 is amended to read as follows:

2 (b) A party commits a violation if the party, without good  
3 cause as determined by the arbitrator, fails to comply with  
4 Subsection (a). [~~A violation under this subsection is a Class D~~  
5 ~~administrative violation.~~]

6 SECTION 3.167. Subsection (b), Section 410.113, Labor Code,  
7 is amended to read as follows:

8 (b) A party commits a violation if the party does not attend  
9 the arbitration unless the arbitrator determines that the party had  
10 good cause not to attend. [~~A violation under this subsection is a~~  
11 ~~Class D administrative violation.~~]

12 SECTION 3.168. Subsection (b), Section 410.114, Labor Code,  
13 is amended to read as follows:

14 (b) The department [~~commission~~] shall make an electronic  
15 recording of the proceeding.

16 SECTION 3.169. Subsection (d), Section 410.118, Labor Code,  
17 is amended to read as follows:

18 (d) The arbitrator shall file a copy of the award as part of  
19 the permanent claim file at the department [~~commission~~] and shall  
20 notify the parties in writing of the decision.

21 SECTION 3.170. Subsection (b), Section 410.119, Labor Code,  
22 is amended to read as follows:

23 (b) An arbitrator's award is a final order of the department  
24 [~~commission~~].

25 SECTION 3.171. Subsections (a) and (b), Section 410.121,  
26 Labor Code, are amended to read as follows:

27 (a) On application of an aggrieved party, a court of

1 competent jurisdiction shall vacate an arbitrator's award on a  
2 finding that:

3 (1) the award was procured by corruption, fraud, or  
4 misrepresentation;

5 (2) the decision of the arbitrator was arbitrary and  
6 capricious; or

7 (3) the award was outside the jurisdiction of the  
8 department [~~commission~~].

9 (b) If an award is vacated, the case shall be remanded to the  
10 department [~~commission~~] for another arbitration proceeding.

11 SECTION 3.172. Subsection (b), Section 410.151, Labor Code,  
12 is amended to read as follows:

13 (b) An issue that was not raised at a benefit review  
14 conference or that was resolved at a benefit review conference may  
15 not be considered unless:

16 (1) the parties consent; or

17 (2) if the issue was not raised, the commissioner  
18 [~~commission~~] determines that good cause existed for not raising the  
19 issue at the conference.

20 SECTION 3.173. Section 410.153, Labor Code, is amended to  
21 read as follows:

22 Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.  
23 Chapter 2001, Government Code, applies to a contested case hearing  
24 to the extent that the commissioner [~~commission~~] finds appropriate,  
25 except that the following do not apply:

26 (1) Section 2001.054;

27 (2) Sections 2001.061 and 2001.062;

1 (3) Section 2001.202; and

2 (4) Subchapters F, G, I, and Z, except for Section  
3 2001.141(c).

4 SECTION 3.174. Section 410.154, Labor Code, is amended to  
5 read as follows:

6 Sec. 410.154. SCHEDULING OF HEARING. The department  
7 [~~commission~~] shall schedule a contested case hearing in accordance  
8 with Section 410.024 or 410.025(b).

9 SECTION 3.175. Section 410.155, Labor Code, is amended to  
10 read as follows:

11 Sec. 410.155. CONTINUANCE. (a) A written request by a  
12 party for a continuance of a contested case hearing to another date  
13 must be directed to the commissioner [~~commission~~].

14 (b) The commissioner [~~commission~~] may grant a continuance  
15 only if the commissioner [~~commission~~] determines that there is good  
16 cause for the continuance.

17 SECTION 3.176. Subsection (b), Section 410.156, Labor Code,  
18 is amended to read as follows:

19 (b) A party commits a violation if the party, without good  
20 cause as determined by the hearing officer, does not attend a  
21 contested case hearing. [~~A violation under this subsection is a~~  
22 ~~Class C administrative violation.~~]

23 SECTION 3.177. Section 410.157, Labor Code, is amended to  
24 read as follows:

25 Sec. 410.157. RULES. The commissioner [~~commission~~] shall  
26 adopt rules governing procedures under which contested case  
27 hearings are conducted.



1 SECTION 3.178. Subsection (a), Section 410.158, Labor Code,  
2 is amended to read as follows:

3 (a) Except as provided by Section 410.162, discovery is  
4 limited to:

5 (1) depositions on written questions to any health  
6 care provider;

7 (2) depositions of other witnesses as permitted by the  
8 hearing officer for good cause shown; and

9 (3) interrogatories as prescribed by the commissioner  
10 [~~commissioner~~].

11 SECTION 3.179. Section 410.159, Labor Code, is amended to  
12 read as follows:

13 Sec. 410.159. STANDARD INTERROGATORIES. (a) The  
14 commissioner [~~commissioner~~] by rule shall prescribe standard form  
15 sets of interrogatories to elicit information from claimants and  
16 insurance carriers.

17 (b) Standard interrogatories shall be answered by each  
18 party and served on the opposing party within the time prescribed by  
19 commissioner [~~commissioner~~] rule, unless the parties agree  
20 otherwise.

21 SECTION 3.180. Section 410.160, Labor Code, is amended to  
22 read as follows:

23 Sec. 410.160. EXCHANGE OF INFORMATION. Within the time  
24 prescribed by commissioner [~~commissioner~~] rule, the parties shall  
25 exchange:

26 (1) all medical reports and reports of expert  
27 witnesses who will be called to testify at the hearing;

- 1           (2) all medical records;
- 2           (3) any witness statements;
- 3           (4) the identity and location of any witness known to
- 4 the parties to have knowledge of relevant facts; and
- 5           (5) all photographs or other documents that a party
- 6 intends to offer into evidence at the hearing.

7           SECTION 3.181. Section 410.161, Labor Code, is amended to

8 read as follows:

9           Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who

10 fails to disclose information known to the party or documents that

11 are in the party's possession, custody, or control at the time

12 disclosure is required by Sections 410.158-410.160 may not

13 introduce the evidence at any subsequent proceeding before the

14 department [~~commission~~] or in court on the claim unless good cause

15 is shown for not having disclosed the information or documents

16 under those sections.

17           SECTION 3.182. Subsections (d) and (e), Section 410.168,

18 Labor Code, are amended to read as follows:

19           (d) On a form that the commissioner [~~commission~~] by rule

20 prescribes, the hearing officer shall issue a separate written

21 decision regarding attorney's fees and any matter related to

22 attorney's fees. The decision regarding attorney's fees and the

23 form may not be made known to a jury in a judicial review of an

24 award, including an appeal.

25           (e) The commissioner [~~commission~~] by rule shall prescribe

26 the times within which the hearing officer must file the decisions

27 with the division.

1 SECTION 3.183. Subsection (d), Section 410.203, Labor Code,  
2 is amended to read as follows:

3 (d) A hearing on remand shall be accelerated and the  
4 commissioner [~~commission~~] shall adopt rules to give priority to the  
5 hearing over other proceedings.

6 SECTION 3.184. Subsection (b), Section 410.204, Labor Code,  
7 is amended to read as follows:

8 (b) A copy of the decision of the appeals panel shall be sent  
9 to each party not later than the seventh day after the date the  
10 decision is filed with the department [~~commission~~].

11 SECTION 3.185. Section 410.206, Labor Code, is amended to  
12 read as follows:

13 Sec. 410.206. CLERICAL ERROR. The commissioner [~~executive~~  
14 ~~director~~] may revise a decision in a contested case hearing on a  
15 finding of clerical error.

16 SECTION 3.186. Section 410.207, Labor Code, is amended to  
17 read as follows:

18 Sec. 410.207. CONTINUATION OF DEPARTMENT [~~COMMISSION~~]  
19 JURISDICTION. During judicial review of an appeals panel decision  
20 on any disputed issue relating to a workers' compensation claim,  
21 the department [~~commission~~] retains jurisdiction of all other  
22 issues related to the claim.

23 SECTION 3.187. Section 410.208, Labor Code, is amended to  
24 read as follows:

25 Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION;  
26 ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to  
27 comply with an interlocutory order, final order, or decision of the

1 commissioner [~~commission~~], the department [~~commission~~] may bring  
2 suit in Travis County to enforce the order or decision.

3 (b) If an insurance carrier refuses or fails to comply with  
4 an interlocutory order, a final order, or a decision of the  
5 commissioner [~~commission~~], the claimant may bring suit in the  
6 county of the claimant's residence or the county in which the injury  
7 occurred to enforce the order or decision.

8 (c) If the department [~~commission~~] brings suit to enforce an  
9 interlocutory order, final order, or decision of the commissioner  
10 [~~commission~~], the department [~~commission~~] is entitled to  
11 reasonable attorney's fees and costs for the prosecution and  
12 collection of the claim, in addition to a judgment enforcing the  
13 order or decision and any other remedy provided by law.

14 (d) A claimant who brings suit to enforce an interlocutory  
15 order, final order, or decision of the commissioner [~~commission~~] is  
16 entitled to a penalty equal to 12 percent of the amount of benefits  
17 recovered in the judgment, interest, and reasonable attorney's fees  
18 for the prosecution and collection of the claim, in addition to a  
19 judgment enforcing the order or decision.

20 (e) A person commits a violation if the person fails or  
21 refuses to comply with an interlocutory order, final order, or  
22 decision of the commissioner [~~commission~~] within 20 days after the  
23 date the order or decision becomes final. [~~A violation under this~~  
24 ~~subsection is a Class A administrative violation.~~]

25 SECTION 3.188. Section 410.209, Labor Code, is amended to  
26 read as follows:

27 Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. The

1 subsequent injury fund shall reimburse an insurance carrier for any  
2 overpayments of benefits made under an interlocutory order or  
3 decision if that order or decision is reversed or modified by final  
4 arbitration, order, or decision of the commissioner [~~commission~~] or  
5 a court. The commissioner [~~commission~~] shall adopt rules to  
6 provide for a periodic reimbursement schedule, providing for  
7 reimbursement at least annually.

8 SECTION 3.189. Section 410.253, Labor Code, is amended to  
9 read as follows:

10 Sec. 410.253. SERVICE; NOTICE. (a) A party seeking  
11 judicial review shall simultaneously:

- 12 (1) file a copy of the party's petition with the court;
- 13 (2) serve any opposing party to the suit; and
- 14 (3) provide written notice of the suit or notice of  
15 appeal to the department [~~commission~~].

16 (b) A party may not seek judicial review under Section  
17 410.251 unless the party has provided written notice of the suit to  
18 the department [~~commission~~] as required by this section.

19 SECTION 3.190. Section 410.254, Labor Code, is amended to  
20 read as follows:

21 Sec. 410.254. [~~COMMISSION~~] INTERVENTION. On timely motion  
22 initiated by the commissioner [~~executive director~~], the department  
23 [~~commission~~] shall be permitted to intervene in any judicial  
24 proceeding under this subchapter or Subchapter G.

25 SECTION 3.191. The heading to Section 410.258, Labor Code,  
26 is amended to read as follows:

27 Sec. 410.258. NOTIFICATION OF DEPARTMENT [~~COMMISSION~~] OF

1 PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

2 SECTION 3.192. Subsections (a) through (e), Section  
3 410.258, Labor Code, are amended to read as follows:

4 (a) The party who initiated a proceeding under this  
5 subchapter or Subchapter G must file any proposed judgment or  
6 settlement made by the parties to the proceeding, including a  
7 proposed default judgment, with the commissioner [~~executive~~  
8 ~~director of the commission~~] not later than the 30th day before the  
9 date on which the court is scheduled to enter the judgment or  
10 approve the settlement. The proposed judgment or settlement must  
11 be mailed to the department [~~executive director~~] by certified mail,  
12 return receipt requested.

13 (b) The department [~~commission~~] may intervene in a  
14 proceeding under Subsection (a) not later than the 30th day after  
15 the date of receipt of the proposed judgment or settlement.

16 (c) The commissioner [~~commission~~] shall review the proposed  
17 judgment or settlement to determine compliance with all appropriate  
18 provisions of the law. If the commissioner [~~commission~~] determines  
19 that the proposal is not in compliance with the law, the department  
20 [~~commission~~] may intervene as a matter of right in the proceeding  
21 not later than the 30th day after the date of receipt of the  
22 proposed judgment or settlement. The court may limit the extent of  
23 the department's [~~commission's~~] intervention to providing the  
24 information described by Subsection (e).

25 (d) If the department [~~commission~~] does not intervene  
26 before the 31st day after the date of receipt of the proposed  
27 judgment or settlement, the court shall enter the judgment or

1 approve the settlement if the court determines that the proposed  
2 judgment or settlement is in compliance with all appropriate  
3 provisions of the law.

4 (e) If the department [~~commission~~] intervenes in the  
5 proceeding, the commissioner [~~commission~~] shall inform the court of  
6 each reason the commissioner [~~commission~~] believes the proposed  
7 judgment or settlement is not in compliance with the law. The court  
8 shall give full consideration to the information provided by the  
9 commissioner [~~commission~~] before entering a judgment or approving a  
10 settlement.

11 SECTION 3.193. Subsection (a), Section 410.301, Labor Code,  
12 is amended to read as follows:

13 (a) Judicial review of a final decision of a department  
14 [~~commission~~] appeals panel regarding compensability or eligibility  
15 for or the amount of income or death benefits shall be conducted as  
16 provided by this subchapter.

17 SECTION 3.194. Section 410.302, Labor Code, is amended to  
18 read as follows:

19 Sec. 410.302. LIMITATION OF ISSUES. A trial under this  
20 subchapter is limited to issues decided by the department  
21 [~~commission~~] appeals panel and on which judicial review is sought.  
22 The pleadings must specifically set forth the determinations of the  
23 appeals panel by which the party is aggrieved.

24 SECTION 3.195. Section 410.304, Labor Code, is amended to  
25 read as follows:

26 Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION.  
27 (a) In a jury trial, the court, before submitting the case to the

1 jury, shall inform the jury in the court's instructions, charge, or  
2 questions to the jury of the department [~~commission~~] appeals panel  
3 decision on each disputed issue described by Section 410.301(a)  
4 that is submitted to the jury.

5 (b) In a trial to the court without a jury, the court in  
6 rendering its judgment on an issue described by Section 410.301(a)  
7 shall consider the decision of the department [~~commission~~] appeals  
8 panel.

9 SECTION 3.196. Subsections (b) and (c), Section 410.306,  
10 Labor Code, are amended to read as follows:

11 (b) The department [~~commission~~] on payment of a reasonable  
12 fee shall make available to the parties a certified copy of the  
13 department's [~~commission's~~] record. All facts and evidence the  
14 record contains are admissible to the extent allowed under the  
15 Texas Rules of [~~Civil~~] Evidence.

16 (c) Except as provided by Section 410.307, evidence of  
17 extent of impairment shall be limited to that presented to the  
18 department [~~commission~~]. The court or jury, in its determination  
19 of the extent of impairment, shall adopt one of the impairment  
20 ratings under Subchapter G, Chapter 408.

21 SECTION 3.197. Subsections (a) and (d), Section 410.307,  
22 Labor Code, are amended to read as follows:

23 (a) Evidence of the extent of impairment is not limited to  
24 that presented to the department [~~commission~~] if the court, after a  
25 hearing, finds that there is a substantial change of condition. The  
26 court's finding of a substantial change of condition may be based  
27 only on:



1 (1) medical evidence from the same doctor or doctors  
2 whose testimony or opinion was presented to the department  
3 [~~commission~~];

4 (2) evidence that has come to the party's knowledge  
5 since the contested case hearing;

6 (3) evidence that could not have been discovered  
7 earlier with due diligence by the party; and

8 (4) evidence that would probably produce a different  
9 result if it is admitted into evidence at the trial.

10 (d) If the court finds a substantial change of condition  
11 under this section, new medical evidence of the extent of  
12 impairment must be from and is limited to the same doctor or doctors  
13 who made impairment ratings before the department [~~commission~~]  
14 under Section 408.123.

15 SECTION 3.198. Subsection (a), Section 410.308, Labor Code,  
16 is amended to read as follows:

17 (a) The department [~~commission or the Texas Department of~~  
18 ~~Insurance~~] shall furnish any interested party in the claim with a  
19 certified copy of the notice of the employer securing compensation  
20 with the insurance carrier, filed with the department [~~commission~~].

21 SECTION 3.199. Subdivision (1), Section 411.001, Labor  
22 Code, is amended to read as follows:

23 (1) "Division" means the division of workers' health  
24 and safety of the department [~~commission~~].

25 SECTION 3.200. Section 411.013, Labor Code, is amended to  
26 read as follows:

27 Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. With the

1 approval of the commissioner [~~commission~~], the division may:

2 (1) enter into contracts with the federal government  
3 to perform occupational safety projects; and

4 (2) apply for federal funds through any federal  
5 program relating to occupational safety.

6 SECTION 3.201. Section 411.032, Labor Code, is amended to  
7 read as follows:

8 Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE  
9 REPORT; ADMINISTRATIVE VIOLATION. (a) An employer shall file with  
10 the department [~~commission~~] a report of each:

11 (1) on-the-job injury that results in the employee's  
12 absence from work for more than one day; and

13 (2) occupational disease of which the employer has  
14 knowledge.

15 (b) The commissioner [~~commission~~] shall adopt rules and  
16 prescribe the form and manner of reports filed under this section.

17 (c) An employer commits an administrative violation if the  
18 employer fails to report to the department [~~commission~~] as required  
19 under Subsection (a) unless good cause exists, as determined by the  
20 commissioner [~~commission~~], for the failure. [~~A violation under  
21 this subsection is a Class D administrative violation.~~]

22 SECTION 3.202. Section 411.035, Labor Code, is amended to  
23 read as follows:

24 Sec. 411.035. USE OF INJURY REPORT. A report made under  
25 Section 411.032 may not be considered to be an admission by or  
26 evidence against an employer or an insurance carrier in a  
27 proceeding before the department [~~commission~~] or a court in which

1 the facts set out in the report are contradicted by the employer or  
2 insurance carrier.

3 SECTION 3.203. Section 411.0415, Labor Code, is amended to  
4 read as follows:

5 Sec. 411.0415. EXEMPTION FOR CERTAIN EMPLOYERS; HEARING.

6 (a) The commissioner [~~executive director~~] may exclude from  
7 identification as a hazardous employer an employer who presents  
8 evidence satisfactory to the commissioner [~~commission~~] that the  
9 injury frequencies of the employer substantially exceed those that  
10 may reasonably be expected in that employer's business or industry  
11 only because of a fatality that:

12 (1) occurred because of factors beyond the employer's  
13 control; or

14 (2) was outside the course and scope of the deceased  
15 individual's employment.

16 (b) The commissioner [~~commission~~] by rule shall analyze and  
17 list fatalities that may not be related to the work environment,  
18 including:

- 19 (1) heart attacks;  
20 (2) common diseases of life;  
21 (3) homicides;  
22 (4) suicides;  
23 (5) vehicle accidents involving a third party;  
24 (6) common carrier accidents; and  
25 (7) natural events.

26 (c) If the commissioner [~~commission~~] determines that the  
27 case history of the employee's fatality indicates that the employer

1 or the work environment was a proximate cause of the fatality, the  
2 commissioner [~~commission~~] may request a hearing under Section  
3 411.049. If the hearing establishes that a proximate cause of the  
4 fatality was a factor or factors within the employer's control and  
5 was within the course and scope of the employment, the commissioner  
6 [~~commission~~] may identify the employer for the hazardous employer  
7 program if that fatality causes the employer to be designated as a  
8 hazardous employer.

9 SECTION 3.204. Subsection (b), Section 411.042, Labor Code,  
10 is amended to read as follows:

11 (b) The commissioner [~~commission~~] by rule shall require a  
12 minimum interval of at least six months before a subsequent audit to  
13 identify an employer who was previously identified as a hazardous  
14 employer.

15 SECTION 3.205. Subsection (b), Section 411.043, Labor Code,  
16 is amended to read as follows:

17 (b) The safety consultant shall file a written report with  
18 the department [~~commission~~] and the employer setting out any  
19 hazardous conditions or practices identified by the safety  
20 consultation.

21 SECTION 3.206. Subsection (a), Section 411.045, Labor Code,  
22 is amended to read as follows:

23 (a) Not earlier than six months or later than nine months  
24 after the formulation of an accident prevention plan under Section  
25 411.043, the division shall conduct a follow-up inspection of the  
26 employer's premises. The department [~~commission~~] may require the  
27 participation of the safety consultant who performed the initial

1 consultation and formulated the safety plan.

2 SECTION 3.207. Subsection (b), Section 411.046, Labor Code,  
3 is amended to read as follows:

4 (b) A violation under Subsection (a) is an [~~a Class B~~]  
5 administrative violation. [~~Each day of noncompliance constitutes a~~  
6 ~~separate violation.~~]

7 SECTION 3.208. Section 411.048, Labor Code, is amended to  
8 read as follows:

9 Sec. 411.048. COSTS CHARGED TO EMPLOYER. (a) The  
10 department [~~commission~~] shall charge an employer that is a  
11 political subdivision for reimbursement of the reasonable cost of  
12 services provided by the division, including a reasonable  
13 allocation of the department's [~~commission's~~] administrative  
14 costs, in formulating and monitoring the implementation of a plan  
15 under Section 411.043 or 411.047, investigating an accident under  
16 Section 411.044, or in conducting a follow-up inspection under  
17 Section 411.045.

18 (b) The department [~~commission~~] shall charge a private  
19 employer for reimbursement of the reasonable cost of services  
20 provided by the division, including a reasonable allocation of the  
21 department's [~~commission's~~] administrative costs, in providing  
22 safety and health services under this program at the request of the  
23 private employer. This subsection does not apply to services  
24 provided to the employer under Section 411.018.

25 SECTION 3.209. Subsection (a), Section 411.049, Labor Code,  
26 is amended to read as follows:

27 (a) An employer may request a hearing to contest findings

1 made by the department [~~commission~~] under this subchapter.

2 SECTION 3.210. Section 411.050, Labor Code, is amended to  
3 read as follows:

4 Sec. 411.050. ADMISSIBILITY OF IDENTIFICATION AS HAZARDOUS  
5 EMPLOYER. The identification of an employer as a hazardous  
6 employer under this subchapter is not admissible in any judicial  
7 proceeding unless:

8 (1) the department [~~commission~~] has determined that  
9 the employer is not in compliance with this subchapter; and

10 (2) that determination has not been reversed or  
11 superseded at the time of the event giving rise to the judicial  
12 proceeding.

13 SECTION 3.211. Section 411.062, Labor Code, is amended to  
14 read as follows:

15 Sec. 411.062. FIELD SAFETY REPRESENTATIVE; QUALIFICATIONS.

16 (a) The commissioner [~~commission~~] by rule shall establish  
17 qualifications for field safety representatives. The rules must  
18 include education and experience requirements for those  
19 representatives.

20 (b) Each field safety representative must meet the  
21 qualifications established by the commissioner [~~commission~~].

22 SECTION 3.212. Subsection (c), Section 411.064, Labor Code,  
23 is amended to read as follows:

24 (c) The insurance company shall reimburse the department  
25 [~~commission~~] for the reasonable cost of the reinspection, including  
26 a reasonable allocation of the department's [~~commission's~~]  
27 administrative costs incurred in conducting the inspections.

1 SECTION 3.213. Subsection (b), Section 411.065, Labor Code,  
2 is amended to read as follows:

3 (b) The information must include:

4 (1) the amount of money spent by the insurance company  
5 on accident prevention services;

6 (2) the number and qualifications of field safety  
7 representatives employed by the insurance company;

8 (3) the number of site inspections performed;

9 (4) accident prevention services for which the  
10 insurance company contracts;

11 (5) a breakdown of the premium size of the risks to  
12 which services were provided;

13 (6) evidence of the effectiveness of and  
14 accomplishments in accident prevention; and

15 (7) any additional information required by the  
16 department [~~commission~~].

17 SECTION 3.214. The heading to Section 411.067, Labor Code,  
18 is amended to read as follows:

19 Sec. 411.067. DEPARTMENT [~~COMMISSION~~] PERSONNEL.

20 SECTION 3.215. Subsection (a), Section 411.067, Labor Code,  
21 is amended to read as follows:

22 (a) The department [~~commission~~] shall employ the personnel  
23 necessary to enforce this subchapter, including at least 10 safety  
24 inspectors to perform inspections at a job site and at an insurance  
25 company to determine the adequacy of the accident prevention  
26 services provided by the insurance company.

27 SECTION 3.216. Subsection (b), Section 411.068, Labor Code,

1 is amended to read as follows:

2 (b) A violation under Subsection (a) is an [~~a Class B~~]  
3 administrative violation. [~~Each day of noncompliance constitutes a~~  
4 ~~separate violation.~~]

5 SECTION 3.2161. The heading to Subchapter F, Chapter 411,  
6 Labor Code, is amended to read as follows:

7 SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL  
8 MATERIALS

9 SECTION 3.217. Section 411.081, Labor Code, is amended to  
10 read as follows:

11 Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall  
12 maintain a 24-hour toll-free telephone service in English and  
13 Spanish for reports of violations of occupational health or safety  
14 law.

15 (b) Each employer shall notify its employees of this service  
16 in a manner prescribed by the department [~~commission~~]. The  
17 department shall, by rule, require the notice to be posted in  
18 English and Spanish, as appropriate.

19 (c) The department shall adopt rules requiring that the  
20 notice required by Subsection (b) be posted:

21 (1) in a conspicuous place in the employer's place of  
22 business; and

23 (2) in sufficient locations to be convenient to all  
24 employees.

25 SECTION 3.2171. Subchapter F, Chapter 411, Labor Code, is  
26 amended by adding Section 411.084 to read as follows:

27 Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) The division



1 shall provide educational material, including books, pamphlets,  
2 brochures, films, videotapes, or other informational material.

3 (b) Educational material shall be provided to employees in  
4 English and Spanish.

5 (c) The department shall adopt minimum content requirements  
6 for the educational material required under this section,  
7 including:

8 (1) an employee's right to report an unsafe working  
9 environment;

10 (2) instructions on how to report unsafe working  
11 conditions and safety violations; and

12 (3) state laws regarding retaliation by employers.

13 SECTION 3.218. Section 411.092, Labor Code, is amended to  
14 read as follows:

15 Sec. 411.092. ENFORCEMENT; RULES. The commissioner  
16 [~~commission~~] shall enforce Section 411.091 and may adopt rules for  
17 that purpose.

18 SECTION 3.219. Subsection (b), Section 411.104, Labor Code,  
19 is amended to read as follows:

20 (b) In addition to the duties specified in this chapter, the  
21 division shall perform other duties as required by the department  
22 [~~commission~~].

23 SECTION 3.220. Section 411.105, Labor Code, is amended to  
24 read as follows:

25 Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. (a) The  
26 department [~~commission~~] and its employees may not disclose at a  
27 public hearing or otherwise information relating to secret

1 processes, methods of manufacture, or products.

2 (b) The commissioner [~~A member~~] or an employee of the  
3 department [~~commission~~] commits an offense if the commissioner  
4 [~~member~~] or employee wilfully discloses or conspires to disclose  
5 information made confidential under this section. An offense under  
6 this subsection is a misdemeanor punishable by a fine not to exceed  
7 \$1,000 and by forfeiture of the person's appointment as  
8 commissioner [~~a member~~] or as an employee of the department  
9 [~~commission~~].

10 SECTION 3.221. Section 411.106, Labor Code, is amended to  
11 read as follows:

12 Sec. 411.106. SAFETY CLASSIFICATION. (a) To establish a  
13 safety classification for employers, the department [~~commission~~]  
14 shall:

15 (1) obtain medical and compensation cost information  
16 regularly compiled by the Texas Department of Insurance in  
17 performing that agency's rate-making duties and functions  
18 regarding employer liability and workers' compensation insurance;  
19 and

20 (2) collect and compile information relating to:  
21 (A) the frequency rate of accidents;  
22 (B) the existence and implementation of private  
23 safety programs;  
24 (C) the number of work-hour losses because of  
25 injuries; and  
26 (D) other facts showing accident experience.

27 (b) From the information obtained under Subsection (a), the

1 department [~~commission~~] shall classify employers as appropriate to  
2 implement this subchapter.

3 SECTION 3.222. Section 411.107, Labor Code, is amended to  
4 read as follows:

5 Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. The  
6 department [~~commission~~] may endeavor to eliminate an impediment to  
7 occupational or industrial safety that is reported to the  
8 department [~~commission~~] by an affected employer. In attempting to  
9 eliminate an impediment the department [~~commission~~] may advise and  
10 consult with an employer, or a representative of an employer, who is  
11 directly involved.

12 SECTION 3.223. Section 411.108, Labor Code, is amended to  
13 read as follows:

14 Sec. 411.108. ACCIDENT REPORTS. The department  
15 [~~commission~~] may require an employer and any other appropriate  
16 person to report accidents, personal injuries, fatalities, or other  
17 statistics and information relating to accidents on forms  
18 prescribed by and covering periods designated by the department  
19 [~~commission~~].

20 SECTION 3.224. Subsections (g), (i), and (l), Section  
21 412.041, Labor Code, are amended to read as follows:

22 (g) The director shall act as an adversary before the  
23 department [~~commission~~] and courts and present the legal defenses  
24 and positions of the state as an employer and insurer, as  
25 appropriate.

26 (i) In administering Chapter 501, the director is subject to  
27 the rules, orders, and decisions of the commissioner [~~commission~~]

1 in the same manner as a private employer, insurer, or association.

2 (1) The director shall furnish copies of all rules to:

3 (1) the department [~~commission~~];

4 (2) the commissioner of the Texas Department of  
5 Insurance; and

6 (3) the administrative heads of all state agencies  
7 affected by this chapter and Chapter 501.

8 SECTION 3.225. Section 413.001, Labor Code, is amended to  
9 read as follows:

10 Sec. 413.001. DEFINITION. In this chapter, "division"  
11 means the division of medical review of the department  
12 [~~commission~~].

13 SECTION 3.226. Section 413.002, Labor Code, is amended to  
14 read as follows:

15 Sec. 413.002. DIVISION OF MEDICAL REVIEW. (a) The  
16 department [~~commission~~] shall maintain a division of medical review  
17 to ensure compliance with the rules and to implement this chapter  
18 under the policies adopted by the department [~~commission~~].

19 (b) The division shall monitor health care providers,  
20 insurance carriers, [~~and~~] workers' compensation claimants who  
21 receive medical services, and independent review organizations to  
22 ensure the compliance of those persons with rules adopted by the  
23 commissioner [~~commission~~] relating to health care, including  
24 medical policies and fee guidelines.

25 (c) In monitoring health care providers who serve as  
26 designated doctors under Chapter 408 and independent review  
27 organizations who provide services described by this chapter, the

1 division shall evaluate:

2 (1) [the] compliance [of these providers] with this  
3 subtitle and with rules adopted by the commissioner [commission]  
4 relating to medical policies, fee guidelines, treatment  
5 guidelines, return-to-work guidelines, and impairment ratings; and

6 (2) the quality and timeliness of decisions made under  
7 Section 408.0041, 408.122, 408.151, or 413.031.

8 (d) The division shall report the results of the monitoring  
9 of independent review organizations under Subsection (c) to the  
10 Texas Department of Insurance on at least a quarterly basis.

11 (e) If the commissioner of the Texas Department of Insurance  
12 determines that an independent review organization is in violation  
13 of this chapter, rules adopted by the commissioner under this  
14 chapter, or applicable provisions of this code, or rules adopted  
15 under this code, or applicable provisions of the Insurance Code or  
16 rules adopted under that code, the commissioner of the Texas  
17 Department of Insurance or a designated representative shall notify  
18 the independent review organization of the alleged violation and  
19 may compel the production of any documents or other information as  
20 necessary to determine whether the violation occurred.

21 SECTION 3.227. Section 413.003, Labor Code, is amended to  
22 read as follows:

23 Sec. 413.003. AUTHORITY TO CONTRACT. The department  
24 [commission] may contract with a private or public entity to  
25 perform a duty or function of the division.

26 SECTION 3.228. Section 413.004, Labor Code, is amended to  
27 read as follows:

1           Sec. 413.004. COORDINATION WITH PROVIDERS. The division  
2 shall coordinate its activities with health care providers as  
3 necessary to perform its duties under this chapter. The  
4 coordination may include:

5           (1) conducting educational seminars on commissioner  
6 ~~[commission]~~ rules and procedures; or

7           (2) providing information to and requesting  
8 assistance from professional peer review organizations.

9           SECTION 3.229. Section 413.006, Labor Code, is amended to  
10 read as follows:

11           Sec. 413.006. ADVISORY COMMITTEES. The commissioner  
12 ~~[commission]~~ may appoint advisory committees ~~[in addition to the~~  
13 ~~medical advisory committee]~~ as the commissioner ~~[it]~~ considers  
14 necessary.

15           SECTION 3.230. Subsections (a) and (c), Section 413.007,  
16 Labor Code, are amended to read as follows:

17           (a) The division shall maintain a statewide data base of  
18 medical charges, actual payments, and treatment protocols that may  
19 be used by:

20           (1) the department ~~[commission]~~ in adopting the  
21 medical policies and fee guidelines; and

22           (2) the division in administering the medical  
23 policies, fee guidelines, or rules.

24           (c) The division shall ensure that the data base is  
25 available for public access for a reasonable fee established by the  
26 commissioner ~~[commission]~~. The identities of injured workers and  
27 beneficiaries may not be disclosed.

1 SECTION 3.231. Section 413.008, Labor Code, is amended to  
2 read as follows:

3 Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS;  
4 ADMINISTRATIVE VIOLATION. (a) On request from the department  
5 [~~commission~~] for specific information, an insurance carrier shall  
6 provide to the division any information in its possession, custody,  
7 or control that reasonably relates to the department's  
8 [~~commission's~~] duties under this subtitle and to health care:

- 9 (1) treatment;  
10 (2) services;  
11 (3) fees; and  
12 (4) charges.

13 (b) The department [~~commission~~] shall keep confidential  
14 information that is confidential by law.

15 (c) An insurance carrier commits a violation if the  
16 insurance carrier fails or refuses to comply with a request or  
17 violates a rule adopted to implement this section. [~~A violation~~  
18 ~~under this subsection is a Class C administrative violation. Each~~  
19 ~~day of noncompliance constitutes a separate violation.~~]

20 SECTION 3.232. Section 413.011, Labor Code, is amended to  
21 read as follows:

22 Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES;  
23 TREATMENT GUIDELINES AND PROTOCOLS. (a) The department  
24 [~~commission~~] shall use health care reimbursement policies and  
25 guidelines that reflect the standardized reimbursement structures  
26 found in other health care delivery systems with minimal  
27 modifications to those reimbursement methodologies as necessary to

1 meet occupational injury requirements. To achieve  
2 standardization, the department [~~commission~~] shall adopt the most  
3 current reimbursement methodologies, models, and values or weights  
4 used by the federal Centers for Medicare and Medicaid Services  
5 [~~Health Care Financing Administration~~], including applicable  
6 payment policies relating to coding, billing, and reporting, and  
7 may modify documentation requirements as necessary to meet the  
8 requirements of Section 413.053.

9 (b) In determining the appropriate fees, the commissioner  
10 [~~commission~~] shall also develop conversion factors or other payment  
11 adjustment factors taking into account economic indicators in  
12 health care and the requirements of Subsection (d). The  
13 commissioner [~~commission~~] shall also provide for reasonable fees  
14 for the evaluation and management of care as required by Section  
15 408.025(c) and commissioner [~~commission~~] rules. This section does  
16 not adopt the Medicare fee schedule, and the commissioner may  
17 [~~commission shall~~] not adopt conversion factors or other payment  
18 adjustment factors based solely on those factors as developed by  
19 the federal Centers for Medicare and Medicaid Services [~~Health Care~~  
20 ~~Financing Administration~~].

21 (c) This section may not be interpreted in a manner that  
22 would discriminate in the amount or method of payment or  
23 reimbursement for services in a manner prohibited by Section  
24 1451.104 [~~3(d), Article 21.52~~], Insurance Code, or as restricting  
25 the ability of chiropractors to serve as treating doctors as  
26 authorized by this subtitle. The commissioner [~~commission~~] shall  
27 also develop guidelines relating to fees charged or paid for



1 providing expert testimony relating to an issue arising under this  
2 subtitle.

3 (d) Guidelines for medical services fees must be fair and  
4 reasonable and designed to ensure the quality of medical care and to  
5 achieve effective medical cost control. The guidelines may not  
6 provide for payment of a fee in excess of the fee charged for  
7 similar treatment of an injured individual of an equivalent  
8 standard of living and paid by that individual or by someone acting  
9 on that individual's behalf. The commissioner [~~commission~~] shall  
10 consider the increased security of payment afforded by this  
11 subtitle in establishing the fee guidelines.

12 (e) The commissioner [~~commission~~] by rule shall [~~may~~] adopt  
13 treatment guidelines and [~~, including~~] return-to-work guidelines [~~7~~]  
14 and may adopt individual treatment protocols. Treatment [~~Except as~~  
15 ~~otherwise provided by this subsection, the treatment~~] guidelines  
16 and protocols must be evidence-based [~~nationally recognized~~],  
17 scientifically valid, and outcome-focused [~~outcome-based~~] and  
18 designed to reduce excessive or inappropriate medical care while  
19 safeguarding necessary medical care [~~If a nationally recognized~~  
20 ~~treatment guideline or protocol is not available for adoption by~~  
21 ~~the commission, the commission may adopt another treatment~~  
22 ~~guideline or protocol as long as it is scientifically valid and~~  
23 ~~outcome-based~~].

24 (f) In addition to complying with the requirements of  
25 Subsection (e), [~~The commission by rule may establish medical~~  
26 ~~policies or treatment guidelines or protocols relating to necessary~~  
27 ~~treatments for injuries.~~

1           ~~[(g) Any]~~ medical policies or guidelines adopted by the  
2 commissioner ~~[commission]~~ must be:

3           (1) designed to ensure the quality of medical care and  
4 to achieve effective medical cost control;

5           (2) designed to enhance a timely and appropriate  
6 return to work; and

7           (3) consistent with Sections 413.013, 413.020,  
8 413.052, and 413.053.

9           (g) The commissioner may adopt rules relating to disability  
10 management that are designed to promote appropriate health care at  
11 the earliest opportunity after the injury to maximize injury  
12 healing and improve stay-at-work and return-to-work outcomes  
13 through appropriate management of work-related injuries or  
14 conditions. The commissioner by rule may identify claims in which  
15 application of disability management activities is required and  
16 prescribe at what point in the claim process a treatment plan is  
17 required. The determination may be based on any factor considered  
18 relevant by the commissioner. Rules adopted under this subsection  
19 do not apply to claims subject to workers' compensation health care  
20 networks under Chapter 1305, Insurance Code.

21           (h) A dispute involving a treatment plan required under  
22 Subsection (g) may be appealed to an independent review  
23 organization in the manner described by Section 413.031.

24           SECTION 3.2321. Subchapter B, Chapter 413, Labor Code, is  
25 amended by adding Section 413.0111 to read as follows:

26           Sec. 413.0111. PROCESSING AGENTS. The regulations adopted  
27 by the commissioner for the reimbursement of prescription

1 medications and services shall authorize pharmacies to utilize  
2 agents or assignees to process claims and act on their behalf  
3 pursuant to terms and conditions as agreed upon by pharmacies.

4 SECTION 3.233. Section 413.013, Labor Code, is amended to  
5 read as follows:

6 Sec. 413.013. PROGRAMS. The commissioner [~~commission~~] by  
7 rule shall establish:

8 (1) a program for prospective, concurrent, and  
9 retrospective review and resolution of a dispute regarding health  
10 care treatments and services;

11 (2) a program for the systematic monitoring of the  
12 necessity of treatments administered and fees charged and paid for  
13 medical treatments or services, including the authorization of  
14 prospective, concurrent, or retrospective review under the medical  
15 policies of the department [~~commission~~] to ensure that the medical  
16 policies or guidelines are not exceeded;

17 (3) a program to detect practices and patterns by  
18 insurance carriers in unreasonably denying authorization of  
19 payment for medical services requested or performed if  
20 authorization is required by the medical policies of the department  
21 [~~commission~~]; and

22 (4) a program to increase the intensity of review for  
23 compliance with the medical policies or fee guidelines for any  
24 health care provider that has established a practice or pattern in  
25 charges and treatments inconsistent with the medical policies and  
26 fee guidelines.

27 SECTION 3.234. Subsections (b) through (e), Section

1 413.014, Labor Code, are amended to read as follows:

2 (b) The commissioner [~~commission~~] by rule shall specify  
3 which health care treatments and services require express  
4 preauthorization or concurrent review by the insurance carrier.  
5 Treatments and services for a medical emergency do not require  
6 express preauthorization.

7 (c) The commissioner's [~~commission~~] rules adopted under  
8 this section must provide that preauthorization and concurrent  
9 review are required at a minimum for:

10 (1) spinal surgery, as provided by Section 408.026;

11 (2) work-hardening or work-conditioning services  
12 provided by a health care facility that is not credentialed by an  
13 organization recognized by commissioner [~~commission~~] rules;

14 (3) inpatient hospitalization, including any  
15 procedure and length of stay;

16 (4) outpatient or ambulatory surgical services, as  
17 defined by commissioner [~~commission~~] rule; [~~and~~]

18 (5) any investigational or experimental services or  
19 devices; and

20 (6) physical therapy and occupational therapy  
21 services.

22 (d) The insurance carrier is not liable for those specified  
23 treatments and services requiring preauthorization unless  
24 preauthorization is sought by the claimant or health care provider  
25 and either obtained from the insurance carrier or ordered by the  
26 commissioner [~~commission~~].

27 (e) The commissioner [~~commission~~] may not prohibit an

1 insurance carrier and a health care provider from voluntarily  
2 discussing health care treatment and treatment plans and  
3 pharmaceutical services, either prospectively or concurrently, and  
4 may not prohibit an insurance carrier from certifying or agreeing  
5 to pay for health care consistent with those agreements. The  
6 insurance carrier is liable for health care treatment and treatment  
7 plans and pharmaceutical services that are voluntarily  
8 preauthorized and may not dispute the certified or agreed-on  
9 preauthorized health care treatment and treatment plans and  
10 pharmaceutical services at a later date.

11 SECTION 3.235. Section 413.0141, Labor Code, is amended to  
12 read as follows:

13 Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The  
14 commissioner [~~commission~~] may by rule provide that an insurance  
15 carrier shall provide for payment of specified pharmaceutical  
16 services sufficient for the first seven days following the date of  
17 injury if the health care provider requests and receives  
18 verification of insurance coverage and a verbal confirmation of an  
19 injury from the employer or from the insurance carrier as provided  
20 by Section 413.014. The rules adopted by the commissioner  
21 [~~commission~~] shall provide that an insurance carrier is eligible  
22 for reimbursement for pharmaceutical services paid under this  
23 section from the subsequent injury fund in the event the injury is  
24 determined not to be compensable.

25 SECTION 3.236. Subsection (b), Section 413.015, Labor Code,  
26 is amended to read as follows:

27 (b) The commissioner [~~commission~~] shall provide by rule for

1 the review and audit of the payment by insurance carriers of charges  
2 for medical services provided under this subtitle to ensure  
3 compliance of health care providers and insurance carriers with the  
4 medical policies and fee guidelines adopted by the commissioner  
5 [~~commission~~].

6 SECTION 3.237. Subsection (b), Section 413.016, Labor Code,  
7 is amended to read as follows:

8 (b) If the division determines that an insurance carrier has  
9 paid medical charges that are inconsistent with the medical  
10 policies or fee guidelines adopted by the commissioner  
11 [~~commission~~], the division shall refer the insurance carrier  
12 alleged to have violated this subtitle to the division of  
13 compliance and practices. If the insurance carrier reduced a  
14 charge of a health care provider that was within the guidelines, the  
15 insurance carrier shall be directed to submit the difference to the  
16 provider unless the reduction is in accordance with an agreement  
17 between the health care provider and the insurance carrier.

18 SECTION 3.238. Section 413.017, Labor Code, is amended to  
19 read as follows:

20 Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following  
21 medical services are presumed reasonable:

22 (1) medical services consistent with the medical  
23 policies and fee guidelines adopted by the commissioner  
24 [~~commission~~]; and

25 (2) medical services that are provided subject to  
26 prospective, concurrent, or retrospective review as required by the  
27 medical policies of the department [~~commission~~] and that are

1 authorized by an insurance carrier.

2 SECTION 3.239. Subsections (a), (c), (d), and (e), Section  
3 413.018, Labor Code, are amended to read as follows:

4 (a) The commissioner [~~commission~~] by rule shall provide for  
5 the periodic review of medical care provided in claims in which  
6 guidelines for expected or average return to work time frames are  
7 exceeded.

8 (c) The department [~~commission~~] shall implement a program  
9 to encourage employers and treating doctors to discuss the  
10 availability of modified duty to encourage the safe and more timely  
11 return to work of injured employees. The department [~~commission~~]  
12 may require a treating or examining doctor, on the request of the  
13 employer, insurance carrier, or department [~~commission~~], to  
14 provide a functional capacity evaluation of an injured employee and  
15 to determine the employee's ability to engage in physical  
16 activities found in the workplace or in activities that are  
17 required in a modified duty setting.

18 (d) The department [~~commission~~] shall provide through the  
19 department's [~~commission's~~] health and safety information and  
20 medical review outreach programs information to employers  
21 regarding effective return to work programs. This section does not  
22 require an employer to provide modified duty or an employee to  
23 accept a modified duty assignment. An employee who does not accept  
24 an employer's offer of modified duty determined by the department  
25 [~~commission~~] to be a bona fide job offer is subject to Section  
26 408.103(e).

27 (e) The commissioner [~~commission~~] may adopt rules and forms

1 as necessary to implement this section.

2 SECTION 3.240. Section 413.020, Labor Code, is amended to  
3 read as follows:

4 Sec. 413.020. DEPARTMENT [~~COMMISSION~~] CHARGES. The  
5 commissioner [~~commissioner~~] by rule shall establish procedures to  
6 enable the department [~~commissioner~~] to charge:

7 (1) an insurance carrier a reasonable fee for access  
8 to or evaluation of health care treatment, fees, or charges under  
9 this subtitle; and

10 (2) a health care provider who exceeds a fee or  
11 utilization guideline established under this subtitle or an  
12 insurance carrier who unreasonably disputes charges that are  
13 consistent with a fee or utilization guideline established under  
14 this subtitle a reasonable fee for review of health care treatment,  
15 fees, or charges under this subtitle.

16 SECTION 3.241. Subsections (a), (d), and (e), Section  
17 413.021, Labor Code, are amended to read as follows:

18 (a) An insurance carrier shall, with the agreement of a  
19 participating employer, provide the employer with return-to-work  
20 coordination services as necessary to facilitate an employee's  
21 return to employment. The insurance carrier shall notify the  
22 employer of the availability of return-to-work coordination  
23 services. In offering the services, insurance carriers and the  
24 department [~~commissioner~~] shall target employers without  
25 return-to-work programs and shall focus return-to-work efforts on  
26 workers who begin to receive temporary income benefits. These  
27 services may be offered by insurance carriers in conjunction with



1 the accident prevention services provided under Section 411.061.  
2 Nothing in this section supersedes the provisions of a collective  
3 bargaining agreement between an employer and the employer's  
4 employees, and nothing in this section authorizes or requires an  
5 employer to engage in conduct that would otherwise be a violation of  
6 the employer's obligations under the National Labor Relations Act  
7 (29 U.S.C. Section 151 et seq.) [~~and its subsequent amendments~~].

8 (d) The department [~~commission~~] shall use certified  
9 rehabilitation counselors or other appropriately trained or  
10 credentialed specialists to provide training to department  
11 [~~commission~~] staff regarding the coordination of return-to-work  
12 services under this section.

13 (e) The commissioner [~~commission~~] shall adopt rules  
14 necessary to collect data on return-to-work outcomes to allow full  
15 evaluations of successes and of barriers to achieving timely return  
16 to work after an injury.

17 SECTION 3.242. Subchapter B, Chapter 413, Labor Code, is  
18 amended by adding Section 413.022 to read as follows:

19 Sec. 413.022. RETURN-TO-WORK PILOT PROGRAM FOR SMALL  
20 EMPLOYERS; FUND. (a) In this section:

21 (1) "Account" means the workers' compensation  
22 return-to-work account.

23 (2) "Eligible employer" means any employer, other than  
24 this state or a political subdivision subject to Subtitle C, who  
25 employs at least two but not more than 50 employees on each business  
26 day during the preceding calendar year and who has workers'  
27 compensation insurance coverage.

1       (b) The commissioner shall establish by rule a  
2 return-to-work pilot program designed to promote the early and  
3 sustained return to work of an injured employee who sustains a  
4 compensable injury.

5       (c) The pilot program shall reimburse from the account an  
6 eligible employer for expenses incurred by the employer to make  
7 workplace modifications necessary to accommodate an injured  
8 employee's return to modified or alternative work. Reimbursement  
9 under this section to an eligible employer may not exceed \$2,500.  
10 The expenses must be incurred to allow the employee to perform  
11 modified or alternative work within doctor-imposed work  
12 restrictions. Allowable expenses may include:

- 13               (1) physical modifications to the worksite;  
14               (2) equipment, devices, furniture, or tools; and  
15               (3) other costs necessary for reasonable  
16 accommodation of the employee's restrictions.

17       (d) The account is established as a special account in the  
18 general revenue fund. From administrative penalties received by  
19 the department under this subtitle, the commissioner shall deposit  
20 in the account an amount not to exceed \$100,000 annually. Money in  
21 the account may be spent by the department, on appropriation by the  
22 legislature, only for the purposes of implementing this section.

23       (e) An employer who wilfully applies for or receives  
24 reimbursement from the account under this section knowing that the  
25 employer is not an eligible employer commits a violation.

26       (f) Notwithstanding Subsections (a)-(e), this section may  
27 be implemented only to the extent funds are available.

1           (g) This section expires September 1, 2009.

2           SECTION 3.243. Section 413.031, Labor Code, is amended by  
3 amending Subsections (a) through (d), (e-1), (f), (g), (h), (k),  
4 and (m) and adding Subsection (n) to read as follows:

5           (a) A party, including a health care provider, is entitled  
6 to a review of a medical service provided or for which authorization  
7 of payment is sought if a health care provider is:

8                   (1) denied payment or paid a reduced amount for the  
9 medical service rendered;

10                   (2) denied authorization for the payment for the  
11 service requested or performed if authorization is required or  
12 allowed by this subtitle or commissioner [~~commission~~] rules;

13                   (3) ordered by the commissioner [~~commission~~] to refund  
14 a payment received; or

15                   (4) ordered to make a payment that was refused or  
16 reduced for a medical service rendered.

17           (b) A health care provider who submits a charge in excess of  
18 the fee guidelines or treatment policies is entitled to a review of  
19 the medical service to determine if reasonable medical  
20 justification exists for the deviation. A claimant is entitled to a  
21 review of a medical service for which preauthorization is sought by  
22 the health care provider and denied by the insurance carrier. The  
23 commissioner [~~commission~~] shall adopt rules to notify claimants of  
24 their rights under this subsection.

25           (c) In resolving disputes over the amount of payment due for  
26 services determined to be medically necessary and appropriate for  
27 treatment of a compensable injury, the role of the department

1 ~~[commission]~~ is to adjudicate the payment given the relevant  
2 statutory provisions and commissioner ~~[commission]~~ rules. The  
3 department ~~[commission]~~ shall publish on its Internet website its  
4 medical dispute decisions, including decisions of independent  
5 review organizations, and any subsequent decisions by the State  
6 Office of Administrative Hearings. Before publication, the  
7 department ~~[commission]~~ shall redact only that information  
8 necessary to prevent identification of the injured worker.

9 (d) A review of the medical necessity of a health care  
10 service requiring preauthorization under Section 413.014 or  
11 commissioner ~~[commission]~~ rules under that section or Section  
12 413.011(g) shall be conducted by an independent review organization  
13 under Article 21.58C, Insurance Code, in the same manner as reviews  
14 of utilization review decisions by health maintenance  
15 organizations. It is a defense for the insurance carrier if the  
16 carrier timely complies with the decision of the independent review  
17 organization.

18 (e-1) In performing a review of medical necessity under  
19 Subsection (d) or (e), the independent review organization shall  
20 consider the department's ~~[commission's]~~ health care reimbursement  
21 policies and guidelines adopted under Section 413.011 [~~if those~~  
22 ~~policies and guidelines are raised by one of the parties to the~~  
23 ~~dispute~~]. If the independent review organization's decision is  
24 contrary to the department's ~~[commission's]~~ policies or guidelines  
25 adopted under Section 413.011, the independent review organization  
26 must indicate in the decision the specific basis for its divergence  
27 in the review of medical necessity. [~~This subsection does not~~

1 ~~prohibit an independent review organization from considering the~~  
2 ~~payment policies adopted under Section 413.011 in any dispute,~~  
3 ~~regardless of whether those policies are raised by a party to the~~  
4 ~~dispute.]~~

5 (f) The commissioner [~~commission~~] by rule shall specify the  
6 appropriate dispute resolution process for disputes in which a  
7 claimant has paid for medical services and seeks reimbursement.

8 (g) In performing a review of medical necessity under  
9 Subsection (d) or (e), an independent review organization may  
10 request that the commissioner [~~commission~~] order an examination by  
11 a designated doctor under Chapter 408.

12 (h) The insurance carrier shall pay the cost of the review  
13 if the dispute arises in connection with:

14 (1) a request for health care services that require  
15 preauthorization under Section 413.014 or commissioner  
16 [~~commission~~] rules under that section; or

17 (2) a treatment plan under Section 413.011(g) or  
18 commissioner rules under that section.

19 (k) Except as provided by Subsection (l), a party to a  
20 medical dispute that remains unresolved after a review of the  
21 medical service under this section [~~is entitled to a hearing. The~~  
22 ~~hearing shall be conducted by the State Office of Administrative~~  
23 ~~Hearings within 90 days of receipt of a request for a hearing in the~~  
24 ~~manner provided for a contested case under Chapter 2001, Government~~  
25 ~~Code (the administrative procedure law). A party who has exhausted~~  
26 ~~the party's administrative remedies under this subtitle and who is~~  
27 ~~aggrieved by a final decision of the State Office of Administrative~~

1 ~~Hearings~~] may seek judicial review of the decision. The department  
2 is not considered to be a party to the medical dispute for purposes  
3 of this subsection. Judicial review under this subsection shall be  
4 conducted in the manner provided for judicial review of contested  
5 cases under Subchapter G, Chapter 2001, Government Code.

6 (m) The decision of an independent review organization  
7 under Subsection (d) is binding during the pendency of a dispute.

8 (n) The commissioner [~~commission~~] by rule may prescribe an  
9 alternate dispute resolution process to resolve disputes regarding  
10 medical services costing less than the cost of a review of the  
11 medical necessity of a health care service by an independent review  
12 organization. The cost of a review under the alternate dispute  
13 resolution process shall be paid by the nonprevailing party.

14 SECTION 3.244. Subsections (a), (b), and (d), Section  
15 413.041, Labor Code, are amended to read as follows:

16 (a) Each health care practitioner shall disclose to the  
17 department [~~commission~~] the identity of any health care provider in  
18 which the health care practitioner, or the health care provider  
19 that employs the health care practitioner, has a financial  
20 interest. The health care practitioner shall make the disclosure  
21 in the manner provided by commissioner [~~commission~~] rule.

22 (b) The commissioner [~~commission~~] shall require by rule  
23 that a doctor disclose financial interests in other health care  
24 providers as a condition of registration for the approved doctor  
25 list established under Section 408.023 and shall define "financial  
26 interest" for purposes of this subsection as provided by analogous  
27 federal regulations. The commissioner [~~commission~~] by rule shall

1 adopt the federal standards that prohibit the payment or acceptance  
2 of payment in exchange for health care referrals relating to fraud,  
3 abuse, and antikickbacks.

4 (d) The department [~~commission~~] shall publish all final  
5 disclosure enforcement orders issued under this section on the  
6 department's [~~commission's~~] Internet website.

7 SECTION 3.245. Subsection (b), Section 413.042, Labor Code,  
8 is amended to read as follows:

9 (b) A health care provider commits a violation if the  
10 provider violates Subsection (a). [~~A violation under this~~  
11 ~~subsection is a Class B administrative violation.~~]

12 SECTION 3.246. Section 413.044, Labor Code, is amended to  
13 read as follows:

14 Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. (a) In  
15 addition to or in lieu of an administrative penalty under Section  
16 415.021 or a sanction imposed under Section 415.023, the  
17 commissioner [~~commission~~] may impose sanctions against a person who  
18 serves as a designated doctor under Chapter 408 who, after an  
19 evaluation conducted under Section 413.002(c), is determined by the  
20 division to be out of compliance with this subtitle or with rules  
21 adopted by the commissioner [~~commission~~] relating to:

22 (1) medical policies, fee guidelines, and impairment  
23 ratings; or

24 (2) the quality of decisions made under Section  
25 408.0041 or Section 408.122.

26 (b) Sanctions imposed under Subsection (a) may include:

27 (1) removal or suspension from the department list of

1 designated doctors; or

2 (2) restrictions on the reviews made by the person as a  
3 designated doctor.

4 SECTION 3.247. Subsections (a) through (d), Section  
5 413.051, Labor Code, are amended to read as follows:

6 (a) The department [~~commission~~] may contract with a health  
7 care provider, health care provider professional review  
8 organization, or other entity to develop, maintain, or review  
9 medical policies or fee guidelines or to review compliance with the  
10 medical policies or fee guidelines.

11 (b) For purposes of review or resolution of a dispute as to  
12 compliance with the medical policies or fee guidelines, the  
13 department [~~commission~~] may contract with a health care provider,  
14 health care provider professional review organization, or other  
15 entity that includes in the review process health care  
16 practitioners who are licensed in the category under review and are  
17 of the same field or specialty as the category under review.

18 (c) The department [~~commission~~] may contract with a health  
19 care provider, health care provider professional review  
20 organization, or other entity for medical consultant services,  
21 including:

- 22 (1) independent medical examinations;  
23 (2) medical case reviews; or  
24 (3) establishment of medical policies and fee  
25 guidelines.

26 (d) The commissioner [~~commission~~] shall establish standards  
27 for contracts under this section.



1 SECTION 3.248. Section 413.0511, Labor Code, is amended to  
2 read as follows:

3 Sec. 413.0511. MEDICAL ADVISOR. (a) The department  
4 [~~commission~~] shall employ or contract with a medical advisor, who  
5 must be a doctor as that term is defined by Section 401.011.

6 (b) The medical advisor shall make recommendations  
7 regarding the adoption of rules and policies to:

8 (1) develop, maintain, and review guidelines as  
9 provided by Section 413.011, including rules regarding impairment  
10 ratings;

11 (2) review compliance with those guidelines;

12 (3) regulate or perform other acts related to medical  
13 benefits as required by the commissioner [~~commission~~];

14 (4) impose sanctions or delete doctors from the  
15 department's [~~commission's~~] list of approved doctors under Section  
16 408.023 for:

17 (A) any reason described by Section 408.0231; or

18 (B) noncompliance with commissioner [~~commission~~]  
19 rules;

20 (5) impose conditions or restrictions as authorized by  
21 Section 408.0231(f);

22 (6) receive, and share with the medical quality review  
23 panel established under Section 413.0512, confidential  
24 information, and other information to which access is otherwise  
25 restricted by law, as provided by Sections 413.0512, 413.0513, and  
26 413.0514 from the Texas State Board of Medical Examiners, the Texas  
27 Board of Chiropractic Examiners, or other occupational licensing

1 boards regarding a physician, chiropractor, or other type of doctor  
2 who applies for registration or is registered with the department  
3 [~~commission~~] on the list of approved doctors; [~~and~~]

4 (7) determine minimal modifications to the  
5 reimbursement methodology and model used by the Medicare system as  
6 necessary to meet occupational injury requirements; and

7 (8) monitor the quality and timeliness of decisions  
8 made by designated doctors and independent review organizations,  
9 and the imposition of sanctions regarding those decisions.

10 SECTION 3.249. Subsection (c), Section 413.0512, Labor  
11 Code, is amended to read as follows:

12 (c) The medical quality review panel shall recommend to the  
13 medical advisor:

14 (1) appropriate action regarding doctors, other  
15 health care providers, insurance carriers, [~~and~~] utilization  
16 review agents, and independent review organizations; and

17 (2) the addition or deletion of doctors from the list  
18 of approved doctors under Section 408.023 or the list of designated  
19 doctors established under Section 408.1225 [~~408.122~~].

20 SECTION 3.250. Section 413.0513, Labor Code, is amended to  
21 read as follows:

22 Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information  
23 collected, assembled, or maintained by or on behalf of the  
24 department [~~commission~~] under Section 413.0511 or 413.0512  
25 constitutes an investigation file for purposes of Section 402.092  
26 and may not be disclosed under Section 413.0511 or 413.0512 except  
27 as provided by that section.

1 (b) Confidential information, and other information to  
2 which access is restricted by law, developed by or on behalf of the  
3 department [~~commission~~] under Section 413.0511 or 413.0512 is not  
4 subject to discovery or court subpoena in any action other than:

5 (1) an action to enforce this subtitle brought by the  
6 department [~~commission~~], an appropriate licensing or regulatory  
7 agency, or an appropriate enforcement authority; or

8 (2) a criminal proceeding.

9 SECTION 3.251. Section 413.0514, Labor Code, is amended to  
10 read as follows:

11 Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL  
12 LICENSING BOARDS. (a) This section applies only to information  
13 held by or for the department [~~commission~~], the Texas State Board of  
14 Medical Examiners, and Texas Board of Chiropractic Examiners that  
15 relates to a person who is licensed or otherwise regulated by any of  
16 those state agencies.

17 (b) The department [~~commission~~] and the Texas State Board of  
18 Medical Examiners on request or on its own initiative, may share  
19 with each other confidential information or information to which  
20 access is otherwise restricted by law. The department [~~commission~~]  
21 and the Texas State Board of Medical Examiners shall cooperate with  
22 and assist each other when either agency is conducting an  
23 investigation by providing information to each other that the  
24 sending agency determines is relevant to the investigation. Except  
25 as provided by this section, confidential information that is  
26 shared under this section remains confidential under law and legal  
27 restrictions on access to the information remain in effect.

1 Furnishing information by the Texas State Board of Medical  
2 Examiners to the department [~~commission~~] or by the department  
3 [~~commission~~] to the Texas State Board of Medical Examiners under  
4 this subsection does not constitute a waiver of privilege or  
5 confidentiality as established by law.

6 (c) Information that is received by the department  
7 [~~commission~~] from the Texas State Board of Medical Examiners or by  
8 the Texas State Board of Medical Examiners from the department  
9 [~~commission~~] remains confidential, may not be disclosed by the  
10 department [~~commission~~] except as necessary to further the  
11 investigation, and shall be exempt from disclosure under Sections  
12 402.092 and 413.0513.

13 (d) The department [~~commission~~] and the Texas Board of  
14 Chiropractic Examiners on request or on its own initiative, may  
15 share with each other confidential information or information to  
16 which access is otherwise restricted by law. The department  
17 [~~commission~~] and the Texas Board of Chiropractic Examiners shall  
18 cooperate with and assist each other when either agency is  
19 conducting an investigation by providing information to each other  
20 that is relevant to the investigation. Except as provided by this  
21 section, confidential information that is shared under this section  
22 remains confidential under law and legal restrictions on access to  
23 the information remain in effect unless the agency sharing the  
24 information approves use of the information by the receiving agency  
25 for enforcement purposes. Furnishing information by the Texas  
26 Board of Chiropractic Examiners to the department [~~commission~~] or  
27 by the department [~~commission~~] to the Texas Board of Chiropractic

1 Examiners under this subsection does not constitute a waiver of  
2 privilege or confidentiality as established by law.

3 (e) Information that is received by the department  
4 [~~commission~~] from the Texas Board of Chiropractic Examiners or by  
5 the Texas Board of Chiropractic Examiners remains confidential and  
6 may not be disclosed by the department [~~commission~~] except as  
7 necessary to further the investigation unless the agency sharing  
8 the information and the agency receiving the information agree to  
9 use of the information by the receiving agency for enforcement  
10 purposes.

11 (f) The department [~~commission~~] and the Texas State Board of  
12 Medical Examiners shall provide information to each other on all  
13 disciplinary actions taken.

14 (g) The department [~~commission~~] and the Texas Board of  
15 Chiropractic Examiners shall provide information to each other on  
16 all disciplinary actions taken.

17 SECTION 3.252. Section 413.0515, Labor Code, is amended to  
18 read as follows:

19 Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR  
20 VIOLATIONS. (a) If the department [~~commission~~] or the Texas State  
21 Board of Medical Examiners discovers an act or omission by a  
22 physician that may constitute a felony, a misdemeanor involving  
23 moral turpitude, a violation of state or federal narcotics or  
24 controlled substance law, an offense involving fraud or abuse under  
25 the Medicare or Medicaid program, or a violation of this subtitle,  
26 the agency shall report that act or omission to the other agency.

27 (b) If the department [~~commission~~] or the Texas Board of

1 Chiropractic Examiners discovers an act or omission by a  
2 chiropractor that may constitute a felony, a misdemeanor involving  
3 moral turpitude, a violation of state or federal narcotics or  
4 controlled substance law, an offense involving fraud or abuse under  
5 the Medicare or Medicaid program, or a violation of this subtitle,  
6 the agency shall report that act or omission to the other agency.

7 SECTION 3.253. Section 413.052, Labor Code, is amended to  
8 read as follows:

9 Sec. 413.052. PRODUCTION OF DOCUMENTS. The commissioner  
10 [~~commission~~] by rule shall establish procedures to enable the  
11 department [~~commission~~] to compel the production of documents.

12 SECTION 3.254. Section 413.053, Labor Code, is amended to  
13 read as follows:

14 Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The  
15 commissioner [~~commission~~] by rule shall establish standards of  
16 reporting and billing governing both form and content.

17 SECTION 3.255. Subsection (a), Section 413.054, Labor Code,  
18 is amended to read as follows:

19 (a) A person who performs services for the department  
20 [~~commission~~] as a designated doctor, an independent medical  
21 examiner, a doctor performing a medical case review, or a member of  
22 a peer review panel has the same immunity from liability as the  
23 commissioner [~~a commission member~~] under Section 402.011  
24 [~~402.010~~].

25 SECTION 3.256. Subsections (a) and (b), Section 413.055,  
26 Labor Code, are amended to read as follows:

27 (a) The department [~~executive director~~], as provided by

1 commissioner [~~commission~~] rule, may enter an interlocutory order  
2 for the payment of all or part of medical benefits. The order may  
3 address accrued benefits, future benefits, or both accrued benefits  
4 and future benefits.

5 (b) The subsequent injury fund shall reimburse an insurance  
6 carrier for any overpayments of benefits made under an order  
7 entered under Subsection (a) if the order is reversed or modified by  
8 final arbitration, order, or decision of the commissioner  
9 [~~commission~~] or a court. The commissioner [~~commission~~] shall adopt  
10 rules to provide for a periodic reimbursement schedule, providing  
11 for reimbursement at least annually.

12 SECTION 3.257. Subsection (a), Section 414.002, Labor Code,  
13 is amended to read as follows:

14 (a) The division shall monitor for compliance with  
15 commissioner [~~commission~~] rules, this subtitle, and other laws  
16 relating to workers' compensation the conduct of persons subject to  
17 this subtitle, other than persons monitored by the division of  
18 medical review. Persons to be monitored include:

- 19 (1) persons claiming benefits under this subtitle;  
20 (2) employers;  
21 (3) insurance carriers; and  
22 (4) attorneys and other representatives of parties.

23 SECTION 3.258. Section 414.003, Labor Code, is amended to  
24 read as follows:

25 Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The  
26 division shall compile and maintain statistical and other  
27 information as necessary to detect practices or patterns of conduct

1 by persons subject to monitoring under this chapter that:

2 (1) violate this subtitle, commissioner [~~or~~  
3 ~~commission~~] rules, or a commissioner order or decision; or

4 (2) otherwise adversely affect the workers'  
5 compensation system of this state.

6 (b) The department [~~commission~~] shall use the information  
7 compiled under this section to impose appropriate penalties and  
8 other sanctions under Chapters 415 and 416.

9 SECTION 3.259. Section 414.005, Labor Code, is amended to  
10 read as follows:

11 Sec. 414.005. INVESTIGATION UNIT. The division shall  
12 maintain an investigation unit to conduct investigations relating  
13 to alleged violations of this subtitle, commissioner [~~or~~  
14 ~~commission~~] rules, or a commissioner order or decision, with  
15 particular emphasis on violations of Chapters 415 and 416.

16 SECTION 3.260. Section 414.007, Labor Code, is amended to  
17 read as follows:

18 Sec. 414.007. REVIEW OF REFERRALS FROM DIVISION OF MEDICAL  
19 REVIEW. The division shall review information and referrals  
20 received from the division of medical review concerning alleged  
21 violations of this subtitle, commissioner rules, or a commissioner  
22 order or decision, and, under Sections 414.005 and 414.006 and  
23 Chapters 415 and 416, may conduct investigations, make referrals to  
24 other authorities, and initiate administrative violation  
25 proceedings.

26 SECTION 3.261. Section 415.001, Labor Code, is amended to  
27 read as follows:



1           Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE  
2 OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee  
3 or legal beneficiary commits an administrative violation if,  
4 regardless of the person's mental state, the person [~~wilfully or~~  
5 ~~intentionally~~]:

6           (1) fails without good cause to attend a dispute  
7 resolution proceeding within the department [~~commission~~];

8           (2) attends a dispute resolution proceeding within the  
9 department [~~commission~~] without complete authority or fails to  
10 exercise authority to effectuate an agreement or settlement;

11           (3) commits an act of barratry under Section 38.12,  
12 Penal Code;

13           (4) withholds from the employee's or legal  
14 beneficiary's weekly benefits or from advances amounts not  
15 authorized to be withheld by the department [~~commission~~];

16           (5) enters into a settlement or agreement without the  
17 knowledge, consent, and signature of the employee or legal  
18 beneficiary;

19           (6) takes a fee or withholds expenses in excess of the  
20 amounts authorized by the department [~~commission~~];

21           (7) refuses or fails to make prompt delivery to the  
22 employee or legal beneficiary of funds belonging to the employee or  
23 legal beneficiary as a result of a settlement, agreement, order, or  
24 award;

25           (8) violates the Texas Disciplinary Rules of  
26 Professional Conduct of the State Bar of Texas;

27           (9) misrepresents the provisions of this subtitle to

1 an employee, an employer, a health care provider, or a legal  
2 beneficiary;

3 (10) violates a commissioner [~~commission~~] rule; or

4 (11) fails to comply with this subtitle.

5 SECTION 3.262. Section 415.002, Labor Code, is amended to  
6 read as follows:

7 Sec. 415.002. ADMINISTRATIVE VIOLATION BY AN INSURANCE  
8 CARRIER. (a) An insurance carrier or its representative commits  
9 an administrative violation if, regardless of the person's mental  
10 state, that person [~~wilfully or intentionally~~]:

11 (1) misrepresents a provision of this subtitle to an  
12 employee, an employer, a health care provider, or a legal  
13 beneficiary;

14 (2) terminates or reduces benefits without  
15 substantiating evidence that the action is reasonable and  
16 authorized by law;

17 (3) instructs an employer not to file a document  
18 required to be filed with the department [~~commission~~];

19 (4) instructs or encourages an employer to violate a  
20 claimant's right to medical benefits under this subtitle;

21 (5) fails to tender promptly full death benefits if a  
22 legitimate dispute does not exist as to the liability of the  
23 insurance carrier;

24 (6) allows an employer, other than a self-insured  
25 employer, to dictate the methods by which and the terms on which a  
26 claim is handled and settled;

27 (7) fails to confirm medical benefits coverage to a

1 person or facility providing medical treatment to a claimant if a  
2 legitimate dispute does not exist as to the liability of the  
3 insurance carrier;

4 (8) fails, without good cause, to attend a dispute  
5 resolution proceeding within the department [~~commission~~];

6 (9) attends a dispute resolution proceeding within the  
7 department [~~commission~~] without complete authority or fails to  
8 exercise authority to effectuate agreement or settlement;

9 (10) adjusts a workers' compensation claim in a manner  
10 contrary to license requirements for an insurance adjuster,  
11 including the requirements of Chapter 4101, Insurance Code [~~407,~~  
12 ~~Acts of the 63rd Legislature, Regular Session, 1973 (Article~~  
13 ~~21.07-4, Vernon's Texas Insurance Code)~~], or the rules of the  
14 commissioner [~~State Board~~] of insurance [~~Insurance~~];

15 (11) fails to process claims promptly in a reasonable  
16 and prudent manner;

17 (12) fails to initiate or reinstate benefits when due  
18 if a legitimate dispute does not exist as to the liability of the  
19 insurance carrier;

20 (13) misrepresents the reason for not paying benefits  
21 or terminating or reducing the payment of benefits;

22 (14) dates documents to misrepresent the actual date  
23 of the initiation of benefits;

24 (15) makes a notation on a draft or other instrument  
25 indicating that the draft or instrument represents a final  
26 settlement of a claim if the claim is still open and pending before  
27 the department [~~commission~~];

1 (16) fails or refuses to pay benefits from week to week  
2 as and when due directly to the person entitled to the benefits;

3 (17) fails to pay an order awarding benefits;

4 (18) controverts a claim if the evidence clearly  
5 indicates liability;

6 (19) unreasonably disputes the reasonableness and  
7 necessity of health care;

8 (20) violates a commissioner ~~[commission]~~ rule; ~~[or]~~

9 (21) makes a statement denying all future medical care  
10 for a compensable injury; or

11 (22) fails to comply with a provision of this  
12 subtitle.

13 (b) An insurance carrier or its representative does not  
14 commit an administrative violation under Subsection (a)(6) by  
15 allowing an employer to:

16 (1) freely discuss a claim;

17 (2) assist in the investigation and evaluation of a  
18 claim; or

19 (3) attend a proceeding of the department ~~[commission]~~  
20 and participate at the proceeding in accordance with this subtitle.

21 SECTION 3.263. Section 415.003, Labor Code, is amended to  
22 read as follows:

23 Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE  
24 PROVIDER. A health care provider commits an administrative  
25 violation if, regardless of the person's mental state, the person  
26 ~~[wilfully or intentionally]~~:

27 (1) submits a charge for health care that was not

1 furnished;

2 (2) administers improper, unreasonable, or medically  
3 unnecessary treatment or services;

4 (3) makes an unnecessary referral;

5 (4) violates the department's [~~commission's~~] fee and  
6 treatment guidelines;

7 (5) violates a commissioner [~~commission~~] rule; or

8 (6) fails to comply with a provision of this subtitle.

9 SECTION 3.264. Subsections (a), (b), (e), and (f), Section  
10 415.0035, Labor Code, are amended to read as follows:

11 (a) An insurance carrier or its representative commits an  
12 administrative violation if, regardless of the person's mental  
13 state, that person:

14 (1) fails to submit to the department [~~commission~~] a  
15 settlement or agreement of the parties;

16 (2) fails to timely notify the department [~~commission~~]  
17 of the termination or reduction of benefits and the reason for that  
18 action; or

19 (3) denies preauthorization in a manner that is not in  
20 accordance with rules adopted by the commissioner [~~commission~~]  
21 under Section 413.014.

22 (b) A health care provider commits an administrative  
23 violation if, regardless of the person's mental state, that person:

24 (1) fails or refuses to timely file required reports  
25 or records; or

26 (2) fails to file with the department [~~commission~~] the  
27 annual disclosure statement required by Section 413.041.

1 (e) An insurance carrier or health care provider commits an  
2 administrative violation if that person violates this subtitle or a  
3 rule, order, or decision of the commissioner [~~commission~~].

4 (f) A subsequent administrative violation under this  
5 section, after prior notice to the insurance carrier or health care  
6 provider of noncompliance, is subject to penalties as provided by  
7 Section 415.021. Prior notice under this subsection is not  
8 required [~~if the violation was committed wilfully or intentionally,~~  
9 ~~or~~] if the violation was of a decision or order of the commissioner  
10 [~~commission~~].

11 SECTION 3.265. The heading to Section 415.005, Labor Code,  
12 is amended to read as follows:

13 Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS  
14 PROHIBITED[~~, ADMINISTRATIVE VIOLATION~~].

15 SECTION 3.266. Subsection (b), Section 415.005, Labor Code,  
16 is amended to read as follows:

17 (b) A violation under this section is an [~~a Class B~~]  
18 administrative violation. A health care provider may be liable for  
19 an administrative penalty regardless of whether a criminal action  
20 is initiated under Section 413.043.

21 SECTION 3.267. The heading to Section 415.006, Labor Code,  
22 is amended to read as follows:

23 Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED[~~+  
24 ADMINISTRATIVE VIOLATION~~].

25 SECTION 3.268. Subsection (c), Section 415.006, Labor Code,  
26 is amended to read as follows:

27 (c) A person commits a violation if the person violates

1 Subsection (a). [~~A violation under this subsection is a Class C~~  
2 ~~administrative violation.~~]

3 SECTION 3.269. Subsection (a), Section 415.007, Labor Code,  
4 is amended to read as follows:

5 (a) An attorney who represents a claimant before the  
6 department [~~commission~~] may not lend money to the claimant during  
7 the pendency of the workers' compensation claim.

8 SECTION 3.270. Subsection (e), Section 415.008, Labor Code,  
9 is amended to read as follows:

10 (e) If an administrative violation proceeding is pending  
11 under this section against an employee or person claiming death  
12 benefits, the department [~~commission~~] may not take final action on  
13 the person's benefits.

14 SECTION 3.271. Subsection (a), Section 415.009, Labor Code,  
15 is amended to read as follows:

16 (a) A person commits a violation if, regardless of the  
17 person's mental state, the person [~~knowingly~~] brings, prosecutes,  
18 or defends an action for benefits under this subtitle or requests  
19 initiation of an administrative violation proceeding that does not  
20 have a basis in fact or is not warranted by existing law or a good  
21 faith argument for the extension, modification, or reversal of  
22 existing law.

23 SECTION 3.272. Subsection (a), Section 415.010, Labor Code,  
24 is amended to read as follows:

25 (a) A party to an agreement approved by the department  
26 [~~commission~~] commits a violation if, regardless of the person's  
27 mental state, the person [~~knowingly~~] breaches a provision of the

1 agreement.

2 SECTION 3.273. Section 415.021, Labor Code, is amended to  
3 read as follows:

4 Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES.

5 (a) In addition to any other provisions in this subtitle relating  
6 to violations, a person commits an administrative violation if the  
7 person violates, fails to comply with, or refuses to comply with  
8 this subtitle or a rule, order, or decision of the department. In  
9 addition to any sanctions, administrative penalty, or other remedy  
10 authorized by this subtitle, the commissioner [~~The commission~~] may  
11 assess an administrative penalty against a person who commits an  
12 administrative violation. The administrative penalty shall not  
13 exceed \$25,000 per day per occurrence. Each day of noncompliance  
14 constitutes a separate violation. The commissioner's authority  
15 under this chapter is in addition to any other authority to enforce  
16 a sanction, penalty, fine, forfeiture, denial, suspension, or  
17 revocation otherwise authorized by law [~~Notwithstanding Subsection~~  
18 ~~(c), the commission by rule shall adopt a schedule of specific~~  
19 ~~monetary administrative penalties for specific violations under~~  
20 ~~this subtitle]~~.

21 (b) The commissioner [~~commission may assess an~~  
22 ~~administrative penalty not to exceed \$10,000 and]~~ may enter a cease  
23 and desist order against a person who:

- 24 (1) commits repeated administrative violations;
- 25 (2) allows, as a business practice, the commission of  
26 repeated administrative violations; or
- 27 (3) violates an order or decision of the commissioner



1 ~~[commission]~~.

2 (c) In assessing an administrative penalty:

3 (1) ~~[7]~~ the commissioner ~~[commission]~~ shall consider:

4 (A) ~~[(1)]~~ the seriousness of the violation,  
5 including the nature, circumstances, consequences, extent, and  
6 gravity of the prohibited act;

7 (B) ~~[(2)]~~ the history and extent of previous  
8 administrative violations;

9 (C) ~~[(3)]~~ the demonstrated good faith of the  
10 violator, including actions taken to rectify the consequences of  
11 the prohibited act;

12 (D) ~~[(4) the economic benefit resulting from the~~  
13 ~~prohibited act,~~

14 ~~[(5)]~~ the penalty necessary to deter future  
15 violations; and

16 (E) ~~[(6)]~~ other matters that justice may  
17 require; and

18 (2) the commissioner shall, to the extent reasonable,  
19 consider the economic benefit resulting from the prohibited act.

20 (d) A penalty may be assessed only after the person charged  
21 with an administrative violation has been given an opportunity for  
22 a hearing under Subchapter C.

23 SECTION 3.274. Subsection (b), Section 415.023, Labor Code,  
24 is amended to read as follows:

25 (b) The commissioner ~~[commission]~~ may adopt rules providing  
26 for:

27 (1) a reduction or denial of fees;

1 (2) public or private reprimand by the commissioner  
2 [~~commission~~];

3 (3) suspension from practice before the commissioner  
4 [~~commission~~];

5 (4) restriction, suspension, or revocation of the  
6 right to receive reimbursement under this subtitle; or

7 (5) referral and petition to the appropriate licensing  
8 authority for appropriate disciplinary action, including the  
9 restriction, suspension, or revocation of the person's license.

10 SECTION 3.275. Section 415.024, Labor Code, is amended to  
11 read as follows:

12 Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT;  
13 ADMINISTRATIVE VIOLATION. A material and substantial breach of a  
14 settlement agreement that establishes a compliance plan is an [~~a~~  
15 ~~Class A~~] administrative violation. In determining the amount of  
16 the penalty, the commissioner [~~commission~~] shall consider the total  
17 volume of claims handled by the insurance carrier.

18 SECTION 3.2751. Subchapter B, Chapter 415, Labor Code, is  
19 amended by adding Section 415.025 to read as follows:

20 Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR  
21 PENALTY. A reference in this code or other law, or in rules of the  
22 Texas Workers' Compensation Commission or the department, to a  
23 particular class of violation, administrative violation, or  
24 penalty means that the penalty shall not exceed \$25,000 per day per  
25 occurrence and that each day of noncompliance constitutes a  
26 separate violation.

27 SECTION 3.276. Subsection (b), Section 415.032, Labor Code,

1 is amended to read as follows:

2 (b) Not later than the 20th day after the date on which  
3 notice is received, the charged party shall:

4 (1) remit the amount of the penalty to the department  
5 [~~commission~~]; or

6 (2) submit to the department [~~commission~~] a written  
7 request for a hearing.

8 SECTION 3.277. Section 415.033, Labor Code, is amended to  
9 read as follows:

10 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a  
11 charged party fails to respond as required under Section 415.032,  
12 the penalty is due and the department [~~commission~~] shall initiate  
13 enforcement proceedings.

14 SECTION 3.278. Subsection (a), Section 415.034, Labor Code,  
15 is amended to read as follows:

16 (a) On the request of the charged party or the commissioner  
17 [~~executive director~~], the State Office of Administrative Hearings  
18 shall set a hearing. The hearing shall be conducted in the manner  
19 provided for a contested case under Chapter 2001, Government Code  
20 (the administrative procedure law).

21 SECTION 3.279. Subsections (b) and (d), Section 415.035,  
22 Labor Code, are amended to read as follows:

23 (b) If an administrative penalty is assessed, the person  
24 charged shall:

25 (1) forward the amount of the penalty to the  
26 commissioner [~~executive director~~] for deposit in an escrow account;  
27 or

1           (2) post with the commissioner [~~executive director~~] a  
2 bond for the amount of the penalty, effective until all judicial  
3 review of the determination is final.

4           (d) If the court determines that the penalty should not have  
5 been assessed or reduces the amount of the penalty, the  
6 commissioner [~~executive director~~] shall:

7                 (1) remit the appropriate amount, plus accrued  
8 interest, if the administrative penalty was paid; or

9                 (2) release the bond.

10          SECTION 3.280. Section 416.001, Labor Code, is amended to  
11 read as follows:

12          Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An  
13 action taken by an insurance carrier under an order of the  
14 commissioner [~~commission~~] or recommendations of a benefit review  
15 officer under Section 410.031, 410.032, or 410.033 may not be the  
16 basis of a cause of action against the insurance carrier for a  
17 breach of the duty of good faith and fair dealing.

18          SECTION 3.281. Subsections (c) and (d), Section 417.001,  
19 Labor Code, are amended to read as follows:

20          (c) If a claimant receives benefits from the subsequent  
21 injury fund, the department [~~commission~~] is:

22                 (1) considered to be the insurance carrier under this  
23 section for purposes of those benefits;

24                 (2) subrogated to the rights of the claimant; and

25                 (3) entitled to reimbursement in the same manner as  
26 the insurance carrier.

27          (d) The department [~~commission~~] shall remit money recovered

1 under this section to the comptroller for deposit to the credit of  
2 the subsequent injury fund.

3 SECTION 3.282. Subsection (b), Section 417.003, Labor Code,  
4 is amended to read as follows:

5 (b) An attorney who represents the claimant and is also to  
6 represent the subrogated insurance carrier shall make a full  
7 written disclosure to the claimant before employment as an attorney  
8 by the insurance carrier. The claimant must acknowledge the  
9 disclosure and consent to the representation. A signed copy of the  
10 disclosure shall be furnished to all concerned parties and made a  
11 part of the department [~~commission~~] file. A copy of the disclosure  
12 with the claimant's consent shall be filed with the claimant's  
13 pleading before a judgment is entered and approved by the court.  
14 The claimant's attorney may not receive a fee under this section to  
15 which the attorney is otherwise entitled under an agreement with  
16 the insurance carrier unless the attorney complies with the  
17 requirements of this subsection.

18 SECTION 3.283. Subdivisions (1) and (5), Section 501.001,  
19 Labor Code, are amended to read as follows:

20 (1) "Department" [~~"Commission"~~] means the Texas  
21 Department of Workers' Compensation [~~Commission~~].

22 (5) "Employee" means a person who is:

23 (A) in the service of the state pursuant to an  
24 election, appointment, or express oral or written contract of hire;

25 (B) paid from state funds but whose duties  
26 require that the person work and frequently receive supervision in  
27 a political subdivision of the state;

1 (C) a peace officer employed by a political  
2 subdivision, while the peace officer is exercising authority  
3 granted under:

4 (i) Article 2.12 [~~12~~], Code of Criminal  
5 Procedure; or

6 (ii) Articles 14.03(d) and (g), Code of  
7 Criminal Procedure;

8 (D) a member of the state military forces, as  
9 defined by Section 431.001, Government Code, who is engaged in  
10 authorized training or duty; or

11 (E) a Texas Task Force 1 member, as defined by  
12 Section 88.301, Education Code, who is activated by the governor's  
13 division of emergency management or is injured during any training  
14 session sponsored or sanctioned by Texas Task Force 1.

15 SECTION 3.284. Subsection (d), Section 501.026, Labor Code,  
16 is amended to read as follows:

17 (d) A person entitled to benefits under this section may  
18 receive the benefits only if the person seeks medical attention  
19 from a doctor for the injury not later than 48 hours after the  
20 occurrence of the injury or after the date the person knew or should  
21 have known the injury occurred. The person shall comply with the  
22 requirements of Section 409.001 by providing notice of the injury  
23 to the department [~~commission~~] or the state agency with which the  
24 officer or employee under Subsection (b) is associated.

25 SECTION 3.285. Subsection (a), Section 501.050, Labor Code,  
26 is amended to read as follows:

27 (a) In each case appealed from the department [~~commission~~]

1 to a county or district court:

2 (1) the clerk of the court shall mail to the department  
3 ~~[commission]~~:

4 (A) not later than the 20th day after the date the  
5 case is filed, a notice containing the style, number, and date of  
6 filing of the case; and

7 (B) not later than the 20th day after the date the  
8 judgment is rendered, a certified copy of the judgment; and

9 (2) the attorney preparing the judgment shall file the  
10 original and a copy of the judgment with the clerk.

11 SECTION 3.286. The heading to Chapter 502, Labor Code, is  
12 amended to read as follows:

13 CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
14 EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM  
15 AND EMPLOYEES OF INSTITUTIONS OF THE TEXAS A&M UNIVERSITY SYSTEM

16 SECTION 3.287. Subdivision (1), Section 502.001, Labor  
17 Code, is amended to read as follows:

18 (1) "Department" means the Texas Department of  
19 Workers' Compensation [~~"Commission" means the Texas Workers'~~  
20 ~~Compensation Commission~~].

21 SECTION 3.288. Subsection (b), Section 502.002, Labor Code,  
22 is amended to read as follows:

23 (b) For the purpose of applying the provisions listed by  
24 Subsection (a) to this chapter, "employer" means "the institution,"  
25 and "system" means the insurance carrier under Section 502.022. [~~"]~~

26 SECTION 3.289. Subsection (a), Section 502.021, Labor Code,  
27 is amended to read as follows:

1 (a) The system [~~institution~~] shall pay benefits as provided  
2 by this chapter to an employee with a compensable injury.

3 SECTION 3.290. Section 502.041, Labor Code, is amended to  
4 read as follows:

5 Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An  
6 employee may elect to use accrued sick leave before receiving  
7 income benefits. If an employee elects to use sick leave, the  
8 employee is not entitled to income benefits under this chapter  
9 until the employee has exhausted the employee's accrued sick leave  
10 [~~institution may provide that an injured employee may remain on the~~  
11 ~~payroll until the employee's earned annual and sick leave is~~  
12 ~~exhausted]~~.

13 (b) An employee may elect to use all or any number of weeks  
14 of accrued annual leave after the employee's accrued sick leave is  
15 exhausted. If an employee elects to use annual leave, the employee  
16 is not entitled to income benefits under this chapter until the  
17 elected number of weeks of leave have been exhausted [~~While an~~  
18 ~~injured employee remains on the payroll under Subsection (a),~~  
19 ~~medical services remain available to the employee, but workers'~~  
20 ~~compensation benefits do not accrue or become payable to the~~  
21 ~~injured employee]~~.

22 SECTION 3.291. Subsections (a) and (c), Section 502.061,  
23 Labor Code, are amended to read as follows:

24 (a) The system [~~Each institution~~] shall administer this  
25 chapter.

26 (c) The system [~~institution~~] may:

27 (1) adopt and publish rules and prescribe and furnish



1 forms necessary for the administration of this chapter; and

2 (2) adopt and enforce rules necessary for the  
3 prevention of accidents and injuries.

4 SECTION 3.292. Section 502.063, Labor Code, is amended to  
5 read as follows:

6 Sec. 502.063. CERTIFIED COPIES OF DEPARTMENT [~~COMMISSION~~]  
7 DOCUMENTS. (a) The department [~~commission~~] shall furnish a  
8 certified copy of an order, award, decision, or paper on file in the  
9 department's [~~commission's~~] office to a person entitled to the copy  
10 on written request and payment of the fee for the copy. The fee is  
11 the same as that charged for similar services by the secretary of  
12 state's office.

13 (b) The system or an [~~An~~] institution may obtain certified  
14 copies under this section without charge.

15 (c) A fee or salary may not be paid to an [~~a member or~~]  
16 employee of the department [~~commission~~] for making a copy under  
17 Subsection (a) that exceeds the fee charged for the copy.

18 SECTION 3.293. Subsection (a), Section 502.065, Labor Code,  
19 is amended to read as follows:

20 (a) In addition to a report of an injury filed with the  
21 department [~~commission~~] under Section 409.005(a), an institution  
22 shall file a supplemental report that contains:

23 (1) the name, age, sex, and occupation of the injured  
24 employee;

25 (2) the character of work in which the employee was  
26 engaged at the time of the injury;

27 (3) the place, date, and hour of the injury; and

1 (4) the nature and cause of the injury.

2 SECTION 3.294. Subsections (a), (b), (d), and (e), Section  
3 502.066, Labor Code, are amended to read as follows:

4 (a) The department [~~commission~~] may require an employee who  
5 claims to have been injured to submit to an examination by the  
6 department [~~commission~~] or a person acting under the department's  
7 [~~commission's~~] authority at a reasonable time and place in this  
8 state.

9 (b) On the request of an employee or the system  
10 [~~institution~~], the employee, [or] the institution, or the system is  
11 entitled to have a physician or chiropractor selected by the  
12 employee, [or] the institution, or the system, as appropriate,  
13 present to participate in an examination under Subsection (a) or  
14 Section 408.004.

15 (d) The system or the institution may have an injured  
16 employee examined at a reasonable time and at a place suitable to  
17 the employee's condition and convenient and accessible to the  
18 employee by a physician or chiropractor selected by the system or  
19 the institution. The system or the institution shall pay for an  
20 examination under this subsection and for the employee's reasonable  
21 expenses incident to the examination. The employee is entitled to  
22 have a physician or chiropractor selected by the employee present  
23 to participate in an examination under this subsection.

24 (e) The system or the institution shall pay the fee set by  
25 the department [~~commission~~] of a physician or chiropractor selected  
26 by the employee under Subsection (b) or (d).

27 SECTION 3.295. Subsection (a), Section 502.067, Labor Code,

1 is amended to read as follows:

2 (a) The commissioner of the Texas Department of Workers'  
3 Compensation [~~commission~~] may order or direct the system or the  
4 institution to reduce or suspend the compensation of an injured  
5 employee who:

6 (1) persists in insanitary or injurious practices that  
7 tend to imperil or retard the employee's recovery; or

8 (2) refuses to submit to medical, surgical,  
9 chiropractic, or other remedial treatment recognized by the state  
10 that is reasonably essential to promote the employee's recovery.

11 SECTION 3.296. Section 502.068, Labor Code, is amended to  
12 read as follows:

13 Sec. 502.068. POSTPONEMENT OF HEARING. If an injured  
14 employee is receiving benefits under this chapter and the system or  
15 the institution is providing hospitalization, medical treatment,  
16 or chiropractic care to the employee, the department [~~commission~~]  
17 may postpone the hearing on the employee's claim. An appeal may not  
18 be taken from a department [~~commission~~] order under this section.

19 SECTION 3.297. Subsection (a), Section 502.069, Labor Code,  
20 is amended to read as follows:

21 (a) In each case appealed from the department [~~commission~~]  
22 to a county or district court:

23 (1) the clerk of the court shall mail to the department  
24 [~~commission~~]:

25 (A) not later than the 20th day after the date the  
26 case is filed, a notice containing the style, number, and date of  
27 filing of the case; and

1 (B) not later than the 20th day after the date the  
2 judgment is rendered, a certified copy of the judgment; and

3 (2) the attorney preparing the judgment shall file the  
4 original and a copy of the judgment with the clerk.

5 SECTION 3.298. The heading to Chapter 503, Labor Code, is  
6 amended to read as follows:

7 CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
8 EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND  
9 EMPLOYEES OF INSTITUTIONS OF THE UNIVERSITY OF TEXAS SYSTEM

10 SECTION 3.299. Section 503.001, Labor Code, is amended by  
11 amending Subdivision (1) and by adding Subdivision (1-a) to read as  
12 follows:

13 (1) "Commissioner" means the commissioner of the Texas  
14 Department of Workers' Compensation [~~"Commission" means the Texas~~  
15 ~~Workers' Compensation Commission~~].

16 (1-a) "Department" means the Texas Department of  
17 Workers' Compensation.

18 SECTION 3.300. Subsection (b), Section 503.002, Labor Code,  
19 is amended to read as follows:

20 (b) For the purpose of applying the provisions listed by  
21 Subsection (a) to this chapter, "employer" means "the institution,"  
22 and "system" means the insurance carrier under Section 503.022. ["]

23 SECTION 3.301. Subsection (a), Section 503.021, Labor Code,  
24 is amended to read as follows:

25 (a) The system [~~institution~~] shall pay benefits as provided  
26 by this chapter to an employee with a compensable injury.

27 SECTION 3.302. Section 503.022, Labor Code, is amended to

1 read as follows:

2       Sec. 503.022. AUTHORITY TO SELF-INSURE. An institution may  
3 self-insure as part of a system insurance plan.

4       SECTION 3.303. Section 503.041, Labor Code, is amended to  
5 read as follows:

6       Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An  
7 employee may elect to use accrued sick leave before receiving  
8 income benefits. If an employee elects to use sick leave, the  
9 employee is not entitled to income benefits under this chapter  
10 until the employee has exhausted the employee's accrued sick leave  
11 ~~[An institution may provide that an injured employee may remain on~~  
12 ~~the payroll until the employee's earned annual and sick leave is~~  
13 ~~exhausted].~~

14       (b) An employee may elect to use all or any number of weeks  
15 of accrued annual leave after the employee's accrued sick leave is  
16 exhausted. If an employee elects to use annual leave, the employee  
17 is not entitled to income benefits under this chapter until the  
18 elected number of weeks of leave have been exhausted ~~[While an~~  
19 ~~injured employee remains on the payroll under Subsection (a), the~~  
20 ~~employee is entitled to medical benefits but income benefits do not~~  
21 ~~accrue].~~

22       SECTION 3.304. Subsections (a) and (c), Section 503.061,  
23 Labor Code, are amended to read as follows:

24       (a) The system ~~[Each institution]~~ shall administer this  
25 chapter.

26       (c) The system ~~[institution]~~ may:

27           (1) adopt and publish rules and prescribe and furnish

1 forms necessary for the administration of this chapter; and

2 (2) adopt and enforce rules necessary for the  
3 prevention of accidents and injuries.

4 SECTION 3.305. Section 503.063, Labor Code, is amended to  
5 read as follows:

6 Sec. 503.063. CERTIFIED COPIES OF DEPARTMENT [~~COMMISSION~~]  
7 DOCUMENTS. (a) The department [~~commission~~] shall furnish a  
8 certified copy of an order, award, decision, or paper on file in the  
9 department's [~~commission's~~] office to a person entitled to the copy  
10 on written request and payment of the fee for the copy. The fee is  
11 the same as that charged for similar services by the secretary of  
12 state's office.

13 (b) The system or the institution may obtain certified  
14 copies under this section without charge.

15 (c) A fee or salary may not be paid to an [~~a member or~~]  
16 employee of the department [~~commission~~] for making a copy under  
17 Subsection (a) that exceeds the fee charged for the copy.

18 SECTION 3.306. Subsection (a), Section 503.065, Labor Code,  
19 is amended to read as follows:

20 (a) In addition to a report of an injury filed with the  
21 department [~~commission~~] under Section 409.005(a), an institution  
22 shall file a supplemental report that contains:

23 (1) the name, age, sex, and occupation of the injured  
24 employee;

25 (2) the character of work in which the employee was  
26 engaged at the time of the injury;

27 (3) the place, date, and hour of the injury; and

1 (4) the nature and cause of the injury.

2 SECTION 3.307. Subsections (a), (b), (d), and (e), Section  
3 503.066, Labor Code, are amended to read as follows:

4 (a) The department [~~commission~~] may require an employee who  
5 claims to have been injured to submit to an examination by the  
6 department [~~commission~~] or a person acting under the department's  
7 [~~commission's~~] authority at a reasonable time and place in this  
8 state.

9 (b) On the request of an employee, the system, or the  
10 institution, the employee, the system, or the institution is  
11 entitled to have a physician selected by the employee, the system,  
12 or the institution, as appropriate, present to participate in an  
13 examination under Subsection (a) or Section 408.004.

14 (d) The system or the institution may have an injured  
15 employee examined at a reasonable time and at a place suitable to  
16 the employee's condition and convenient and accessible to the  
17 employee by a physician selected by the system or the institution.  
18 The system or the institution shall pay for an examination under  
19 this subsection and for the employee's reasonable expenses incident  
20 to the examination. The employee is entitled to have a physician  
21 selected by the employee present to participate in an examination  
22 under this subsection.

23 (e) The system or the institution shall pay the fee, as set  
24 by the department [~~commission~~], of a physician selected by the  
25 employee under Subsection (b) or (d).

26 SECTION 3.308. Subsection (a), Section 503.067, Labor Code,  
27 is amended to read as follows:

1 (a) The commissioner [~~commission~~] may order or direct the  
2 system or the institution to reduce or suspend the compensation of  
3 an injured employee who:

4 (1) persists in insanitary or injurious practices that  
5 tend to imperil or retard the employee's recovery; or

6 (2) refuses to submit to medical, surgical, or other  
7 remedial treatment recognized by the state that is reasonably  
8 essential to promote the employee's recovery.

9 SECTION 3.309. Section 503.068, Labor Code, is amended to  
10 read as follows:

11 Sec. 503.068. POSTPONEMENT OF HEARING. If an injured  
12 employee is receiving benefits under this chapter and the system or  
13 the institution is providing hospitalization or medical treatment  
14 to the employee, the department [~~commission~~] may postpone the  
15 hearing on the employee's claim. An appeal may not be taken from a  
16 commissioner [~~commission~~] order under this section.

17 SECTION 3.310. Subsection (a), Section 503.069, Labor Code,  
18 is amended to read as follows:

19 (a) In each case appealed from the department [~~commission~~]  
20 to a county or district court:

21 (1) the clerk of the court shall mail to the department  
22 [~~commission~~]:

23 (A) not later than the 20th day after the date the  
24 case is filed, a notice containing the style, number, and date of  
25 filing of the case; and

26 (B) not later than the 20th day after the date the  
27 judgment is rendered, a certified copy of the judgment; and



1           (2) the attorney preparing the judgment shall file the  
2 original and a copy of the judgment with the clerk.

3           SECTION 3.311. Subsection (a), Section 503.070, Labor Code,  
4 is amended to read as follows:

5           (a) A party who does not consent to abide by the final  
6 decision of the commissioner [~~commission~~] shall file notice with  
7 the department [~~commission~~] as required by Section 410.253 and  
8 bring suit in the county in which the injury occurred to set aside  
9 the final decision of the commissioner [~~commission~~].

10          SECTION 3.312. Section 504.001, Labor Code, is amended by  
11 amending Subdivision (1) and adding Subdivision (4) to read as  
12 follows:

13           (1) "Department" means the Texas Department of  
14 Workers' Compensation [~~"Commission" means the Texas Workers'~~  
15 ~~Compensation Commission~~].

16           (4) "Pool" means two or more political subdivisions  
17 collectively self-insuring under an interlocal contract under  
18 Chapter 791, Government Code.

19          SECTION 3.313. Subsection (a), Section 504.002, Labor Code,  
20 is amended to read as follows:

21          (a) The following provisions of Subtitles A and B apply to  
22 and are included in this chapter except to the extent that they are  
23 inconsistent with this chapter:

24           (1) Chapter 401, other than Section 401.011(18)  
25 defining "employer" and Section 401.012 defining "employee";

26           (2) Chapter 402;

27           (3) Chapter 403, other than Sections 403.001-403.005;

1 (4) Sections 406.006-406.009 and Subchapters B and  
2 D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035,  
3 406.091, and 406.096;

4 (5) Chapter 408, other than Sections 408.001(b) and  
5 (c);

6 (6) Chapters 409-412 [~~409-417~~]; [~~and~~]

7 (7) Chapter 413, except as provided by Section  
8 504.053;

9 (8) Chapters 414-417; and

10 (9) Chapter 451.

11 SECTION 3.314. The heading to Section 504.018, Labor Code,  
12 is amended to read as follows:

13 Sec. 504.018. NOTICE TO DEPARTMENT [~~COMMISSION~~] AND  
14 EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

15 SECTION 3.315. Subsection (a), Section 504.018, Labor Code,  
16 is amended to read as follows:

17 (a) A political subdivision shall notify the department  
18 [~~commission~~] of the method by which its employees will receive  
19 benefits, the approximate number of employees covered, and the  
20 estimated amount of payroll.

21 SECTION 3.316. Subchapter C, Chapter 504, Labor Code, is  
22 amended by adding Section 504.053 to read as follows:

23 Sec. 504.053. ELECTION. (a) A political subdivision that  
24 self-insures either individually or collectively shall provide  
25 workers' compensation medical benefits to the injured employees of  
26 the political subdivision or the injured employees of the members  
27 of a pool:

1           (1) in the manner provided by Chapter 1305, Insurance  
2 Code;

3           (2) in the manner provided by Chapter 408, other than  
4 Sections 408.001(b) and (c) and Section 408.002, and by Subchapters  
5 B and C, Chapter 413; or

6           (3) by direct contracting with health care providers  
7 or by contracting through a health benefits pool established under  
8 Chapter 172, Local Government Code.

9           (b) If the political subdivision or pool provides medical  
10 benefits in the manner authorized under Subsection (a)(3), the  
11 following do not apply:

12           (1) Sections 408.004 and 408.0041, unless use of a  
13 required medical examination or designated doctor is necessary to  
14 resolve an issue relating to the entitlement to or amount of income  
15 benefits under this title;

16           (2) Subchapter B, Chapter 408, except for Section  
17 408.021;

18           (3) Chapter 413, except for Section 413.042; and

19           (4) Chapter 1305, Insurance Code, except for Sections  
20 1305.501, 1305.502, and 1305.503.

21           (c) If the political subdivision or pool provides medical  
22 benefits in the manner authorized under Subsection (a)(3), the  
23 following standards apply:

24           (1) the political subdivision or pool must ensure that  
25 workers' compensation medical benefits are reasonably available to  
26 all injured workers of the political subdivision or the injured  
27 workers of the members of the pool within a designed service area;

1           (2) the political subdivision or pool must ensure that  
2 all necessary health care services are provided in a manner that  
3 will ensure the availability of and accessibility to adequate  
4 health care providers, specialty care, and facilities;

5           (3) the political subdivision or pool must have an  
6 internal review process for resolving complaints relating to the  
7 manner of providing medical benefits, including an appeal to the  
8 governing body or its designee and appeal to an independent review  
9 organization;

10          (4) the political subdivision or pool must establish  
11 reasonable procedures for the transition of injured workers to  
12 contract providers and for the continuity of treatment, including  
13 notice of impending termination of providers and a current list of  
14 contract providers;

15          (5) the political subdivision or pool shall provide  
16 for emergency care if an injured worker cannot reasonably reach a  
17 contact provider and the care is for medical screening or other  
18 evaluation that is necessary to determine whether a medical  
19 emergency condition exists, necessary emergency care services  
20 including treatment and stabilization, and services originating in  
21 a hospital emergency facility following treatment or stabilization  
22 of an emergency medical condition;

23          (6) prospective or concurrent review of the medical  
24 necessity and appropriateness of health care services must comply  
25 with Article 21.58A, Insurance Code;

26          (7) the political subdivision or pool shall continue  
27 to report data to the appropriate agency as required by Title 5 of

1 this code and Chapter 1305, Insurance Code; and

2 (8) a political subdivision or pool is subject to the  
3 requirements under Sections 1305.501, 1305.502, and 1305.503,  
4 Insurance Code.

5 (d) Nothing in this chapter waives sovereign immunity or  
6 creates a new cause of action.

7 SECTION 3.317. The heading to Section 505.053, Labor Code,  
8 is amended to read as follows:

9 Sec. 505.053. CERTIFIED COPIES OF TEXAS DEPARTMENT OF  
10 WORKERS' COMPENSATION [~~COMMISSION~~] DOCUMENTS.

11 SECTION 3.318. Subsections (a) and (c), Section 505.053,  
12 Labor Code, are amended to read as follows:

13 (a) The Texas Department of Workers' Compensation  
14 [~~commission~~] shall furnish a certified copy of an order, award,  
15 decision, or paper on file in that department's [~~the commission's~~]  
16 office to a person entitled to the copy on written request and  
17 payment of the fee for the copy. The fee shall be the same as that  
18 charged for similar services by the secretary of state's office.

19 (c) A fee or salary may not be paid to a person in the Texas  
20 Department of Workers' Compensation [~~commission~~] for making the  
21 copies that exceeds the fee charged for the copies.

22 SECTION 3.319. Subsection (d), Section 505.054, Labor Code,  
23 is amended to read as follows:

24 (d) A physician designated under Subsection (c) who  
25 conducts an examination shall file with the department a complete  
26 transcript of the examination on a form furnished by the  
27 department. The department shall maintain all reports under this

1 subsection as part of the department's permanent records. A report  
2 under this subsection is admissible in evidence before the Texas  
3 Department of Workers' Compensation [~~commission~~] and in an appeal  
4 from a final award or ruling of that department [~~the commission~~] in  
5 which the individual named in the examination is a claimant for  
6 compensation under this chapter. A report under this subsection  
7 that is admitted is prima facie evidence of the facts stated in the  
8 report.

9 SECTION 3.320. Section 505.055, Labor Code, is amended to  
10 read as follows:

11 Sec. 505.055. REPORTS OF INJURIES. (a) A report of an  
12 injury filed with the Texas Department of Workers' Compensation  
13 [~~commission~~] under Section 409.005, in addition to the information  
14 required by commissioner of workers' compensation [~~commission~~]  
15 rules, must contain:

16 (1) the name, age, sex, and occupation of the injured  
17 employee;

18 (2) the character of work in which the employee was  
19 engaged at the time of the injury;

20 (3) the place, date, and hour of the injury; and

21 (4) the nature and cause of the injury.

22 (b) In addition to subsequent reports of an injury filed  
23 with the Texas Department of Workers' Compensation [~~commission~~]  
24 under Section 409.005(e), the department shall file a subsequent  
25 report on a form obtained for that purpose:

26 (1) on the termination of incapacity of the injured  
27 employee; or

1 (2) if the incapacity extends beyond 60 days.

2 SECTION 3.321. Subsections (a) and (d), Section 505.056,  
3 Labor Code, are amended to read as follows:

4 (a) The Texas Department of Workers' Compensation  
5 [~~commission~~] may require an employee who claims to have been  
6 injured to submit to an examination by that department [~~the~~  
7 ~~commission~~] or a person acting under the [~~commission's~~] authority  
8 of that department at a reasonable time and place in this state.

9 (d) On the request of an employee or the department, the  
10 employee or the department is entitled to have a physician selected  
11 by the employee or the department present to participate in an  
12 examination under Subsection (a) or Section 408.004. The employee  
13 is entitled to have a physician selected by the employee present to  
14 participate in an examination under Subsection (c). The department  
15 shall pay the fee set by the commissioner of the Texas Department of  
16 Workers' Compensation [~~commission~~] of a physician selected by the  
17 employee under this subsection.

18 SECTION 3.322. Subsection (a), Section 505.057, Labor Code,  
19 is amended to read as follows:

20 (a) The commissioner of the Texas Department of Workers'  
21 Compensation [~~commission~~] may order or direct the department to  
22 reduce or suspend the compensation of an injured employee if the  
23 employee:

24 (1) persists in insanitary or injurious practices that  
25 tend to imperil or retard the employee's recovery; or

26 (2) refuses to submit to medical, surgical, or other  
27 remedial treatment recognized by the state that is reasonably

1 essential to promote the employee's recovery.

2 SECTION 3.323. Section 505.058, Labor Code, is amended to  
3 read as follows:

4 Sec. 505.058. POSTPONEMENT OF HEARING. If an injured  
5 employee is receiving benefits under this chapter and the  
6 department is providing hospitalization or medical treatment to the  
7 employee, the Texas Department of Workers' Compensation  
8 [~~commission~~] may postpone the hearing of the employee's claim. An  
9 appeal may not be taken from an [~~a commission~~] order of the  
10 commissioner of the Texas Department of Workers' Compensation under  
11 this section.

12 SECTION 3.324. Subsection (a), Section 505.059, Labor Code,  
13 is amended to read as follows:

14 (a) In each case appealed from the Texas Department of  
15 Workers' Compensation [~~commission~~] to a county or district court:

16 (1) the clerk of the court shall mail to the Texas  
17 Department of Workers' Compensation [~~commission~~]:

18 (A) not later than the 20th day after the date the  
19 case is filed, a notice containing the style, number, and date of  
20 filing of the case; and

21 (B) not later than the 20th day after the date the  
22 judgment is rendered, a certified copy of the judgment; and

23 (2) the attorney preparing the judgment shall file the  
24 original and a copy of the judgment with the clerk.

25 ARTICLE 4. PROVISION OF WORKERS' COMPENSATION MEDICAL BENEFITS  
26 THROUGH PROVIDER NETWORKS

27 SECTION 4.01. The heading to Subtitle D, Title 8, Insurance



1 Code, as effective April 1, 2005, is amended to read as follows:

2 SUBTITLE D. [~~PREFERRED~~] PROVIDER [~~BENEFIT~~] PLANS

3 SECTION 4.02. Subtitle D, Title 8, Insurance Code, as  
4 effective April 1, 2005, is amended by adding Chapter 1305 to read  
5 as follows:

6 CHAPTER 1305. WORKERS' COMPENSATION HEALTH CARE NETWORKS

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 1305.001. SHORT TITLE. This chapter may be cited as  
9 the Workers' Compensation Health Care Network Act.

10 Sec. 1305.002. PURPOSE. The purpose of this chapter is to:

11 (1) authorize the establishment of workers'  
12 compensation health care networks for the provision of workers'  
13 compensation medical benefits; and

14 (2) provide standards for the certification,  
15 administration, evaluation, and enforcement of the delivery of  
16 health care services to injured employees by networks contracting  
17 with or established by:

18 (A) workers' compensation insurance carriers;

19 (B) employers certified to self-insure under  
20 Chapter 407, Labor Code;

21 (C) groups of employers certified to self-insure  
22 under Chapter 407A, Labor Code; and

23 (D) governmental entities that self-insure,  
24 either individually or collectively.

25 Sec. 1305.003. LIMITATIONS ON APPLICABILITY. (a) This  
26 chapter does not affect the authority of the Texas Department of  
27 Workers' Compensation to exercise the powers granted to that agency

1 under Title 5, Labor Code, that do not conflict with this chapter.

2 (b) In the event of a conflict between Title 5, Labor Code,  
3 and this chapter as to the operation and regulation of health care  
4 networks that provide workers' compensation medical benefits or the  
5 provision of health care to injured employees who are subject to  
6 workers' compensation health care networks, this chapter prevails.

7 Sec. 1305.004. DEFINITIONS. (a) In this chapter, unless  
8 the context clearly indicates otherwise:

9 (1) "Adverse determination" means a determination,  
10 made through utilization review or retrospective review, that the  
11 health care services furnished or proposed to be furnished to an  
12 employee are not medically necessary or appropriate.

13 (2) "Affiliate" means a person that directly, or  
14 indirectly through one or more intermediaries, controls or is  
15 controlled by, or is under common control with, the person  
16 specified.

17 (3) "Capitation" means a method of compensation for  
18 arranging for or providing health care services to employees for a  
19 specified period that is based on a predetermined payment for each  
20 employee for the specified period, without regard to the quantity  
21 of services provided for the compensable injury.

22 (4) "Complainant" means a person who files a complaint  
23 under this chapter. The term includes:

24 (A) an employee;

25 (B) an employer;

26 (C) a health care provider; and

27 (D) another person designated to act on behalf of

1 an employee.

2 (5) "Complaint" means any dissatisfaction expressed  
3 orally or in writing by a complainant to a network regarding any  
4 aspect of the network's operation. The term includes  
5 dissatisfaction relating to medical fee disputes and the network's  
6 administration and the manner in which a service is provided. The  
7 term does not include:

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

12 (B) an oral or written expression of  
13 dissatisfaction or disagreement with an adverse determination.

14 (6) "Credentialing" means the review, under  
15 nationally recognized standards to the extent that those standards  
16 do not conflict with other laws of this state, of qualifications and  
17 other relevant information relating to a health care provider who  
18 seeks a contract with a network.

19 (7) "Emergency" means either a medical or mental  
20 health emergency.

21 (8) "Employee" has the meaning assigned by Section  
22 401.012, Labor Code.

23 (9) "Fee dispute" means a dispute over the amount of  
24 payment due for health care services determined to be medically  
25 necessary and appropriate for treatment of a compensable injury.

26 (10) "Independent review" means a system for final  
27 administrative review by an independent review organization of the

1 medical necessity and appropriateness of health care services being  
2 provided, proposed to be provided, or that have been provided to an  
3 employee.

4 (11) "Independent review organization" means an  
5 entity that is certified by the commissioner to conduct independent  
6 review under Article 21.58C and rules adopted by the commissioner.

7 (12) "Life-threatening" has the meaning assigned by  
8 Section 2, Article 21.58A.

9 (13) "Medical emergency" means the sudden onset of a  
10 medical condition manifested by acute symptoms of sufficient  
11 severity, including severe pain, that the absence of immediate  
12 medical attention could reasonably be expected to result in:

13 (A) placing the patient's health or bodily  
14 functions in serious jeopardy; or

15 (B) serious dysfunction of any body organ or  
16 part.

17 (14) "Medical records" means the history of diagnosis  
18 and treatment for an injury, including medical, dental, and other  
19 health care records from each health care practitioner who provides  
20 care to an injured employee.

21 (15) "Mental health emergency" means a condition that  
22 could reasonably be expected to present danger to the person  
23 experiencing the mental health condition or another person.

24 (16) "Network" or "workers' compensation health care  
25 network" means an organization that is:

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

1           (B) certified in accordance with this chapter and  
2 commissioner rules; and

3           (C) established by, or operates under contract  
4 with, an insurance carrier.

5           (17) "Nurse" has the meaning assigned by Section 2,  
6 Article 21.58A.

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

13           (19) "Preauthorization" means the process required to  
14 request approval from the network to provide a specific treatment  
15 or service before the treatment or service is provided.

16           (20) "Quality improvement program" means a system  
17 designed to continuously examine, monitor, and revise processes and  
18 systems that support and improve administrative and clinical  
19 functions.

20           (21) "Retrospective review" means the process of  
21 reviewing the medical necessity and reasonableness of health care  
22 that has been provided to an injured employee.

23           (22) "Rural area" means:

24           (A) a county with a population of 50,000 or less;

25           (B) an area that is not designated as an  
26 urbanized area by the United States Census Bureau; or

27           (C) any other area designated as rural under

1 rules adopted by the commissioner.

2 (23) "Screening criteria" means the written policies,  
3 decision rules, medical protocols, and treatment guidelines used by  
4 a network as part of utilization review or retrospective review.

5 (24) "Service area" means a geographic area within  
6 which health care services from network providers are available and  
7 accessible to employees who live within that geographic area.

8 (25) "Texas Workers' Compensation Act" means Subtitle  
9 A, Title 5, Labor Code.

10 (26) "Transfer of risk" means, for purposes of this  
11 chapter only, an insurance carrier's transfer of financial risk for  
12 the provision of health care services to a network through  
13 capitation or other means.

14 (27) "Utilization review" has the meaning assigned by  
15 Section 2, Article 21.58A.

16 (28) "Utilization review agent" has the meaning  
17 assigned by Article 21.58A.

18 (29) "Utilization review plan" means the screening  
19 criteria and utilization review procedures of a workers'  
20 compensation health care network or utilization review agent.

21 (b) In this chapter, the following terms have the meanings  
22 assigned by Section 401.011, Labor Code:

23 (1) "compensable injury";

24 (2) "doctor";

25 (3) "employer";

26 (4) "health care";

27 (5) health care facility;

1           (6) health care practitioner;

2           (7) health care provider;

3           (8) "injury";

4           (9) "insurance carrier"; and

5           (10) "treating doctor."

6           Sec. 1305.005. PARTICIPATION IN NETWORK; NOTICE OF NETWORK  
7 REQUIREMENTS. (a) An employer that elects to provide workers'  
8 compensation insurance coverage under the Texas Workers'  
9 Compensation Act may receive workers' compensation health care  
10 services for the employer's injured employees through a workers'  
11 compensation health care network.

12           (b) An insurance carrier may establish or contract with  
13 networks certified under this chapter to provide health care  
14 services under the Texas Workers' Compensation Act. If an employer  
15 elects to contract with an insurance company for the provision of  
16 health care services through a network, or if a self-insured  
17 employer under Chapter 407, Labor Code, a group of employers  
18 certified to self-insure under Chapter 407A, Labor Code, or a  
19 public employer under Subtitle C, Title 5, Labor Code, elects to  
20 establish or contract with a network, the employer's employees who  
21 live within the network's service area are required to obtain  
22 medical treatment for a compensable injury within the network,  
23 except as provided by Section 1305.006(a)(1) and (3).

24           (c) The insurance carrier shall provide to the employer, and  
25 the employer shall provide to the employer's employees, notice of  
26 network requirements, including all information required by  
27 Section 1305.451. The employer shall:

1           (1) obtain a signed acknowledgment from each employee,  
2 written in English, Spanish, and any other language common to the  
3 employer's employees, that the employee has received information  
4 concerning the network and the network's requirements; and

5           (2) post notice of the network requirements at each  
6 place of employment.

7           (d) The employer shall provide to each employee hired after  
8 the notice is given under Subsection (c) the notice and information  
9 required under that subsection not later than the third day after  
10 the date of hire.

11           (e) An injured employee who has received notice of network  
12 requirements but refuses to sign the acknowledgment form required  
13 under Subsection (c) remains subject to the network requirements  
14 established under this chapter.

15           (f) The employer shall notify an injured employee of the  
16 network requirements at the time the employer receives actual or  
17 constructive notice of an injury.

18           (g) An injured employee is not required to comply with the  
19 network requirements until the employee receives the notice under  
20 Subsection (c) or (d). An insurance carrier that establishes or  
21 contracts with a network is liable for the payment of medical care  
22 under the requirements of Title 5, Labor Code, for an injured  
23 employee who does not receive the notice under Subsection (c) or (d)  
24 until the employee receives notice of network requirements under  
25 this section.

26           (h) The commissioner may adopt rules as necessary to  
27 implement this section.



1           Sec. 1305.006. INSURANCE CARRIER LIABILITY FOR  
2 OUT-OF-NETWORK HEALTH CARE. (a) An insurance carrier that  
3 establishes or contracts with a network is liable for the following  
4 out-of-network health care that is provided to an injured employee:

5                   (1) emergency care;

6                   (2) health care provided to an injured employee who  
7 does not live within the service area of any network established by  
8 the insurance carrier or with which the insurance carrier has a  
9 contract; and

10                   (3) health care provided by an out-of-network provider  
11 pursuant to a referral from the injured employee's treating doctor  
12 that has been approved by the network pursuant to Section 1305.103.

13           (b) If an accident or health insurance carrier or other  
14 person obligated for the cost of health care services has paid for  
15 health care services for an employee for an injury for which a  
16 workers' compensation insurance carrier denies compensability, and  
17 the injury is later determined to be compensable, the accident or  
18 health insurance carrier or other person may recover the amounts  
19 paid for such services from the workers' compensation insurance  
20 carrier.

21           Sec. 1305.007. RULES. The commissioner may adopt rules as  
22 necessary to implement this chapter.

23                   [Sections 1305.008-1305.050 reserved for expansion]

24                                   SUBCHAPTER B. CERTIFICATION

25           Sec. 1305.051. CERTIFICATION REQUIRED. (a) A person may  
26 not operate a workers' compensation health care network in this  
27 state unless the person holds a certificate issued under this

1 chapter and rules adopted by the commissioner.

2 (b) A person may not perform any act of a workers'  
3 compensation health care network except in accordance with the  
4 specific authorization of this chapter or rules adopted by the  
5 commissioner.

6 (c) A health maintenance organization regulated under  
7 Chapter 843 or an organization of physicians and providers that  
8 operates as a preferred provider benefit plan, as defined by  
9 Chapter 1301, may obtain a certification as a workers' compensation  
10 health care network in the same manner as any other person if that  
11 entity meets the requirements of this chapter and rules adopted by  
12 the commissioner under this chapter.

13 Sec. 1305.052. CERTIFICATE APPLICATION. (a) A person who  
14 seeks to operate as a workers' compensation health care network  
15 shall apply to the department for a certificate to organize and  
16 operate as a network.

17 (b) A certificate application must be:

18 (1) filed with the department in the form prescribed  
19 by the commissioner;

20 (2) verified by the applicant or an officer or other  
21 authorized representative of the applicant; and

22 (3) accompanied by a nonrefundable fee set by  
23 commissioner rule.

24 Sec. 1305.053. CONTENTS OF APPLICATION. Each certificate  
25 application must include:

26 (1) a description or a copy of the applicant's basic  
27 organizational structure documents and other related documents,

1 including organizational charts or lists that show:

2 (A) the relationships and contracts between the  
3 applicant and any affiliates of the applicant; and

4 (B) the internal organizational structure of the  
5 applicant's management and administrative staff;

6 (2) biographical information regarding each person  
7 who governs or manages the affairs of the applicant, accompanied by  
8 information sufficient to allow the commissioner to determine the  
9 competence, fitness, and reputation of each officer or director of  
10 the applicant or other person having control of the applicant;

11 (3) a copy of the form of any contract between the  
12 applicant and any provider or group of providers, and with any third  
13 party performing services on behalf of the applicant under  
14 Subchapter D;

15 (4) a copy of the form of each contract with an  
16 insurance carrier, as described by Section 1305.154;

17 (5) a financial statement, current as of the date of  
18 the application, that is prepared using generally accepted  
19 accounting practices and includes:

20 (A) a balance sheet that reflects a solvent  
21 financial position;

22 (B) an income statement;

23 (C) a cash flow statement; and

24 (D) the sources and uses of all funds;

25 (6) a statement acknowledging that lawful process in a  
26 legal action or proceeding against the network on a cause of action  
27 arising in this state is valid if served in the manner provided by

1 Chapter 804 for a domestic company;

2 (7) a description and a map of the applicant's service  
3 area or areas, with key and scale, that identifies each county or  
4 part of a county to be served;

5 (8) a description of programs and procedures to be  
6 utilized, including:

7 (A) a complaint system, as required under  
8 Subchapter I;

9 (B) a quality improvement program, as required  
10 under Subchapter G; and

11 (C) the utilization review and retrospective  
12 review programs described in Subchapter H;

13 (9) a list of all contracted network providers that  
14 demonstrates the adequacy of the network to provide comprehensive  
15 health care services sufficient to serve the population of injured  
16 employees within the service area and maps that demonstrate that  
17 the access and availability standards under Subchapter G are met;  
18 and

19 (10) any other information that the commissioner  
20 requires by rule to implement this chapter.

21 Sec. 1305.054. ACTION ON APPLICATION; RENEWAL OF  
22 CERTIFICATION. (a) The commissioner shall approve or disapprove  
23 an application for certification as a network not later than the  
24 60th day after the date the completed application is received by the  
25 department. An application is considered complete on receipt of  
26 all information required by this chapter and any commissioner  
27 rules, including receipt of any additional information requested by

1 the commissioner as needed to make the determination.

2 (b) Additional information requested by the commissioner  
3 under Subsection (a) may include information derived from an  
4 on-site quality-of-care examination.

5 (c) The department shall notify the applicant of any  
6 deficiencies in the application and may allow the applicant to  
7 request additional time to revise the application, in which case  
8 the 60-day period for approval or disapproval is tolled. The  
9 commissioner may grant or deny requests for additional time at the  
10 commissioner's discretion.

11 (d) An order issued by the commissioner disapproving an  
12 application must specify in what respects the application does not  
13 comply with applicable statutes and rules. An applicant whose  
14 application is disapproved may request a hearing not later than the  
15 30th day after the date of the commissioner's disapproval order.  
16 The hearing is a contested case hearing under Chapter 2001,  
17 Government Code.

18 (e) A certificate issued under this subchapter is valid  
19 until revoked or suspended.

20 Sec. 1305.055. USE OF CERTAIN INSURANCE TERMS BY NETWORK  
21 PROHIBITED. A network is not an insurer and may not use in the  
22 network's name or informational literature the word "insurance,"  
23 "casualty," "surety," or "mutual" or any other word that is:

24 (1) descriptive of the insurance, casualty, or surety  
25 business; or

26 (2) deceptively similar to the name or description of  
27 an insurer or surety corporation engaging in the business of

1 insurance in this state.

2 Sec. 1305.056. RESTRAINT OF TRADE; APPLICATION OF CERTAIN  
3 LAWS. (a) A network that contracts with a provider or providers  
4 practicing individually or as a group is not, because of the  
5 contract or arrangement, considered to have entered into a  
6 conspiracy in restraint of trade in violation of Chapter 15,  
7 Business & Commerce Code.

8 (b) Notwithstanding any other law, a person who contracts  
9 under this chapter with one or more providers in the process of  
10 conducting activities that are permitted by law but that do not  
11 require a certificate of authority or other authorization under  
12 this code is not, because of the contract, considered to have  
13 entered into a conspiracy in restraint of trade in violation of  
14 Chapter 15, Business & Commerce Code.

15 (c) A network is subject to Articles 21.28 and 21.28-A and  
16 is considered an insurer or insurance company, as applicable, for  
17 purposes of those laws.

18 [Sections 1305.057-1305.100 reserved for expansion]

19 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION

20 HEALTH CARE NETWORKS

21 Sec. 1305.101. PROVIDING OR ARRANGING FOR HEALTH CARE.

22 (a) Except for emergencies and out-of-network referrals, a  
23 network shall provide or arrange for health care services only  
24 through providers or provider groups that are under contract with  
25 or are employed by the network.

26 (b) A network doctor may not serve as a designated doctor or  
27 perform a required medical examination, as those terms are used

1 under the Texas Workers' Compensation Act, for an employee  
2 receiving medical care through a network with which the doctor  
3 contracts or is employed.

4 (c) Notwithstanding any other provision of this chapter,  
5 prescription medication or services, as defined by Section  
6 401.011(19)(E), Labor Code, may not be delivered through a workers'  
7 compensation health care network. Prescription medication and  
8 services shall be reimbursed as provided by the Texas Workers'  
9 Compensation Act and applicable rules of the commissioner of the  
10 Texas Department of Workers' Compensation.

11 Sec. 1305.102. MANAGEMENT CONTRACTS. (a) A network may  
12 not enter into a contract with another entity for management  
13 services unless the proposed contract is first filed with the  
14 department and approved by the commissioner.

15 (b) The commissioner shall approve or disapprove the  
16 contract not later than the 30th day after the date the contract is  
17 filed, or within a reasonable extended period that the commissioner  
18 specifies by notice given within the 30-day period.

19 (c) The contract must state that:

20 (1) the contract may not be canceled without cause  
21 without at least 90 days' prior written notice;

22 (2) notice of any cancellation must be sent  
23 simultaneously to the commissioner by certified mail; and

24 (3) the network is responsible for ensuring that all  
25 functions delegated by the contract are performed in accordance  
26 with applicable statutes and rules, subject to the carrier's  
27 oversight and monitoring of the network's performance.

1       (d) The management contractor proposing to contract shall  
2 provide to the commissioner information sufficient to allow the  
3 commissioner to determine the competence, fitness, or reputation of  
4 each of the contractor's officers and directors or other person  
5 having control of the contractor, including criminal history  
6 information demonstrating that none of those individuals has been  
7 convicted of a felony involving moral turpitude or breach of  
8 fiduciary duty.

9       (e) The commissioner shall disapprove the proposed contract  
10 if the commissioner determines that the contract authorizes a  
11 person who is not sufficiently trustworthy, competent,  
12 experienced, and free from conflict of interest to manage the  
13 network with due regard for the interests of employers, employees,  
14 creditors, or the public.

15       (f) The commissioner may not approve a proposed management  
16 contract unless the management contractor has in force in the  
17 management contractor's own name a fidelity bond on the  
18 contractor's officers and employees in the amount of \$250,000 or a  
19 greater amount prescribed by the commissioner.

20       (g) The fidelity bond must be issued by an insurer  
21 authorized to engage in business in this state and must be filed  
22 with the department. If the commissioner determines that a  
23 fidelity bond is not available from an insurer authorized to engage  
24 in business in this state, the management contractor may obtain a  
25 fidelity bond procured by a surplus lines agent under Chapter 981.

26       (h) The fidelity bond must obligate the surety to pay any  
27 loss of money or other property or damage that the network sustains



1 because of an act of fraud or dishonesty by an employee or officer  
2 of the management contractor during the period that the management  
3 contract is in effect.

4 (i) In lieu of a fidelity bond, and at the commissioner's  
5 discretion, the management contractor may deposit with the  
6 comptroller cash or readily marketable liquid securities  
7 acceptable to the commissioner. The deposit must be maintained in  
8 the amount of, and is subject to the same conditions required for, a  
9 fidelity bond under this section.

10 (j) A management contract approved by the commissioner  
11 under this section may not be assigned to any other entity.

12 (k) A management contract filed with the department under  
13 this section is confidential and is not subject to disclosure as  
14 public information under Chapter 552, Government Code.

15 Sec. 1305.103. TREATING DOCTOR; REFERRALS. (a) A network  
16 shall determine the specialty or specialties of doctors who may  
17 serve as treating doctors.

18 (b) For each injury, an injured employee shall select a  
19 treating doctor from the list of all treating doctors under  
20 contract with the network in that service area.

21 (c) An employee being treated by a non-network provider for  
22 an injury that occurred before the employer's insurance carrier  
23 contracted with the network shall select a network treating doctor  
24 on notification by the carrier that health care services are being  
25 provided through the network. The carrier shall provide to the  
26 employee all information required by Section 1305.451. If the  
27 employee fails to select a treating doctor on or before the 14th day

1 after the date of receipt of the information required by Section  
2 1305.451, the network may assign the employee a network treating  
3 doctor.

4 (d) Each network shall, by contract, require treating  
5 doctors to provide, at a minimum, the functions and services for  
6 injured employees described by this section.

7 (e) A treating doctor shall provide health care to the  
8 employee for the employee's compensable injury and shall make  
9 referrals to other network providers, or request referrals to  
10 out-of-network providers if medically necessary services are not  
11 available within the network. Referrals to out-of-network  
12 providers must be approved by the network. The network shall  
13 approve a referral to an out-of-network provider not later than the  
14 seventh day after the date on which the referral is requested, or  
15 sooner if circumstances and the condition of the employee require  
16 expedited approval. If the network denies the referral request,  
17 the employee may appeal the decision through the network's  
18 complaint process under Subchapter I.

19 (f) The treating doctor shall participate in the medical  
20 case management process as required by the network, including  
21 participation in return-to-work planning.

22 Sec. 1305.104. SELECTION OF TREATING DOCTOR. (a) An  
23 injured employee is entitled to the employee's initial choice of a  
24 treating doctor from the list provided by the network of all  
25 treating doctors under contract with the network who provide  
26 services within the service area in which the injured employee  
27 lives. The following does not constitute an initial choice of

1 treating doctor:

2 (1) a doctor salaried by the employer;

3 (2) a doctor providing emergency care; or

4 (3) any doctor who provides care before the employee  
5 is enrolled in the network, except for a doctor selected under  
6 Section 1305.105.

7 (b) An employee who is dissatisfied with the initial choice  
8 of a treating doctor is entitled to select an alternate treating  
9 doctor from the network's list of treating doctors who provide  
10 services within the service area in which the injured employee  
11 lives by notifying the network in the manner prescribed by the  
12 network. The network may not deny a selection of an alternate  
13 treating doctor.

14 (c) An employee who is dissatisfied with an alternate  
15 treating doctor must obtain authorization from the network to  
16 select any subsequent treating doctor. The network shall establish  
17 procedures and criteria to be used in authorizing an employee to  
18 select subsequent treating doctors. The criteria must include, at  
19 a minimum, whether:

20 (1) treatment by the current treating doctor is  
21 medically inappropriate;

22 (2) the employee is receiving appropriate medical care  
23 to reach maximum medical improvement or medical care in compliance  
24 with the network's treatment guidelines; and

25 (3) a conflict exists between the employee and the  
26 current treating doctor to the extent that the doctor-patient  
27 relationship is jeopardized or impaired.

1        (d) Denial of a request for any subsequent treating doctor  
2 is subject to the appeal process for a complaint filed under  
3 Subchapter I.

4        (e) For purposes of this section, the following do not  
5 constitute the selection of an alternate or any subsequent treating  
6 doctor:

7            (1) a referral made by the treating doctor, including  
8 a referral for a second or subsequent opinion;

9            (2) the selection of a treating doctor because the  
10 original treating doctor:

11                    (A) dies;

12                    (B) retires; or

13                    (C) leaves the network; or

14            (3) a change of treating doctor required because of a  
15 change of residence by the employee to a location outside the  
16 service area distance requirements, as described by Section  
17 1305.302(g).

18        (f) A network shall provide that an injured employee with a  
19 chronic, life-threatening injury or chronic pain related to a  
20 compensable injury may apply to the network's medical director to  
21 use a nonprimary care physician specialist that is in the network as  
22 the injured employee's treating doctor.

23        (g) An application under Subsection (f) must:

24            (1) include information specified by the network,  
25 including certification of the medical need provided by the  
26 nonprimary care physician specialist; and

27            (2) be signed by the injured employee and the

1 nonprimary care physician specialist interested in serving as the  
2 injured employee's treating doctor.

3 (h) To be eligible to serve as the injured employee's  
4 treating doctor, a physician specialist must agree to accept the  
5 responsibility to coordinate all of the injured employee's health  
6 care needs.

7 (i) If a network denies a request under Subsection (f), the  
8 injured employee may appeal the decision through the network's  
9 established complaint resolution process under Subchapter I.

10 Sec. 1305.105. TREATMENT BY A PRIMARY CARE PHYSICIAN OR  
11 PROVIDER UNDER CHAPTER 843. (a) Notwithstanding any other  
12 provision of this chapter, an injured employee required to receive  
13 health care services within a network may select as the employee's  
14 treating doctor a doctor who the employee selected, prior to  
15 injury, as the employee's primary care physician or provider under  
16 Chapter 843, as the terms "physician" and "provider" are defined in  
17 that chapter.

18 (b) A doctor serving as an employee's treating doctor under  
19 Subsection (a) must agree to abide by the terms of the network's  
20 contract and comply with the provisions of this subchapter and  
21 Subchapters D and G. Services provided by such a doctor are  
22 considered to be network services and are subject to Subchapters H  
23 and I.

24 (c) Any change of doctor requested by an employee being  
25 treated by a doctor under Subsection (a) must be to a network doctor  
26 and is subject to the requirements of this chapter.

27 Sec. 1305.106. PAYMENT OF HEALTH CARE PROVIDER. (a) The

1 commissioner shall adopt rules regarding the payment of claims by  
2 health care providers in workers' compensation health care  
3 networks.

4 (b) Rules adopted under this section shall as closely as  
5 possible follow those adopted for payment of claims by Health  
6 Maintenance Organizations pursuant to Subchapter J, Chapter 843.  
7 Rules adopted under this section may vary from those adopted under  
8 Subchapter J, Chapter 843, to consider factors specific to the  
9 payment of claims in the workers' compensation system.

10 Sec. 1305.107. TELEPHONE ACCESS. (a) Each network shall  
11 have appropriate personnel reasonably available through a  
12 toll-free telephone service at least 40 hours per week during  
13 normal business hours, in both time zones in this state if  
14 applicable, to discuss an employee's care and to allow response to  
15 requests for information, including information regarding adverse  
16 determinations.

17 (b) A network must have a telephone system capable of  
18 accepting or recording or providing instructions to incoming calls  
19 during other than normal business hours. The network shall respond  
20 to those calls not later than two business days after the date:

- 21 (1) the call was received by the network; or  
22 (2) the details necessary to respond were received by  
23 the network from the caller.

24 [Sections 1305.108-1305.150 reserved for expansion]

25 SUBCHAPTER D. CONTRACTING PROVISIONS

26 Sec. 1305.151. TRANSFER OF RISK. A contract under this  
27 subchapter may not involve a transfer of risk.

1       Sec. 1305.152. NETWORK CONTRACTS WITH PROVIDERS. (a) A  
2 network shall enter into a written contract with each provider or  
3 group of providers that participates in the network. A provider  
4 contract under this section is confidential and is not subject to  
5 disclosure as public information under Chapter 552, Government  
6 Code.

7       (b) A network is not required to accept an application for  
8 participation in the network from a health care provider who  
9 otherwise meets the requirements specified in this chapter for  
10 participation if the network determines that the network has  
11 contracted with a sufficient number of qualified health care  
12 providers.

13       (c) Provider contracts and subcontracts must include, at a  
14 minimum, the following provisions:

15           (1) a hold-harmless clause stating that the network  
16 and the network's contracted providers are prohibited from billing  
17 or attempting to collect any amounts from employees for health care  
18 services under any circumstances, including the insolvency of the  
19 insurance carrier or the network, except as provided by Section  
20 1305.451(b)(6);

21           (2) a statement that the provider agrees to follow  
22 treatment guidelines adopted by the network under Section 1305.304,  
23 as applicable to an employee's injury;

24           (3) a continuity of treatment clause that states that  
25 if a provider leaves the network, the insurance carrier or network  
26 is obligated to continue to reimburse the provider for a period not  
27 to exceed 90 days at the contracted rate for care of an employee

1 with a life-threatening condition or an acute condition for which  
2 disruption of care would harm the employee;

3 (4) a clause regarding appeal by the provider of  
4 termination of provider status and applicable written notification  
5 to employees regarding such a termination, including provisions  
6 determined by the commissioner; and

7 (5) any other provisions required by the commissioner  
8 by rule.

9 (d) Continued care as described by Subsection (c)(3) must be  
10 requested by a provider. A dispute involving continuity of care is  
11 subject to the dispute resolution process under Subchapter I.

12 (e) An insurance carrier and a network may not use any  
13 financial incentive or make a payment to a health care provider that  
14 acts directly or indirectly as an inducement to limit medically  
15 necessary services.

16 Sec. 1305.153. PROVIDER REIMBURSEMENT. (a) The amount of  
17 reimbursement for services provided by a network provider is  
18 determined by the contract between the network and the provider or  
19 group of providers.

20 (b) If a network has preauthorized a health care service,  
21 the insurance carrier or network or the network's agent or other  
22 representative may not deny payment to a provider except for  
23 reasons other than medical necessity.

24 (c) Out-of-network providers who provide care as described  
25 by Section 1305.006(a) shall be reimbursed as provided by the Texas  
26 Workers' Compensation Act and applicable rules of the commissioner  
27 of the Texas Department of Workers' Compensation.



1       (d) Subject to Subsection (a), billing by, and  
2 reimbursement to, contracted and out-of-network providers is  
3 subject to standard reimbursement requirements as provided by the  
4 Texas Workers' Compensation Act and applicable rules of the  
5 commissioner of the Texas Department of Workers' Compensation, as  
6 consistent with this chapter. This subsection may not be construed  
7 to require application of rules of the commissioner of the Texas  
8 Department of Workers' Compensation regarding reimbursement if  
9 application of those rules would negate reimbursement amounts  
10 negotiated by the network.

11       (e) An insurance carrier shall notify in writing a network  
12 provider if the carrier contests the compensability of the injury  
13 for which the provider provides health care services. A carrier may  
14 not deny payment for health care services provided by a network  
15 provider before that notification on the grounds that the injury  
16 was not compensable. Payment for medically necessary health care  
17 services provided prior to written notification of a compensability  
18 denial is not subject to denial, recoupment, or refund from a  
19 network provider based on compensability.

20       (f) If an insurance carrier contests the compensability of  
21 an injury and the injury is determined not to be compensable, the  
22 carrier may recover the amounts paid for health care services from  
23 the employee's accident or health insurance carrier, to the extent  
24 covered under the employee's accident or health benefit plan, or  
25 any other person who may be obligated for the cost of the health  
26 care services.

27       Sec. 1305.154. NETWORK-CARRIER CONTRACTS. (a) Except for

1 emergencies and out-of-network referrals, a network may provide  
2 health care services to employees only through a written contract  
3 with an insurance carrier. A network-carrier contract under this  
4 section is confidential and is not subject to disclosure as public  
5 information under Chapter 552, Government Code.

6 (b) A carrier and a network may negotiate the functions to  
7 be provided by the network, except that the network shall contract  
8 with providers for the provision of health care functions related  
9 to the operation of a quality improvement program, and  
10 credentialing in accordance with the requirements of this chapter.

11 (c) A network's contract with a carrier must include:

12 (1) a description of the functions that the carrier  
13 delegates to the network, consistent with the requirements of  
14 Subsection (b), and the reporting requirements for each function;

15 (2) a statement that the network and any management  
16 contractor or third party to which the network delegates a function  
17 will perform all delegated functions in full compliance with all  
18 requirements of this chapter, the Texas Workers' Compensation Act,  
19 and rules of the commissioner of insurance or the commissioner of  
20 the Texas Department of Workers' Compensation;

21 (3) a provision that the contract:

22 (A) may not be terminated without cause by either  
23 party without 90 days' prior written notice; and

24 (B) must be terminated immediately if cause  
25 exists;

26 (4) a hold-harmless provision stating that the  
27 network, a management contractor, a third party to which the

1 network delegates a function, and the network's contracted  
2 providers are prohibited from billing or attempting to collect any  
3 amounts from employees for health care services under any  
4 circumstances, including the insolvency of the carrier or the  
5 network, except as provided by Section 1305.451(b)(6);

6 (5) a statement that the carrier retains ultimate  
7 responsibility for ensuring that all delegated functions and all  
8 management contractor functions are performed in accordance with  
9 applicable statutes and rules and that the contract may not be  
10 construed to limit in any way the carrier's responsibility,  
11 including financial responsibility, to comply with all statutory  
12 and regulatory requirements;

13 (6) a statement that the network's role is to provide  
14 the services described under Subsection (b) as well as any other  
15 services or functions delegated by the carrier, including functions  
16 delegated to a management contractor, subject to the carrier's  
17 oversight and monitoring of the network's performance;

18 (7) a requirement that the network provide the  
19 carrier, at least monthly and in a form usable for audit purposes,  
20 the data necessary for the carrier to comply with reporting  
21 requirements of the department and the Texas Department of Workers'  
22 Compensation with respect to any services provided under the  
23 contract, as determined by commissioner rules;

24 (8) a requirement that the carrier, the network, any  
25 management contractor, and any third party to which the network  
26 delegates a function comply with the data reporting requirements of  
27 the Texas Workers' Compensation Act and rules of the commissioner

1 of the Texas Department of Workers' Compensation;

2 (9) a contingency plan under which the carrier would,  
3 in the event of termination of the contract or a failure to perform,  
4 reassume one or more functions of the network under the contract,  
5 including functions related to:

6 (A) payments to providers and notification to  
7 employees;

8 (B) quality of care;

9 (C) utilization review;

10 (D) retrospective review; and

11 (E) continuity of care, including a plan for  
12 identifying and transitioning employees to new providers;

13 (10) a provision that requires that any agreement by  
14 which the network delegates any function to a management contractor  
15 or any third party be in writing, and that such an agreement require  
16 the delegated third party or management contractor to be subject to  
17 all the requirements of this subchapter;

18 (11) a provision that requires the network to provide  
19 to the department the license number of a management contractor or  
20 any delegated third party who performs a function that requires a  
21 license as a utilization review agent under Article 21.58A or any  
22 other license under this code or another insurance law of this  
23 state;

24 (12) an acknowledgment that:

25 (A) any management contractor or third party to  
26 whom the network delegates a function must perform in compliance  
27 with this chapter and other applicable statutes and rules, and that

1 the management contractor or third party is subject to the  
2 carrier's and the network's oversight and monitoring of its  
3 performance; and

4 (B) if the management contractor or the third  
5 party fails to meet monitoring standards established to ensure that  
6 functions delegated to the management contractor or the third party  
7 under the delegation contract are in full compliance with all  
8 statutory and regulatory requirements, the carrier or the network  
9 may cancel the delegation of one or more delegated functions;

10 (13) a requirement that the network and any management  
11 contractor or third party to which the network delegates a function  
12 provide all necessary information to allow the carrier to provide  
13 information to employees as required by Section 1305.451; and

14 (14) a provision that requires the network, in  
15 contracting with a third party directly or through another third  
16 party, to require the third party to permit the commissioner to  
17 examine at any time any information the commissioner believes is  
18 relevant to the third party's financial condition or the ability of  
19 the network to meet the network's responsibilities in connection  
20 with any function the third party performs or has been delegated.

21 (d) An insurance carrier, a network, and any management  
22 contractor or third party to which the network delegates a function  
23 may not use any financial incentive or make a payment to a health  
24 care provider that acts directly or indirectly as an inducement to  
25 limit medically necessary services.

26 Sec. 1305.155. COMPLIANCE REQUIREMENTS. (a) An insurance  
27 carrier that becomes aware of any information that indicates that

1 the network, any management contractor, or any third party to which  
2 the network delegates a function is not operating in accordance  
3 with the contract or is operating in a condition that renders the  
4 continuance of the network's business hazardous to employees shall:

5 (1) notify the network in writing of those findings;

6 (2) request in writing a written explanation, with  
7 documentation supporting the explanation, of:

8 (A) the network's apparent noncompliance with  
9 the contract; or

10 (B) the existence of the condition that  
11 apparently renders the continuance of the network's business  
12 hazardous to employees; and

13 (3) notify the commissioner and provide the department  
14 with copies of all notices and requests submitted to the network and  
15 the responses and other documentation the carrier generates or  
16 receives in response to the notices and requests.

17 (b) A network shall respond to a request from a carrier  
18 under Subsection (a) in writing not later than the 30th day after  
19 the date the request is received.

20 (c) The carrier shall cooperate with the network to correct  
21 any failure by the network to comply with any regulatory  
22 requirement of the department.

23 (d) On receipt of a notice under Subsection (a), or if a  
24 complaint is filed with the department, on receipt of that  
25 complaint, the commissioner or the commissioner's designated  
26 representative shall examine the matters contained in the notice or  
27 complaint as well as any other matter relating to the financial

1 solvency of the network or the network's ability to meet its  
2 responsibilities in connection with any function performed by the  
3 network or delegated to the network by the carrier.

4 (e) Except as provided by this subsection, on completion of  
5 the examination, the department shall report to the network and the  
6 carrier the results of the examination and any action the  
7 department determines is necessary to ensure that the carrier meets  
8 its responsibilities under this chapter, this code, and rules  
9 adopted by the commissioner, and that the network can meet the  
10 network's responsibilities in connection with any function  
11 delegated by the carrier or performed by the network, any  
12 management contractor, or any third party to which the network  
13 delegates a function. The department may not report to the carrier  
14 any information regarding fee schedules, prices, cost of care, or  
15 other information not relevant to the monitoring plan.

16 (f) The network and the carrier shall respond to the  
17 department's report and submit a corrective plan to the department  
18 not later than the 30th day after the date of receipt of the report.

19 (g) The commissioner may order a carrier to take any action  
20 the commissioner determines is necessary to ensure that the carrier  
21 can provide all health care services under the Texas Workers'  
22 Compensation Act, including:

23 (1) reassuming the functions performed by or delegated  
24 to the network, including claims payments for services previously  
25 provided to injured employees;

26 (2) temporarily or permanently ceasing coverage of  
27 employees through the network;

1           (3) complying with the contingency plan required by  
2 Section 1305.154(c)(9), including permitting an injured employee  
3 to select a treating doctor in the manner provided by Section  
4 408.022, Labor Code; or

5           (4) terminating the carrier's contract with the  
6 network.

7           (h) The carrier retains ultimate responsibility for  
8 ensuring that all delegated functions and all management contractor  
9 functions are performed in accordance with applicable statutes and  
10 rules and nothing in this section may be construed to limit in any  
11 way the carrier's responsibility, including financial  
12 responsibility, to comply with all statutory and regulatory  
13 requirements.

14           [Sections 1305.156-1305.200 reserved for expansion]

15                   SUBCHAPTER E. FINANCIAL REQUIREMENTS

16           Sec. 1305.201. NETWORK FINANCIAL REQUIREMENTS. (a) Each  
17 network shall prepare financial statements in accordance with  
18 generally accepted accounting standards, which must include  
19 adequate provisions for liabilities, including incurred but not  
20 reported obligations relating to providing benefits or services.

21           (b) Each network shall file the financial statement under  
22 Subsection (a) with the department in the manner prescribed by  
23 commissioner rule.

24           [Sections 1305.202-1305.250 reserved for expansion]

25                   SUBCHAPTER F. EXAMINATIONS

26           Sec. 1305.251. EXAMINATION OF NETWORK. (a) As often as  
27 the commissioner considers necessary, the commissioner or the



1 commissioner's designated representative may review the operations  
2 of a network to determine compliance with this chapter. The review  
3 may include on-site visits to the network's premises.

4 (b) During on-site visits, the network must make available  
5 to the department all records relating to the network's operations.

6 Sec. 1305.252. EXAMINATION OF PROVIDER OR THIRD PARTY. If  
7 requested by the commissioner or the commissioner's  
8 representative, each provider, provider group, or third party with  
9 which the network has contracted to provide health care services or  
10 any other services delegated to the network by an insurance carrier  
11 shall make available for examination by the department that portion  
12 of the books and records of the provider, provider group, or third  
13 party that is relevant to the relationship with the network of the  
14 provider, provider group, or third party.

15 [Sections 1305.253-1305.300 reserved for expansion]

16 SUBCHAPTER G. PROVISION OF SERVICES BY NETWORK; QUALITY  
17 IMPROVEMENT PROGRAM

18 Sec. 1305.301. NETWORK ORGANIZATION; SERVICE AREAS.

19 (a) The chief executive officer, operations officer, or governing  
20 body of a network is responsible for:

21 (1) the development, approval, implementation, and  
22 enforcement of:

23 (A) administrative, operational, personnel, and  
24 patient care policies; and

25 (B) network procedures; and

26 (2) the development of any documents necessary for the  
27 operation of the network.

1       (b) Each network shall have a chief executive officer or  
2 operations officer who:

3           (1) is accountable for the day-to-day administration  
4 of the network; and

5           (2) shall ensure compliance with all applicable  
6 statutes and rules pertaining to the operation of the network.

7       (c) Each network shall have a medical director, who must be  
8 an occupational medicine specialist or employ or contract with an  
9 occupational medicine specialist, and who must be licensed to  
10 practice medicine in the United States. The medical director  
11 shall:

12           (1) be available at all times to address complaints,  
13 clinical issues, and any quality improvement issues on behalf of  
14 the network;

15           (2) be actively involved in all quality improvement  
16 activities; and

17           (3) comply with the network's credentialing  
18 requirements.

19       (d) The network shall establish one or more service areas  
20 within this state. For each defined service area, the network must:

21           (1) demonstrate to the satisfaction of the department  
22 the ability to provide continuity, accessibility, availability,  
23 and quality of services;

24           (2) specify the counties and zip code areas, or any  
25 parts of a county or zip code area, included in the service area;  
26 and

27           (3) provide a complete provider directory to all

1 policyholders who have selected a network in the service area.

2 Sec. 1305.302. ACCESSIBILITY AND AVAILABILITY  
3 REQUIREMENTS. (a) All services specified by this section must be  
4 provided by a provider who holds an appropriate license, unless the  
5 provider is exempt from license requirements.

6 (b) The network shall ensure that the network's provider  
7 panel includes an adequate number of treating doctors and  
8 specialists, who must be available and accessible to employees 24  
9 hours a day, seven days a week, within the network's service area.  
10 An adequate number of the treating doctors and specialists must  
11 have admitting privileges at one or more network hospitals located  
12 within the network's service area to ensure that any necessary  
13 hospital admissions are made.

14 (c) Hospital services must be available and accessible 24  
15 hours a day, seven days a week, within the network's service area.  
16 The network shall provide for the necessary hospital services by  
17 contracting with general, special, and psychiatric hospitals.

18 (d) Physical and occupational therapy services and  
19 chiropractic services must be available and accessible within the  
20 network's service area.

21 (e) Emergency care must be available and accessible 24 hours  
22 a day, seven days a week, without restrictions as to where the  
23 services are rendered.

24 (f) Except for emergencies, a network shall arrange for  
25 services, including referrals to specialists, to be accessible to  
26 employees on a timely basis on request, but not later than the last  
27 day of the third week after the date of the request.

1       (g) Each network shall provide that network services are  
2 sufficiently accessible and available as necessary to ensure that  
3 the distance from any point in the network's service area to a point  
4 of service by a treating doctor or general hospital is not greater  
5 than 30 miles in nonrural areas and 60 miles in rural areas and that  
6 the distance from any point in the network's service area to a point  
7 of service by a specialist or specialty hospital is not greater than  
8 75 miles in nonrural areas and 75 miles in rural areas. For  
9 portions of the service area in which the network identifies  
10 noncompliance with this subsection, the network must file an access  
11 plan with the department in accordance with Subsection (h).

12       (h) The network shall submit an access plan, as required by  
13 commissioner rules, to the department for approval at least 30 days  
14 before implementation of the plan if any health care service or a  
15 network provider is not available to an employee within the  
16 distance specified by Subsection (g) because:

17               (1) providers are not located within that distance;

18               (2) the network is unable to obtain provider contracts  
19 after good faith attempts; or

20               (3) providers meeting the network's minimum quality of  
21 care and credentialing requirements are not located within that  
22 distance.

23       (i) The network may make arrangements with providers  
24 outside the service area to enable employees to receive a skill or  
25 specialty not available within the network service area.

26       (j) The network may not be required to expand services  
27 outside the network's service area to accommodate employees who

1 live outside the service area.

2 Sec. 1305.303. QUALITY OF CARE REQUIREMENTS. (a) A  
3 network shall develop and maintain an ongoing quality improvement  
4 program designed to objectively and systematically monitor and  
5 evaluate the quality and appropriateness of care and services and  
6 to pursue opportunities for improvement. The quality improvement  
7 program must include return-to-work and medical case management  
8 programs.

9 (b) The network's governing body is ultimately responsible  
10 for the quality improvement program. The governing body shall:

11 (1) appoint a quality improvement committee that  
12 includes network providers;

13 (2) approve the quality improvement program;

14 (3) approve an annual quality improvement plan;

15 (4) meet at least annually to receive and review  
16 reports of the quality improvement committee or group of  
17 committees, and take action as appropriate; and

18 (5) review the annual written report on the quality  
19 improvement program.

20 (c) The quality improvement committee or committees shall  
21 evaluate the overall effectiveness of the quality improvement  
22 program as determined by commissioner rules.

23 (d) The quality improvement program must be continuous and  
24 comprehensive and must address both the quality of clinical care  
25 and the quality of services. The network shall dedicate adequate  
26 resources, including adequate personnel and information systems,  
27 to the quality improvement program.

1       (e) The network shall develop a written description of the  
2 quality improvement program that outlines the organizational  
3 structure of the program, the functional responsibilities of the  
4 program, and the frequency of committee meetings.

5       (f) The network shall develop an annual quality improvement  
6 work plan designed to reflect the type of services and the  
7 populations served by the network in terms of age groups, disease or  
8 injury categories, and special risk status, such as type of  
9 industry.

10       (g) The network shall prepare an annual written report to  
11 the department on the quality improvement program. The report must  
12 include:

- 13               (1) completed activities;  
14               (2) the trending of clinical and service goals;  
15               (3) an analysis of program performance; and  
16               (4) conclusions regarding the effectiveness of the  
17 program.

18       (h) Each network shall implement a documented process for  
19 the selection and retention of contracted providers, in accordance  
20 with rules adopted by the commissioner.

21       (i) The quality improvement program must provide for a peer  
22 review action procedure for providers, as described by Section  
23 151.002, Occupations Code.

24       (j) The network shall have a medical case management program  
25 with certified case managers. Case managers shall work with  
26 treating doctors, referral providers, and employers to facilitate  
27 cost-effective care and employee return-to-work.

1       Sec. 1305.304. GUIDELINES AND PROTOCOLS. Each network  
2 shall adopt treatment guidelines, return-to-work guidelines, and  
3 individual treatment protocols. The treatment guidelines and  
4 individual treatment protocols must be evidence-based,  
5 scientifically valid, and outcome-focused and be designed to reduce  
6 inappropriate or unnecessary health care while safeguarding  
7 necessary care.

8       [Sections 1305.305-1305.350 reserved for expansion]

9       SUBCHAPTER H. UTILIZATION REVIEW; RETROSPECTIVE REVIEW

10       Sec. 1305.351. UTILIZATION REVIEW AND RETROSPECTIVE REVIEW  
11 IN NETWORK. (a) The requirements of Article 21.58A apply to  
12 utilization review conducted in relation to claims in a workers'  
13 compensation health care network. In the event of a conflict  
14 between Article 21.58A and this chapter, this chapter controls.

15       (b) Any screening criteria used for utilization review or  
16 retrospective review related to a workers' compensation health care  
17 network must be consistent with the network's treatment guidelines.

18       Sec. 1305.352. GENERAL STANDARDS FOR RETROSPECTIVE REVIEW.

19       (a) Retrospective review of a health care service shall be based  
20 on written screening criteria established and periodically updated  
21 with appropriate involvement from doctors, including actively  
22 practicing doctors, and other health care providers.

23       (b) Retrospective review must be performed under the  
24 direction of a physician.

25       Sec. 1305.353. NOTICE OF CERTAIN UTILIZATION REVIEW  
26 DETERMINATIONS; PREAUTHORIZATION REQUIREMENTS. (a) The entity  
27 performing utilization review or retrospective review shall notify

1 the employee or the employee's representative, if any, and the  
2 requesting provider of a determination made in a utilization review  
3 or retrospective review.

4 (b) Notification of an adverse determination must include:

5 (1) the principal reasons for the adverse  
6 determination;

7 (2) the clinical basis for the adverse determination;

8 (3) a description of or the source of the screening  
9 criteria that were used as guidelines in making the determination;

10 (4) a description of the procedure for the  
11 reconsideration process; and

12 (5) notification of the availability of independent  
13 review in the form prescribed by the commissioner.

14 (c) On receipt of a preauthorization request from a provider  
15 for proposed services that require preauthorization, the  
16 utilization review agent shall issue and transmit a determination  
17 indicating whether the proposed health care services are  
18 preauthorized. The utilization review agent shall respond to  
19 requests for preauthorization within the periods prescribed by this  
20 section.

21 (d) For services not described under Subsection (e) or (f),  
22 the determination under Subsection (c) must be issued and  
23 transmitted not later than the third calendar day after the date the  
24 request is received.

25 (e) If the proposed services are for concurrent  
26 hospitalization care, the utilization review agent shall, within 24  
27 hours of receipt of the request, transmit a determination



1 indicating whether the proposed services are preauthorized.

2 (f) If the proposed health care services involve  
3 poststabilization treatment or a life-threatening condition, the  
4 utilization review agent shall transmit to the requesting provider  
5 a determination indicating whether the proposed services are  
6 preauthorized within the time appropriate to the circumstances  
7 relating to the delivery of the services and the condition of the  
8 patient, not to exceed one hour from receipt of the request. If the  
9 utilization review agent issues an adverse determination in  
10 response to a request for poststabilization treatment or a request  
11 for treatment involving a life-threatening condition, the  
12 utilization review agent shall provide to the employee or the  
13 employee's representative, if any, and the employee's treating  
14 provider the notification required under Subsection (a).

15 (g) For life-threatening conditions, the notification of  
16 adverse determination must include notification of the  
17 availability of independent review in the form prescribed by the  
18 commissioner.

19 (h) Treatments and services for an emergency do not require  
20 preauthorization.

21 Sec. 1305.354. RECONSIDERATION OF ADVERSE DETERMINATION.

22 (a) A utilization review agent shall maintain and make available a  
23 written description of the reconsideration procedures involving an  
24 adverse determination. The reconsideration procedures must be  
25 reasonable and must include:

26 (1) a provision stating that reconsideration must be  
27 performed by a provider other than the provider who made the

1 original adverse determination;

2 (2) a provision that an employee, a person acting on  
3 behalf of the employee, or the employee's requesting provider may,  
4 not later than the 30th day after the date of issuance of written  
5 notification of an adverse determination, request reconsideration  
6 of the adverse determination either orally or in writing;

7 (3) a provision that, not later than the fifth  
8 calendar day after the date of receipt of the request, the network  
9 shall send to the requesting party a letter acknowledging the date  
10 of the receipt of the request that includes a reasonable list of  
11 documents the requesting party is required to submit;

12 (4) a provision that, after completion of the review  
13 of the request for reconsideration of the adverse determination,  
14 the utilization review agent shall issue a response letter to the  
15 employee or person acting on behalf of the employee, and the  
16 employee's requesting provider, that:

17 (A) explains the resolution of the  
18 reconsideration; and

19 (B) includes:

20 (i) a statement of the specific medical or  
21 clinical reasons for the resolution;

22 (ii) the medical or clinical basis for the  
23 decision;

24 (iii) the professional specialty of any  
25 provider consulted; and

26 (iv) notice of the requesting party's right  
27 to seek review of the denial by an independent review organization

1 and the procedures for obtaining that review; and

2 (5) written notification to the requesting party of  
3 the determination of the request for reconsideration as soon as  
4 practicable, but not later than the 30th day after the date the  
5 utilization review agent received the request.

6 (b) In addition to the written request for reconsideration,  
7 the reconsideration procedures must include a method for expedited  
8 reconsideration procedures for denials of proposed health care  
9 services involving poststabilization treatment or life-threatening  
10 conditions, and for denials of continued stays for hospitalized  
11 employees. The procedures must include a review by a provider who  
12 has not previously reviewed the case and who is of the same or a  
13 similar specialty as a provider who typically manages the  
14 condition, procedure, or treatment under review. The period during  
15 which that reconsideration must be completed shall be based on the  
16 medical or clinical immediacy of the condition, procedure, or  
17 treatment, but may not exceed one calendar day from the date of  
18 receipt of all information necessary to complete the  
19 reconsideration.

20 (c) Notwithstanding Subsection (a) or (b), an employee with  
21 a life-threatening condition is entitled to an immediate review by  
22 an independent review organization and is not required to comply  
23 with the procedures for a reconsideration of an adverse  
24 determination.

25 Sec. 1305.355. INDEPENDENT REVIEW OF ADVERSE  
26 DETERMINATION. (a) The utilization review agent shall:

27 (1) permit the employee or person acting on behalf of

1 the employee and the employee's requesting provider whose  
2 reconsideration of an adverse determination is denied to seek  
3 review of that determination within the period prescribed by  
4 Subsection (b) by an independent review organization assigned in  
5 accordance with Article 21.58C and commissioner rules; and

6 (2) provide to the appropriate independent review  
7 organization, not later than the third business day after the date  
8 the utilization review agent receives notification of the  
9 assignment of the request to an independent review organization:

10 (A) any medical records of the employee that are  
11 relevant to the review;

12 (B) any documents used by the utilization review  
13 agent in making the determination;

14 (C) the response letter described by Section  
15 1305.354(a)(4);

16 (D) any documentation and written information  
17 submitted in support of the request for reconsideration; and

18 (E) a list of the providers who provided care to  
19 the employee and who may have medical records relevant to the  
20 review.

21 (b) A request for independent review under Subsection (a)  
22 must be timely filed by the requestor as follows:

23 (1) for a request for preauthorization or concurrent  
24 review by an independent review organization, not later than the  
25 45th day after the date of denial of a reconsideration for health  
26 care requiring preauthorization or concurrent review; or

27 (2) for a request for retrospective medical necessity

1 review, not later than the 45th day after the denial of  
2 reconsideration.

3 (c) The insurance carrier shall pay for the independent  
4 review provided under this subchapter.

5 (d) The department shall assign the review request to an  
6 independent review organization.

7 (e) A party to a medical dispute that remains unresolved  
8 after a review under this section may seek judicial review of the  
9 decision. The department is not considered a party to the medical  
10 dispute.

11 (f) A determination of an independent review organization  
12 related to a request for preauthorization or concurrent review is  
13 binding during the pendency of any appeal, and the carrier and  
14 network shall comply with the determination.

15 (g) If judicial review is not sought under this section, the  
16 carrier and network shall comply with the independent review  
17 organization's determination.

18 [Sections 1305.356-1305.400 reserved for expansion]

19 SUBCHAPTER I. COMPLAINT RESOLUTION

20 Sec. 1305.401. COMPLAINT SYSTEM REQUIRED. (a) Each  
21 network shall implement and maintain a complaint system that  
22 provides reasonable procedures to resolve an oral or written  
23 complaint.

24 (b) The network may require a complainant to file the  
25 complaint not later than the 90th day after the date of the event or  
26 occurrence that is the basis for the complaint.

27 (c) The complaint system must include a process for the

1 notice and appeal of a complaint.

2 (d) The commissioner may adopt rules as necessary to  
3 implement this section.

4 Sec. 1305.402. COMPLAINT INITIATION AND INITIAL RESPONSE;  
5 DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant  
6 notifies a network of a complaint, the network, not later than the  
7 seventh calendar day after the date the network receives the  
8 complaint, shall respond to the complainant, acknowledging the date  
9 of receipt of the complaint and providing a description of the  
10 network's complaint procedures and deadlines.

11 (b) The network shall investigate and resolve a complaint  
12 not later than the 30th calendar day after the date the network  
13 receives the complaint.

14 Sec. 1305.403. RECORD OF COMPLAINTS. (a) Each network  
15 shall maintain a complaint and appeal log regarding each complaint.  
16 The commissioner shall adopt rules designating the classification  
17 of network complaints under this section.

18 (b) Each network shall maintain a record of and  
19 documentation on each complaint, complaint proceeding, and action  
20 taken on the complaint until the third anniversary of the date the  
21 complaint was received.

22 (c) A complainant is entitled to a copy of the network's  
23 record regarding the complaint and any proceeding relating to that  
24 complaint.

25 (d) The department, during any investigation or examination  
26 of a network, may review documentation maintained under this  
27 subchapter, including original documentation, regarding a

1 complaint and action taken on the complaint.

2 Sec. 1305.404. RETALIATORY ACTION PROHIBITED. A network  
3 may not engage in any retaliatory action against an employer or  
4 employee because the employer or employee or a person acting on  
5 behalf of the employer or employee has filed a complaint against the  
6 network.

7 Sec. 1305.405. POSTING OF INFORMATION ON COMPLAINT PROCESS  
8 REQUIRED. (a) A contract between a network and a provider must  
9 require the provider to post, in the provider's office, a notice to  
10 injured employees on the process for resolving complaints with the  
11 network.

12 (b) The notice required under Subsection (a) must include  
13 the department's toll-free telephone number for filing a complaint.

14 [Sections 1305.406-1305.450 reserved for expansion]

15 SUBCHAPTER J. EMPLOYEE INFORMATION AND RESPONSIBILITIES

16 Sec. 1305.451. EMPLOYEE INFORMATION; RESPONSIBILITIES OF  
17 EMPLOYEE. (a) An insurance carrier that establishes or contracts  
18 with a network shall provide to employers, and the employer shall  
19 provide to its employees, an accurate written description of the  
20 terms and conditions for obtaining health care within the network's  
21 service area.

22 (b) The written description required under Subsection (a)  
23 must be in English, Spanish, and any additional language common to  
24 an employer's employees, must be in plain language and in a readable  
25 and understandable format, and must include, in a clear, complete,  
26 and accurate format:

27 (1) a statement that the entity providing health care

1 to employees is a workers' compensation health care network;

2 (2) the network's toll-free number and address for  
3 obtaining additional information about the network, including  
4 information about network providers;

5 (3) a statement that in the event of an injury, the  
6 employee must select a treating doctor:

7 (A) from a list of all the network's treating  
8 doctors who have contracts with the network in that service area; or

9 (B) as described by Section 1305.105;

10 (4) a statement that, except for emergency services,  
11 the employee shall obtain all health care and specialist referrals  
12 through the employee's treating doctor;

13 (5) an explanation that network providers have agreed  
14 to look only to the network or insurance carrier and not to  
15 employees for payment of providing health care, except as provided  
16 by Subdivision (6);

17 (6) a statement that if the employee obtains health  
18 care from non-network providers without network approval, except as  
19 provided by Section 1305.006(a), the insurance carrier may not be  
20 liable, and the employee may be liable, for payment for that health  
21 care;

22 (7) information about how to obtain emergency care  
23 services, including emergency care outside the service area, and  
24 after-hours care;

25 (8) a list of the health care services for which the  
26 network requires preauthorization;

27 (9) an explanation regarding continuity of treatment



1 in the event of the termination from the network of a treating  
2 doctor;

3 (10) a description of the network's complaint system,  
4 including a statement that the network is prohibited from  
5 retaliating against:

6 (A) an employee if the employee files a complaint  
7 against the network or appeals a decision of the network; or

8 (B) a provider if the provider, on behalf of an  
9 employee, reasonably files a complaint against the network or  
10 appeals a decision of the network;

11 (11) a summary of the network's procedures relating to  
12 adverse determinations and the availability of the independent  
13 review process;

14 (12) a list of network providers updated at least  
15 quarterly, including:

16 (A) the names and addresses of the providers;

17 (B) a statement of limitations of accessibility  
18 and referrals to specialists; and

19 (C) a disclosure of which providers are accepting  
20 new patients; and

21 (13) a description of the network's service area.

22 (c) The network and the network's representatives and  
23 agents may not cause or knowingly permit the use or distribution to  
24 employees of information that is untrue or misleading.

25 (d) A network that contracts with an insurance carrier shall  
26 provide all the information necessary to allow the carrier to  
27 comply with this section.

1 [Sections 1305.452-1305.500 reserved for expansion]

2 SUBCHAPTER K. EVALUATION OF NETWORKS; CONSUMER REPORT CARD

3 Sec. 1305.501. EVALUATION OF NETWORKS. (a) In accordance  
4 with the research duties assigned to the department under Chapter  
5 405, Labor Code, the department shall:

6 (1) objectively evaluate the cost and the quality of  
7 medical care provided by networks certified under this chapter; and

8 (2) report the department's findings to the governor,  
9 the lieutenant governor, the speaker of the house of  
10 representatives, and the members of the legislature not later than  
11 September 1 of each even-numbered year.

12 (b) At the minimum, the report required under Subsection (a)  
13 must evaluate:

14 (1) the average medical and indemnity cost per claim  
15 for health care services provided through networks;

16 (2) the access to care and utilization by injured  
17 employees of health care provided through networks;

18 (3) injured employee return-to-work outcomes;

19 (4) injured employee satisfaction and health-related  
20 functional outcomes; and

21 (5) the frequency, duration, and outcome of disputes  
22 regarding medical benefits.

23 (c) The department shall include in the report a comparison  
24 of the administrative burdens incurred by health care providers who  
25 provide workers' compensation medical benefits through networks  
26 with those incurred by providers who provide analogous medical  
27 benefits outside the network structure.

1       Sec. 1305.502. CONSUMER REPORT CARDS. (a) The department  
2 shall annually issue consumer report cards that identify and  
3 compare, on an objective basis, the networks certified by the  
4 department under this chapter.

5       (b) The department shall ensure that consumer report cards  
6 issued by the department under this section are accessible to the  
7 public on the department's Internet website and available to any  
8 person on request. The commissioner, by rule, may set a reasonable  
9 fee to obtain a paper copy of consumer report cards.

10       Sec. 1305.503. CONFIDENTIALITY REQUIREMENTS. (a) As  
11 necessary to implement this subchapter, the department is entitled  
12 to information that is otherwise confidential under any law of this  
13 state, including the Texas Workers' Compensation Act.

14       (b) Confidential information provided to or obtained by the  
15 department under this section remains confidential and is not  
16 subject to disclosure under Chapter 552, Government Code. The  
17 department may not release, and a person may not gain access to, any  
18 information that:

19               (1) could reasonably be expected to reveal the  
20 identity of an injured employee; or

21               (2) discloses provider discounts or differentials  
22 between payments and billed charges for individual providers or  
23 networks.

24       (c) Information that is in the possession of the department  
25 and that relates to an individual injured employee, and any  
26 compilation, report, or analysis produced from the information that  
27 identifies an individual injured employee, are not:

1           (1) subject to discovery, subpoena, or other means of  
2 legal compulsion for release to any person; or

3           (2) admissible in any civil, administrative, or  
4 criminal proceeding.

5           [Sections 1305.504-1305.550 reserved for expansion]

6                   SUBCHAPTER L. DISCIPLINARY ACTIONS

7           Sec. 1305.551. DETERMINATION OF VIOLATION; NOTICE. (a) If  
8 the commissioner determines that a network, insurance carrier, or  
9 any other person or third party operating under this chapter,  
10 including a third party to which a network delegates a function, or  
11 any third party with which a network contracts for management  
12 services, is in violation of this chapter, rules adopted by the  
13 commissioner under this chapter, or applicable provisions of the  
14 Labor Code or rules adopted under that code, the commissioner or a  
15 designated representative may notify the network, insurance  
16 carrier, person, or third party of the alleged violation and may  
17 compel the production of any documents or other information as  
18 necessary to determine whether the violation occurred.

19           (b) The commissioner's designated representative may  
20 initiate the proceedings under this section.

21           (c) A proceeding under this section is a contested case  
22 under Chapter 2001, Government Code.

23           Sec. 1305.552. DISCIPLINARY ACTIONS. If under Section  
24 1305.551 the commissioner determines that a network, insurance  
25 carrier, or other person or third party described under Section  
26 1305.551 has violated or is violating this chapter, rules adopted  
27 by the commissioner under this chapter, or the Labor Code or rules

1 adopted under that code, the commissioner may:

2 (1) suspend or revoke a certificate issued under this  
3 code;

4 (2) impose sanctions under Chapter 82;

5 (3) issue a cease and desist order under Chapter 83;

6 (4) impose administrative penalties under Chapter 84;

7 or

8 (5) take any combination of these actions.

9 ARTICLE 5. RATES AND UNDERWRITING REQUIREMENTS

10 SECTION 5.01. Section 1, Article 5.55, Insurance Code, is  
11 amended by amending Subdivision (2) and adding Subdivision (2-a) to  
12 read as follows:

13 (2) "Insurer" means a person authorized and admitted  
14 by the department [~~Texas Department of Insurance~~] to engage in the  
15 [~~do insurance~~] business of insurance in this state under a  
16 certificate of authority that includes authorization to write  
17 workers' compensation insurance. The term includes:

18 (A) the Texas Mutual Insurance Company;

19 (B) a Lloyd's plan under Chapter 941 of this  
20 code;

21 (C) a reciprocal and interinsurance exchange  
22 under Chapter 942 of this code; and

23 (D) a workers' compensation self-insurance group  
24 required to file rates under Chapter 407A, Labor Code.

25 (2-a) "Premium" means the amount charged for a  
26 workers' compensation insurance policy, including any  
27 endorsements, after the application of individual risk variations

1 based on loss or expense considerations.

2 SECTION 5.02. Subsections (b) and (d), Section 2, Article  
3 5.55, Insurance Code, are amended to read as follows:

4 (b) In setting rates, an insurer shall consider:

5 (1) past and prospective loss cost experience;

6 (2) operation expenses;

7 (3) investment income;

8 (4) a reasonable margin for profit and contingencies;

9 [~~and~~]

10 (5) the effect on premiums of individual risk  
11 variations based on loss or expense considerations; and

12 (6) any other relevant factors.

13 (d) Rates and premiums established under this article may  
14 not be excessive, inadequate, or unfairly discriminatory.

15 SECTION 5.03. Section 3, Article 5.55, Insurance Code, is  
16 amended by adding Subsections (e) through (h) to read as follows:

17 (e) Not later than December 1 of each even-numbered year,  
18 the commissioner shall report to the governor, lieutenant governor,  
19 and speaker of the house of representatives regarding the impact  
20 that legislation enacted during the regular session of the 79th  
21 Legislature reforming the workers' compensation system of this  
22 state has had on the affordability and availability of workers'  
23 compensation insurance for the employers of this state. The report  
24 must include an analysis of:

25 (1) the projected workers' compensation premium  
26 savings realized by employers as a result of the reforms;

27 (2) the impact of the reforms on:

1           (A) the percentage of employers who provide  
2 workers' compensation insurance coverage for their employees; and

3           (B) to the extent possible, economic development  
4 and job creation;

5           (3) the effects of the reforms on market competition  
6 and carrier financial solvency, including an analysis of how  
7 carrier loss ratios, combined ratios, and use of individual risk  
8 variations have changed since implementation of the reforms; and

9           (4) the extent of participation in workers'  
10 compensation health care networks by small and medium-sized  
11 employers.

12           (f) If the commissioner determines that workers'  
13 compensation rate filings or premium levels analyzed by the  
14 department do not appropriately reflect the savings associated with  
15 the reforms described by Subsection (e) of this section, the  
16 commissioner shall include in the report required under Subsection  
17 (e) of this section any recommendations, including any recommended  
18 legislative changes, necessary to identify the tools needed by the  
19 department to more effectively regulate workers' compensation  
20 rates.

21           (g) At the request of the department, each insurer shall  
22 submit to the department all data and other information considered  
23 necessary by the commissioner to generate the report required under  
24 Subsection (e) of this section. Failure by an insurer to submit the  
25 data and information in a timely fashion, as determined by  
26 commissioner rule, constitutes grounds for sanctions under Chapter  
27 82 of this code.

1        (h) In reviewing rates under this article, the commissioner  
2 shall consider any state or federal legislation that has been  
3 enacted and that may impact rates and premiums for workers'  
4 compensation insurance coverage in this state.

5        SECTION 5.04. Subsection (b), Section 6, Article 5.55,  
6 Insurance Code, is amended to read as follows:

7        (b) The disapproval order must be issued not later than the  
8 15th day after the close of a hearing and must specify how the rate  
9 fails to meet the requirements of this article. The disapproval  
10 order must state the date on which the further use of that rate is  
11 prohibited. [~~A disapproval order does not affect a policy made or~~  
12 ~~issued in accordance with this code before the expiration of the~~  
13 ~~period established in the order.~~]

14        SECTION 5.05. Section 7, Article 5.55, Insurance Code, is  
15 amended to read as follows:

16        Sec. 7. EFFECT OF DISAPPROVAL; PENALTY. (a) If a policy is  
17 issued and the commissioner [~~board~~] subsequently disapproves the  
18 rate or filing that governs the premium charged on the policy:

19                (1) the policyholder may continue the policy at the  
20 original rate;

21                (2) the policyholder may cancel the policy without  
22 penalty; or

23                (3) the policyholder and the insurer may agree to  
24 amend the policy to reflect the premium that would have been charged  
25 based on the insurer's most recently approved rate; the amendment  
26 may not take effect before the date on which further use of the rate  
27 is prohibited under the disapproval order.



1           (b) If a policy is issued and the commissioner subsequently  
2 disapproves the rate or filing on which the premium is based, the  
3 commissioner, after notice and the opportunity for a hearing, may:

4                   (1) impose sanctions under Chapter 82 of this code;

5                   (2) issue a cease and desist order under Chapter 83 of  
6 this code;

7                   (3) impose administrative penalties under Chapter 84  
8 of this code; or

9                   (4) take any combination of these actions [~~If the~~  
10 ~~board determines, based on a pattern of charges for premiums, that~~  
11 ~~an insurer is consistently overcharging or undercharging, the board~~  
12 ~~may assess an administrative penalty. The penalty shall be~~  
13 ~~assessed in accordance with Article 10, Texas Workers' Compensation~~  
14 ~~Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes),~~  
15 ~~and set by the board in an amount reasonable and necessary to deter~~  
16 ~~the overcharging or undercharging of policyholders].~~

17           SECTION 5.055. Article 5.55, Insurance Code, is amended by  
18 adding Section 8 to read as follows:

19                   Sec. 8. EXCLUSIVE JURISDICTION. The department has  
20 exclusive jurisdiction over all rates and premiums subject to this  
21 article.

22           SECTION 5.06. Subchapter D, Chapter 5, Insurance Code, is  
23 amended by adding Article 5.55A to read as follows:

24                   Art. 5.55A. UNDERWRITING GUIDELINES

25                   Sec. 1. DEFINITIONS. In this article:

26                           (1) "Insurer" has the meaning assigned by Section  
27 1(2), Article 5.55, of this code.

1           (2) "Underwriting guideline" means a rule, standard,  
2 guideline, or practice, whether written, oral, or electronic, that  
3 is used by an insurer or its agent to decide whether to accept or  
4 reject an application for coverage under a workers' compensation  
5 insurance policy or to determine how to classify those risks that  
6 are accepted for the purpose of determining a rate.

7           Sec. 2. UNDERWRITING GUIDELINES. Each underwriting  
8 guideline used by an insurer in writing workers' compensation  
9 insurance must be sound, actuarially justified, or otherwise  
10 substantially commensurate with the contemplated risk. An  
11 underwriting guideline may not be unfairly discriminatory.

12           Sec. 3. ENFORCEMENT. This article may be enforced in the  
13 manner provided by Section 38.003(g) of this code.

14           Sec. 4. FILING REQUIREMENTS. Each insurer shall file with  
15 the department a copy of the insurer's underwriting guidelines.  
16 The insurer shall update its filing each time the underwriting  
17 guidelines are changed. If a group of insurers files one set of  
18 underwriting guidelines for the group, the group shall identify  
19 which underwriting guidelines apply to each insurer in the group.

20           Sec. 5. APPLICABILITY OF SECTION 38.003. Section 38.003 of  
21 this code applies to this article to the extent consistent with this  
22 article.

23           SECTION 5.07. Subsection (b), Article 5.58, Insurance Code,  
24 is amended to read as follows:

25           (b) Standards and Procedures. For purposes of Subsection  
26 (c) of this article, the commissioner shall establish standards and  
27 procedures for categorizing insurance and medical benefits

1 reported on each workers' compensation claim. The commissioner  
2 shall consult with the Texas Department of Workers' Compensation  
3 [~~Commission and the Research and Oversight Council on Workers'~~  
4 ~~Compensation~~] in establishing these standards to ensure that the  
5 data collection methodology will also yield data necessary for  
6 research and medical cost containment efforts.

7 ARTICLE 6. REPEALER

8 SECTION 6.001. The following provisions of the Labor Code  
9 are repealed:

- 10 (1) Section 402.025;
- 11 (2) Subsection (b), Section 402.062;
- 12 (3) Sections 402.063 and 402.070;
- 13 (4) Section 406.012;
- 14 (5) Subsection (g), Section 408.004;
- 15 (6) Sections 408.0221, 408.0222, and 408.0223;
- 16 (7) Subsection (d), Section 411.034;
- 17 (8) Subsections (c) and (d), Section 415.0035;
- 18 (9) Section 415.004;
- 19 (10) Subsection (b), Section 415.008;
- 20 (11) Subsection (b), Section 415.009;
- 21 (12) Subsection (b), Section 415.010;
- 22 (13) Section 415.022; and
- 23 (14) Subdivision (1), Section 505.001.

24 ARTICLE 7. TRANSITION; EFFECTIVE DATE

25 SECTION 7.001. EFFECT OF CHANGE IN DESIGNATION. The change  
26 in designation of the Texas Workers' Compensation Commission to the  
27 Texas Department of Workers' Compensation does not affect or impair

1 any act done or taken, any rule, standard, or rate adopted, any  
2 order or certificate issued, or any form approved by the Texas  
3 Workers' Compensation Commission as a state agency, or any penalty  
4 assessed by the Texas Workers' Compensation Commission as a state  
5 agency before the change in designation made by this Act.

6 SECTION 7.002. ABOLITION OF TEXAS WORKERS' COMPENSATION  
7 COMMISSION. (a) The Texas Workers' Compensation Commission is  
8 abolished on the effective date of this Act. The term of a person  
9 who is serving on the Texas Workers' Compensation Commission on the  
10 effective date of this Act expires on the date the commissioner of  
11 workers' compensation is appointed.

12 (b) All appropriations made by the legislature for the use  
13 and benefit of the Texas Workers' Compensation Commission are  
14 available for the use and benefit of the Texas Department of  
15 Workers' Compensation.

16 (c) The divisions of the Texas Workers' Compensation  
17 Commission established under Section 402.021, Labor Code, as that  
18 section existed prior to amendment by this Act, are abolished on the  
19 effective date of this Act.

20 SECTION 7.003. COMMISSIONER. The governor shall appoint  
21 the commissioner of workers' compensation not later than September  
22 30, 2005.

23 SECTION 7.0031. OFFICE OF INJURED EMPLOYEE COUNSEL.  
24 (a) The office of injured employee counsel created under Chapter  
25 404, Labor Code, as added by this Act, is established September 1,  
26 2005.

27 (b) The governor shall appoint the injured employee public

1 counsel of the office of injured employee counsel not later than  
2 October 1, 2005.

3 (c) The injured employee public counsel of the office of  
4 injured employee counsel shall adopt initial rules for the office  
5 under Section 404.006, Labor Code, as added by this Act, not later  
6 than March 1, 2006.

7 (d) The Texas Department of Workers' Compensation shall  
8 provide, in Austin and in each regional office operated by the  
9 department to administer Subtitle A, Title 5, Labor Code, as  
10 amended by this Act, suitable office space, personnel, computer  
11 support, and other administrative support to the office of injured  
12 employee counsel as required by Chapter 404, Labor Code, as added by  
13 this Act. The department shall provide the facilities and support  
14 not later than October 1, 2005.

15 (e) All powers, duties, obligations, rights, contracts,  
16 funds, unspent appropriations, records, real or personal property,  
17 and personnel of the Texas Workers' Compensation Commission  
18 relating to the operation of the workers' compensation ombudsman  
19 program under Subchapter C, Chapter 409, Labor Code, as that  
20 subchapter existed before amendment by this Act, shall be  
21 transferred to the office of injured employee counsel not later  
22 than March 1, 2006. An ombudsman transferred to the office of  
23 injured employee counsel under this section shall begin providing  
24 services under Chapter 404, Labor Code, as added by this Act, not  
25 later than March 1, 2006.

26 SECTION 7.0032. BUDGET EXECUTION AUTHORITY.  
27 Notwithstanding Subsection (e), Section 317.005, Government Code,

1 the Legislative Budget Board may adopt an order under Section  
2 317.005, Government Code, affecting any portion of the total  
3 appropriation of the Texas Department of Workers' Compensation or  
4 office of injured employee counsel if necessary to implement the  
5 provisions of this Act. This section expires March 31, 2006.

6 SECTION 7.004. RULES REGARDING MEDICAL EXAMINATIONS. The  
7 commissioner of workers' compensation shall adopt rules to  
8 implement the changes in law made to Sections 408.004 and 408.0041,  
9 Labor Code, as amended by this Act, on or before February 1, 2006.  
10 The changes in law made to Sections 408.004 and 408.0041, Labor  
11 Code, are effective on the date provided by commissioner rule.

12 SECTION 7.005. ELECTRONIC BILLING RULES. The commissioner  
13 of workers' compensation shall adopt rules under Section 408.0251,  
14 Labor Code, as added by this Act, not later than January 1, 2006.

15 SECTION 7.006. ACCRUAL OF RIGHT TO INCOME BENEFITS.  
16 Subsection (c), Section 408.082, Labor Code, as amended by this  
17 Act, applies only to a claim for workers' compensation benefits  
18 based on a compensable injury that occurs on or after the effective  
19 date of this Act. A claim based on a compensable injury that occurs  
20 before that date is governed by the law in effect on the date that  
21 the compensable injury occurred, and the former law is continued in  
22 effect for that purpose.

23 SECTION 7.007. ELIGIBILITY FOR PILOT PROGRAM. The pilot  
24 program established under Section 413.022, Labor Code, as added by  
25 this Act, takes effect January 1, 2006.

26 SECTION 7.008. REPORTS. (a) Not later than October 1,  
27 2006, the commissioner of workers' compensation shall report to the

1 governor, the lieutenant governor, the speaker of the house of  
2 representatives, and the members of the 79th Legislature regarding  
3 the implementation of Section 408.1225, Labor Code, as added by  
4 this Act.

5 (b) Not later than October 1, 2008, the commissioner of  
6 workers' compensation shall report to the governor, the lieutenant  
7 governor, the speaker of the house of representatives, and the  
8 members of the legislature regarding the implementation of the  
9 pilot program established by Section 413.022, Labor Code, as added  
10 by this Act, and the results of the pilot program. The report must  
11 include any recommendations regarding the continuation of the pilot  
12 program, including any changes required to enhance the  
13 effectiveness of the program.

14 (c) The commissioner of insurance shall submit the initial  
15 report required under Subsection (e), Section 3, Article 5.55,  
16 Insurance Code, as added by this Act, not later than December 1,  
17 2006.

18 (d) The commissioner of insurance shall submit to the  
19 governor, the lieutenant governor, the speaker of the house of  
20 representatives, and the members of the legislature the first  
21 report under Subsection (a), Section 1305.501, Insurance Code, as  
22 added by this Act, not later than December 1, 2008.

23 SECTION 7.009. ABOLITION OF MEDICAL ADVISORY COMMITTEE.  
24 The medical advisory committee established under Section 413.005,  
25 Labor Code, as that section existed prior to repeal by this Act, is  
26 abolished on the effective date of this Act.

27 SECTION 7.010. STATE OFFICE OF ADMINISTRATIVE HEARINGS

1 REVIEW. (a) This section applies to a hearing conducted by the  
2 State Office of Administrative Hearings under Subsection (k),  
3 Section 413.031, Labor Code, as that subsection existed prior to  
4 amendment by this Act.

5 (b) Effective September 1, 2005, the State Office of  
6 Administrative Hearings may not accept for hearing a medical  
7 dispute that remains unresolved pursuant to Section 413.031, Labor  
8 Code. A medical dispute that is not pending for a hearing by the  
9 State Office of Administrative Hearings on or before August 31,  
10 2005, is subject to Subsection (k), Section 413.031, Labor Code, as  
11 amended by this Act, and is not subject to a hearing before the  
12 State Office of Administrative Hearings.

13 SECTION 7.011. IMPLEMENTATION OF PROVIDER NETWORKS.

14 (a) Except as provided by Subsection (c) of this section, the  
15 commissioner of insurance and the commissioner of workers'  
16 compensation shall adopt rules as necessary to implement Chapter  
17 1305, Insurance Code, as added by this Act, not later than December 1,  
18 2005. The Texas Department of Insurance shall accept applications  
19 from a network seeking certification under Chapter 1305, Insurance  
20 Code, as added by this Act, beginning December 15, 2005.

21 (b) An insurance carrier may begin to offer workers'  
22 compensation medical benefits through a network under Chapter 1305,  
23 Insurance Code, as added by this Act, on certification of the  
24 network by the commissioner of insurance.

25 (c) The commissioner of insurance shall adopt rules to  
26 implement Section 1305.106, Insurance Code, as added by this Act,  
27 on or before January 1, 2007.



1           SECTION 7.012. CONSUMER REPORT CARD. The Texas Department  
2 of Insurance shall issue the first annual workers' compensation  
3 consumer report card under Section 1305.502, Insurance Code, as  
4 added by this Act, not later than 18 months after the date on which  
5 that department certifies the first workers' compensation health  
6 care network under Chapter 1305, Insurance Code, as added by this  
7 Act.

8           SECTION 7.013. APPLICATION TO MEDICAL BENEFITS.

9           (a) Article 4 of this Act applies to a claim for workers'  
10 compensation medical benefits based on a compensable injury  
11 incurred by an employee whose employer elects to provide workers'  
12 compensation insurance coverage if the insurance carrier of the  
13 employer enters into a contract to provide workers' compensation  
14 medical benefits through a network certified under Chapter 1305,  
15 Insurance Code, as added by this Act.

16           (b) A claim for workers' compensation medical benefits  
17 based on a compensable injury that occurs on or after the effective  
18 date of a contract described by Subsection (a) of this section is  
19 subject to the provisions of Chapter 1305, Insurance Code, as added  
20 by this Act.

21           (c) Notwithstanding Subsection (a) of this section, an  
22 injured employee who receives workers' compensation medical  
23 benefits based on a compensable injury that occurs before the  
24 effective date of this Act is subject to the provisions of Chapter  
25 1305, Insurance Code, as added by this Act, and must receive  
26 treatment through a network health care provider if the insurer  
27 liable for the payment of benefits on that claim elects to use a

1 workers' compensation health care network to provide medical  
2 benefits and the claimant lives in a network service area. The  
3 insurer shall notify affected injured employees in writing of the  
4 election.

5 SECTION 7.014. APPLICATION TO SANCTIONS AND VIOLATIONS.

6 (a) The changes in law made by this Act apply only to a penalty or  
7 sanction for an offense or violation committed on or after the  
8 effective date of this Act.

9 (b) For purposes of this section, an offense or violation is  
10 committed before the effective date of this Act if any element of  
11 the offense occurs before that date.

12 (c) An offense committed before the effective date of this  
13 Act is governed by the law in effect when the offense was committed,  
14 and the former law is continued in effect for that purpose.

15 SECTION 7.015. EFFECT OF UPDATE ACT. To the extent of any  
16 conflict, this Act prevails over another Act of the 79th  
17 Legislature, Regular Session, 2005, relating to nonsubstantive  
18 additions to and corrections in enacted codes (the General Code  
19 Update bill).

20 SECTION 7.016. EFFECTIVE DATE. This Act takes effect  
21 September 1, 2005.