

House Bill 673
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter C, Chapter 404, Labor Code, is amended by adding Section 404.1015 to read as follows:
Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES. (a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:
(1) is abusive or violent to or who threatens any employee of the office;
(2) makes unreasonable demands for office services or for assistance in claiming benefits not provided by law;
or
(3) commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.
(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.
(c) The office shall notify the appropriate law enforcement authority if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

SECTION 2. Section 404.105, Labor Code, is amended to read as follows:
Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN

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SECTION 1. Subchapter C, Chapter 404, Labor Code, is amended by adding Section 404.1015 to read as follows:
Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES. (a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:
(1) is abusive or violent to or who threatens any employee of the office;
(2) requests assistance in claiming benefits not provided by law; or
(3) commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.
(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.
(c) The office shall notify and cooperate with the appropriate law enforcement authority and the Department of Insurance, Fraud Unit if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

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ADMINISTRATIVE PROCEDURES. (a) The office, through the ombudsman program, may appear before the commissioner, ~~[or]~~ division, or State Office of Administrative Hearings to provide assistance to ~~an~~ behalf of an individual injured employee during:

(1) a workers' compensation ~~an~~ administrative dispute resolution process; or

(2) an enforcement action by the department or division against an employee for a violation of the Texas Workers' Compensation Act.

(b) This chapter may not be construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

SECTION 3. Section 404.109, Labor Code, is amended to read as follows:

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public counsel shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, ~~[submit to the division and the department for adoption by the commissioners]~~ a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or ~~[and]~~ commissioner of insurance rules. A right or responsibility adopted under this section must be consistent with the requirements of this subtitle and

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division rules. This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

SECTION 4. Section 404.110, Labor Code, is amended to read as follows:

Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS. (a) Confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058, 401.105, 401.106, 441.201, and 501.158 [Article 1.18], Insurance Code, as applicable, and Section 404.111, [and to the commissioner of insurance under Section 3A, Article 21.28 A, Insurance Code,] apply to the public counsel.

(b) An employee of the office may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. This subsection does not prohibit or alter the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

SECTION 5. Section 404.111, Labor Code, is amended to read as follows:

Sec. 404.111. ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, the [The]

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SECTION 4. Section 404.110, Labor Code, is amended to read as follows:

Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS. (a) Confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058, 401.105, 401.106, 441.201, and 501.158 [Article 1.18], Insurance Code, as applicable, and Section 404.111, [and to the commissioner of insurance under Section 3A, Article 21.28 A, Insurance Code,] apply to the public counsel.

(b) An employee of the office may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. This subsection does not prohibit or alter the office's duty to notify and cooperate with appropriate law enforcement authorities under Section 404.1015(c).

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office may access information from an executive agency that is otherwise confidential under a law of this state if that information is necessary for the performance of the duties of the office, including information made confidential under[~~:-~~

~~[(1) Section [843.006, Insurance Code;~~

~~[(2) Chapter 108, Health and Safety Code;~~

~~[(3) Chapter 552, Government Code; and~~

~~[(4) Sections 402.083,] 402.091[, and 402.092 of this code].~~

(b) The office may not access information under Subsection (a) that is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) In furtherance of assisting an employee under Section 404.105(a)(2), the office may not access information under Section 404.111(a) to which the employee is not otherwise entitled. If the office possesses any information made confidential by the Texas Workers' Compensation Act or any other laws of this state to which the employee is not otherwise entitled, that information may not be disclosed to the employee or any other party assisting an employee under Section 404.105(a)(2). Nothing in this subsection prohibits or alters the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

(d) Except as provided by this section ~~[On request by the public counsel],~~ the division or the department shall

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provide any information or data requested by the public counsel [~~office~~] in furtherance of the duties of the office under this chapter.

(e) [~~(e)~~] The office may not make public any confidential information provided to the office under this chapter. Except as provided by Subsection (c), the office [~~but~~] may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

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

(f) [~~(d)~~] Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of[:

- [~~(1) Section 81.103, Health and Safety Code;~~
- [~~(2) Section 311.037, Health and Safety Code;~~
- [~~(3) Chapter 159, Occupations Code; and~~
- [~~(4) Section 402.091 [of this code].~~

(g) [~~(e)~~] Information on health care providers and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from

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the information that identifies providers and injured employees is not:

- (1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity;
- or
- (2) admissible in any civil, administrative, or criminal proceeding.

(h) [~~(f)~~] Notwithstanding Subsection (e)(2) [~~(e)(2)~~], the office may use zip code information to analyze information on a geographical basis.

SECTION 6. This Act takes effect September 1, 2009.

Same as House version.