

By: Huffman, Hegar

S.B. No. 658

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the division of
3 workers' compensation of the Texas Department of Insurance.

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

5 SECTION 1. Section 31.004(b), Insurance Code, is amended to
6 read as follows:

7 (b) Unless continued as provided by Chapter 325, Government
8 Code, the duties of the division of workers' compensation of the
9 Texas Department of Insurance under Title 5, Labor Code, expire
10 September 1, 2017 [~~2011~~], or another date designated by the
11 legislature.

12 SECTION 2. Sections 1305.355(e), (f), and (g), Insurance
13 Code, are amended to read as follows:

14 (e) A party to a medical dispute that remains unresolved
15 after a review under this section is entitled to a hearing and [~~may~~
16 ~~seek~~] judicial review of the decision in accordance with Section
17 1305.356. The division of workers' compensation and the department
18 are not considered to be parties to the medical dispute.

19 (f) A determination of an independent review organization
20 related to a request for preauthorization or concurrent review is
21 binding during the pendency of a dispute, including during a
22 contested case hearing or judicial review under Section 1305.356
23 [~~any appeal~~], and the carrier and network shall comply with the
24 determination.

1 (g) If a contested case hearing or judicial review is not
2 sought under Section 1305.356 [~~this section~~], the carrier and
3 network shall comply with the independent review organization's
4 determination.

5 SECTION 3. Subchapter H, Chapter 1305, Insurance Code, is
6 amended by adding Section 1305.356 to read as follows:

7 Sec. 1305.356. CONTESTED CASE HEARING ON AND JUDICIAL
8 REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute
9 that remains unresolved after a review under Section 1305.355 is
10 entitled to a contested case hearing. A hearing under this
11 subsection shall be conducted by the department's division of
12 workers' compensation in the same manner as a hearing conducted
13 under Section 413.0311, Labor Code.

14 (b) At a contested case hearing held under Subsection (a),
15 the hearing officer conducting the hearing shall consider
16 evidence-based treatment guidelines adopted by the network under
17 Section 1305.304.

18 (c) A party that has exhausted all administrative remedies
19 under Subsection (a) and is aggrieved by a final decision of the
20 department's division of workers' compensation may seek judicial
21 review of the decision.

22 (d) Judicial review under Subsection (c) shall be conducted
23 in the manner provided for judicial review of a contested case under
24 Subchapter G, Chapter 2001, Government Code, and is governed by the
25 substantial evidence rule.

26 SECTION 4. Section 2051.151(e), Insurance Code, is amended
27 to read as follows:

1 (e) An insurance company that fails to comply with this
2 section commits an [~~a Class D~~] administrative violation under
3 Subtitle A, Title 5, Labor Code.

4 SECTION 5. Section 2053.206(a), Insurance Code, is amended
5 to read as follows:

6 (a) A person commits an [~~a Class A~~] administrative violation
7 under Subtitle A, Title 5, Labor Code, if the person engages in
8 conduct that violates this subchapter.

9 SECTION 6. Section 402.023, Labor Code, is amended by
10 adding Subsection (c-1) to read as follows:

11 (c-1) The division shall adopt a policy outlining the
12 division's complaint process from receipt of the initial complaint
13 to the complaint's disposition.

14 SECTION 7. Subchapter B, Chapter 402, Labor Code, is
15 amended by adding Section 402.0231 to read as follows:

16 Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS.

17 (a) The division shall develop procedures to formally document and
18 analyze formal and informal complaints received by the division.

19 (b) The division shall compile detailed statistics on all
20 complaints received and analyze complaint information trends,
21 including:

- 22 (1) the number of complaints;
23 (2) the source of each complaint;
24 (3) the types of complaints;
25 (4) the length of time from the receipt of the
26 complaint to its resolution; and
27 (5) the disposition of complaints.

1 (c) The division shall further analyze the information
2 compiled under Subsection (b) by field office and by program.

3 (d) The division shall report the information compiled and
4 analyzed under Subsections (b) and (c) to the commissioner at
5 regular intervals.

6 SECTION 8. Section 402.073, Labor Code, is amended by
7 amending Subsections (b) and (c) and adding Subsections (d) and (e)
8 to read as follows:

9 (b) In all enforcement cases [~~a case~~] in which a hearing is
10 conducted by the State Office of Administrative Hearings under this
11 subtitle [~~Section 413.031, 413.055, or 415.034~~], the
12 administrative law judge who conducts the hearing for the State
13 Office of Administrative Hearings shall propose a [~~enter the final~~]
14 decision to the commissioner for final consideration and decision
15 [~~in the case after completion of the hearing~~].

16 (c) Based on the findings of fact, conclusions of law, and
17 proposal for decision, [~~In a case in which a hearing is conducted in~~
18 ~~conjunction with Section 402.072, 407.046, or 408.023, and in other~~
19 ~~cases under this subtitle that are not subject to Subsection (b),~~
20 ~~the administrative law judge who conducts the hearing for the State~~
21 ~~Office of Administrative Hearings shall propose a decision to] the
22 commissioner by order may determine that:~~

23 (1) a violation occurred and impose an administrative
24 penalty; or

25 (2) a violation did not occur [~~for final consideration~~
26 ~~and decision by the commissioner~~].

27 (d) The notice of the commissioner's order must include a

1 statement of the right of the person to judicial review of the
2 order.

3 (e) In issuing an order under this section, the commissioner
4 shall comply with the requirements applicable to a state agency
5 under Section 2001.058, Government Code.

6 SECTION 9. Section 403.001(a), Labor Code, is amended to
7 read as follows:

8 (a) Except as provided by Sections 403.006 and 403.007 or as
9 otherwise provided by law, money collected under this subtitle,
10 including administrative penalties and advance deposits for
11 purchase of services, shall be deposited in the general revenue
12 fund [~~of the state treasury to the credit of the Texas Department of~~
13 ~~Insurance operating account~~].

14 SECTION 10. Section 408.0041, Labor Code, is amended by
15 amending Subsection (b) and adding Subsection (b-1) to read as
16 follows:

17 (b) A medical examination requested under Subsection (a)
18 shall be performed by the next available doctor on the division's
19 list of certified designated doctors whose credentials are
20 appropriate for the area of the body affected by the injury [~~issue~~
21 ~~in question~~] and the injured employee's diagnosis [~~medical~~
22 ~~condition~~] as determined by commissioner rule. [~~A designated~~
23 ~~doctor, other than a chiropractor, is subject to Section 408.0043.~~
24 ~~A designated doctor who is a chiropractor is subject to Section~~
25 ~~408.0045.~~] The division shall assign a designated doctor not later
26 than the 10th day after the date on which the request under
27 Subsection (a) is approved, and the examination must be conducted

1 not later than the 21st day after the date on which the commissioner
2 issues the order under Subsection (a). An examination under this
3 section may not be conducted more frequently than every 60 days,
4 unless good cause for more frequent examinations exists, as defined
5 by commissioner rules.

6 (b-1) A designated doctor, other than a chiropractor, is
7 subject to Section 408.0043. A designated doctor who is a
8 chiropractor is subject to Section 408.0045. To the extent of a
9 conflict between this section and Section 408.0043 or 408.0045,
10 this section controls.

11 SECTION 11. Section 408.022, Labor Code, is amended by
12 amending Subsections (b) and (c) and adding Subsections (c-1) and
13 (c-2) to read as follows:

14 (b) If an employee is dissatisfied with the initial choice
15 of a doctor from the division's list, the employee may notify the
16 insurance carrier [~~division~~] and request authority to select an
17 alternate doctor. The notification must be in writing stating the
18 reasons for the change, except notification may be by telephone
19 when a medical necessity exists for immediate change.

20 (c) The commissioner shall prescribe criteria to be used by
21 an insurance carrier [~~the division~~] in granting the employee
22 authority to select an alternate doctor. The criteria may include:

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

25 (2) the professional reputation of the doctor;

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

1 (4) whether a conflict exists between the employee and
2 the doctor to the extent that the doctor-patient relationship is
3 jeopardized or impaired.

4 (c-1) The employee may dispute a denial of authority to
5 select an alternate doctor. A dispute under this subsection is
6 subject to Chapter 410.

7 (c-2) The commissioner shall adopt rules to implement this
8 section, including procedures for disputing a denial of authority.

9 SECTION 12. Section 408.085, Labor Code, is amended to read
10 as follows:

11 Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If
12 there is a likelihood that income benefits will be paid, the
13 insurance carrier [~~commissioner~~] may grant an employee suffering
14 financial hardship advances as provided by this subtitle against
15 the amount of income benefits to which the employee may be entitled.
16 An advance may be granted [~~ordered~~] before or after the employee
17 attains maximum medical improvement. [~~An insurance carrier shall~~
18 ~~pay the advance ordered.~~]

19 (b) An employee must apply to the insurance carrier
20 [~~division~~] for an advance on a form prescribed by the commissioner.
21 The application must describe the hardship that is the grounds for
22 the advance.

23 (c) An advance under this section may not exceed an amount
24 equal to four times the maximum weekly benefit for temporary income
25 benefits as computed in Section 408.061. An insurance carrier [~~The~~
26 ~~commissioner~~] may not grant more than three advances to a
27 particular employee based on the same injury.

1 (d) An insurance carrier [~~The commissioner~~] may not grant an
2 advance to an employee who is receiving, on the date of the
3 application under Subsection (b), at least 90 percent of the
4 employee's net preinjury wages under Section 408.003 or 408.129.

5 (e) The employee may dispute a denial or the amount of an
6 advance of benefits. A dispute under this subsection is subject to
7 Chapter 410.

8 (f) The commissioner shall adopt rules to implement this
9 section, including procedures for requesting an advance of benefits
10 and disputing the denial or the amount of an advance of benefits.

11 SECTION 13. Sections 408.104(a) and (b), Labor Code, are
12 amended to read as follows:

13 (a) On application by [~~either~~] the employee, [~~or~~] the
14 insurance carrier [~~, the commissioner by order~~] may extend the
15 104-week period described by Section 401.011(30)(B) if the employee
16 has had spinal surgery, or has been approved for spinal surgery
17 under Section 408.026 and commissioner rules, within 12 weeks
18 before the expiration of the 104-week period. If the insurance
19 carrier grants an extension [~~an order is issued~~] under this
20 section, the insurance carrier [~~order~~] shall extend the statutory
21 period for maximum medical improvement to a date certain, based on
22 medical evidence presented to the insurance carrier
23 [~~commissioner~~].

24 (b) The [~~Either the~~] employee [~~or the insurance carrier~~] may
25 dispute the disposition of an application for extension made under
26 this section. A dispute under this subsection is subject to Chapter
27 410.

1 SECTION 14. Section 408.1225, Labor Code, is amended by
2 amending Subsections (a), (b), and (e) and adding Subsections
3 (a-1), (a-2), (a-3), (a-4), (a-5), and (f) to read as follows:

4 (a) To be eligible to serve as a designated doctor, a doctor
5 must maintain an active certification by the division [~~meet~~
6 ~~specific qualifications, including training in the determination~~
7 ~~of impairment ratings and demonstrated expertise in performing~~
8 ~~examinations and making evaluations as described by Section~~
9 ~~408.0041. The commissioner shall develop qualification standards~~
10 ~~and administrative policies to implement this subsection and may~~
11 ~~adopt rules as necessary~~].

12 (a-1) The commissioner by rule shall develop a process for
13 the certification of a designated doctor.

14 (a-2) The rules adopted by the commissioner under
15 Subsection (a-1) must:

16 (1) require the division to evaluate the qualification
17 of designated doctors for certification using eligibility
18 requirements, including:

19 (A) educational experience;

20 (B) previous training; and

21 (C) demonstrated ability to perform the specific
22 designated doctor duties described by Section 408.0041; and

23 (2) require standard training and testing to be
24 completed in accordance with policies and guidelines developed by
25 the division.

26 (a-3) The division shall develop guidelines for
27 certification training programs for certification of a designated

1 doctor under Subsection (a-1) to ensure a designated doctor's
2 competency and continued competency in providing assessments,
3 including:

- 4 (1) a standard curriculum;
5 (2) standard course materials; and
6 (3) testing criteria.

7 (a-4) The department shall develop and implement a
8 procedure to periodically review and update the guidelines
9 developed under Subsection (a-3).

10 (a-5) The division may authorize an independent training
11 and testing provider to conduct the certification program for the
12 division under the guidelines developed under Subsection (a-3).

13 (b) The commissioner shall ensure the quality of designated
14 doctor decisions and reviews through active monitoring of the
15 decisions and reviews, and may take action as necessary to:

16 (1) restrict the participation of a designated doctor;

17 or

18 (2) revoke or deny renewal of [remove] a designated
19 doctor's certification under Section 413.044 [doctor from
20 inclusion on the department's list of designated doctors].

21 (e) A designated doctor, other than a chiropractor, is
22 subject to Section 408.0043. A designated doctor who is a
23 chiropractor is subject to Section 408.0045. To the extent of a
24 conflict between this section and Section 408.0043 or 408.0045,
25 this section controls.

26 (f) A designated doctor shall continue providing services
27 related to a case assigned to the designated doctor, including

1 performing subsequent examinations or acting as a resource for
2 division disputes, unless the division authorizes the designated
3 doctor to discontinue providing services. The commissioner by rule
4 shall prescribe the circumstances under which a designated doctor
5 is permitted to discontinue providing services, including:

6 (1) the doctor decides to stop practicing in the
7 workers' compensation system;

8 (2) the doctor relocates the doctor's residence or
9 practice; or

10 (3) any other instance in which the doctor is no longer
11 available.

12 SECTION 15. Section 408.129, Labor Code, is amended by
13 amending Subsections (a), (b), and (d) and adding Subsection (e) to
14 read as follows:

15 (a) On approval by an insurance carrier [~~the commissioner~~]
16 of a written request received from an employee, the [~~an insurance~~]
17 carrier shall accelerate the payment of impairment income benefits
18 to the employee. The accelerated payment may not exceed a rate of
19 payment equal to that of the employee's net preinjury wage.

20 (b) An insurance carrier [~~The commissioner~~] shall approve
21 the request and accelerate [~~order the acceleration of~~] the benefits
22 if the carrier [~~commissioner~~] determines that the acceleration is:

23 (1) required to relieve hardship; and

24 (2) in the overall best interest of the employee.

25 (d) The employee may dispute a denial or the amount of an
26 acceleration of benefits. A dispute under this subsection is
27 subject to Chapter 410.

1 (e) The commissioner shall adopt rules [~~may prescribe forms~~
2 ~~necessary~~] to implement this section, including procedures for
3 requesting an acceleration of benefits and disputing the denial or
4 the amount of an acceleration of benefits.

5 SECTION 16. Section 408.1415, Labor Code, is amended by
6 amending Subsection (a) and adding Subsections (d) and (e) to read
7 as follows:

8 (a) The commissioner by rule shall adopt compliance
9 standards for supplemental income benefit recipients that require
10 each recipient to demonstrate an active effort to obtain
11 employment, including [~~To be eligible to receive supplemental~~
12 ~~income benefits under this chapter, a recipient must provide~~
13 ~~evidence satisfactory to the division of~~]:

14 (1) active participation in a vocational
15 rehabilitation program conducted by the Department of Assistive and
16 Rehabilitative Services or a private vocational rehabilitation
17 provider;

18 (2) active participation in work search efforts
19 conducted through the Texas Workforce Commission; or

20 (3) active work search efforts documented by job
21 applications submitted by the recipient.

22 (d) To be eligible to receive supplemental income benefits
23 under this subchapter, a recipient must provide evidence
24 satisfactory to the insurance carrier that the recipient has
25 complied with the standards adopted by the commissioner under
26 Subsection (a).

27 (e) The employee may dispute a denial of supplemental income

1 benefits by an insurance carrier under this section. A dispute
2 under this subsection is subject to Chapter 410. The commissioner
3 by rule shall adopt procedures for disputing the denial of
4 benefits.

5 SECTION 17. Section 409.021(e), Labor Code, is amended to
6 read as follows:

7 (e) An insurance carrier commits an administrative [a]
8 violation if the insurance carrier does not initiate payments or
9 file a notice of refusal as required by this section. [~~A violation~~
10 ~~under this subsection shall be assessed at \$500 if the carrier~~
11 ~~initiates compensation or files a notice of refusal within five~~
12 ~~working days of the date required by Subsection (a), \$1,500 if the~~
13 ~~carrier initiates compensation or files a notice of refusal more~~
14 ~~than five and less than 16 working days of the date required by~~
15 ~~Subsection (a), \$2,500 if the carrier initiates compensation or~~
16 ~~files a notice of refusal more than 15 and less than 31 working days~~
17 ~~of the date required by Subsection (a), or \$5,000 if the carrier~~
18 ~~initiates compensation or files a notice of refusal more than 30~~
19 ~~days after the date required by Subsection (a). The administrative~~
20 ~~penalties are not cumulative.]~~

21 SECTION 18. Section 410.023, Labor Code, is amended by
22 amending Subsection (b) and adding Subsections (c) and (d) to read
23 as follows:

24 (b) The division shall require the party requesting the
25 benefit review conference to provide:

26 (1) documentation of efforts made to resolve the
27 disputed issues before the request was submitted; and

1 (2) a written statement that the party possesses the
2 information necessary to facilitate resolution of the disputed
3 issues.

4 (c) The commissioner by rule shall:

5 (1) adopt guidelines regarding the type of information
6 necessary to satisfy the requirements of Subsection (b); and

7 (2) establish a process through which the division
8 evaluates the sufficiency of the documentation or a written
9 statement provided under Subsection (b) [~~this requirement~~].

10 (d) The division may refuse a request for a benefit review
11 conference if the party requesting the benefit review conference
12 does not provide the documentation or written statement required
13 under Subsection (b).

14 SECTION 19. Section 410.028, Labor Code, is amended to read
15 as follows:

16 Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION.

17 (a) A scheduled benefit review conference shall be conducted even
18 though a party fails to attend unless the benefit review officer
19 determines that good cause, as defined by commissioner rule, exists
20 to reschedule the conference.

21 (b) If a party to a benefit review conference under Section
22 410.023 requests that the benefit review conference be rescheduled
23 under this section, the party must submit a request in the same
24 manner as an initial request under Section 410.023. The division
25 shall evaluate a request for a rescheduled benefit review
26 conference received under this section in the same manner as an
27 initial request received under Section 410.023.

1 (c) If a [A party commits an administrative violation if
2 the] party fails to request that a benefit review conference be
3 rescheduled in the time required by commissioner rule or fails to
4 attend a benefit review conference without good cause as defined
5 [determined] by commissioner rule, the party forfeits the party's
6 entitlement to attend a benefit review conference on the claim,
7 unless a [the] benefit review officer is authorized to schedule an
8 additional benefit review conference under Section 410.026(b).

9 (d) The commissioner shall adopt rules necessary to
10 implement and enforce this section, including rules that:

11 (1) define good cause; and

12 (2) establish deadlines for requesting that a benefit
13 review conference be rescheduled under Subsection (b).

14 SECTION 20. Section 410.203(b), Labor Code, is amended to
15 read as follows:

16 (b) The appeals panel may:

17 (1) reverse the decision of the hearings officer and
18 render a new decision; ~~or~~

19 (2) reverse the decision of the hearings officer and
20 remand the case to the hearing officer for further consideration
21 and development of evidence; or

22 (3) affirm the decision of the hearings officer in a
23 case described by Section 410.204(a-1).

24 SECTION 21. Section 410.204, Labor Code, is amended by
25 amending Subsection (a) and adding Subsection (a-1) to read as
26 follows:

27 (a) The appeals panel shall review each request and issue a

1 written decision on each reversed or remanded case. The appeals
2 panel may issue a written decision on an affirmed case as described
3 by Subsection (a-1). The decision must be in writing and shall be
4 issued not later than the 45th day after the date on which the
5 written response to the request for appeal is filed. The appeals
6 panel shall file a copy of the decision with the commissioner.

7 (a-1) An appeals panel shall issue a written decision if the
8 panel affirms the decision of a hearings officer and the case:

9 (1) is a case of first impression;

10 (2) involves a recent change in law; or

11 (3) involves errors at the contested case hearing that
12 require correction but do not affect the outcome of the hearing,
13 including:

14 (A) findings of fact for which insufficient
15 evidence exists;

16 (B) incorrect conclusions of law;

17 (C) findings of fact or conclusions of law
18 regarding matters that were not properly before the hearings
19 officer; and

20 (D) legal errors not otherwise described by this
21 subdivision.

22 SECTION 22. Sections 413.031(k) and (k-1), Labor Code, are
23 amended to read as follows:

24 (k) A party to a medical dispute [~~other than a medical~~
25 ~~dispute regarding spinal surgery subject to Subsection (1) and a~~
26 ~~dispute subject to Section 413.0311,~~] that remains unresolved after
27 a review of the medical service under this section is entitled to a

1 hearing under Section 413.0311 or 413.0312, as applicable. [A
2 ~~hearing under this subsection shall be conducted by the State~~
3 ~~Office of Administrative Hearings not later than the 60th day after~~
4 ~~the date on which the party notifies the division of the request for~~
5 ~~a hearing. The hearing shall be conducted in the manner provided~~
6 ~~for a contested case under Chapter 2001, Government Code.]~~

7 (k-1) A party who has exhausted all administrative remedies
8 described by [~~under~~] Subsection (k) and who is aggrieved by a final
9 decision of the division or the State Office of Administrative
10 Hearings may seek judicial review of the decision. Judicial review
11 under this subsection shall be conducted in the manner provided for
12 judicial review of a contested case under Subchapter G, Chapter
13 2001, Government Code.

14 SECTION 23. The heading to Section 413.0311, Labor Code, is
15 amended to read as follows:

16 Sec. 413.0311. REVIEW OF [~~CERTAIN~~] MEDICAL NECESSITY
17 DISPUTES; CONTESTED CASE HEARING.

18 SECTION 24. Section 413.0311(a), Labor Code, is amended to
19 read as follows:

20 (a) This section applies only to [~~the following medical~~
21 ~~disputes that remain unresolved after any applicable review under~~
22 ~~Sections 413.031(b) through (i):~~

23 [~~(1) a medical fee dispute in which the amount of~~
24 ~~reimbursement sought by the requestor in its request for medical~~
25 ~~dispute resolution does not exceed \$2,000,~~

26 [~~(2)~~] an appeal of an independent review organization
27 decision regarding determination of the [~~retrospective~~] medical

1 necessity for a health care service [~~for which the amount billed~~
2 ~~does not exceed \$3,000, and~~

3 ~~(3) an appeal of an independent review organization~~
4 ~~decision regarding determination of the concurrent or prospective~~
5 ~~medical necessity for a health care service].~~

6 SECTION 25. Subchapter C, Chapter 413, Labor Code, is
7 amended by adding Section 413.0312 to read as follows:

8 Sec. 413.0312. REVIEW OF MEDICAL FEE DISPUTES; BENEFIT
9 REVIEW CONFERENCE. (a) This section applies only to a medical fee
10 dispute that remains unresolved after any applicable review under
11 Sections 413.031(b) through (i).

12 (b) Subject to Subsection (e), a party to a medical fee
13 dispute described by Subsection (a) must adjudicate the dispute in
14 the manner required by Subchapter B, Chapter 410.

15 (c) At a benefit review conference conducted under this
16 section, the parties to the dispute may not resolve the dispute by
17 negotiating fees that are inconsistent with any applicable fee
18 guidelines adopted by the commissioner.

19 (d) If issues remain unresolved after a benefit review
20 conference, the parties may elect to engage in arbitration as
21 provided by Section 410.104.

22 (e) If arbitration is not elected as described by Subsection
23 (d), a party to a medical fee dispute described by Subsection (a) is
24 entitled to a contested case hearing. A hearing under this
25 subsection shall be conducted by the State Office of Administrative
26 Hearings in the manner provided for a contested case under Chapter
27 2001, Government Code.

1 (f) The commissioner or the division may participate in a
2 contested case hearing conducted under Subsection (e) if the
3 hearing significantly involves the interpretation of fee
4 guidelines adopted by the commissioner. The division and the
5 department are not considered to be parties to the medical fee
6 dispute for purposes of this section.

7 (g) The cost of the contested case hearing shall be paid by
8 the nonprevailing party.

9 SECTION 26. Section 413.044(b), Labor Code, is amended to
10 read as follows:

11 (b) Sanctions imposed under Subsection (a) may include:

12 (1) revocation of certification or denial of renewal
13 of certification for a designated doctor and removal [~~or~~
14 suspension] from the division list of designated doctors; or

15 (2) restrictions on the reviews made by the person as a
16 designated doctor.

17 SECTION 27. Section 413.0512, Labor Code, is amended by
18 amending Subsections (b), (c), (e), and (f) and adding Subsection
19 (g) to read as follows:

20 (b) The agencies that regulate health professionals who are
21 licensed or otherwise authorized to practice a health profession
22 under Title 3, Occupations Code, and who are involved in the
23 provision of health care as part of the workers' compensation
24 system in this state [~~Texas State Board of Medical Examiners and the~~
25 Texas Board of Chiropractic Examiners, with input from their
26 respective professional associations,] shall develop lists of
27 health care providers [~~physicians and chiropractors]~~ licensed or

1 otherwise regulated by those agencies who have demonstrated
2 experience in workers' compensation or utilization review. The
3 medical advisor shall consider appointing some of the members of
4 the medical quality review panel from the names on those lists and,
5 when appointing members of the medical quality review panel, shall
6 select specialists from various health care specialty fields to
7 serve on the panel to ensure that the membership of the panel has
8 expertise in a wide variety of health care specialty fields. The
9 medical advisor shall also consider nominations for the panel made
10 by labor, business, and insurance organizations.

11 (c) The medical quality review panel shall recommend to the
12 medical advisor:

13 (1) appropriate action regarding doctors, other
14 health care providers, insurance carriers, utilization review
15 agents, and independent review organizations; ~~and~~

16 (2) the addition or deletion of doctors from the list
17 of approved doctors under Section 408.023; and

18 (3) the certification, revocation of certification,
19 or denial of renewal of certification ~~[or the list]~~ of a designated
20 doctor ~~[doctors established]~~ under Section 408.1225.

21 (e) The actions of a person serving on the medical quality
22 review panel do not constitute utilization review and are not
23 subject to Chapter 4201 ~~[Article 21.58A]~~, Insurance Code.

24 (f) A member of the medical quality review panel ~~[, other~~
25 ~~than a chiropractor,~~] who reviews a specific workers' compensation
26 case is subject to Section 408.0043, 408.0044, or ~~[. A chiropractor~~
27 ~~who reviews a specific workers' compensation case is subject to~~

1 ~~Section]~~ 408.0045, as applicable.

2 (g) The medical advisor shall notify the division if, in
3 appointing members of the medical quality review panel, the medical
4 advisor determines that it is no longer necessary for the panel to
5 include a member that practices in a particular health care
6 specialty field. If the division receives notice from the medical
7 advisor under this subsection, the division may enter into
8 agreements with other state agencies to access, as necessary,
9 expertise in the health care specialty field that is no longer
10 represented on the panel.

11 SECTION 28. Subchapter E, Chapter 413, Labor Code, is
12 amended by adding Sections 413.05115, 413.05121, and 413.05122 to
13 read as follows:

14 Sec. 413.05115. MEDICAL QUALITY REVIEW PROCESS. (a) The
15 division shall develop, and the commissioner shall adopt, criteria
16 concerning the medical case review process under this subchapter.
17 In developing the criteria, and before adopting the criteria, the
18 division and the commissioner, as applicable, must consult with the
19 medical advisor and seek input from potentially affected parties,
20 including health care providers and insurance carriers.

21 (b) The criteria developed and adopted under this section
22 must establish a clear process or processes:

23 (1) for handling complaint-based medical case
24 reviews; and

25 (2) through which the division selects health care
26 providers or other entities for a compliance audit or review.

27 (c) The division shall make the criteria developed and

1 adopted under this section available on the Internet website
2 maintained by the division.

3 Sec. 413.05121. QUALITY ASSURANCE PANEL. (a) The medical
4 advisor shall establish the quality assurance panel within the
5 medical quality review panel to:

6 (1) provide an additional level of evaluation in
7 medical case reviews; and

8 (2) assist the medical advisor in performing the
9 advisor's duties under Section 413.0511(b)(6) and the medical
10 quality review panel in performing that panel's duties under
11 Section 413.0512.

12 (b) The quality assurance panel shall meet periodically to
13 discuss medical case reviews and recommend enforcement action to
14 the medical quality review panel and the medical advisor.

15 Sec. 413.05122. MEDICAL QUALITY REVIEW PANEL: RULES;
16 TRAINING. (a) The commissioner, after consultation with the
17 medical advisor, shall adopt rules concerning the operation of the
18 medical quality review panel, including rules that establish:

19 (1) the qualifications necessary for a health care
20 provider to serve on the medical quality review panel;

21 (2) the composition of the medical quality review
22 panel, including the number of members to be included on the panel
23 and the health care specialty fields required to be represented by
24 the members of the panel;

25 (3) the maximum length of time a health care provider
26 may serve on the medical quality review panel;

27 (4) a policy defining situations that constitute a

1 conflict of interest for a member of the medical quality review
2 panel;

3 (5) procedures and grounds for removing a member of
4 the medical quality review panel from the panel, including as a
5 ground for removal that a member is repeatedly delinquent in
6 conducting case reviews; and

7 (6) a procedure through which members of the medical
8 quality review panel are notified concerning the status and
9 enforcement outcomes of cases resulting from the medical quality
10 review process.

11 (b) In addition to the rules required under Subsection (a),
12 the commissioner shall adopt rules concerning the training
13 requirements for members of the medical quality review panel. The
14 rules adopted under this subsection must ensure that panel members
15 are fully aware of any requirements imposed by this subtitle
16 concerning the medical quality review process and the division's
17 goals concerning the process. The rules adopted under this
18 subsection may require members to receive training on any topic
19 determined by the division or the commissioner to be relevant to the
20 operations of the panel and must require members of the panel to
21 receive training concerning:

22 (1) administrative violations that affect the
23 delivery of appropriate medical care;

24 (2) the confidentiality requirements described by
25 Section 413.0513 and the immunity from liability provided to
26 members of the panel under Section 413.054; and

27 (3) the medical quality review criteria adopted under

1 Section 413.05115.

2 SECTION 29. Section 414.005, Labor Code, is amended to read
3 as follows:

4 Sec. 414.005. INVESTIGATION UNIT. (a) The division shall
5 maintain an investigation unit to conduct investigations relating
6 to alleged violations of this subtitle, commissioner rules, or a
7 commissioner order or decision, with particular emphasis on
8 violations of Chapters 415 and 416.

9 (b) As often as the commissioner considers necessary, the
10 commissioner or the investigation unit may review the operations of
11 an entity regulated by the division to determine compliance with
12 this subtitle.

13 (c) The review described by Subsection (b) may include
14 on-site visits to the entity's premises. The commissioner is not
15 required to announce an on-site visit in advance.

16 (d) During an on-site visit, an entity regulated by the
17 division shall make available to the division all records relating
18 to the entity's participation in the workers' compensation system.

19 (e) The commissioner by rule shall:

20 (1) specify the entities and records subject to
21 inspection under this section; and

22 (2) prescribe the procedures to be used for both
23 announced and unannounced on-site visits authorized under this
24 section.

25 SECTION 30. Section 415.0035(e), Labor Code, is amended to
26 read as follows:

27 (e) A person regulated by the division under this title [~~An~~

1 ~~insurance carrier or health care provider]~~ commits an
2 administrative violation if the [~~that~~] person violates this
3 subtitle or a rule, order, or decision of the commissioner.

4 SECTION 31. Section 415.008(a), Labor Code, is amended to
5 read as follows:

6 (a) A person commits an administrative [~~a~~] violation if the
7 person, to obtain or deny a payment of a workers' compensation
8 benefit or the provision of a benefit for the person or another,
9 knowingly or intentionally:

- 10 (1) makes a false or misleading statement;
- 11 (2) misrepresents or conceals a material fact;
- 12 (3) fabricates, alters, conceals, or destroys a
13 document; or
- 14 (4) conspires to commit an act described by
15 Subdivision (1), (2), or (3).

16 SECTION 32. Sections 415.009 and 415.010, Labor Code, are
17 amended to read as follows:

18 Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION.
19 [~~(a)~~] A person commits an administrative [~~a~~] violation if the
20 person brings, prosecutes, or defends an action for benefits under
21 this subtitle or requests initiation of an administrative violation
22 proceeding that does not have a basis in fact or is not warranted by
23 existing law or a good faith argument for the extension,
24 modification, or reversal of existing law.

25 [~~(b) A violation under Subsection (a) is a Class B~~
26 ~~administrative violation.~~]

27 Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE

1 VIOLATION. [~~(a)~~] A party to an agreement approved by the division
2 commits an administrative [~~a~~] violation if the person breaches a
3 provision of the agreement.

4 [~~(b) A violation under Subsection (a) is a Class C~~
5 ~~administrative violation.~~]

6 SECTION 33. The heading to Subchapter B, Chapter 415, Labor
7 Code, is amended to read as follows:

8 SUBCHAPTER B. SANCTIONS [~~PENALTIES~~]

9 SECTION 34. Section 415.021(a), Labor Code, is amended to
10 read as follows:

11 (a) In addition to any other provisions in this subtitle
12 relating to violations, a person commits an administrative
13 violation if the person violates, fails to comply with, or refuses
14 to comply with this subtitle or a rule, order, or decision of the
15 commissioner, including an emergency cease and desist order issued
16 under Section 415.0211. In addition to any sanctions,
17 administrative penalty, or other remedy authorized by this
18 subtitle, the commissioner may assess an administrative penalty
19 against a person who commits an administrative violation. The
20 administrative penalty shall not exceed \$25,000 per day per
21 occurrence. Each day of noncompliance constitutes a separate
22 violation. The commissioner's authority under this chapter is in
23 addition to any other authority to enforce a sanction, penalty,
24 fine, forfeiture, denial, suspension, or revocation otherwise
25 authorized by law.

26 SECTION 35. Subchapter B, Chapter 415, Labor Code, is
27 amended by adding Section 415.0211 to read as follows:

1 Sec. 415.0211. EMERGENCY CEASE AND DESIST ORDER. (a) The
2 commissioner ex parte may issue an emergency cease and desist order
3 if:

4 (1) the commissioner believes a person regulated by
5 the division under this title is engaging in conduct violating a
6 law, rule, or order; and

7 (2) the commissioner believes that the alleged conduct
8 under Subdivision (1) will result in harm to the health, safety, or
9 welfare of another person.

10 (b) On issuance of an order under Subsection (a), the
11 commissioner shall serve on the affected person an order that
12 contains a statement of the charges and requires the person
13 immediately to cease and desist from the acts, methods, or
14 practices stated in the order. The commissioner shall serve the
15 order by registered or certified mail, return receipt requested, to
16 the affected person's last known address. The order is final on the
17 31st day after the date the affected person receives the order,
18 unless the affected person requests a hearing under Subsection (d).

19 (c) A person affected by an order is entitled to request a
20 hearing to contest the order. The affected person must request the
21 hearing not later than the 30th day after the date the person
22 receives the order required by Subsection (b). A request to contest
23 an order must:

24 (1) be in writing;

25 (2) be directed to the commissioner; and

26 (3) state the grounds for the request to set aside or
27 modify the order.

1 (d) On receiving a request for a hearing, the commissioner
2 shall serve notice of the time and place of the hearing. The
3 hearing shall be conducted according to the procedures described by
4 Subchapter C. The hearing shall be held not later than the 10th day
5 after the date the commissioner receives the request for a hearing
6 unless the parties mutually agree to a later hearing date. At the
7 hearing, the person requesting the hearing is entitled to show
8 cause why the order should not be affirmed. Following receipt of
9 the proposal for decision from the State Office of Administrative
10 Hearings regarding the hearing, the commissioner shall wholly or
11 partly affirm, modify, or set aside the order.

12 (e) Pending a hearing under this section, an order continues
13 in effect unless the order is stayed by the commissioner.

14 SECTION 36. Section 402.072, Labor Code, is transferred to
15 Subchapter B, Chapter 415, Labor Code, and redesignated as Section
16 415.0215, Labor Code, to read as follows:

17 Sec. 415.0215 [~~402.072~~]. SANCTIONS. (a) The division may
18 impose sanctions against any person regulated by the division under
19 this subtitle.

20 (b) Only the commissioner may impose:

21 (1) a sanction that deprives a person of the right to
22 practice before the division or of the right to receive
23 remuneration under this subtitle for a period exceeding 30 days; or

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

27 (c) A sanction imposed by the division is binding pending

1 appeal.

2 SECTION 37. Sections 415.025, 415.032, and 415.033, Labor
3 Code, are amended to read as follows:

4 Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR
5 PENALTY. A reference in this code or other law, or in rules of the
6 former Texas Workers' Compensation Commission or the commissioner,
7 to a particular class of violation, administrative violation, or
8 penalty shall be construed as a reference to an administrative
9 penalty. An [~~Except as otherwise provided by this subtitle, an~~]
10 administrative penalty may not exceed \$25,000 per day per
11 occurrence. Each day of noncompliance constitutes a separate
12 violation.

13 Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION;
14 RESPONSE. (a) If investigation by the division indicates that an
15 administrative violation has occurred, the division shall notify
16 the person alleged to have committed the violation in writing of:

- 17 (1) the charge;
- 18 (2) the proposed sanction [~~penalty~~];
- 19 (3) the right to consent to the charge and the sanction
20 [~~penalty~~]; and
- 21 (4) the right to request a hearing.

22 (b) Not later than the 20th day after the date on which
23 notice is received, the charged party shall:

24 (1) remit the amount of the sanction [~~penalty~~] to the
25 division or otherwise consent to the imposed sanction; or

26 (2) submit to the division a written request for a
27 hearing.

1 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a
2 charged party fails to respond as required under Section 415.032,
3 [~~the penalty is due and~~] the division shall initiate enforcement
4 proceedings.

5 SECTION 38. Subchapter C, Chapter 415, Labor Code, is
6 amended by adding Section 415.036 to read as follows:

7 Sec. 415.036. STANDARD OF JUDICIAL REVIEW OF COMMISSIONER'S
8 ORDER. An order of the commissioner is subject to judicial review
9 under the substantial evidence rule.

10 SECTION 39. The following provisions of the Labor Code are
11 repealed:

- 12 (1) Section 413.031(1);
- 13 (2) Sections 415.0035(c), (d), and (f);
- 14 (3) Section 415.0036(c);
- 15 (4) Section 415.004;
- 16 (5) Section 415.008(b); and
- 17 (6) Section 415.022.

18 SECTION 40. Sections 1305.355(e), (f), and (g), Insurance
19 Code, as amended by this Act, and Section 1305.356, Insurance Code,
20 as added by this Act, apply to a medical dispute based on a review by
21 an independent review organization under Section 1305.355 that is
22 commenced on or after the effective date of this Act. A dispute
23 based on a review by an independent review organization under
24 Section 1305.355 that is commenced before the effective date of
25 this Act is governed by the law in effect immediately before the
26 effective date of this Act, and that law is continued in effect for
27 that purpose.

1 SECTION 41. Section 402.073, Labor Code, as amended by this
2 Act, applies only to an administrative hearing that is conducted on
3 or after the effective date of this Act. An administrative hearing
4 conducted before the effective date of this Act is governed by the
5 law in effect when the hearing was conducted, and the former law is
6 continued in effect for that purpose.

7 SECTION 42. (a) The commissioner of workers' compensation
8 shall adopt the rules regarding certification of designated doctors
9 required by Section 408.1225, Labor Code, as amended by this Act,
10 not later than June 1, 2012.

11 (b) A designated doctor is not required to obtain
12 certification under Section 408.1225, Labor Code, as amended by
13 this Act, before June 1, 2012.

14 (c) Sections 408.1225(b), 413.044(b), and 413.0512(c),
15 Labor Code, as amended by this Act, apply only to a disciplinary
16 action taken against a designated doctor on or after June 1, 2012.
17 A disciplinary action taken against a designated doctor before that
18 date is governed by the law as it existed immediately before the
19 effective date of this Act, and the former law is continued in
20 effect for that purpose.

21 (d) Section 408.0041, Labor Code, as amended by this Act,
22 applies only to a medical examination by a designated doctor that
23 occurs on or after June 1, 2012. A medical examination that occurs
24 before that date is governed by the law in effect when the medical
25 examination occurred, and the former law is continued in effect for
26 that purpose.

27 SECTION 43. (a) Sections 408.022, 408.085, 408.104,

1 408.129, and 408.1415, Labor Code, as amended by this Act, apply to
2 an application filed or a request made on or after the effective
3 date of this Act. An application filed or request made before the
4 effective date of this Act is governed by the law in effect when the
5 application was filed or the request was made, and the former law is
6 continued in effect for that purpose.

7 (b) The commissioner of workers' compensation shall adopt
8 the rules required by Sections 408.085, 408.104, 408.129, and
9 408.1415, Labor Code, as amended by this Act, as soon as practicable
10 after the effective date of this Act.

11 SECTION 44. The change in law made by this Act in amending
12 Sections 409.021, 415.0035, 415.008, 415.009, 415.010, 415.021,
13 415.025, 415.032, and 415.033, Labor Code, and Sections 2051.151
14 and 2053.206, Insurance Code, adding Section 415.0211, Labor Code,
15 and repealing Sections 415.0035(c), (d), and (f), 415.0036(c),
16 415.004, 415.008(b), and 415.022, Labor Code, applies only to an
17 administrative violation that occurs on or after the effective date
18 of this Act. An administrative violation that occurs before the
19 effective date of this Act is governed by the law in effect on the
20 date the violation occurred, and the former law is continued in
21 effect for that purpose.

22 SECTION 45. Sections 410.023 and 410.028, Labor Code, as
23 amended by this Act, apply only to a benefit review conference
24 requested on or after the effective date of this Act. A benefit
25 review conference requested before the effective date of this Act
26 is governed by the law in effect immediately before the effective
27 date of this Act, and that law is continued in effect for that

1 purpose.

2 SECTION 46. Sections 413.031(k) and (k-1) and 413.0311(a),
3 Labor Code, as amended by this Act, and Section 413.0312, Labor
4 Code, as added by this Act, apply only to the appeal of a medical fee
5 dispute under those sections that is based on a review conducted by
6 the division of workers' compensation of the Texas Department of
7 Insurance on or after the effective date of this Act. The appeal of
8 a medical fee dispute that is based on a review conducted by the
9 division of workers' compensation before the effective date of this
10 Act is governed by the law in effect on the date the review was
11 conducted, and that law is continued in effect for that purpose.

12 SECTION 47. Section 414.005, Labor Code, as amended by this
13 Act, applies only to an investigation or review conducted on or
14 after the effective date of this Act. An investigation or review
15 conducted before the effective date of this Act is governed by the
16 law in effect when the investigation or review was conducted, and
17 the former law is continued in effect for that purpose.

18 SECTION 48. Section 415.036, Labor Code, as added by this
19 Act, applies only to an order of the commissioner of workers'
20 compensation issued on or after the effective date of this Act. An
21 order by the commissioner that was issued before the effective date
22 of this Act is governed by the law in effect when the order was
23 issued, and the former law is continued in effect for that purpose.

24 SECTION 49. This Act takes effect September 1, 2011.