

SENATE AMENDMENTS

2nd Printing

By: Taylor of Galveston

H.B. No. 2605

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain workers' compensation benefits and to the
3 continuation and functions of the division of workers' compensation
4 of the Texas Department of Insurance; providing an administrative
5 violation.

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

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

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

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

16 (e) A party to a medical dispute that remains unresolved
17 after a review under this section is entitled to a hearing and [~~may~~
18 ~~seek~~] judicial review of the decision in accordance with Section
19 1305.356. The division of workers' compensation and the department
20 are not considered to be parties to the medical dispute.

21 (f) A determination of an independent review organization
22 related to a request for preauthorization or concurrent review is
23 binding during the pendency of a dispute [~~any appeal~~] and the
24 carrier and network shall comply with the 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) Except as otherwise provided by this subsection,
23 judicial review under Subsection (c) shall be conducted in the
24 manner provided by Section 413.031(k-1), Labor Code. For judicial
25 review of an independent review organization decision to which an
26 injured employee is a party:

27 (1) venue shall be as provided by Section 410.252,

1 Labor Code; and

2 (2) service and notice shall be as provided by Section
3 410.253, Labor Code.

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

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

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

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

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

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

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

21 Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS.

22 (a) The division shall develop procedures to formally document and
23 analyze complaints received by the division.

24 (b) The division shall compile detailed statistics on all
25 complaints received and analyze complaint information trends,
26 including:

27 (1) the number of complaints;

- 1 (2) the source of each complaint;
2 (3) the types of complaints;
3 (4) the length of time from the receipt of the
4 complaint to its disposition; and
5 (5) the disposition of complaints.

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

8 (d) The division shall report the information compiled and
9 analyzed under Subsections (b) and (c) to the commissioner at
10 regular intervals.

11 SECTION 8. Section 402.073, Labor Code, is amended to read
12 as follows:

13 Sec. 402.073. COOPERATION WITH STATE OFFICE OF
14 ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief
15 administrative law judge of the State Office of Administrative
16 Hearings [~~by rule~~] shall adopt a memorandum of understanding
17 governing administrative procedure law hearings under this
18 subtitle conducted by the State Office of Administrative Hearings
19 in the manner provided for a contested case hearing under Chapter
20 2001, Government Code. The memorandum of understanding must
21 address the payment of costs by parties to a medical fee dispute
22 under Section 413.0312.

23 (b) In a case in which a hearing is conducted by the State
24 Office of Administrative Hearings under Section 413.031 or [7]
25 413.055, [~~or 415.034,~~] the administrative law judge who conducts
26 the hearing for the State Office of Administrative Hearings shall
27 enter the final decision in the case after completion of the

1 hearing.

2 (c) In a case in which a hearing is conducted in conjunction
3 with Section 402.072, 407.046, ~~[or]~~ 408.023, or 415.034, and in
4 other cases under this subtitle that are not subject to Subsection
5 (b), the administrative law judge who conducts the hearing for the
6 State Office of Administrative Hearings shall propose a decision to
7 the commissioner for final consideration and decision by the
8 commissioner.

9 (d) The notice of the commissioner's order must include a
10 statement of the right of the person to judicial review of the
11 order.

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

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

17 (a) Except as provided by Sections 403.006, ~~[and]~~ 403.007,
18 and 403.008, or as otherwise provided by law, money collected under
19 this subtitle, including ~~[administrative penalties and]~~ advance
20 deposits for purchase of services, shall be deposited in the
21 general revenue fund of the state treasury to the credit of the
22 Texas Department of Insurance operating account.

23 SECTION 10. Chapter 403, Labor Code, is amended by adding
24 Section 403.008 to read as follows:

25 Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES.
26 Administrative penalties collected under this subtitle shall be
27 deposited in the general revenue fund.

1 SECTION 11. Section 408.0041, Labor Code, is amended by
2 amending Subsection (b) and adding Subsection (b-1) to read as
3 follows:

4 (b) Except as provided by Section 408.1225(f), a [A] medical
5 examination requested under Subsection (a) shall be performed by
6 the next available doctor on the division's list of certified
7 designated doctors whose credentials are appropriate for the area
8 of the body affected by the injury [~~issue in question~~] and the
9 injured employee's diagnosis [~~medical condition~~] as determined by
10 commissioner rule. [~~A designated doctor, other than a~~
11 ~~chiropractor, is subject to Section 408.0043. A designated doctor~~
12 ~~who is a chiropractor is subject to Section 408.0045.~~] The division
13 shall assign a designated doctor not later than the 10th day after
14 the date on which the request under Subsection (a) is approved, and
15 the examination must be conducted not later than the 21st day after
16 the date on which the commissioner issues the order under
17 Subsection (a). An examination under this section may not be
18 conducted more frequently than every 60 days, unless good cause for
19 more frequent examinations exists, as defined by commissioner
20 rules.

21 (b-1) 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 SECTION 12. Section 408.023(r), Labor Code, is amended to
27 read as follows:

1 (r) Notwithstanding the waiver or expiration of Subsections
2 (a)-(g) and (i), there may be no direct or indirect provision of
3 health care under this subtitle and rules adopted under this
4 subtitle, and no direct or indirect receipt of remuneration under
5 this subtitle and rules adopted under this subtitle by a doctor who:

6 (1) before September 1, 2007:

7 (A) was removed or deleted from the list of
8 approved doctors either by action of the Texas Workers'
9 Compensation Commission or the division or by agreement with the
10 doctor;

11 (B) was not admitted to the list of approved
12 doctors either by action of the Texas Workers' Compensation
13 Commission or the division or by agreement with the doctor;

14 (C) was suspended from the list of approved
15 doctors either by action of the Texas Workers' Compensation
16 Commission or the division or by agreement with the doctor; or

17 (D) had the doctor's license to practice
18 suspended by the appropriate licensing agency, including a
19 suspension that was stayed, deferred, or probated, or voluntarily
20 relinquished the license to practice; and

21 (2) was not reinstated or restored by the Texas
22 Workers' Compensation Commission or the division:

23 (A) to the list of approved doctors; or

24 (B) to the workers' compensation system [~~before~~
25 ~~September 1, 2007~~].

26 SECTION 13. Section 408.1225, Labor Code, is amended by
27 amending Subsections (a), (b), and (e) and adding Subsections

1 (a-1), (a-2), (a-3), (a-4), (a-5), and (f) to read as follows:

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

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

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

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

17 (A) educational experience;

18 (B) previous training; and

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

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

24 (a-3) The division shall develop guidelines for
25 certification training programs for certification of a designated
26 doctor under Subsection (a-1) to ensure a designated doctor's
27 competency and continued competency in providing assessments,

1 including:

2 (1) a standard curriculum;

3 (2) standard course materials; and

4 (3) testing criteria.

5 (a-4) The division shall develop and implement a procedure
6 to periodically review and update the guidelines developed under
7 Subsection (a-3).

8 (a-5) The division may authorize an independent training
9 and testing provider to conduct the certification program for the
10 division under the guidelines developed under Subsection (a-3).
11 The division shall solicit proposals or applications from
12 independent training and testing providers and shall make public on
13 its website a complete list of providers that are authorized to
14 conduct the certification training program developed under
15 Subsection (a-3).

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

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

20 [~~or~~]

21 (2) deny renewal of [remove] a [doctor from inclusion
22 on the department's list of] designated doctor's certification; or

23 (3) revoke a designated doctor's certification under
24 Section 413.044 [~~doctors~~].

25 (e) A designated doctor, other than a chiropractor, is
26 subject to Section 408.0043. A designated doctor who is a
27 chiropractor is subject to Section 408.0045. To the extent of a

1 conflict between this section and Section 408.0043 or 408.0045,
2 this section controls.

3 (f) A designated doctor shall continue providing services
4 related to a case assigned to the designated doctor, including
5 performing subsequent examinations or acting as a resource for
6 division disputes, unless the division authorizes the designated
7 doctor to discontinue providing services. The commissioner by rule
8 shall prescribe the circumstances under which a designated doctor
9 is permitted to discontinue providing services, including:

10 (1) the doctor decides to stop practicing in the
11 workers' compensation system; or

12 (2) the doctor relocates the doctor's residence or
13 practice.

14 SECTION 14. Section 409.021(e), Labor Code, is amended to
15 read as follows:

16 (e) An insurance carrier commits an administrative [a]
17 violation if the insurance carrier does not initiate payments or
18 file a notice of refusal as required by this section. [~~A violation~~
19 ~~under this subsection shall be assessed at \$500 if the carrier~~
20 ~~initiates compensation or files a notice of refusal within five~~
21 ~~working days of the date required by Subsection (a), \$1,500 if the~~
22 ~~carrier initiates compensation or files a notice of refusal more~~
23 ~~than five and less than 16 working days of the date required by~~
24 ~~Subsection (a), \$2,500 if the carrier initiates compensation or~~
25 ~~files a notice of refusal more than 15 and less than 31 working days~~
26 ~~of the date required by Subsection (a), or \$5,000 if the carrier~~
27 ~~initiates compensation or files a notice of refusal more than 30~~

1 ~~days after the date required by Subsection (a). The administrative~~
2 ~~penalties are not cumulative.]~~

3 SECTION 15. Section 410.023, Labor Code, is amended by
4 amending Subsection (b) and adding Subsections (c) and (d) to read
5 as follows:

6 (b) The division shall require the party requesting the
7 benefit review conference to provide documentation of efforts made
8 to resolve the disputed issues before the request was submitted.

9 (c) The commissioner by rule shall:

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

12 (2) establish a process through which the division
13 evaluates the sufficiency of the documentation provided under
14 Subsection (b) [~~this requirement~~].

15 (d) The division may deny a request for a benefit review
16 conference if the party requesting the benefit review conference
17 does not provide the documentation required under Subsection (b).

18 SECTION 16. Section 410.028, Labor Code, is amended to read
19 as follows:

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

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

25 (b) If a party to a benefit review conference under Section
26 410.023 requests that the benefit review conference be rescheduled
27 under this section, the party must submit a request in the same

1 manner as an initial request under Section 410.023. The division
2 shall evaluate a request for a rescheduled benefit review
3 conference received under this section in the same manner as an
4 initial request received under Section 410.023.

5 (c) If a [A party commits an administrative violation if
6 the] party fails to request that a benefit review conference be
7 rescheduled in the time required by commissioner rule or fails to
8 attend a benefit review conference without good cause as defined
9 [determined] by commissioner rule, the party forfeits the party's
10 entitlement to attend a benefit review conference on the issue in
11 dispute, unless a [the] benefit review officer is authorized to
12 schedule an additional benefit review conference under Section
13 410.026(b).

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

- 16 (1) define good cause; and
17 (2) establish deadlines for requesting that a benefit
18 review conference be rescheduled under Subsection (b).

19 SECTION 17. Section 410.203(b), Labor Code, is amended to
20 read as follows:

- 21 (b) The appeals panel may:
- 22 (1) reverse the decision of the hearings officer and
23 render a new decision; ~~or~~
- 24 (2) reverse the decision of the hearings officer and
25 remand the case to the hearing officer for further consideration
26 and development of evidence; or
- 27 (3) affirm the decision of the hearings officer in a

1 case described by Section 410.204(a-1).

2 SECTION 18. Section 410.204, Labor Code, is amended by
3 amending Subsection (a) and adding Subsection (a-1) to read as
4 follows:

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

12 (a-1) An appeals panel may only issue a written decision in
13 a case in which the panel affirms the decision of a hearings officer
14 if the case:

15 (1) is a case of first impression;

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

17 (3) involves errors at the contested case hearing that
18 require correction but do not affect the outcome of the hearing,
19 including:

20 (A) findings of fact for which insufficient
21 evidence exists;

22 (B) incorrect conclusions of law;

23 (C) findings of fact or conclusions of law
24 regarding matters that were not properly before the hearings
25 officer; and

26 (D) legal errors not otherwise described by this
27 subdivision.

1 SECTION 19. Sections 413.031(k) and (k-1), Labor Code, are
2 amended to read as follows:

3 (k) A party to a medical dispute [~~, other than a medical~~
4 ~~dispute regarding spinal surgery subject to Subsection (l) and a~~
5 ~~dispute subject to Section 413.0311,~~] that remains unresolved after
6 a review of the medical service under this section is entitled to a
7 hearing under Section 413.0311 or 413.0312, as applicable. [~~A~~
8 ~~hearing under this subsection shall be conducted by the State~~
9 ~~Office of Administrative Hearings not later than the 60th day after~~
10 ~~the date on which the party notifies the division of the request for~~
11 ~~a hearing. The hearing shall be conducted in the manner provided~~
12 ~~for a contested case under Chapter 2001, Government Code.~~]

13 (k-1) A party who has exhausted all administrative remedies
14 described by [~~under~~] Subsection (k) and who is aggrieved by a final
15 decision of the division or the State Office of Administrative
16 Hearings may seek judicial review of the decision. Except as
17 otherwise provided by this subsection, Section 413.0311(d) of this
18 code, or Section 1305.356(d), Insurance Code, judicial [~~Judicial~~]
19 review under this subsection shall be conducted in the manner
20 provided for judicial review of a contested case under Subchapter
21 G, Chapter 2001, Government Code. The standard of review shall be
22 as provided by Section 2001.174, Government Code. The court shall
23 conduct the review without a jury as provided by Section
24 2001.175(e), Government Code. The time to file a petition shall be
25 as provided by Section 410.252.

26 SECTION 20. The heading to Section 413.0311, Labor Code, is
27 amended to read as follows:

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

3 SECTION 21. Sections 413.0311(a) and (d), Labor Code, are
4 amended to read as follows:

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

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

11 [~~(2)~~] an appeal of an independent review organization
12 decision regarding determination of the [~~retrospective~~] medical
13 necessity for a health care service [~~for which the amount billed~~
14 ~~does not exceed \$3,000; and~~

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

18 (d) A party who has exhausted all administrative remedies
19 under Section 413.031 and this section and who is aggrieved by a
20 final decision of the hearings officer under Subsection (c) may
21 seek judicial review of the decision. Except as otherwise provided
22 by this subsection, judicial [~~Judicial~~] review under this
23 subsection shall be conducted in the manner provided by Section
24 413.031(k-1). For [~~for~~] judicial review of an independent review
25 organization decision to which an injured employee is a party:

26 (1) venue shall be as provided by Section 410.252; and

27 (2) service and notice shall be as provided by Section

1 410.253 [~~a contested case under Subchapter C, Chapter 2001,~~
2 ~~Government Code~~].

3 SECTION 22. Subchapter C, Chapter 413, Labor Code, is
4 amended by adding Section 413.0312 to read as follows:

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

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

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

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

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

25 (f) The commissioner or the division may participate in a
26 contested case hearing conducted under Subsection (e) if the
27 hearing involves the interpretation of fee guidelines adopted by

1 the commissioner. The division and the department are not
2 considered to be parties to the medical fee dispute for purposes of
3 this section.

4 (g) Except as otherwise provided by this subsection, the
5 nonprevailing party shall reimburse the division for the costs for
6 services provided by the State Office of Administrative Hearings
7 under this section. If the injured employee is the nonprevailing
8 party, the insurance carrier shall reimburse the division for the
9 costs for services provided by the State Office of Administrative
10 Hearings under this section. The party required to reimburse the
11 division under this subsection shall remit payment to the division
12 not later than the 30th day after the date of receiving a bill or
13 statement from the division.

14 (h) The State Office of Administrative Hearings shall
15 timely notify the division if a dispute is dismissed before
16 issuance of a decision under this section. In the event of a
17 dismissal, the party requesting the hearing, other than the injured
18 employee, shall reimburse the division for the costs for services
19 provided by the State Office of Administrative Hearings unless
20 otherwise agreed by the parties. If the injured employee requested
21 the hearing, the insurance carrier shall reimburse the division for
22 the costs for services provided by the State Office of
23 Administrative Hearings unless otherwise agreed by the parties.
24 The responsible party shall remit payment to the division not later
25 than the 30th day after the date of receiving a bill or statement
26 from the division.

27 (i) The State Office of Administrative Hearings shall

1 identify the nonprevailing party and any costs for services
2 provided by the office under this section in its final decision.
3 Money collected by the division under this section shall be
4 deposited in the general revenue fund to the credit of the Texas
5 Department of Insurance operating account.

6 (j) Interest on the amount of reimbursement required by this
7 section that remains unpaid accrues at a rate provided by Section
8 401.023 beginning on the 45th day after the date the division
9 submits the bill or statement to a party until the date the
10 reimbursement is paid. Failure to pay the division as required by
11 this section is an administrative violation under this subtitle.

12 (k) The commissioner by rule shall establish procedures to
13 enable the division to charge a party to a medical fee dispute,
14 other than an injured employee, for the costs of services provided
15 by the State Office of Administrative Hearings.

16 SECTION 23. Section 413.044(b), Labor Code, is amended to
17 read as follows:

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

19 (1) revocation of certification for a designated
20 doctor on [~~removal or suspension from~~] the division list of
21 designated doctors; or

22 (2) restrictions on the reviews made by the person as a
23 designated doctor.

24 SECTION 24. Section 413.0512, Labor Code, is amended by
25 amending Subsections (b), (c), (d), (e), and (f) and adding
26 Subsections (g) and (h) to read as follows:

27 (b) The agencies that regulate health professionals who are

1 licensed or otherwise authorized to practice a health profession
2 under Title 3, Occupations Code, and who are involved in the
3 provision of health care as part of the workers' compensation
4 system in this state [~~Texas State Board of Medical Examiners and the~~
5 ~~Texas Board of Chiropractic Examiners, with input from their~~
6 ~~respective professional associations,~~] shall develop lists of
7 health care providers [~~physicians and chiropractors~~] licensed or
8 otherwise regulated by those agencies who have demonstrated
9 experience in workers' compensation or utilization review. The
10 medical advisor shall consider appointing some of the members of
11 the medical quality review panel from the names on those lists and,
12 when appointing members of the medical quality review panel, shall
13 select specialists from various health care specialty fields to
14 serve on the panel to ensure that the membership of the panel has
15 expertise in a wide variety of health care specialty fields. The
16 medical advisor shall also consider nominations for the panel made
17 by labor, business, and insurance organizations.

18 (c) The medical quality review panel shall recommend to the
19 medical advisor:

20 (1) appropriate action regarding doctors, other
21 health care providers, insurance carriers, utilization review
22 agents, and independent review organizations; [~~and~~]

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

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

1 (d) A person who serves on the medical quality review panel
2 is immune from suit and from civil liability for an act performed,
3 or a recommendation made, within the scope of the person's
4 functions as a member of the panel if the person acts without malice
5 and in the reasonable belief that the action or recommendation is
6 warranted by the facts known to that person. In the event of a civil
7 action brought against a member of the panel that arises from the
8 person's participation on the panel, the person is entitled to the
9 same protections afforded the commissioner [~~a commission member~~]
10 under Section 402.00123 [~~402.010~~].

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

14 (f) A member of the medical quality review panel [~~, other~~
15 ~~than a chiropractor,~~] who reviews a specific workers' compensation
16 case is subject to Section 408.0043, 408.0044, or [~~. A chiropractor~~
17 ~~who reviews a specific workers' compensation case is subject to~~
18 ~~Section~~] 408.0045, as applicable.

19 (g) The medical advisor shall notify the division if the
20 medical advisor determines that:

21 (1) it is no longer necessary for the medical quality
22 review panel to include a member that practices in a particular
23 health care specialty field; or

24 (2) there is a need for the panel to include a member
25 that practices in a particular health care specialty field not
26 represented on the panel.

27 (h) If the division receives notice from the medical advisor

1 under Subsection (g)(2), the division may enter into agreements
2 with other state agencies to access, as necessary, expertise in
3 that health care specialty field.

4 SECTION 25. Subchapter E, Chapter 413, Labor Code, is
5 amended by adding Sections 413.05115, 413.05121, and 413.05122 to
6 read as follows:

7 Sec. 413.05115. MEDICAL QUALITY REVIEW PROCESS. (a) The
8 division shall develop, and the commissioner shall adopt, criteria
9 concerning the medical case review process under this subchapter.
10 In developing the criteria, and before adopting the criteria, the
11 division and the commissioner, as applicable, must consult with the
12 medical advisor and seek input from potentially affected parties,
13 including health care providers and insurance carriers.

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

16 (1) for handling complaint-based medical case
17 reviews; and

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

20 (c) The division shall make the criteria developed and
21 adopted under this section available on the Internet website
22 maintained by the division.

23 Sec. 413.05121. QUALITY ASSURANCE PANEL. (a) The medical
24 advisor shall establish the quality assurance panel within the
25 medical quality review panel to:

26 (1) provide an additional level of evaluation in
27 medical case reviews; and

1 (2) assist the medical advisor in performing the
2 advisor's duties under Section 413.0511(b)(6) and the medical
3 quality review panel in performing that panel's duties under
4 Section 413.0512.

5 (b) Members of the quality assurance panel shall evaluate
6 medical care and recommend enforcement actions to the medical
7 advisor.

8 (c) The quality assurance panel shall meet periodically to
9 discuss issues and otherwise offer assistance to the medical
10 advisor and the medical quality review panel under Subsection
11 (a)(2).

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

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

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

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

24 (4) a policy defining situations that constitute a
25 conflict of interest for a member of the medical quality review
26 panel;

27 (5) procedures and grounds for removing a member of

1 the medical quality review panel from the panel, including as a
2 ground for removal that a member is repeatedly delinquent in
3 conducting case reviews; and

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

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

19 (1) administrative violations that affect the
20 delivery of appropriate medical care;

21 (2) the confidentiality requirements described by
22 Section 413.0513 and the immunity from liability provided to
23 members of the panel under Section 413.054; and

24 (3) the medical quality review criteria adopted under
25 Section 413.05115.

26 SECTION 26. Section 413.054(a), Labor Code, is amended to
27 read as follows:

1 (a) A person who performs services for the division as a
2 designated doctor, an independent medical examiner, a doctor
3 performing a medical case review, or a member of a peer review panel
4 has the same immunity from liability as the commissioner under
5 Section 402.00123 [~~402.0024~~].

6 SECTION 27. Section 414.005, Labor Code, is amended to read
7 as follows:

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

13 (b) As often as the commissioner considers necessary, the
14 commissioner or the investigation unit may review the operations of
15 a person regulated by the division, including an agent of the person
16 performing functions regulated by the division, to determine
17 compliance with this subtitle.

18 (c) The review described by Subsection (b) may include
19 on-site visits to the person's premises. The commissioner is not
20 required to announce an on-site visit in advance.

21 (d) During an on-site visit, a person regulated by the
22 division shall make available to the division all records relating
23 to the person's participation in the workers' compensation system.

24 (e) The commissioner by rule shall prescribe the procedures
25 to be used for both announced and unannounced on-site visits
26 authorized under this section, including specifying the types of
27 records subject to inspection.

1 SECTION 28. Section 415.0035(e), Labor Code, is amended to
2 read as follows:

3 (e) A person regulated by the division under this title [~~An~~
4 ~~insurance carrier or health care provider~~] commits an
5 administrative violation if the [~~that~~] person violates this
6 subtitle or a rule, order, or decision of the commissioner.

7 SECTION 29. Section 415.008(a), Labor Code, is amended to
8 read as follows:

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

13 (1) makes a false or misleading statement;

14 (2) misrepresents or conceals a material fact;

15 (3) fabricates, alters, conceals, or destroys a
16 document; or

17 (4) conspires to commit an act described by
18 Subdivision (1), (2), or (3).

19 SECTION 30. Sections 415.009 and 415.010, Labor Code, are
20 amended to read as follows:

21 Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION.

22 [~~(a)~~] A person commits an administrative [~~a~~] violation if the
23 person brings, prosecutes, or defends an action for benefits under
24 this subtitle or requests initiation of an administrative violation
25 proceeding that does not have a basis in fact or is not warranted by
26 existing law or a good faith argument for the extension,
27 modification, or reversal of existing law.

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

3 Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE
4 VIOLATION. ~~[(a)]~~ A party to an agreement approved by the division
5 commits an administrative ~~[a]~~ violation if the person breaches a
6 provision of the agreement.

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

9 SECTION 31. The heading to Subchapter B, Chapter 415, Labor
10 Code, is amended to read as follows:

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

12 SECTION 32. Section 415.021(a), Labor Code, is amended to
13 read as follows:

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

1 authorized by law.

2 SECTION 33. Subchapter B, Chapter 415, Labor Code, is
3 amended by adding Section 415.0211 to read as follows:

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

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

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

13 (b) On issuance of an order under Subsection (a), the
14 commissioner shall serve on the affected person an order that
15 contains a statement of the charges and requires the person
16 immediately to cease and desist from the acts, methods, or
17 practices stated in the order. The commissioner shall serve the
18 order by registered or certified mail, return receipt requested, to
19 the affected person's last known address. The order is final on the
20 31st day after the date the affected person receives the order,
21 unless the affected person requests a hearing under Subsection (c).

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

27 (1) be in writing;

1 (2) be directed to the commissioner; and

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

4 (d) On receiving a request for a hearing, the commissioner
5 shall serve notice of the time and place of the hearing. The
6 hearing is subject to the procedures for a contested case under
7 Chapter 2001, Government Code. The hearing shall be held not later
8 than the 10th day after the date the commissioner receives the
9 request for a hearing unless the parties mutually agree to a later
10 hearing date. At the hearing, the person requesting the hearing is
11 entitled to show cause why the order should not be affirmed.
12 Following receipt of the proposal for decision from the State
13 Office of Administrative Hearings regarding the hearing, the
14 commissioner shall wholly or partly affirm, modify, or set aside
15 the order.

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

18 SECTION 34. Section 402.072, Labor Code, is transferred to
19 Subchapter B, Chapter 415, Labor Code, and redesignated as Section
20 415.0215, Labor Code, to read as follows:

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

24 (b) Only the commissioner may impose:

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

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

4 (c) A sanction imposed by the division is binding pending
5 appeal.

6 SECTION 35. Sections 415.025, 415.032, 415.033, and
7 415.034, Labor Code, are amended to read as follows:

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

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

- 21 (1) the charge;
- 22 (2) the proposed sanction [~~penalty~~];
- 23 (3) the right to consent to the charge and the sanction
24 [~~penalty~~]; and
- 25 (4) the right to request a hearing.

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

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

3 (2) submit to the division a written request for a
4 hearing.

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

9 Sec. 415.034. HEARING PROCEDURES. [~~(a)~~] On the request of
10 the charged party or the commissioner, the State Office of
11 Administrative Hearings shall set a hearing. The hearing shall be
12 conducted in the manner provided for a contested case under Chapter
13 2001, Government Code (the administrative procedure law).

14 [~~(b) At the close of the hearing, the hearing officer~~
15 ~~conducting the hearing shall make findings of fact and conclusions~~
16 ~~of law and shall issue a written decision. If the hearing officer~~
17 ~~determines that an administrative violation has occurred, the~~
18 ~~hearing officer shall include in the decision the amount of the~~
19 ~~administrative penalty assessed and shall order payment of the~~
20 ~~penalty.~~

21 [~~(c) The findings of fact, the decision, and the order shall~~
22 ~~be sent immediately to the charged party.]~~

23 SECTION 36. Subchapter C, Chapter 415, Labor Code, is
24 amended by adding Section 415.036 to read as follows:

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

1 SECTION 37. Section 419.001, Labor Code, is amended by
2 adding Subsection (c) to read as follows:

3 (c) For purposes of this chapter, a person acts in a
4 "deceptive manner" if the person knows or should know that the
5 person's actions would convey, or could reasonably be interpreted
6 or construed as conveying, the false impression that:

7 (1) an item is approved, endorsed, sponsored,
8 authorized by, the same as, or associated with the division, the
9 department, this state, or an agency of this state; or

10 (2) the person has a connection with or authorization
11 from the division, the department, this state, or an agency of this
12 state.

13 SECTION 38. Section 419.002, Labor Code, is amended to read
14 as follows:

15 Sec. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS
16 PROHIBITED. (a) Except as authorized by law, a person, in
17 connection with any impersonation, advertisement, solicitation,
18 business name, business activity, document, product, or service
19 made or offered by the person regarding workers' compensation
20 coverage or benefits, may not knowingly use or cause to be used in a
21 deceptive manner:

22 (1) the words "Texas Department of Insurance,"
23 "Department of Insurance," "Texas Workers' Compensation," or
24 "division of workers' compensation";

25 (2) any term using both "Texas" and "Workers'
26 Compensation" or any term using both "Texas" and "Workers' Comp";

27 (3) the initials "T.D.I."; or

1 (4) any combination or variation of the words or
2 initials, or any term deceptively similar to the words or initials,
3 described by Subdivisions (1)-(3).

4 (b) A person subject to Subsection (a) may not knowingly use
5 or cause to be used in a deceptive manner a word, term, or initials
6 described by Subsection (a) alone or in conjunction with:

7 (1) the state seal or a representation of the state
8 seal;

9 (2) a picture or map of this state; or

10 (3) the official logo of the department or the
11 division or a representation of the department's or division's
12 logo.

13 SECTION 39. Subchapter C, Chapter 504, Labor Code, is
14 amended by adding Sections 504.054 and 504.055 to read as follows:

15 Sec. 504.054. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR
16 INJURY SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF
17 EMPLOYMENT. (a) In this section, "first responder" means an
18 individual employed by, or volunteering service to, a political
19 subdivision of this state who is:

20 (1) a peace officer under Article 2.12, Code of
21 Criminal Procedure;

22 (2) a person licensed under Chapter 773, Health and
23 Safety Code, as an emergency care attendant, emergency medical
24 technician, emergency medical technician-intermediate, emergency
25 medical technician-paramedic, or licensed paramedic;

26 (3) a firefighter subject to certification by the
27 Texas Commission on Fire Protection under Chapter 419, Government

1 Code, whose principal duties are firefighting and aircraft crash
2 and rescue;

3 (4) a volunteer firefighter, regardless of whether the
4 volunteer firefighter is certified under Subchapter D, Chapter 419,
5 Government Code; or

6 (5) an emergency medical services volunteer, as that
7 term is defined by Section 773.003, Health and Safety Code.

8 (a-1) For purposes of this section, an injury sustained in
9 the course and scope of employment includes an injury sustained by a
10 first responder providing services on a volunteer basis.

11 (b) This section applies only to a first responder who
12 sustains a serious injury, as defined by commissioner rule, in the
13 course and scope of employment.

14 (c) The political subdivision, division, and insurance
15 carrier shall accelerate and give priority to an injured first
16 responder's claim for medical benefits, including all health care
17 required to cure or relieve the effects naturally resulting from a
18 compensable injury sustained in the course and scope of employment.

19 (d) The division shall accelerate, under rules adopted by
20 the commissioner, a contested case hearing requested by or an
21 appeal submitted by a first responder regarding the denial of a
22 claim for medical benefits, including all health care required to
23 cure or relieve the effects naturally resulting from a compensable
24 injury sustained in the course and scope of employment. The first
25 responder shall provide notice to the division and independent
26 review organization that the contested case or appeal involves a
27 first responder.

1 Sec. 504.055. FIRST RESPONDER MEDICAL DISPUTES; CONTESTED
2 CASE HEARING AND JUDICIAL REVIEW. (a) In this section, "first
3 responder" has the meaning assigned by Section 504.054.

4 (b) A first responder whose medical dispute remains
5 unresolved after a review by an independent review organization is
6 entitled to a contested case hearing. The independent review
7 organization's decision is binding during the pendency of a
8 dispute. A hearing under this subsection shall be conducted by the
9 division in the same manner as a hearing conducted under Section
10 413.0311.

11 (c) A first responder who has exhausted all administrative
12 remedies under Subsection (b) and is aggrieved by a final decision
13 of the division may seek judicial review of the decision. Judicial
14 review under this subsection shall be conducted in the manner
15 provided by Section 413.0311(d).

16 SECTION 40. The following provisions of the Labor Code are
17 repealed:

- 18 (1) Section 413.031(1);
- 19 (2) Sections 415.0035(c), (d), and (f);
- 20 (3) Section 415.0036(c);
- 21 (4) Section 415.004;
- 22 (5) Section 415.008(b); and
- 23 (6) Section 415.022.

24 SECTION 41. Sections 1305.355(e), (f), and (g), Insurance
25 Code, as amended by this Act, and Section 1305.356, Insurance Code,
26 as added by this Act, apply to a medical dispute based on a review by
27 an independent review organization under Section 1305.355 that is

1 commenced on or after June 1, 2012. A dispute based on a review by
2 an independent review organization under Section 1305.355 that is
3 commenced before June 1, 2012, is governed by the law in effect
4 immediately before the effective date of this Act, and that law is
5 continued in effect for that purpose.

6 SECTION 42. (a) Section 402.073, Labor Code, as amended by
7 this Act, applies only to an administrative hearing that is
8 conducted on or after the effective date of this Act. An
9 administrative hearing conducted before the effective date of this
10 Act is governed by the law in effect when the hearing was conducted,
11 and the former law is continued in effect for that purpose.

12 (b) The State Office of Administrative Hearings and the
13 division of workers' compensation of the Texas Department of
14 Insurance shall adopt an updated memorandum of understanding
15 required by Section 402.073, Labor Code, as amended by this Act, not
16 later than June 1, 2012.

17 SECTION 43. Section 403.001, Labor Code, as amended by this
18 Act, and Section 403.008, Labor Code, as added by this Act, apply
19 only to an administrative penalty assessed for an administrative
20 violation that occurs on or after the effective date of this Act.
21 An administrative penalty assessed for an administrative violation
22 that occurred before the effective date of this Act is governed by
23 the law in effect when the violation occurred, and the former law is
24 continued in effect for that purpose.

25 SECTION 44. (a) The commissioner of workers' compensation
26 shall adopt the rules regarding certification of designated doctors
27 required by Section 408.1225, Labor Code, as amended by this Act,

1 not later than January 1, 2013.

2 (b) A designated doctor is not required to obtain
3 certification under Section 408.1225, Labor Code, as amended by
4 this Act, before January 1, 2013.

5 (c) Sections 408.1225(b), 413.044(b), and 413.0512(c),
6 Labor Code, as amended by this Act, apply only to a disciplinary
7 action taken against a designated doctor on or after January 1,
8 2013. A disciplinary action taken against a designated doctor
9 before that date is governed by the law as it existed immediately
10 before the effective date of this Act, and the former law is
11 continued in effect for that purpose.

12 (d) Section 408.0041, Labor Code, as amended by this Act,
13 applies only to a medical examination by a designated doctor that
14 occurs on or after January 1, 2013. A medical examination that
15 occurs before that date is governed by the law in effect when the
16 medical examination occurred, and the former law is continued in
17 effect for that purpose.

18 SECTION 45. The change in law made by this Act in amending
19 Sections 409.021, 415.0035, 415.008, 415.009, 415.010, 415.021,
20 415.025, 415.032, 415.033, and 415.034, Labor Code, and Sections
21 2051.151 and 2053.206, Insurance Code, adding Section 415.0211,
22 Labor Code, and repealing Sections 415.0035(c), (d), and (f),
23 415.0036(c), 415.004, 415.008(b), and 415.022, Labor Code, applies
24 only to an administrative violation that occurs on or after the
25 effective date of this Act. An administrative violation that
26 occurs before the effective date of this Act is governed by the law
27 in effect on the date the violation occurred, and the former law is

1 continued in effect for that purpose.

2 SECTION 46. Sections 410.023 and 410.028, Labor Code, as
3 amended by this Act, apply only to a benefit review conference
4 requested on or after the effective date of this Act. A benefit
5 review conference requested before the effective date of this Act
6 is governed by the law in effect immediately before the effective
7 date of this Act, and that law is continued in effect for that
8 purpose.

9 SECTION 47. Sections 413.031(k) and (k-1) and 413.0311(a),
10 Labor Code, as amended by this Act, and Section 413.0312, Labor
11 Code, as added by this Act, apply only to the appeal of a medical fee
12 dispute under those sections that is based on a review conducted by
13 the division of workers' compensation of the Texas Department of
14 Insurance on or after June 1, 2012. The appeal of a medical fee
15 dispute that is based on a review conducted by the division of
16 workers' compensation before June 1, 2012, is governed by the law in
17 effect immediately before the effective date of this Act, and that
18 law is continued in effect for that purpose.

19 SECTION 48. Section 414.005, Labor Code, as amended by this
20 Act, applies only to an investigation or review conducted on or
21 after the effective date of this Act. An investigation or review
22 conducted before the effective date of this Act is governed by the
23 law in effect when the investigation or review was conducted, and
24 the former law is continued in effect for that purpose.

25 SECTION 49. Section 415.036, Labor Code, as added by this
26 Act, applies only to an order of the commissioner of workers'
27 compensation issued on or after the effective date of this Act. An

1 order of the commissioner that was issued before the effective date
2 of this Act is governed by the law in effect when the order was
3 issued, and the former law is continued in effect for that purpose.

4 SECTION 50. Sections 504.054 and 504.055, Labor Code, as
5 added by this Act, apply only to a claim for workers' compensation
6 benefits based on a compensable injury that occurs on or after the
7 effective date of this Act. A claim based on a compensable injury
8 that occurs before that date is governed by the law in effect on the
9 date the compensable injury occurred, and the former law is
10 continued in effect for that purpose.

11 SECTION 51. This Act takes effect September 1, 2011.

ADOPTED

MAY 19 2011

Atay Shaw
Secretary of the Senate

By: Huffman

H.B. No. 2605

Substitute the following for H.B. No. ~~2604~~ 2605:

By: [Signature]

C.S. H.B. No. 2605

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

(f) A determination of an independent review organization related to a request for preauthorization or concurrent review is binding during the pendency of a dispute [~~any appeal~~] and the carrier and network shall comply with the determination.

(g) If a contested case hearing or judicial review is not sought under Section 1305.356 [~~this section~~], the carrier and

1 network shall comply with the independent review organization's
2 determination.

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

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

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

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

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

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

26 (e) An insurance company that fails to comply with this
27 section commits an [~~a Class D~~] administrative violation under

1 Subtitle A, Title 5, Labor Code.

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

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

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

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

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

14 Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS.

15 (a) The division shall develop procedures to formally document and
16 analyze complaints received by the division.

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

20 (1) the number of complaints;

21 (2) the source of each complaint;

22 (3) the types of complaints;

23 (4) the length of time from the receipt of the
24 complaint to its disposition; and

25 (5) the disposition of complaints.

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

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

4 SECTION 8. Section 402.073, Labor Code, is amended to read
5 as follows:

6 Sec. 402.073. COOPERATION WITH STATE OFFICE OF
7 ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief
8 administrative law judge of the State Office of Administrative
9 Hearings [~~by rule~~] shall adopt a memorandum of understanding
10 governing administrative procedure law hearings under this
11 subtitle conducted by the State Office of Administrative Hearings
12 in the manner provided for a contested case hearing under Chapter
13 2001, Government Code. The memorandum of understanding must
14 address the payment of costs by parties to a medical fee dispute
15 under Section 413.0312.

16 (b) In a case in which a hearing is conducted by the State
17 Office of Administrative Hearings under Section 413.031 or [~~7~~]
18 413.055, [~~or 415.034~~] the administrative law judge who conducts
19 the hearing for the State Office of Administrative Hearings shall
20 enter the final decision in the case after completion of the
21 hearing.

22 (c) In a case in which a hearing is conducted in conjunction
23 with Section 402.072, 407.046, [~~or~~] 408.023, or 415.034, and in
24 other cases under this subtitle that are not subject to Subsection
25 (b), the administrative law judge who conducts the hearing for the
26 State Office of Administrative Hearings shall propose a decision to
27 the commissioner for final consideration and decision by the

1 commissioner.

2 (d) The notice of the commissioner's order must include a
3 statement of the right of the person to judicial review of the
4 order.

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

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

10 (a) Except as provided by Sections 403.006, ~~[and]~~ 403.007,
11 and 403.008, or as otherwise provided by law, money collected under
12 this subtitle, including ~~[administrative penalties and]~~ advance
13 deposits for purchase of services, shall be deposited in the
14 general revenue fund of the state treasury to the credit of the
15 Texas Department of Insurance operating account.

16 SECTION 10. Chapter 403, Labor Code, is amended by adding
17 Section 403.008 to read as follows:

18 Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES.
19 Administrative penalties collected under this subtitle shall be
20 deposited in the general revenue fund.

21 SECTION 11. Section 408.0041, Labor Code, is amended by
22 amending Subsection (b) and adding Subsection (b-1) to read as
23 follows:

24 (b) Except as provided by Section 408.1225(f), a [A] medical
25 examination requested under Subsection (a) shall be performed by
26 the next available doctor on the division's list of certified
27 designated doctors whose credentials are appropriate for the area

1 of the body affected by the injury [~~issue in question~~] and the
2 injured employee's diagnosis [~~medical condition~~] as determined by
3 commissioner rule. [~~A designated doctor, other than a~~
4 ~~chiropractor, is subject to Section 408.0043. A designated doctor~~
5 ~~who is a chiropractor is subject to Section 408.0045.~~] The division
6 shall assign a designated doctor not later than the 10th day after
7 the date on which the request under Subsection (a) is approved, and
8 the examination must be conducted not later than the 21st day after
9 the date on which the commissioner issues the order under
10 Subsection (a). An examination under this section may not be
11 conducted more frequently than every 60 days, unless good cause for
12 more frequent examinations exists, as defined by commissioner
13 rules.

14 (b-1) A designated doctor, other than a chiropractor, is
15 subject to Section 408.0043. A designated doctor who is a
16 chiropractor is subject to Section 408.0045. To the extent of a
17 conflict between this section and Section 408.0043 or 408.0045,
18 this section controls.

19 SECTION 12. Section 408.1225, Labor Code, is amended by
20 amending Subsections (a), (b), and (e) and adding Subsections
21 (a-1), (a-2), (a-3), (a-4), (a-5), and (f) to read as follows:

22 (a) To be eligible to serve as a designated doctor, a doctor
23 must maintain an active certification by the division [~~meet~~
24 ~~specific qualifications, including training in the determination~~
25 ~~of impairment ratings and demonstrated expertise in performing~~
26 ~~examinations and making evaluations as described by Section~~
27 ~~408.0041. The commissioner shall develop qualification standards~~

1 ~~and administrative policies to implement this subsection and may~~
2 ~~adopt rules as necessary].~~

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

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

7 (1) require the division to evaluate the qualification
8 of designated doctors for certification using eligibility
9 requirements, including:

10 (A) educational experience;

11 (B) previous training; and

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

14 (2) require standard training and testing to be
15 completed in accordance with policies and guidelines developed by
16 the division.

17 (a-3) The division shall develop guidelines for
18 certification training programs for certification of a designated
19 doctor under Subsection (a-1) to ensure a designated doctor's
20 competency and continued competency in providing assessments,
21 including:

22 (1) a standard curriculum;

23 (2) standard course materials; and

24 (3) testing criteria.

25 (a-4) The division shall develop and implement a procedure
26 to periodically review and update the guidelines developed under
27 Subsection (a-3).

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

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

7 (1) restrict the participation of a designated doctor;
8 ~~[or]~~

9 (2) deny renewal of ~~[remove]~~ a ~~[doctor from inclusion~~
10 ~~on the department's list of]~~ designated doctor's certification; or

11 (3) revoke a designated doctor's certification under
12 Section 413.044 ~~[doctors]~~.

13 (e) A designated doctor, other than a chiropractor, is
14 subject to Section 408.0043. A designated doctor who is a
15 chiropractor is subject to Section 408.0045. To the extent of a
16 conflict between this section and Section 408.0043 or 408.0045,
17 this section controls.

18 (f) A designated doctor shall continue providing services
19 related to a case assigned to the designated doctor, including
20 performing subsequent examinations or acting as a resource for
21 division disputes, unless the division authorizes the designated
22 doctor to discontinue providing services. The commissioner by rule
23 shall prescribe the circumstances under which a designated doctor
24 is permitted to discontinue providing services, including:

25 (1) the doctor decides to stop practicing in the
26 workers' compensation system; or

27 (2) the doctor relocates the doctor's residence or

1 practice.

2 SECTION 13. Section 408.141, Labor Code, is amended to read
3 as follows:

4 Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An
5 award of a supplemental income benefit[~~, whether by the~~
6 ~~commissioner or a court,~~] shall be made in accordance with this
7 subchapter.

8 SECTION 14. Section 408.143(a), Labor Code, is amended to
9 read as follows:

10 (a) An [~~After the commissioner's initial determination of~~
11 ~~supplemental income benefits, the~~] employee seeking supplemental
12 income benefits must file a statement with the insurance carrier
13 stating:

14 (1) that the employee has earned less than 80 percent
15 of the employee's average weekly wage as a direct result of the
16 employee's impairment;

17 (2) the amount of wages the employee earned in the
18 filing period provided by Subsection (b); and

19 (3) that the employee has complied with the
20 requirements adopted under Section 408.1415.

21 SECTION 15. Section 408.147, Labor Code, is amended to read
22 as follows:

23 Sec. 408.147. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY
24 INSURANCE CARRIER; ATTORNEY'S FEES. [~~(a) An insurance carrier may~~
25 ~~request a benefit review conference to contest an employee's~~
26 ~~entitlement to supplemental income benefits or the amount of~~
27 ~~supplemental income benefits.~~

1 ~~[(b) If an insurance carrier fails to make a request for a~~
2 ~~benefit review conference within 10 days after the date of the~~
3 ~~expiration of the impairment income benefit period or within 10~~
4 ~~days after receipt of the employee's statement, the insurance~~
5 ~~carrier waives the right to contest entitlement to supplemental~~
6 ~~income benefits and the amount of supplemental income benefits for~~
7 ~~that period of supplemental income benefits.~~

8 [(c)] If an insurance carrier denies an employee's
9 entitlement ~~[disputes the commissioner's determination that an~~
10 ~~employee is entitled]~~ to supplemental income benefits or there is a
11 dispute regarding the amount of supplemental income benefits due
12 and the employee prevails on any disputed issue, the insurance
13 carrier is liable for reasonable and necessary attorney's fees
14 incurred by the employee as a result of the ~~[insurance carrier's]~~
15 dispute and for supplemental income benefits accrued but not paid
16 and interest on that amount, according to Section 408.064.
17 Attorney's fees awarded under this section ~~[subsection]~~ are not
18 subject to Sections 408.221(b), (f), and (i).

19 SECTION 16. Section 408.149(b), Labor Code, is amended to
20 read as follows:

21 (b) Either party may request a benefit review conference to
22 contest a determination of the commissioner at any time~~[, subject~~
23 ~~only to the limits placed on the insurance carrier by Section~~
24 ~~408.147]~~.

25 SECTION 17. Section 408.151(a), Labor Code, is amended to
26 read as follows:

27 (a) On or after the second anniversary of the date the

1 employee is initially awarded [~~commissioner makes the initial award~~
2 ~~of~~] supplemental income benefits, an insurance carrier may not
3 require an employee who is receiving supplemental income benefits
4 to submit to a medical examination more than annually if, in the
5 preceding year, the employee's medical condition resulting from the
6 compensable injury has not improved sufficiently to allow the
7 employee to return to work.

8 SECTION 18. Section 408.221(b), Labor Code, is amended to
9 read as follows:

10 (b) Except as otherwise provided, an attorney's fee under
11 this section is based on the attorney's time and expenses according
12 to written evidence presented to the division or court. Except as
13 provided by Subsection (c) or Section 408.147 [~~408.147(c)~~], the
14 attorney's fee shall be paid from the claimant's recovery.

15 SECTION 19. Section 409.021(e), Labor Code, is amended to
16 read as follows:

17 (e) An insurance carrier commits an administrative [~~a~~]
18 violation if the insurance carrier does not initiate payments or
19 file a notice of refusal as required by this section. [~~A violation~~
20 ~~under this subsection shall be assessed at \$500 if the carrier~~
21 ~~initiates compensation or files a notice of refusal within five~~
22 ~~working days of the date required by Subsection (a), \$1,500 if the~~
23 ~~carrier initiates compensation or files a notice of refusal more~~
24 ~~than five and less than 16 working days of the date required by~~
25 ~~Subsection (a), \$2,500 if the carrier initiates compensation or~~
26 ~~files a notice of refusal more than 15 and less than 31 working days~~
27 ~~of the date required by Subsection (a), or \$5,000 if the carrier~~

1 ~~initiates compensation or files a notice of refusal more than 30~~
2 ~~days after the date required by Subsection (a). The administrative~~
3 ~~penalties are not cumulative.]~~

4 SECTION 20. Section 410.023, Labor Code, is amended by
5 amending Subsection (b) and adding Subsections (c) and (d) to read
6 as follows:

7 (b) The division shall require the party requesting the
8 benefit review conference to provide documentation of efforts made
9 to resolve the disputed issues before the request was submitted.

10 (c) The commissioner by rule shall:

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

13 (2) establish a process through which the division
14 evaluates the sufficiency of the documentation provided under
15 Subsection (b) [this requirement].

16 (d) The division may deny a request for a benefit review
17 conference if the party requesting the benefit review conference
18 does not provide the documentation required under Subsection (b).

19 SECTION 21. Section 410.028, Labor Code, is amended to read
20 as follows:

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

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

26 (b) If a party to a benefit review conference under Section
27 410.023 requests that the benefit review conference be rescheduled

1 under this section, the party must submit a request in the same
2 manner as an initial request under Section 410.023. The division
3 shall evaluate a request for a rescheduled benefit review
4 conference received under this section in the same manner as an
5 initial request received under Section 410.023.

6 (c) If a [A party commits an administrative violation if
7 the] party fails to request that a benefit review conference be
8 rescheduled in the time required by commissioner rule or fails to
9 attend a benefit review conference without good cause as defined
10 [determined] by commissioner rule, the party forfeits the party's
11 entitlement to attend a benefit review conference on the issue in
12 dispute, unless a [the] benefit review officer is authorized to
13 schedule an additional benefit review conference under Section
14 410.026(b).

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

17 (1) define good cause; and

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

20 SECTION 22. Section 410.203(b), Labor Code, is amended to
21 read as follows:

22 (b) The appeals panel may:

23 (1) reverse the decision of the hearings officer and
24 render a new decision; ~~[or]~~

25 (2) reverse the decision of the hearings officer and
26 remand the case to the hearing officer for further consideration
27 and development of evidence; or

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

3 SECTION 23. Section 410.204, Labor Code, is amended by
4 amending Subsection (a) and adding Subsection (a-1) to read as
5 follows:

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

13 (a-1) An appeals panel may only issue a written decision in
14 a case in which the panel affirms the decision of a hearings officer
15 if the case:

16 (1) is a case of first impression;

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

18 (3) involves errors at the contested case hearing that
19 require correction but do not affect the outcome of the hearing,
20 including:

21 (A) findings of fact for which insufficient
22 evidence exists;

23 (B) incorrect conclusions of law;

24 (C) findings of fact or conclusions of law
25 regarding matters that were not properly before the hearings
26 officer; and

27 (D) legal errors not otherwise described by this

1 subdivision.

2 SECTION 24. Sections 413.031(k) and (k-1), Labor Code, are
3 amended to read as follows:

4 (k) A party to a medical dispute [~~, other than a medical~~
5 ~~dispute regarding spinal surgery subject to Subsection (l) and a~~
6 ~~dispute subject to Section 413.0311,~~] that remains unresolved after
7 a review of the medical service under this section is entitled to a
8 hearing under Section 413.0311 or 413.0312, as applicable. [~~A~~
9 ~~hearing under this subsection shall be conducted by the State~~
10 ~~Office of Administrative Hearings not later than the 60th day after~~
11 ~~the date on which the party notifies the division of the request for~~
12 ~~a hearing. The hearing shall be conducted in the manner provided~~
13 ~~for a contested case under Chapter 2001, Government Code.~~]

14 (k-1) A party who has exhausted all administrative remedies
15 described by [~~under~~] Subsection (k) and who is aggrieved by a final
16 decision of the division or the State Office of Administrative
17 Hearings may seek judicial review of the decision. Judicial review
18 under this subsection shall be conducted in the manner provided for
19 judicial review of a contested case under Subchapter G, Chapter
20 2001, Government Code.

21 SECTION 25. The heading to Section 413.0311, Labor Code, is
22 amended to read as follows:

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

25 SECTION 26. Section 413.0311(a), Labor Code, is amended to
26 read as follows:

27 (a) This section applies only to [~~the following medical~~

1 ~~disputes that remain unresolved after any applicable review under~~
2 ~~Sections 413.031(b) through (i):~~

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

6 ~~[(2)] an appeal of an independent review organization~~
7 ~~decision regarding determination of the [retrospective] medical~~
8 ~~necessity for a health care service [for which the amount billed~~
9 ~~does not exceed \$3,000, and~~

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

13 SECTION 27. Subchapter C, Chapter 413, Labor Code, is
14 amended by adding Section 413.0312 to read as follows:

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

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

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

26 (d) If issues remain unresolved after a benefit review
27 conference, the parties may elect to engage in arbitration as

1 provided by Section 410.104.

2 (e) If arbitration is not elected as described by Subsection
3 (d), a party to a medical fee dispute described by Subsection (a) is
4 entitled to a contested case hearing. A hearing under this
5 subsection shall be conducted by the State Office of Administrative
6 Hearings in the manner provided for a contested case under Chapter
7 2001, Government Code.

8 (f) The commissioner or the division may participate in a
9 contested case hearing conducted under Subsection (e) if the
10 hearing involves the interpretation of fee guidelines adopted by
11 the commissioner. The division and the department are not
12 considered to be parties to the medical fee dispute for purposes of
13 this section.

14 (g) Except as otherwise provided by this subsection, the
15 nonprevailing party shall reimburse the division for the costs for
16 services provided by the State Office of Administrative Hearings
17 under this section. If the injured employee is the nonprevailing
18 party, the insurance carrier shall reimburse the division for the
19 costs for services provided by the State Office of Administrative
20 Hearings under this section. The party required to reimburse the
21 division under this subsection shall remit payment to the division
22 not later than the 30th day after the date of receiving a bill or
23 statement from the division.

24 (h) The State Office of Administrative Hearings shall
25 timely notify the division if a dispute is dismissed before
26 issuance of a decision under this section. In the event of a
27 dismissal, the party requesting the hearing, other than the injured

1 employee, shall reimburse the division for the costs for services
2 provided by the State Office of Administrative Hearings unless
3 otherwise agreed by the parties. If the injured employee requested
4 the hearing, the insurance carrier shall reimburse the division for
5 the costs for services provided by the State Office of
6 Administrative Hearings unless otherwise agreed by the parties.
7 The responsible party shall remit payment to the division not later
8 than the 30th day after the date of receiving a bill or statement
9 from the division.

10 (i) The State Office of Administrative Hearings shall
11 identify the nonprevailing party and any costs for services
12 provided by the office under this section in its final decision.
13 Money collected by the division under this section shall be
14 deposited in the general revenue fund to the credit of the Texas
15 Department of Insurance operating account.

16 (j) Interest on the amount of reimbursement required by this
17 section that remains unpaid accrues at a rate provided by Section
18 401.023 beginning on the 45th day after the date the division
19 submits the bill or statement to a party until the date the
20 reimbursement is paid. Failure to pay the division as required by
21 this section is an administrative violation under this subtitle.

22 (k) The commissioner by rule shall establish procedures to
23 enable the division to charge a party to a medical fee dispute,
24 other than an injured employee, for the costs of services provided
25 by the State Office of Administrative Hearings.

26 SECTION 28. Section 413.044(b), Labor Code, is amended to
27 read as follows:

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

2 (1) revocation of certification for a designated
3 doctor on [removal or suspension from] the division list of
4 designated doctors; or

5 (2) restrictions on the reviews made by the person as a
6 designated doctor.

7 SECTION 29. Section 413.0512, Labor Code, is amended by
8 amending Subsections (b), (c), (d), (e), and (f) and adding
9 Subsections (g) and (h) to read as follows:

10 (b) The agencies that regulate health professionals who are
11 licensed or otherwise authorized to practice a health profession
12 under Title 3, Occupations Code, and who are involved in the
13 provision of health care as part of the workers' compensation
14 system in this state [Texas State Board of Medical Examiners and the
15 Texas Board of Chiropractic Examiners, with input from their
16 respective professional associations,] shall develop lists of
17 health care providers [physicians and chiropractors] licensed or
18 otherwise regulated by those agencies who have demonstrated
19 experience in workers' compensation or utilization review. The
20 medical advisor shall consider appointing some of the members of
21 the medical quality review panel from the names on those lists and,
22 when appointing members of the medical quality review panel, shall
23 select specialists from various health care specialty fields to
24 serve on the panel to ensure that the membership of the panel has
25 expertise in a wide variety of health care specialty fields. The
26 medical advisor shall also consider nominations for the panel made
27 by labor, business, and insurance organizations.

1 (c) The medical quality review panel shall recommend to the
2 medical advisor:

3 (1) appropriate action regarding doctors, other
4 health care providers, insurance carriers, utilization review
5 agents, and independent review organizations; ~~and~~

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

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

11 (d) A person who serves on the medical quality review panel
12 is immune from suit and from civil liability for an act performed,
13 or a recommendation made, within the scope of the person's
14 functions as a member of the panel if the person acts without malice
15 and in the reasonable belief that the action or recommendation is
16 warranted by the facts known to that person. In the event of a civil
17 action brought against a member of the panel that arises from the
18 person's participation on the panel, the person is entitled to the
19 same protections afforded the commissioner ~~[a commission member]~~
20 under Section 402.00123 ~~[402.010]~~.

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 the
3 medical advisor determines that:

4 (1) it is no longer necessary for the medical quality
5 review panel to include a member that practices in a particular
6 health care specialty field; or

7 (2) there is a need for the panel to include a member
8 that practices in a particular health care specialty field not
9 represented on the panel.

10 (h) If the division receives notice from the medical advisor
11 under Subsection (g)(2), the division may enter into agreements
12 with other state agencies to access, as necessary, expertise in
13 that health care specialty field.

14 SECTION 30. Subchapter E, Chapter 413, Labor Code, is
15 amended by adding Sections 413.05115, 413.05121, and 413.05122 to
16 read as follows:

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

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

26 (1) for handling complaint-based medical case
27 reviews; and

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

3 (c) The division shall make the criteria developed and
4 adopted under this section available on the Internet website
5 maintained by the division.

6 Sec. 413.05121. QUALITY ASSURANCE PANEL. (a) The medical
7 advisor shall establish the quality assurance panel within the
8 medical quality review panel to:

9 (1) provide an additional level of evaluation in
10 medical case reviews; and

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

15 (b) Members of the quality assurance panel shall evaluate
16 medical care and recommend enforcement actions to the medical
17 advisor.

18 (c) The quality assurance panel shall meet periodically to
19 discuss issues and otherwise offer assistance to the medical
20 advisor and the medical quality review panel under Subsection
21 (a)(2).

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

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

1 (2) the composition of the medical quality review
2 panel, including the number of members to be included on the panel
3 and the health care specialty fields required to be represented by
4 the members of the panel;

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

7 (4) a policy defining situations that constitute a
8 conflict of interest for a member of the medical quality review
9 panel;

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

14 (6) a procedure through which members of the medical
15 quality review panel are notified concerning the status and
16 enforcement outcomes of cases resulting from the medical quality
17 review process.

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

1 receive training concerning:

2 (1) administrative violations that affect the
3 delivery of appropriate medical care;

4 (2) the confidentiality requirements described by
5 Section 413.0513 and the immunity from liability provided to
6 members of the panel under Section 413.054; and

7 (3) the medical quality review criteria adopted under
8 Section 413.05115.

9 SECTION 31. Section 413.054(a), Labor Code, is amended to
10 read as follows:

11 (a) A person who performs services for the division as a
12 designated doctor, an independent medical examiner, a doctor
13 performing a medical case review, or a member of a peer review panel
14 has the same immunity from liability as the commissioner under
15 Section 402.00123 [~~402.0024~~].

16 SECTION 32. Section 414.005, Labor Code, is amended to read
17 as follows:

18 Sec. 414.005. INVESTIGATION UNIT. (a) The division shall
19 maintain an investigation unit to conduct investigations relating
20 to alleged violations of this subtitle, commissioner rules, or a
21 commissioner order or decision, with particular emphasis on
22 violations of Chapters 415 and 416.

23 (b) As often as the commissioner considers necessary, the
24 commissioner or the investigation unit may review the operations of
25 a person regulated by the division, including an agent of the person
26 performing functions regulated by the division, to determine
27 compliance with this subtitle.

1 (c) The review described by Subsection (b) may include
2 on-site visits to the person's premises. The commissioner is not
3 required to announce an on-site visit in advance.

4 (d) During an on-site visit, a person regulated by the
5 division shall make available to the division all records relating
6 to the person's participation in the workers' compensation system.

7 (e) The commissioner by rule shall prescribe the procedures
8 to be used for both announced and unannounced on-site visits
9 authorized under this section, including specifying the types of
10 records subject to inspection.

11 SECTION 33. Section 415.0035(e), Labor Code, is amended to
12 read as follows:

13 (e) A person regulated by the division under this title [~~An~~
14 ~~insurance carrier or health care provider~~] commits an
15 administrative violation if the [~~that~~] person violates this
16 subtitle or a rule, order, or decision of the commissioner.

17 SECTION 34. Section 415.008(a), Labor Code, is amended to
18 read as follows:

19 (a) A person commits an administrative [~~a~~] violation if the
20 person, to obtain or deny a payment of a workers' compensation
21 benefit or the provision of a benefit for the person or another,
22 knowingly or intentionally:

23 (1) makes a false or misleading statement;

24 (2) misrepresents or conceals a material fact;

25 (3) fabricates, alters, conceals, or destroys a
26 document; or

27 (4) conspires to commit an act described by

1 Subdivision (1), (2), or (3).

2 SECTION 35. Sections 415.009 and 415.010, Labor Code, are
3 amended to read as follows:

4 Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION.

5 ~~[(a)]~~ A person commits an administrative ~~[a]~~ violation if the
6 person brings, prosecutes, or defends an action for benefits under
7 this subtitle or requests initiation of an administrative violation
8 proceeding that does not have a basis in fact or is not warranted by
9 existing law or a good faith argument for the extension,
10 modification, or reversal of existing law.

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

13 Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE
14 VIOLATION. ~~[(a)]~~ A party to an agreement approved by the division
15 commits an administrative ~~[a]~~ violation if the person breaches a
16 provision of the agreement.

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

19 SECTION 36. The heading to Subchapter B, Chapter 415, Labor
20 Code, is amended to read as follows:

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

22 SECTION 37. Section 415.021(a), Labor Code, is amended to
23 read as follows:

24 (a) In addition to any other provisions in this subtitle
25 relating to violations, a person commits an administrative
26 violation if the person violates, fails to comply with, or refuses
27 to comply with this subtitle or a rule, order, or decision of the

1 commissioner, including an emergency cease and desist order issued
2 under Section 415.0211. In addition to any sanctions,
3 administrative penalty, or other remedy authorized by this
4 subtitle, the commissioner may assess an administrative penalty
5 against a person who commits an administrative violation. The
6 administrative penalty shall not exceed \$25,000 per day per
7 occurrence. Each day of noncompliance constitutes a separate
8 violation. The commissioner's authority under this chapter is in
9 addition to any other authority to enforce a sanction, penalty,
10 fine, forfeiture, denial, suspension, or revocation otherwise
11 authorized by law.

12 SECTION 38. Subchapter B, Chapter 415, Labor Code, is
13 amended by adding Section 415.0211 to read as follows:

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

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

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

23 (b) On issuance of an order under Subsection (a), the
24 commissioner shall serve on the affected person an order that
25 contains a statement of the charges and requires the person
26 immediately to cease and desist from the acts, methods, or
27 practices stated in the order. The commissioner shall serve the

1 order by registered or certified mail, return receipt requested, to
2 the affected person's last known address. The order is final on the
3 31st day after the date the affected person receives the order,
4 unless the affected person requests a hearing under Subsection (c).

5 (c) A person affected by an order is entitled to request a
6 hearing to contest the order. The affected person must request the
7 hearing not later than the 30th day after the date the person
8 receives the order required by Subsection (b). A request to contest
9 an order must:

10 (1) be in writing;

11 (2) be directed to the commissioner; and

12 (3) state the grounds for the request to set aside or
13 modify the order.

14 (d) On receiving a request for a hearing, the commissioner
15 shall serve notice of the time and place of the hearing. The
16 hearing is subject to the procedures for a contested case under
17 Chapter 2001, Government Code. The hearing shall be held not later
18 than the 10th day after the date the commissioner receives the
19 request for a hearing unless the parties mutually agree to a later
20 hearing date. At the hearing, the person requesting the hearing is
21 entitled to show cause why the order should not be affirmed.
22 Following receipt of the proposal for decision from the State
23 Office of Administrative Hearings regarding the hearing, the
24 commissioner shall wholly or partly affirm, modify, or set aside
25 the order.

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

1 SECTION 39. Section 402.072, Labor Code, is transferred to
2 Subchapter B, Chapter 415, Labor Code, and redesignated as Section
3 415.0215, Labor Code, to read as follows:

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

7 (b) Only the commissioner may impose:

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

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

14 (c) A sanction imposed by the division is binding pending
15 appeal.

16 SECTION 40. Sections 415.025, 415.032, 415.033, and
17 415.034, Labor Code, are amended to read as follows:

18 Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR
19 PENALTY. A reference in this code or other law, or in rules of the
20 former Texas Workers' Compensation Commission or the commissioner,
21 to a particular class of violation, administrative violation, or
22 penalty shall be construed as a reference to an administrative
23 penalty. An [~~Except as otherwise provided by this subtitle, an~~]
24 administrative penalty may not exceed \$25,000 per day per
25 occurrence. Each day of noncompliance constitutes a separate
26 violation.

27 Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION;

1 RESPONSE. (a) If investigation by the division indicates that an
2 administrative violation has occurred, the division shall notify
3 the person alleged to have committed the violation in writing of:

4 (1) the charge;

5 (2) the proposed sanction [~~penalty~~];

6 (3) the right to consent to the charge and the sanction
7 [~~penalty~~]; and

8 (4) the right to request a hearing.

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

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

13 (2) submit to the division a written request for a
14 hearing.

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

19 Sec. 415.034. HEARING PROCEDURES. [~~(a)~~] On the request of
20 the charged party or the commissioner, the State Office of
21 Administrative Hearings shall set a hearing. The hearing shall be
22 conducted in the manner provided for a contested case under Chapter
23 2001, Government Code (the administrative procedure law).

24 [~~(b) At the close of the hearing, the hearing officer~~
25 ~~conducting the hearing shall make findings of fact and conclusions~~
26 ~~of law and shall issue a written decision. If the hearing officer~~
27 ~~determines that an administrative violation has occurred, the~~

1 ~~hearing officer shall include in the decision the amount of the~~
2 ~~administrative penalty assessed and shall order payment of the~~
3 ~~penalty.~~

4 ~~[(c) The findings of fact, the decision, and the order shall~~
5 ~~be sent immediately to the charged party.]~~

6 SECTION 41. Subchapter C, Chapter 415, Labor Code, is
7 amended by adding Section 415.036 to read as follows:

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

11 SECTION 42. Subchapter C, Chapter 504, Labor Code, is
12 amended by adding Section 504.054 to read as follows:

13 Sec. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW
14 OF INDEPENDENT REVIEW. (a) A party to a medical dispute that
15 remains unresolved after the review described by Section
16 504.053(d)(3) is entitled to a contested case hearing. A hearing
17 under this subsection shall be conducted by the division in the same
18 manner as a hearing conducted under Section 413.0311.

19 (b) The hearing officer conducting the contested case
20 hearing under Subsection (a) shall consider any treatment
21 guidelines adopted by the political subdivision or pool that
22 provides medical benefits under Section 504.053(b)(2) if those
23 guidelines meet the standards provided by Section 413.011(e).

24 (c) A party that has exhausted all administrative remedies
25 under Subsection (a) and is aggrieved by a final decision of the
26 division may seek judicial review of the decision.

27 (d) Judicial review under Subsection (c) shall be conducted

1 in the manner provided for judicial review of a contested case under
2 Subchapter G, Chapter 2001, Government Code, and is governed by the
3 substantial evidence rule.

4 (e) A decision of the independent review organization is
5 binding during the pendency of a dispute.

6 SECTION 43. The following provisions of the Labor Code are
7 repealed:

- 8 (1) Sections 415.0035(c), (d), and (f);
- 9 (2) Section 415.0036(c);
- 10 (3) Section 415.004;
- 11 (4) Section 415.008(b); and
- 12 (5) Section 415.022.

13 SECTION 44. Sections 1305.355(e), (f), and (g), Insurance
14 Code, as amended by this Act, and Section 1305.356, Insurance Code,
15 as added by this Act, apply to a medical dispute based on a review by
16 an independent review organization under Section 1305.355 that is
17 commenced on or after June 1, 2012. A dispute based on a review by
18 an independent review organization under Section 1305.355 that is
19 commenced before June 1, 2012, is governed by the law in effect
20 immediately before the effective date of this Act, and that law is
21 continued in effect for that purpose.

22 SECTION 45. (a) Section 402.073, Labor Code, as amended by
23 this Act, applies only to an administrative hearing that is
24 conducted on or after the effective date of this Act. An
25 administrative hearing conducted before the effective date of this
26 Act is governed by the law in effect when the hearing was conducted,
27 and the former law is continued in effect for that purpose.

1 (b) The State Office of Administrative Hearings and the
2 division of workers' compensation of the Texas Department of
3 Insurance shall adopt an updated memorandum of understanding
4 required by Section 402.073, Labor Code, as amended by this Act, not
5 later than June 1, 2012.

6 SECTION 46. Section 403.001, Labor Code, as amended by this
7 Act, and Section 403.008, Labor Code, as added by this Act, apply
8 only to an administrative penalty assessed for an administrative
9 violation that occurs on or after the effective date of this Act.
10 An administrative penalty assessed for an administrative violation
11 that occurred before the effective date of this Act is governed by
12 the law in effect when the violation occurred, and the former law is
13 continued in effect for that purpose.

14 SECTION 47. (a) The commissioner of workers' compensation
15 shall adopt the rules regarding certification of designated doctors
16 required by Section 408.1225, Labor Code, as amended by this Act,
17 not later than January 1, 2013.

18 (b) A designated doctor is not required to obtain
19 certification under Section 408.1225, Labor Code, as amended by
20 this Act, before January 1, 2013.

21 (c) Sections 408.1225(b), 413.044(b), and 413.0512(c),
22 Labor Code, as amended by this Act, apply only to a disciplinary
23 action taken against a designated doctor on or after January 1,
24 2013. A disciplinary action taken against a designated doctor
25 before that date is governed by the law as it existed immediately
26 before the effective date of this Act, and the former law is
27 continued in effect for that purpose.

1 (d) Section 408.0041, Labor Code, as amended by this Act,
2 applies only to a medical examination by a designated doctor that
3 occurs on or after January 1, 2013. A medical examination that
4 occurs before that date is governed by the law as it existed
5 immediately before the effective date of this Act, and the former
6 law is continued in effect for that purpose.

7 SECTION 48. The change in law made by this Act in amending
8 Sections 409.021, 415.0035, 415.008, 415.009, 415.010, 415.021,
9 415.025, 415.032, 415.033, and 415.034, Labor Code, and Sections
10 2051.151 and 2053.206, Insurance Code, adding Section 415.0211,
11 Labor Code, and repealing Sections 415.0035(c), (d), and (f),
12 415.0036(c), 415.004, 415.008(b), and 415.022, Labor Code, applies
13 only to an administrative violation that occurs on or after the
14 effective date of this Act. An administrative violation that
15 occurs before the effective date of this Act is governed by the law
16 in effect on the date the violation occurred, and the former law is
17 continued in effect for that purpose.

18 SECTION 49. Sections 410.023 and 410.028, Labor Code, as
19 amended by this Act, apply only to a benefit review conference
20 requested on or after the effective date of this Act. A benefit
21 review conference requested before the effective date of this Act
22 is governed by the law in effect immediately before the effective
23 date of this Act, and that law is continued in effect for that
24 purpose.

25 SECTION 50. Sections 413.031(k) and (k-1) and 413.0311(a),
26 Labor Code, as amended by this Act, and Section 413.0312, Labor
27 Code, as added by this Act, apply only to the appeal of a medical fee

1 dispute under those sections that is based on a review conducted by
2 the division of workers' compensation of the Texas Department of
3 Insurance on or after June 1, 2012. The appeal of a medical fee
4 dispute that is based on a review conducted by the division of
5 workers' compensation before June 1, 2012, is governed by the law in
6 effect immediately before the effective date of this Act, and that
7 law is continued in effect for that purpose.

8 SECTION 51. Section 414.005, Labor Code, as amended by this
9 Act, applies only to an investigation or review conducted on or
10 after the effective date of this Act. An investigation or review
11 conducted before the effective date of this Act is governed by the
12 law in effect when the investigation or review was conducted, and
13 the former law is continued in effect for that purpose.

14 SECTION 52. Section 415.036, Labor Code, as added by this
15 Act, applies only to an order of the commissioner of workers'
16 compensation issued on or after the effective date of this Act. An
17 order of the commissioner that was issued before the effective date
18 of this Act is governed by the law in effect when the order was
19 issued, and the former law is continued in effect for that purpose.

20 SECTION 53. This Act takes effect September 1, 2011.

ADOPTED

MAY 19 2011

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Jonathan Huffman*

1 Amend C.S.H.B. No. 2605 (senate committee printing) as
2 follows:

3 (1) Strike SECTIONS 13, 14, 15, 16, 17, and 18 of the bill.

4 (2) In SECTION 43 of the bill (page 13, between lines 27 and
5 28), insert the following and renumber subsequent subdivisions of
6 that SECTION accordingly:

7 (1) Section 413.031(1);

8 (3) Renumber the SECTIONS of the bill accordingly.

ADOPTED

MAY 19 2011

FLOOR AMENDMENT NO. 2

Antony Spaw
Secretary of the Senate

Patricia VandePutte

1 Amend C.S.H.B. No. 2605 (Senate Committee Printing) as
2 follows:

3 (1) Strike the recital to SECTION 11 of the bill (page 3,
4 lines 2-4) and substitute the following:

5 SECTION 11. Section 408.0041, Labor Code, is amended by
6 amending Subsections (b) and (h) and adding Subsections (b-1),
7 (f-2), (f-3), and (f-4) to read as follows:

8 (2) In SECTION 11 of the bill, after added Section
9 408.0041(b-1), Labor Code (page 3, between lines 26 and 27), insert
10 the following:

11 (f-2) An employee required to be examined by a designated
12 doctor may request a medical examination to determine maximum
13 medical improvement and the employee's impairment rating from the
14 treating doctor or from another doctor to whom the employee is
15 referred by the treating doctor if:

16 (1) the designated doctor's opinion is the employee's
17 first evaluation of maximum medical improvement and impairment
18 rating; and

19 (2) the employee is not satisfied with the designated
20 doctor's opinion.

21 (f-3) The commissioner shall provide the insurance carrier
22 and the employee with reasonable time to obtain and present the
23 opinion of a doctor selected under Subsection (f) or (f-2) before
24 the commissioner makes a decision on the merits of the issue.

25 (f-4) The commissioner by rule shall adopt guidelines
26 prescribing the circumstances under which an examination by the
27 employee's treating doctor or another doctor to whom the employee
28 is referred by the treating doctor to determine any issue under
29 Subsection (a), other than an examination under Subsection (f-2),

1 may be appropriate.

2 (h) The insurance carrier shall pay for:

3 (1) an examination required under Subsection (a), ~~[or]~~
4 (f), or (f-2), unless otherwise prohibited by this subtitle or by an
5 order or rule of the commissioner; and

6 (2) the reasonable expenses incident to the employee
7 in submitting to the examination.

8 (3) In SECTION 47(d) of the bill (page 14, lines 6-7),
9 strike "Section 408.0041, Labor Code, as amended by this Act,
10 applies" and substitute "Section 408.0041(b), Labor Code, as
11 amended by this Act, and Section 408.0041(b-1), Labor Code, as
12 added by this Act, apply".

ADOPTED

MAY 19 2011

Atalay Sew
Secretary of the Senate

Robert Duncan

FLOOR AMENDMENT NO. 3

BY: _____

1 Amend C.S.H.B. No. 2605 (senate committee printing) by adding
2 the following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. Sections 406.033(a) and (d), Labor Code, are
5 amended to read as follows:

6 (a) In an action against an employer by or on behalf of an
7 employee who is not covered by [~~who does not have~~] workers'
8 compensation insurance obtained in the manner authorized by Section
9 406.003 [~~coverage~~] to recover damages for personal injuries or
10 death sustained by an employee in the course and scope of the
11 employment, it is not a defense that:

12 (1) the employee was guilty of contributory
13 negligence;

14 (2) the employee assumed the risk of injury or death;
15 or

16 (3) the injury or death was caused by the negligence of
17 a fellow employee.

18 (d) In an action described by Subsection (a) [~~against an~~
19 ~~employer who does not have workers' compensation insurance~~
20 ~~coverage~~], the plaintiff must prove negligence of the employer or
21 of an agent or servant of the employer acting within the general
22 scope of the agent's or servant's employment.

23 SECTION _____. Section 406.034(d), Labor Code, is amended to
24 read as follows:

25 (d) An employee who elects to retain the right of action or a
26 legal beneficiary of that employee may bring a cause of action for
27 damages for injuries sustained in the course and scope of the
28 employment under common law or under a statute of this state.
29 Notwithstanding Section 406.033, the cause of action is subject to

1 all defenses available under common law and the statutes of this
2 state unless the employee has waived coverage in connection with an
3 agreement with the employer.

4 SECTION _____. (a) Sections 406.033 and 406.034, Labor
5 Code, as amended by this Act, do not apply to a cause of action by an
6 employee if:

7 (1) the employee is subject to a valid and enforceable
8 contract with the employee's employer relating to benefits for
9 occupational injury or death; and

10 (2) the employer, since January 1, 2011, has
11 continuously:

12 (A) had workers' compensation insurance
13 coverage; and

14 (B) offered its employees a program providing
15 benefits for occupational injury or death that is not governed by
16 Subtitle A, Title 5, Labor Code.

17 (b) Except as provided by Subsection (a) of this section,
18 Sections 406.033 and 406.034, Labor Code, as amended by this Act,
19 apply only to a cause of action that is filed on or after the
20 effective date of this Act. A cause of action that is filed before
21 that date is governed by the law in effect on the date the action is
22 filed, and the former law is continued in effect for that purpose.

ADOPTED

FLOOR AMENDMENT NO. 4

MAY 19 2011

BY: Josiah Lewis, Jr.

Atty. Gen.
Secretary of the Senate

1 Amend the committee substitute to H.B. No. 2605 by adding
2 the following appropriately numbered SECTIONS to the proposed
3 substitute and renumbering subsequent SECTIONS accordingly:

4 SECTION _____. Subchapter C, Chapter 504, Labor Code, is
5 amended by adding Sections 504.054 and 504.055 to read as
6 follows:

7 Sec. 504.054. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR
8 CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND
9 SCOPE OF EMPLOYMENT. (a) In this section, "first responder"
10 means:

11 (1) an individual employed by a political subdivision
12 of this state who is:

13 (A) a peace officer under Article 2.12, Code of
14 Criminal Procedure;

15 (B) a person licensed under Chapter 773, Health
16 and Safety Code, as an emergency care attendant, emergency
17 medical technician, emergency medical technician-intermediate,
18 emergency medical technician-paramedic, or licensed paramedic;
19 or

20 (C) a firefighter subject to certification by
21 the Texas Commission on Fire Protection under Chapter 419,
22 Government Code, whose principal duties are firefighting and
23 aircraft crash and rescue; or

24 (2) an individual covered under Section 504.012(a)
25 who is providing volunteer services to a political subdivision
26 of this state as:

27 (A) a volunteer firefighter, without regard to
28 whether the volunteer firefighter is certified under Subchapter
29 D, Chapter 419, Government Code; or

1 (B) an emergency medical services volunteer, as
2 defined by Section 773.003, Health and Safety Code.

3 (b) This section applies only to a first responder who
4 sustains a serious bodily injury, as defined by Section 1.07,
5 Penal Code, in the course and scope of employment. For purposes
6 of this section, an injury sustained in the course and scope of
7 employment includes an injury sustained by a first responder
8 providing services on a volunteer basis.

9 (c) The political subdivision, division, and insurance
10 carrier shall accelerate and give priority to an injured first
11 responder's claim for medical benefits, including all health
12 care required to cure or relieve the effects naturally resulting
13 from a compensable injury described by Subsection (b).

14 (d) The division shall accelerate, under rules adopted by
15 the commissioner of workers' compensation, a contested case
16 hearing requested by or an appeal submitted by a first responder
17 regarding the denial of a claim for medical benefits, including
18 all health care required to cure or relieve the effects
19 naturally resulting from a compensable injury described by
20 Subsection (b). The first responder shall provide notice to the
21 division and independent review organization that the contested
22 case or appeal involves a first responder.

23 Sec. 504.055. FIRST RESPONDER MEDICAL DISPUTES; CONTESTED
24 CASE HEARING AND JUDICIAL REVIEW. (a) In this section, "first
25 responder" has the meaning assigned by Section 504.054.

26 (b) A first responder whose medical dispute remains
27 unresolved after a review by an independent review organization
28 is entitled to a contested case hearing. The independent review
29 organization's decision is binding during the pendency of a
30 dispute. A hearing under this subsection shall be conducted by
31 the division in the same manner as a hearing conducted under

1 Section 413.0311.

2 (c) A first responder who has exhausted all administrative
3 remedies under Subsection (b) and is aggrieved by a final
4 decision of the division may seek judicial review of the
5 decision. Judicial review under this subsection shall be
6 conducted in the manner provided by Section 413.0311(d).

7 SECTION _____. Sections 504.054 and 504.055, Labor Code,
8 as added by this Act, apply only to a claim for workers'
9 compensation benefits based on a compensable injury that occurs
10 on or after the effective date of this Act. A claim based on a
11 compensable injury that occurs before that date is governed by
12 the law in effect on the date the compensable injury occurred,
13 and the former law is continued in effect for that purpose.

ADOPTED

FLOOR AMENDMENT NO. 5

MAY 19 2011

Atay Spaw
Secretary of the Senate

BY: *Earle Lewis, Jr.*

1 Amend the committee substitute to H.B. No. 2605 by
2 adding the following appropriately numbered SECTION to the
3 proposed substitute and renumbering subsequent SECTIONS
4 accordingly:

5 SECTION ____ Subchapter C, Chapter 504, Labor Code, is
6 amended by adding Section 504.056 to read as follows:

7 Section 504.056 INTENT OF EXPEDITED PROVISION OF MEDICAL
8 BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN
9 COURSE AND SCOPE OF EMPLOYMENT.

10 The purpose of section 504.054 is to ensure that an injured
11 first responder's claim for medical benefits is accelerated by a
12 political subdivision, insurance carrier, and the division to
13 the full extent authorized by current law.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 23, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2605 by Taylor, Larry (Relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2605, As Passed 2nd House: a positive impact of \$2,400,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from General Revenue Fund 1	Probable Revenue (Loss) from Dept Ins Operating Acct 36	Probable Revenue Gain from Dept Ins Operating Acct 36	Probable Savings/ (Cost) from Interagency Contracts 777
2012	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2013	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2014	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2015	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)
2016	\$1,200,000	(\$1,200,000)	\$1,200,000	(\$331,338)

Fiscal Analysis

The bill would amend the Insurance and Labor Codes relating to the continuation and functions of the division of workers' compensation (DWC) of the Texas Department of Insurance (TDI). DWC has a separate Sunset date from TDI, and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue DWC for 6 years and take effect on September 1, 2011.

The bill would require parties to non-network medical fee disputes to attempt low-level mediation at DWC before appealing to the contested case hearing level and would require DWC to conduct all medical necessity contested case hearings and the State Office of Administrative Hearings (SOAH) to conduct all medical fee contested case hearings. The bill would require DWC to develop guidelines

for the contested case hearings process and make them publicly available. The bill would require DWC to develop minimum qualification and training requirements for Medical Quality Review Panel members and establishes the Quality Assurance Panel in statute and clarifies its involvement in the process. The bill would authorize the Commissioner of Workers' Compensation to make final decisions on cases involving monetary penalties and requires all administrative penalties to be deposited in the General Revenue Fund instead of the General Revenue – Dedicated Fund 36 TDI Operating Account (GR-D 36). The bill would strengthen Designated Doctor requirements to ensure DWC can use their expert medical opinions effectively in disputes. The bill would allow doctors that were previously removed from the Approved Doctors List to be reinstated to the workers' compensation system. The bill would establish an expedited claim process for first responders who are employed by or volunteer for a political subdivision and sustain a serious work-related injury and would require DWC to solicit proposals or applications from independent training and testing providers when contracting for Designated Doctor training and testing providers, and would require that DWC place the contracts on its website. The bill would align the appeals process for medical necessity disputes for all workers' compensation claims.

The bill would require the agencies that regulate health professionals who are involved in the provision of health care as part of the workers' compensation system in this state to develop lists of health care providers who have demonstrated experience in workers' compensation to be used to potentially appoint members of the medical quality review panel. The bill would amend statute relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

The bill would require the insurance carrier to pay for the cost of an additional examination of an employee after any designated doctor examination to determine any issue upon which the designated doctor opined. The bill would require that the cost of that additional examination is to be borne by the insurance carrier.

This bill would provide for an examination after any designated doctor examination that is the employee's first determination of maximum medical improvement and impairment rating with which the employee is dissatisfied; and would direct the commissioner to adopt guidelines prescribing circumstances where an employee is entitled to a post designated doctor examination on other issues decided by the designated doctor.

The bill states that the changes to statute regarding the appeal of a medical fee dispute apply only to medical fee disputes based on a review conducted by DWC on or after the effective date of the bill. The bill would take effect September 1, 2011.

Methodology

Based on the analysis provided the Comptroller of Public Accounts, Sunset Advisory Commission (SAC) and TDI, the bill would deposit all administrative penalties assessed and collected by DWC in General Revenue instead of GR-D Fund 36, which would result in a gain to General Revenue of \$1,200,000 each year. Since GR-D Fund 36 is a self-leveling account, this analysis also assumes that any loss in revenue resulting from the implementation of the bill would result in TDI adjusting the assessment of the maintenance tax or other fees accordingly in the following year.

Additionally, the bill would require the losing party appealing DWC's staff-level medical fee decision to pay all associated Contested Case Hearing costs, resulting in an annual savings. However, since the DWC is funded with GR-D Fund 36, a self-leveling account, this recommendation would result in a potential savings to GR-D Fund 36, but the amount is considered to be minimal. This analysis assumes that DWC will collect payment for all hearings conducted due to the implementation of this bill. Based on the analysis provided by SAC and SOAH, it is assumed that all duties and responsibilities associated with SOAH implementing the provisions of the bill could be accomplished by utilizing existing resources.

Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill

would accumulate in the account fund balances and that the TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the analysis provided by the Sunset Advisory Commission and the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with TDI implementing the other provisions of the bill could be accomplished by utilizing existing resources.

Based on the analysis provided by the State Office of Risk Management (SORM), the bill would cost \$331,338 in interagency contract funds in each year of 2012-2016. Assessment allocations to state agencies would increase to cover the increased cost to the state. Calculations assume the number of state employees injured and subject to designated doctor examinations to determine maximum medical improvement and impairment rating remain at the FY 2010 level of 703 and that post-designated doctor examinations proposed under this bill will cost approximately the same as the designated doctor examination (assumed at the FY 2010 average of \$942.64, including necessary testing). The analysis provided by SORM anticipates that half of all designated doctor examinations will result in a post-designated doctor examination request as provided for in the bill (351.5 x \$942.64), resulting in a projected annual cost of \$331,338 (\$662,676 for the biennium).

This estimate does not account for fluctuations in covered population, medical cost inflation or fee guideline changes, ancillary administration costs (consumables, postage, staff time) or possible increased utilization of designated doctor and post-designated doctor examinations. The cost estimate does not take into account the possible interpretation that an employee may request multiple post-designated doctor examinations; one to address each issue upon which the designated doctor opined.

Based on analysis provided by the Texas Medical Board, the Board of Dental Examiners, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Podiatric Medical Examiners, the Board of Pharmacy, the Board of Examiners of Psychologists, and the Executive Council on Physical Therapists and Occupational Therapists, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 454 Department of Insurance, 479 State Office of Risk Management, 304 Comptroller of Public Accounts, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515 Board of Pharmacy, 520 Board of Examiners of Psychologists, 533 Executive Council of Physical Therapy & Occupational Therapy Examiners

LBB Staff: JOB, KM, MW, CH, SD, KJG, NV, EH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 15, 2011

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2605 by Taylor, Larry (Relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2605, Committee Report 2nd House, Substituted: a positive impact of \$2,400,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Dept Ins Operating Acct</i> 36	Probable Revenue Gain from <i>Dept Ins Operating Acct</i> 36
2012	\$1,200,000	(\$1,200,000)	\$1,200,000
2013	\$1,200,000	(\$1,200,000)	\$1,200,000
2014	\$1,200,000	(\$1,200,000)	\$1,200,000
2015	\$1,200,000	(\$1,200,000)	\$1,200,000
2016	\$1,200,000	(\$1,200,000)	\$1,200,000

Fiscal Analysis

The bill would amend the Insurance and Labor Codes relating to the continuation and functions of the division of workers' compensation (DWC) of the Texas Department of Insurance (TDI). DWC has a separate Sunset date from TDI, and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue DWC for 6 years and take effect on September 1, 2011.

The bill would require parties to non-network medical fee disputes to attempt low-level mediation at DWC before appealing to the contested case hearing level and would require DWC to conduct all medical necessity contested case hearings and the State Office of Administrative Hearings (SOAH) to conduct all medical fee contested case hearings. The bill would require DWC to develop guidelines for the contested case hearings process and make them publicly available. The bill would require DWC to develop minimum qualification and

training requirements for Medical Quality Review Panel members and establishes the Quality Assurance Panel in statute and clarifies its involvement in the process. The bill would authorize the Commissioner of Workers' Compensation to make final decisions on cases involving monetary penalties and requires all administrative penalties to be deposited in the General Revenue Fund instead of the General Revenue – Dedicated Fund 36 TDI Operating Account (GR-D 36). The bill would strengthen Designated Doctor requirements to ensure DWC can use their expert medical opinions effectively in disputes. The bill would allow doctors that were previously removed from the Approved Doctors List to be reinstated to the workers' compensation system. The bill would establish an expedited claim process for first responders who are employed by or volunteer for a political subdivision and sustain a serious work-related injury and would require DWC to solicit proposals or applications from independent training and testing providers when contracting for Designated Doctor training and testing providers, and would require that DWC place the contracts on its website. The bill would align the appeals process for medical necessity disputes for all workers' compensation claims.

The bill would require the agencies that regulate health professionals who are involved in the provision of health care as part of the workers' compensation system in this state to develop lists of health care providers who have demonstrated experience in workers' compensation to be used to potentially appoint members of the medical quality review panel.

The bill states that the changes to statute regarding the appeal of a medical fee dispute apply only to medical fee disputes based on a review conducted by DWC on or after the effective date of the bill. The bill would take effect September 1, 2011.

Methodology

Based on the analysis provided the Comptroller of Public Accounts, Sunset Advisory Commission (SAC) and TDI, the bill would deposit all administrative penalties assessed and collected by DWC in General Revenue instead of GR-D Fund 36, which would result in a gain to General Revenue of \$1,200,000 each year. Since GR-D Fund 36 is a self-leveling account, this analysis also assumes that any loss in revenue resulting from the implementation of the bill would result in TDI adjusting the assessment of the maintenance tax or other fees accordingly in the following year.

Additionally, the bill would require the losing party appealing DWC's staff-level medical fee decision to pay all associated Contested Case Hearing costs, resulting in an annual savings. However, since the DWC is funded with GR-D Fund 36, a self-leveling account, this recommendation would result in a potential savings to GR-D Fund 36, but the amount is considered to be minimal. This analysis assumes that DWC will collect payment for all hearings conducted due to the implementation of this bill. Based on the analysis provided by SAC and SOAH, it is assumed that all duties and responsibilities associated with SOAH implementing the provisions of the bill could be accomplished by utilizing existing resources.

Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the analysis provided by the Sunset Advisory Commission and the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with TDI implementing the other provisions of the bill could be accomplished by utilizing existing resources.

Based on analysis provided by the Texas Medical Board, the Board of Dental Examiners, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Podiatric Medical Examiners, the Board of Pharmacy, the Board of Examiners of Psychologists, and the Executive Council on Physical Therapists and Occupational Therapists, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 454 Department of Insurance, 304 Comptroller of Public Accounts, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515

Board of Pharmacy, 520 Board of Examiners of Psychologists, 533 Executive Council
of Physical Therapy & Occupational Therapy Examiners

LBB Staff: JOB, KM, MW, CH, KJG, NV, EH

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 2, 2011

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2605 by Taylor, Larry (Relating to certain workers' compensation benefits and to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance; providing an administrative violation.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2605, As Engrossed: a positive impact of \$2,400,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from General Revenue Fund 1	Probable Revenue (Loss) from Dept Ins Operating Acct 36	Probable Revenue Gain from Dept Ins Operating Acct 36
2012	\$1,200,000	(\$1,200,000)	\$1,200,000
2013	\$1,200,000	(\$1,200,000)	\$1,200,000
2014	\$1,200,000	(\$1,200,000)	\$1,200,000
2015	\$1,200,000	(\$1,200,000)	\$1,200,000
2016	\$1,200,000	(\$1,200,000)	\$1,200,000

Fiscal Analysis

The bill would amend the Insurance and Labor Codes relating to the continuation and functions of the division of workers' compensation (DWC) of the Texas Department of Insurance (TDI). DWC has a separate Sunset date from TDI, and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue DWC for 6 years and take effect on September 1, 2011.

The bill would require parties to non-network medical fee disputes to attempt low-level mediation at DWC before appealing to the contested case hearing level, and establishes an administrative appeal mechanism for network medical necessity disputes. The bill would require DWC to conduct all medical necessity contested case hearings and the State Office of Administrative Hearings (SOAH) to conduct all medical fee contested case hearings. The bill would require DWC to develop guidelines for the contested case hearings process and

make them publicly available. The bill would require DWC to develop minimum qualification and training requirements for Medical Quality Review Panel members and establishes the Quality Assurance Panel in statute and clarifies its involvement in the process. The bill would authorize the Commissioner of Workers' Compensation to make final decisions on cases involving monetary penalties and requires all administrative penalties to be deposited in the General Revenue Fund instead of the General Revenue – Dedicated Fund 36 TDI Operating Account (GR-D 36). The bill would strengthen Designated Doctor requirements to ensure DWC can use their expert medical opinions effectively in disputes. The bill would allow doctors that were previously removed from the Approved Doctors List to be reinstated to the workers' compensation system. The bill would establish an expedited claim process for first responders who are employed by or volunteer for a political subdivision and sustain a serious work-related injury and would require DWC to solicit proposals or applications from independent training and testing providers when contracting for Designated Doctor training and testing providers, and would require that DWC place the contracts on its website.

The bill would require the agencies that regulate health professionals who are involved in the provision of health care as part of the workers' compensation system in this state to develop lists of health care providers who have demonstrated experience in workers' compensation to be used to potentially appoint members of the medical quality review panel.

The bill states that the changes to statute regarding the appeal of a medical fee dispute apply only to medical fee disputes based on a review conducted by DWC on or after the effective date of the bill. The bill would take effect September 1, 2011.

Methodology

Based on the analysis provided the Comptroller of Public Accounts, Sunset Advisory Commission (SAC) and TDI, the bill would deposit all administrative penalties assessed and collected by DWC in General Revenue instead of GR-D Fund 36, which would result in a gain to General Revenue of \$1,200,000 each year. Since GR-D Fund 36 is a self-leveling account, this analysis also assumes that any loss in revenue resulting from the implementation of the bill would result in TDI adjusting the assessment of the maintenance tax or other fees accordingly in the following year.

Additionally, the bill would require the losing party appealing DWC's staff-level medical fee decision to pay all associated Contested Case Hearing costs, resulting in an annual savings. However, since the DWC is funded with GR-D Fund 36, a self-leveling account, this recommendation would result in a potential savings to GR-D Fund 36, but the amount is considered to be minimal. This analysis assumes that DWC will collect payment for all hearings conducted due to the implementation of this bill. Based on the analysis provided by SAC and SOAH, it is assumed that all duties and responsibilities associated with SOAH implementing the provisions of the bill could be accomplished by utilizing existing resources.

Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the analysis provided by the Sunset Advisory Commission and the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with TDI implementing the other provisions of the bill could be accomplished by utilizing existing resources.

Based on analysis provided by the Texas Medical Board, the Board of Dental Examiners, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Podiatric Medical Examiners, the Board of Pharmacy, the Board of Examiners of Psychologists, and the Executive Council on Physical Therapists and Occupational Therapists, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515

Board of Pharmacy, 520 Board of Examiners of Psychologists, 533 Executive Council
of Physical Therapy & Occupational Therapy Examiners

LBB Staff: JOB, KM, MW, CH, KJG, NV, EH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 13, 2011

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2605 by Taylor, Larry (Relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2605, Committee Report 1st House, Substituted: a positive impact of \$2,400,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Dept Ins Operating Acct</i> 36	Probable Revenue Gain from <i>Dept Ins Operating Acct</i> 36
2012	\$1,200,000	(\$1,200,000)	\$1,200,000
2013	\$1,200,000	(\$1,200,000)	\$1,200,000
2014	\$1,200,000	(\$1,200,000)	\$1,200,000
2015	\$1,200,000	(\$1,200,000)	\$1,200,000
2016	\$1,200,000	(\$1,200,000)	\$1,200,000

Fiscal Analysis

The bill would amend the Insurance and Labor Codes relating to the continuation and functions of the division of workers' compensation (DWC) of the Texas Department of Insurance (TDI). DWC has a separate Sunset date from TDI, and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue DWC for 6 years and take effect on September 1, 2011.

The bill would require parties to non-network medical fee disputes to attempt low-level mediation at DWC before appealing to the contested case hearing level, and establishes an administrative appeal mechanism for network medical necessity disputes. The bill would require DWC to conduct all medical necessity contested case hearings and the State Office of Administrative Hearings (SOAH) to conduct all medical fee contested case hearings. The bill would require DWC to develop guidelines for the contested case hearings process and

make them publicly available. The bill would require DWC to develop minimum qualification and training requirements for Medical Quality Review Panel members and establishes the Quality Assurance Panel in statute and clarifies its involvement in the process. The bill would authorize the Commissioner of Workers' Compensation to make final decisions on cases involving monetary penalties and requires all administrative penalties to be deposited in the General Revenue Fund instead of the General Revenue – Dedicated Fund 36 TDI Operating Account (GR-D 36). The bill would strengthen Designated Doctor requirements to ensure DWC can use their expert medical opinions effectively in disputes.

The bill would require the agencies that regulate health professionals who are involved in the provision of health care as part of the workers' compensation system in this state to develop lists of health care providers who have demonstrated experience in workers' compensation to be used to potentially appoint members o the medical quality review panel.

The bill states that the changes to statute regarding the appeal of a medical fee dispute apply only to medical fee disputes based on a review conducted by DWC on or after the effective date of the bill. The bill would take effect September 1, 2011.

Methodology

Based on the analysis provided the Comptroller of Public Accounts, Sunset Advisory Commission (SAC) and TDI, the bill would deposit all administrative penalties assessed and collected by DWC in General Revenue instead of GR-D Fund 36, which would result in a gain to General Revenue of \$1,200,000 each year. Since GR-D Fund 36 is a self-leveling account, this analysis also assumes that any loss in revenue resulting from the implementation of the bill would result in TDI adjusting the assessment of the maintenance tax or other fees accordingly in the following year.

Additionally, the bill would require the losing party appealing DWC's staff-level medical fee decision to pay all associated Contested Case Hearing costs, resulting in an annual savings, as DWC would no longer reimburse SOAH for costs associated with conducting these hearings. However, since the DWC is funded with GR-D Fund 36, a self-leveling account, this recommendation would result in a potential savings to GR-D Fund 36, but the amount is considered to be minimal. This analysis assumes that SOAH will collect payment for all hearings conducted due to the implementation of this bill. Based on the analysis provided by SAC, it is assumed that all duties and responsibilities associated with SOAH implementing the provisions of the bill could be accomplished by utilizing existing resources.

Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the analysis provided by the Sunset Advisory Commission and the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with TDI implementing the other provisions of the bill could be accomplished by utilizing existing resources.

Based on analysis provided by the Texas Medical Board, the Board of Dental Examiners, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Podiatric Medical Examiners, the Board of Pharmacy, the Board of Examiners of Psychologists, and the Executive Council on Physical Therapists and Occupational Therapists, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515 Board of Pharmacy, 520 Board of Examiners of Psychologists, 533 Executive Council of Physical Therapy & Occupational Therapy Examiners

LBB Staff: JOB, KJG, MW, CH, NV, EH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 6, 2011

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2605 by Taylor, Larry (Relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2605, As Introduced: a positive impact of \$2,400,000 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$1,200,000
2013	\$1,200,000
2014	\$1,200,000
2015	\$1,200,000
2016	\$1,200,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Dept Ins Operating Acct</i> 36	Probable Revenue Gain from <i>Dept Ins Operating Acct</i> 36
2012	\$1,200,000	(\$1,200,000)	\$1,200,000
2013	\$1,200,000	(\$1,200,000)	\$1,200,000
2014	\$1,200,000	(\$1,200,000)	\$1,200,000
2015	\$1,200,000	(\$1,200,000)	\$1,200,000
2016	\$1,200,000	(\$1,200,000)	\$1,200,000

Fiscal Analysis

The bill would amend the Insurance and Labor Codes relating to the continuation and functions of the division of workers' compensation (DWC) of the Texas Department of Insurance (TDI). DWC has a separate Sunset date from TDI, and will be abolished on September 1, 2011, unless continued by the Legislature. The bill would continue DWC for 6 years and take effect on September 1, 2011.

The bill would require parties to non-network medical fee disputes to attempt low-level mediation at DWC before appealing to the contested case hearing level, and establishes an administrative appeal mechanism for network medical necessity disputes. The bill would require DWC to conduct all medical necessity contested case hearings and the State Office of Administrative Hearings (SOAH) to conduct all medical fee contested case hearings. The bill would require DWC to develop guidelines for the contested case hearings process and make them publicly available. The bill would require DWC to develop minimum qualification and training

requirements for Medical Quality Review Panel members and establishes the Quality Assurance Panel in statute and clarifies its involvement in the process. The bill would authorize the Commissioner of Workers' Compensation to make final decisions on cases involving monetary penalties and requires all administrative penalties to be deposited in the General Revenue Fund instead of the General Revenue – Dedicated Fund 36 TDI Operating Account (GR-D 36). The bill would strengthen Designated Doctor requirements to ensure DWC can use their expert medical opinions effectively in disputes.

The bill would require the agencies that regulate health professionals who are involved in the provision of health care as part of the workers' compensation system in this state to develop lists of health care providers who have demonstrated experience in workers' compensation to be used to potentially appoint members of the medical quality review panel.

The bill states that the changes to statute regarding the appeal of a medical fee dispute apply only to medical fee disputes based on a review conducted by DWC on or after the effective date of the bill. The bill would take effect September 1, 2011.

Methodology

Based on the analysis provided the Comptroller of Public Accounts, Sunset Advisory Commission (SAC) and TDI, the bill would deposit all administrative penalties assessed and collected by DWC in General Revenue instead of GR-D Fund 36, which would result in a gain to General Revenue of \$1,200,000 each year. Since GR-D Fund 36 is a self-leveling account, this analysis also assumes that any loss in revenue resulting from the implementation of the bill would result in TDI adjusting the assessment of the maintenance tax or other fees accordingly in the following year.

Additionally, the bill would require the losing party appealing DWC's staff-level medical fee decision to pay all associated Contested Case Hearing costs, resulting in an annual savings, as DWC would no longer reimburse SOAH for costs associated with conducting these hearings. However, since the DWC is funded with GR-D Fund 36, a self-leveling account, this recommendation would result in a potential savings to GR-D Fund 36, but the amount is considered to be minimal. This analysis assumes that SOAH will collect payment for all hearings conducted due to the implementation of this bill. Based on the analysis provided by SAC, it is assumed that all duties and responsibilities associated with SOAH implementing the provisions of the bill could be accomplished by utilizing existing resources.

Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Based on the analysis provided by the Sunset Advisory Commission and the Texas Department of Insurance, it is assumed that all duties and responsibilities associated with TDI implementing the other provisions of the bill could be accomplished by utilizing existing resources.

Based on analysis provided by the Texas Medical Board, the Board of Dental Examiners, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Podiatric Medical Examiners, the Board of Pharmacy, the Board of Examiners of Psychologists, and the Executive Council on Physical Therapists and Occupational Therapists, it is assumed that all duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515 Board of Pharmacy, 520 Board of Examiners of Psychologists, 533 Executive Council of Physical Therapy & Occupational Therapy Examiners

LBB Staff: JOB, KJG, MW, CH, NV, EH