

**House Bill 2605**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 [~~2014~~], 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 network shall comply with the independent review organization's determination.

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

Sec. 1305.356. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute that remains unresolved after a review under Section 1305.355 is entitled to a contested case

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

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

Sec. 1305.356. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute that remains unresolved after a review under Section 1305.355 is entitled to a contested case

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hearing. A hearing under this subsection shall be conducted by the department's division of workers' compensation in the same manner as a hearing conducted under Section 413.0311, Labor Code.

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

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

(d) Except as otherwise provided by this subsection, judicial review under Subsection (c) shall be conducted in the manner provided by Section 413.031(k-1), Labor Code. For judicial review of an independent review organization decision to which an injured employee is a party:

(1) venue shall be as provided by Section 410.252, Labor Code; and

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

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

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

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

(a) A person commits an ~~[a Class A]~~ administrative violation

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hearing. A hearing under this subsection shall be conducted by the department's division of workers' compensation in the same manner as a hearing conducted under Section 413.0311, Labor Code.

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

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

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

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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under Subtitle A, Title 5, Labor Code, if the person engages in conduct that violates this subchapter.

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

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

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

Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS. (a) The division shall develop procedures to formally document and analyze complaints received by the division.

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

(1) the number of complaints;

(2) the source of each complaint;

(3) the types of complaints;

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

(5) the disposition of complaints.

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

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

SECTION 6. Same as House version.

SECTION 7. Same as House version.

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

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

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

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

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

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

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

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

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

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

**No equivalent provision.**

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SECTION 9. Same as House version.

SECTION 10. Same as House version.

SECTION \_\_. Sections 406.033(a) and (d), Labor Code, are amended to read as follows:

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

- (1) the employee was guilty of contributory negligence;
- (2) the employee assumed the risk of injury or death; or
- (3) the injury or death was caused by the negligence of a fellow employee.

(d) In an action described by Subsection (a) ~~against an employer who does not have workers' compensation insurance coverage~~, the plaintiff must prove negligence of the employer

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or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment. [FA3]

No equivalent provision.

SECTION \_\_\_. Section 406.034(d), Labor Code, is amended to read as follows:

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage in connection with an agreement with the employer. [FA3]

No equivalent provision.

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

(1) the employee is subject to a valid and enforceable contract with the employee's employer relating to benefits for occupational injury or death; and  
(2) the employer, since January 1, 2011, has continuously:  
(A) had workers' compensation insurance coverage; and  
(B) offered its employees a program providing benefits for occupational injury or death that is not governed by Subtitle A, Title 5, Labor Code.

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

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that purpose. [FA3]

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

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

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

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

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

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

(f-2) An employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the employee's impairment rating from the treating doctor or from another

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doctor to whom the employee is referred by the treating doctor if:

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

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

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

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

(h) The insurance carrier shall pay for:

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

(2) the reasonable expenses incident to the employee in submitting to the examination. [FA2(1),(2)]

No equivalent provision.

SECTION 12. Section 408.023(r), Labor Code, is amended to read as follows:

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



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doctor who:

(1) before September 1, 2007:

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

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

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

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

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

(A) to the list of approved doctors; or

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

SECTION 13. Section 408.1225, Labor Code, is amended by amending Subsections (a), (b), and (e) and adding Subsections (a-1), (a-2), (a-3), (a-4), (a-5), and (f) to read as follows:

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

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

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

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

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

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

(A) educational experience;

(B) previous training; and

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

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

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

(1) a standard curriculum;

(2) standard course materials; and

(3) testing criteria.

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

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

The division shall solicit proposals or applications from independent training and testing providers and shall make public on its website a complete list of providers that are authorized to conduct the certification training program developed under Subsection (a-3).

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

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

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

(A) educational experience;

(B) previous training; and

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

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

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

(1) a standard curriculum;

(2) standard course materials; and

(3) testing criteria.

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

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

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

- (1) restrict the participation of a designated doctor; ~~[or]~~
- (2) deny renewal of [remove] a [doctor from inclusion on the department's list of] designated doctor's certification; or
- (3) revoke a designated doctor's certification under Section 413.044 [doctors].

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

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

- (1) the doctor decides to stop practicing in the workers' compensation system; or
- (2) the doctor relocates the doctor's residence or practice.

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

- (1) restrict the participation of a designated doctor; ~~[or]~~
- (2) deny renewal of [remove] a [doctor from inclusion on the department's list of] designated doctor's certification; or
- (3) revoke a designated doctor's certification under Section 413.044 [doctors].

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

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

- (1) the doctor decides to stop practicing in the workers' compensation system; or
- (2) the doctor relocates the doctor's residence or practice.

[SECTION 13. Section 408.141, Labor Code, added by the substitute and deleted by FA1(1)]

[SECTION 14. Section 408.143(a), Labor Code, added by the substitute and deleted by FA1(1)]

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[SECTION 15. Section 408.147, Labor Code, added by the substitute and deleted by FA1(1)]

[SECTION 16. Section 408.149(b), Labor Code, added by the substitute and deleted by FA1(1)]

[SECTION 17. Section 408.151(a), Labor Code, added by the substitute and deleted by FA1(1)]

[SECTION 18. Section 408.221(b), Labor Code, added by the substitute and deleted by FA1(1)]

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

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

SECTION 19. Same as House version.

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

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

(c) The commissioner by rule shall:

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

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

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

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

Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION. (a) A scheduled benefit review conference shall be conducted even though a party fails to attend unless the benefit review officer determines that good cause, as defined by commissioner rule, exists to reschedule the conference.

(b) If a party to a benefit review conference under Section 410.023 requests that the benefit review conference be rescheduled under this section, the party must submit a request in the same manner as an initial request under Section

SECTION 20. Same as House version.

SECTION 21. Same as House version.

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

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

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

(1) define good cause; and

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

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

(b) The appeals panel may:

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

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

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

SECTION 18. Section 410.204, Labor Code, is amended by

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SECTION 22. Same as House version.

SECTION 23. Same as House version.

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amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

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

(1) is a case of first impression;

(2) involves a recent change in law; or

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

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

(B) incorrect conclusions of law;

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

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

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

(k) A party to a medical dispute [~~other than a medical dispute regarding spinal surgery subject to Subsection (l) and a dispute subject to Section 413.0311,~~] that remains unresolved after a review of the medical service under this section is entitled to a hearing under Section 413.0311 or 413.0312, as applicable. [~~A hearing under this subsection~~

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

(k) A party to a medical dispute [~~other than a medical dispute regarding spinal surgery subject to Subsection (l) and a dispute subject to Section 413.0311,~~] that remains unresolved after a review of the medical service under this section is entitled to a hearing under Section 413.0311 or 413.0312, as applicable. [~~A hearing under this subsection~~

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~~shall be conducted by the State Office of Administrative Hearings not later than the 60th day after the date on which the party notifies the division of the request for a hearing. The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code.]~~

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

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

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

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

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

~~[(1) a medical fee dispute in which the amount of~~

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~~shall be conducted by the State Office of Administrative Hearings not later than the 60th day after the date on which the party notifies the division of the request for a hearing. The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code.]~~

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

SECTION 25. Same as House version.

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

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

~~[(1) a medical fee dispute in which the amount of~~

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~~reimbursement sought by the requestor in its request for medical dispute resolution does not exceed \$2,000;~~

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

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

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

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

(2) service and notice shall be as provided by Section 410.253 [a contested case under Subchapter G, Chapter 2001, Government Code].

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

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

(b) Subject to Subsection (e), a party to a medical fee dispute described by Subsection (a) must adjudicate the dispute in the

SENATE VERSION (IE)

~~reimbursement sought by the requestor in its request for medical dispute resolution does not exceed \$2,000;~~

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

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

SECTION 27. Same as House version.

CONFERENCE

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CONFERENCE

manner required by Subchapter B, Chapter 410.

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

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

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

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

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

(h) The State Office of Administrative Hearings shall timely notify the division if a dispute is dismissed before issuance of a decision under this section. In the event of a dismissal, the

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

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

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

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

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

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

(1) revocation of certification for a designated doctor on

SENATE VERSION (IE)

CONFERENCE

SECTION 28. Same as House version.

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~~[removal or suspension from]~~ the division list of designated doctors; or

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

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

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

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

(1) appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and

SENATE VERSION (IE)

SECTION 29. Same as House version.

CONFERENCE

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CONFERENCE

independent review organizations; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

(1) for handling complaint-based medical case reviews; and  
(2) through which the division selects health care providers or other entities for a compliance audit or review.

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

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

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

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

SENATE VERSION (IE)

SECTION 30. Same as House version.

CONFERENCE

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413.0512.

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

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

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

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

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

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

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

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

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

(b) In addition to the rules required under Subsection (a), the commissioner shall adopt rules concerning the training

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requirements for members of the medical quality review panel. The rules adopted under this subsection must ensure that panel members are fully aware of any requirements imposed by this subtitle concerning the medical quality review process and the division's goals concerning the process. The rules adopted under this subsection may require members to receive training on any topic determined by the division or the commissioner to be relevant to the operations of the panel and must require members of the panel to receive training concerning:

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

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

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

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

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

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

Sec. 414.005. INVESTIGATION UNIT. (a) The division shall maintain an investigation unit to conduct investigations relating to alleged violations of this subtitle, commissioner

SENATE VERSION (IE)

CONFERENCE

SECTION 31. Same as House version.

SECTION 32. Same as House version.



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rules, or a commissioner order or decision, with particular emphasis on violations of Chapters 415 and 416.

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

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

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

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

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

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

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

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

SENATE VERSION (IE)

CONFERENCE

SECTION 33. Same as House version.

SECTION 34. Same as House version.

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

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

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

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

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

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

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

SUBCHAPTER B. SANCTIONS ~~[PENALTIES]~~

SENATE VERSION (IE)

SECTION 35. Same as House version.

SECTION 36. Same as House version.

CONFERENCE

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

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

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

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

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

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

(b) On issuance of an order under Subsection (a), the commissioner shall serve on the affected person an order that contains a statement of the charges and requires the person

SENATE VERSION (IE)

SECTION 37. Same as House version.

SECTION 38. Same as House version.

CONFERENCE

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immediately to cease and desist from the acts, methods, or practices stated in the order. The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address. The order is final on the 31st day after the date the affected person receives the order, unless the affected person requests a hearing under Subsection (c).

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

(1) be in writing;

(2) be directed to the commissioner; and

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

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

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

SECTION 34. Section 402.072, Labor Code, is transferred to

SENATE VERSION (IE)

SECTION 39. Same as House version.

CONFERENCE

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Subchapter B, Chapter 415, Labor Code, and redesignated as Section 415.0215, Labor Code, to read as follows:

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

(b) Only the commissioner may impose:

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

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

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

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

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

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

SENATE VERSION (IE)

SECTION 40. Same as House version.

CONFERENCE

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

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

- (1) remit the amount of the sanction [~~penalty~~] to the division or otherwise consent to the imposed sanction; or
- (2) submit to the division a written request for a hearing.

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

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

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

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

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

SENATE VERSION (IE)

CONFERENCE

SECTION 41. Same as House version.

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SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

No equivalent provision.

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

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

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

(2) any term using both "Texas" and "Workers' Compensation" or any term using both "Texas" and "Workers'

No equivalent provision.

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Comp";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) a peace officer under Article 2.12, Code of Criminal Procedure;  
(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419,



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

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

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

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

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

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

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

Sec. 504.055. FIRST RESPONDER MEDICAL DISPUTES; CONTESTED CASE HEARING AND JUDICIAL REVIEW.

SENATE VERSION (IE)

Government Code, whose principal duties are firefighting and aircraft crash and rescue; or

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

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

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

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

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

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

Sec. 504.055. FIRST RESPONDER MEDICAL DISPUTES; CONTESTED CASE HEARING AND JUDICIAL REVIEW.

CONFERENCE

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(a) In this section, "first responder" has the meaning assigned by Section 504.054.

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

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

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

- (1) Section 413.031(l);
- (2) Sections 415.0035(c), (d), and (f);
- (3) Section 415.0036(c);
- (4) Section 415.004;
- (5) Section 415.008(b); and
- (6) Section 415.022.

**No equivalent provision.**

SENATE VERSION (IE)

(a) In this section, "first responder" has the meaning assigned by Section 504.054.

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

(c) A first responder who has exhausted all administrative remedies under Subsection (b) and is aggrieved by a final decision of the division may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided by Section 413.0311(d).  
[FA4]

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

- (1) Section 413.031(1);
- (1) Sections 415.0035(c), (d), and (f);
- (2) Section 415.0036(c);
- (3) Section 415.004;
- (4) Section 415.008(b); and
- (5) Section 415.022. [FA1(2)]

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

Sec. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute that remains unresolved after the review described by Section 504.053(d)(3) is entitled to a

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contested case hearing. A hearing under this subsection shall be conducted by the division in the same manner as a hearing conducted under Section 413.0311.

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

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

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

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

No equivalent provision.

SECTION \_\_. Subchapter C, Chapter 504, Labor Code, is amended by adding Section 504.056 to read as follows:

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

The purpose of section 504.054 is to ensure that an injured first responder's claim for medical benefits is accelerated by a political subdivision, insurance carrier, and the division to the full extent authorized by current law. [FA5]

SECTION 41. Sections 1305.355(e), (f), and (g), Insurance

SECTION 44. Same as House version.

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Code, as amended by this Act, and Section 1305.356, Insurance Code, as added by this Act, apply to a medical dispute based on a review by an independent review organization under Section 1305.355 that is commenced on or after June 1, 2012. A dispute based on a review by an independent review organization under Section 1305.355 that is commenced before June 1, 2012, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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

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

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

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SECTION 45. Same as House version.

SECTION 46. Same as House version.

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purpose.

SECTION 44. (a) The commissioner of workers' compensation shall adopt the rules regarding certification of designated doctors required by Section 408.1225, Labor Code, as amended by this Act, not later than January 1, 2013.

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

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

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

SECTION 45. The change in law made by this Act in amending Sections 409.021, 415.0035, 415.008, 415.009, 415.010, 415.021, 415.025, 415.032, 415.033, and 415.034, Labor Code, and Sections 2051.151 and 2053.206, Insurance Code, adding Section 415.0211, Labor Code, and repealing Sections 415.0035(c), (d), and (f), 415.0036(c), 415.004, 415.008(b), and 415.022, Labor Code, applies only to an

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

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

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

(d) Section 408.0041**(b)**, Labor Code, as amended by this Act, **and Section 408.0041(b-1), Labor Code, as added by this Act**, apply only to a medical examination by a designated doctor that occurs on or after January 1, 2013. A medical examination that occurs before that date is governed by the law **as it existed immediately before the effective date of this Act**, and the former law is continued in effect for that purpose.  
[FA2(3)]

SECTION 48. Same as House version.

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administrative violation that occurs on or after the effective date of this Act. An administrative violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

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

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

SECTION 48. Section 414.005, Labor Code, as amended by this Act, applies only to an investigation or review conducted on or after the effective date of this Act. An investigation or review conducted before the effective date of this Act is

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SECTION 49. Same as House version.

SECTION 50. Same as House version.

SECTION 51. Same as House version.

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governed by the law in effect when the investigation or review was conducted, and the former law is continued in effect for that purpose.

SECTION 49. Section 415.036, Labor Code, as added by this Act, applies only to an order of the commissioner of workers' compensation issued on or after the effective date of this Act. An order of the commissioner that was issued before the effective date of this Act is governed by the law in effect when the order was issued, and the former law is continued in effect for that purpose.

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

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

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SECTION 52. Same as House version.

SECTION \_\_\_. Same as House version. [FA4]

SECTION 53. Same as House version.

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