

By: Staples, Nelson

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

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

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

10 ARTICLE 1. ORGANIZATION OF DEPARTMENT

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

13 SUBCHAPTER A. ORGANIZATION

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

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

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

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

24 (1) this title;

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

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

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

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

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

21 Sec. 402.005. QUALIFICATIONS. The commissioner must:

22 (1) be a competent and experienced administrator;
23 (2) be well informed and qualified in the field of
24 workers' compensation; and

25 (3) have at least 10 years of experience as an
26 executive in the administration of business or government or as a
27 practicing attorney or certified public accountant, with at least

1 five years of that experience in the field of insurance, with
2 preference for experience in the field of workers' compensation
3 insurance.

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

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

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

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

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

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

27 ~~[(1) the geographic location of a prospective~~

1 ~~appointee's domicile,~~

2 ~~[(2) the prospective appointee's experience as an~~
3 ~~employer or wage earner,~~

4 ~~[(3) the number of employees employed by a prospective~~
5 ~~member who would represent employers, and~~

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

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

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

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

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

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

20 ~~[(1) the enabling legislation that created the~~
21 ~~commission,~~

22 ~~[(2) the programs operated by the commission,~~

23 ~~[(3) the role and functions of the commission,~~

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

26 ~~[(5) the current budget for the commission,~~

27 ~~[(6) the results of the most recent formal audit of the~~

1 ~~commission;~~

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

3 ~~[(A) the open meetings law, Chapter 551,~~
4 ~~Government Code;~~

5 ~~[(B) the open records law, Chapter 552,~~
6 ~~Government Code; and~~

7 ~~[(C) the administrative procedure law, Chapter~~
8 ~~2001, Government Code;~~

9 ~~[(8) the requirements of the conflict of interest laws~~
10 ~~and other laws relating to public officials; and~~

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

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

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

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

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

1 ~~[(b) Decisions regarding the employment of an executive~~
2 ~~director require the affirmative vote of at least two commissioners~~
3 ~~representing employers and two commissioners representing wage~~
4 ~~earners.]~~

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

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

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

14 (3) violates a prohibition established by Section
15 402.008 or 402.012 ~~[402.003 or 402.012]; or~~

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

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

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

26 ~~[(c) If the executive director of the commission knows that~~
27 ~~a potential ground for removal exists, the executive director shall~~

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

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

13 (b) A violation of Subsection (a) is a Class A
14 administrative violation and constitutes a ground for removal from
15 office or termination of employment.

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

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

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

1 ~~[Sec. 402.009. LEAVE OF ABSENCE. (a) An employer may not~~
2 ~~terminate the employment of an employee who is appointed as a member~~
3 ~~of the commission because of the exercise by the employee of duties~~
4 ~~required as a commission member.~~

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

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

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

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

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

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

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

27 ~~[(4) attendance by the chair or vice chair of the~~

1 ~~commission at a legislative committee meeting if attendance is~~
2 ~~requested by the committee chair; and~~

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

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

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

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

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

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

25 (b) On acceptance of appointment as commissioner ~~[to the~~
26 ~~commission]~~, a commissioner ~~[an appointee]~~ who is an officer,
27 employee, or paid consultant of a Texas trade association described

1 by Subsection (a) must resign the position or terminate the
2 contract with the trade association.

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

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

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

13 Sec. 402.041. APPOINTMENTS. (a) Subject to the General
14 Appropriations Act or other law, the commissioner shall appoint
15 deputies, assistants, and other personnel as necessary to carry out
16 the powers and duties of the commissioner and the department under
17 this title, other workers' compensation laws of this state, and
18 other laws granting jurisdiction or applicable to the department or
19 the commissioner.

20 (b) A person appointed under this section must have the
21 professional, administrative, and workers' compensation experience
22 necessary to qualify the person for the position to which the person
23 is appointed.

24 (c) A person appointed as an associate or deputy
25 commissioner or to hold an equivalent position must have at least
26 five years of the experience required for appointment as
27 commissioner under Section 402.005. At least two years of that

1 experience must be in work related to the position to be held.

2 Sec. 402.042. DIVISION OF RESPONSIBILITIES. The
3 commissioner shall develop and implement policies that clearly
4 define the respective responsibilities of the commissioner and the
5 staff of the department. [~~EXECUTIVE DIRECTOR. (a) The executive~~
6 director is the executive officer and administrative head of the
7 commission. The executive director exercises all rights, powers,
8 and duties imposed or conferred by law on the commission, except for
9 rulemaking and other rights, powers, and duties specifically
10 reserved under this subtitle to members of the commission.

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

13 [~~(c) The executive director serves at the pleasure of the~~
14 commission.

15 [~~(d) The commission shall develop and implement policies~~
16 that clearly separate the policymaking responsibilities of the
17 commission and the management responsibilities of the executive
18 director and the staff of the commission.

19 [~~Sec. 402.042. GENERAL POWERS AND DUTIES OF EXECUTIVE~~
20 DIRECTOR. (a) The executive director shall conduct the day-to-day
21 operations of the commission in accordance with policies
22 established by the commission and otherwise implement commission
23 policy.

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

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

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

27 [~~(3) issue subpoenas to compel the attendance of~~

1 ~~witnesses and the production of documents,~~

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

3 ~~[(5) take testimony directly or by deposition or~~
4 ~~interrogatory,~~

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

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

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

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

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

14 ~~[(11) prescribe the form, manner, and procedure for~~
15 ~~transmission of information to the commission, and~~

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

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

19 ~~[Sec. 402.043. ADMINISTRATIVE ASSISTANTS. The executive~~
20 ~~director shall employ and supervise:~~

21 ~~[(1) one person representing wage earners permanently~~
22 ~~assigned to act as administrative assistant to the members of the~~
23 ~~commission who represent wage earners, and~~

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

27 Sec. 402.043 [402.044]. CAREER LADDER; ANNUAL PERFORMANCE

1 EVALUATIONS. (a) The commissioner or the commissioner's designee
2 [~~executive director~~] shall develop an intra-agency career ladder
3 program that addresses opportunities for mobility and advancement
4 for employees within the department [~~commission~~]. The program
5 shall require intra-agency postings of all positions concurrently
6 with any public posting.

7 (b) The commissioner or the commissioner's designee
8 [~~executive director~~] shall develop a system of annual performance
9 evaluations that are based on documented employee performance. All
10 merit pay for department [~~commission~~] employees must be based on
11 the system established under this subsection.

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

19 (1) personnel policies, including policies related to
20 recruitment, evaluation, selection, appointment, training, and
21 promotion of personnel that are in compliance with the requirements
22 of Chapter 21;

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

25 (3) procedures by which a determination can be made of
26 significant underuse in the department [~~commission~~] work force of
27 all persons for whom federal or state guidelines encourage a more

1 equitable balance; and

2 (4) reasonable methods to appropriately address those
3 areas of underuse.

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

5 (1) cover an annual period;

6 (2) be updated annually;

7 (3) be reviewed by the civil rights division of the
8 Texas Workforce Commission [~~on Human Rights~~] for compliance with
9 Subsection (a)(1); and

10 (4) be filed with the governor's office.

11 (c) The governor's office shall deliver a biennial report to
12 the legislature based on the information received under Subsection
13 (b). The report may be made separately or as part of other biennial
14 reports made to the legislature.

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

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

18 CHAPTER 402. TEXAS DEPARTMENT OF WORKERS' COMPENSATION

19 [~~COMMISSION~~]

20 SECTION 2.002. Section 402.021, Labor Code, is amended to
21 read as follows:

22 Sec. 402.021. DEPARTMENT [~~COMMISSION~~] DIVISIONS. (a) The
23 department [~~commission~~] shall have:

24 (1) a division of workers' health and safety;

25 (2) a division of medical review;

26 (3) a division of compliance and practices; and

27 (4) a division of hearings.

1 (b) In addition to the divisions listed by Subsection (a),
2 the commissioner [~~executive director, with the approval of the~~
3 ~~commission,~~] may establish divisions within the department
4 [~~commission~~] for effective administration and performance of
5 department [~~commission~~] functions. The commissioner [~~executive~~
6 ~~director~~] may allocate and reallocate functions among the
7 divisions.

8 (c) The commissioner [~~executive director~~] shall appoint the
9 directors of the divisions of the department [~~commission~~]. The
10 directors serve at the pleasure of the commissioner [~~executive~~
11 ~~director~~].

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

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

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

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

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

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

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

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

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

1 jurisdiction of the department [~~commission~~].

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

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

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

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

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

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

18 SECTION 2.008. Section 402.062, Labor Code, is amended to
19 read as follows:

20 Sec. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS.

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

24 (b) Notwithstanding Chapter 575, Government Code, the
25 department [~~commission~~] may accept a grant paid by the Texas Mutual
26 Insurance Company established under Article 5.76-3, Insurance
27 Code, to implement specific steps to control and lower medical

1 costs in the workers' compensation system and to ensure the
2 delivery of quality medical care. The department [~~commission~~] must
3 publish the name of the grantor and the purpose and conditions of
4 the grant in the Texas Register and provide for a 20-day public
5 comment period before the department [~~commission~~] may accept the
6 grant. The department [~~commission~~] shall acknowledge acceptance of
7 the grant at a public meeting. The minutes of the public meeting
8 must include the name of the grantor, a description of the grant,
9 and a general statement of the purposes for which the grant will be
10 used.

11 SECTION 2.009. Section 402.064, Labor Code, is amended to
12 read as follows:

13 Sec. 402.064. FEES. In addition to fees established by
14 this subtitle, the commissioner [~~commission~~] shall set reasonable
15 fees for services provided to persons requesting services from the
16 department [~~commission~~], including services provided under
17 Subchapter E.

18 SECTION 2.010. Section 402.065, Labor Code, is amended to
19 read as follows:

20 Sec. 402.065. EMPLOYMENT OF COUNSEL. The commissioner
21 [~~commission~~] may employ counsel to represent the department
22 [~~commission~~] in any legal action the department [~~commission~~] is
23 authorized to initiate.

24 SECTION 2.011. Section 402.066, Labor Code, is amended to
25 read as follows:

26 Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The
27 commissioner [~~commission~~] shall consider and recommend to the

1 legislature changes to this subtitle.

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

5 SECTION 2.012. Section 402.0665, Labor Code, is amended to
6 read as follows:

7 Sec. 402.0665. LEGISLATIVE OVERSIGHT. The legislature may
8 adopt requirements relating to legislative oversight of the
9 department [~~commission~~] and the workers' compensation system of
10 this state. The department [~~commission~~] shall comply with any
11 requirements adopted by the legislature under this section.

12 SECTION 2.013. Section 402.067, Labor Code, is amended to
13 read as follows:

14 Sec. 402.067. ADVISORY COMMITTEES. The commissioner
15 [~~commission~~] may appoint advisory committees as the commissioner
16 [~~it~~] considers necessary.

17 SECTION 2.014. Section 402.068, Labor Code, is amended to
18 read as follows:

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

22 SECTION 2.015. Section 402.069, Labor Code, is amended to
23 read as follows:

24 Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT
25 INFORMATION. The commissioner or the commissioner's designee
26 [~~executive director~~] shall provide to department [~~members of the~~
27 ~~commission and commission~~] employees, as often as necessary,

1 information regarding their:

2 (1) qualifications for office or employment under this
3 subtitle; and

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

6 SECTION 2.016. Section 402.071(a), Labor Code, is amended to
7 read as follows:

8 (a) The commissioner [~~commission~~] shall establish
9 qualifications for a representative and shall adopt rules
10 establishing procedures for authorization of representatives.

11 SECTION 2.017. Section 402.072, Labor Code, is amended to
12 read as follows:

13 Sec. 402.072. SANCTIONS. Only the commissioner
14 [~~commission~~] may impose:

15 (1) a sanction that deprives a person of the right to
16 practice before the department [~~commission~~] or of the right to
17 receive remuneration under this subtitle for a period exceeding 30
18 days; or

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

22 SECTION 2.018. Sections 402.073(a) and (c), Labor Code, are
23 amended to read as follows:

24 (a) The commissioner [~~commission~~] and the chief
25 administrative law judge of the State Office of Administrative
26 Hearings by rule shall adopt a memorandum of understanding
27 governing administrative procedure law hearings under this

1 subtitle conducted by the State Office of Administrative Hearings
2 in the manner provided for a contested case hearing under Chapter
3 2001, Government Code [~~(the administrative procedure law)~~].

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

11 SECTION 2.019. Section 402.081, Labor Code, is amended to
12 read as follows:

13 Sec. 402.081. DEPARTMENT [~~COMMISSION~~] RECORDS. (a) The
14 commissioner [~~executive director~~] is the custodian of the
15 department's [~~commission's~~] records and shall perform the duties of
16 a custodian required by law, including providing copies and the
17 certification of records.

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

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

27 (d) The department [~~commission~~] may charge a reasonable fee

1 for making available for inspection any of its information that
2 contains confidential information that must be redacted before the
3 information is made available. However, when a request for
4 information is for the inspection of 10 or fewer pages, and a copy
5 of the information is not requested, the department [~~commission~~]
6 may charge only the cost of making a copy of the page from which
7 confidential information must be redacted. The fee for access to
8 information under Chapter 552, Government Code, shall be in accord
9 with the rules of the Texas Building and Procurement [~~General~~
10 ~~Services~~] Commission that prescribe the method for computing the
11 charge for copies under that chapter.

12 SECTION 2.020. Section 402.082, Labor Code, is amended to
13 read as follows:

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

- 17 (1) race, ethnicity, and sex of the claimant;
18 (2) classification of the injury;
19 (3) amount of wages earned by the claimant before the
20 injury; and
21 (4) amount of compensation received by the claimant.

22 SECTION 2.021. Section 402.083(a), Labor Code, is amended to
23 read as follows:

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

27 SECTION 2.022. Sections 402.084(a), (b), and (d), Labor

1 Code, are amended to read as follows:

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

5 (1) the claim is:

6 (A) open or pending before the department
7 [~~commission~~];

8 (B) on appeal to a court of competent
9 jurisdiction; or

10 (C) the subject of a subsequent suit in which the
11 insurance carrier or the subsequent injury fund is subrogated to
12 the rights of the named claimant; and

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

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

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

19 (2) the employee's or the legal beneficiary's
20 representative;

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

22 (4) the insurance carrier;

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

26 (6) the Texas Property and Casualty Insurance Guaranty
27 Association, if that association has assumed the obligations of an

1 impaired insurance company;

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

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

9 (d) Information on a claim relating to a subclaimant under
10 Subsection (b)(8) may include information, in an electronic data
11 format, on all workers' compensation claims necessary to determine
12 if a subclaim exists. The information on a claim remains subject to
13 confidentiality requirements while in the possession of a
14 subclaimant or representative. The commissioner [~~commission~~] by
15 rule may establish a reasonable fee for all information requested
16 under this subsection in an electronic data format by subclaimants
17 or authorized representatives of subclaimants. The commissioner
18 [~~commission~~] shall adopt rules under Section 401.024(d) to
19 establish:

20 (1) reasonable security parameters for all transfers
21 of information requested under this subsection in electronic data
22 format; and

23 (2) requirements regarding the maintenance of
24 electronic data in the possession of a subclaimant or the
25 subclaimant's representative.

26 SECTION 2.023. Section 402.085, Labor Code, is amended to
27 read as follows:

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

3 (1) the Texas Department of Insurance for any
4 statutory or regulatory purpose, including a research purpose under
5 Chapter 405;

6 (2) a legislative committee for legislative purposes;

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

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

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

16 (A) establishing, modifying, or enforcing a
17 child support or medical support obligation; or

18 (B) locating an absent parent.

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

22 (1) investigate an allegation of a criminal offense or
23 licensing or regulatory violation;

24 (2) provide:

25 (A) unemployment compensation benefits;

26 (B) crime victims compensation benefits;

27 (C) vocational rehabilitation services; or

- 1 (D) health care benefits;
- 2 (3) investigate occupational safety or health
3 violations;
- 4 (4) verify income on an application for benefits under
5 an income-based state or federal assistance program; or
- 6 (5) assess financial resources in an action, including
7 an administrative action, to:
- 8 (A) establish, modify, or enforce a child support
9 or medical support obligation;
- 10 (B) establish paternity;
- 11 (C) locate an absent parent; or
- 12 (D) cooperate with another state in an action
13 authorized under Part D, Title IV, Social Security Act (42 U.S.C.
14 Section 651 et seq.), or Chapter 231, Family [~~76, Human Resources~~]
15 Code.

16 SECTION 2.024. Sections 402.088(a), (b), and (d), Labor
17 Code, are amended to read as follows:

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

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

25 (d) If the employer requests information on three or more
26 applicants at the same time, the department [~~commission~~] may refuse
27 to release information until it receives the written authorization

1 from each applicant.

2 SECTION 2.025. Section 402.089(a), Labor Code, is amended to
3 read as follows:

4 (a) An employer who receives information by telephone from
5 the department [~~commission~~] under Section 402.088 and who fails to
6 file the necessary authorization in accordance with Section 402.087
7 commits a Class C administrative violation.

8 SECTION 2.026. Section 402.090, Labor Code, is amended to
9 read as follows:

10 Sec. 402.090. STATISTICAL INFORMATION. The department
11 [~~commission~~], the Texas Department of Insurance [~~research center~~],
12 or any other governmental agency may prepare and release
13 statistical information if the identity of an employee is not
14 explicitly or implicitly disclosed.

15 SECTION 2.027. Section 402.091(a), Labor Code, is amended to
16 read as follows:

17 (a) A person commits an offense if the person knowingly,
18 intentionally, or recklessly publishes, discloses, or distributes
19 information that is confidential under this subchapter to a person
20 not authorized to receive the information directly from the
21 department [~~commission~~].

22 SECTION 2.028. Sections 402.092(a), (b), (d), (e), and (f),
23 Labor Code, are amended to read as follows:

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

27 (1) in a criminal proceeding;

1 (2) in a hearing conducted by the department
2 [~~commission~~];

3 (3) on a judicial determination of good cause; or

4 (4) to a governmental agency, political subdivision,
5 or regulatory body if the disclosure is necessary or proper for the
6 enforcement of the laws of this or another state or of the United
7 States.

8 (b) Department [~~Commission~~] investigation files are not
9 open records for purposes of Chapter 552, Government Code.

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

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

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

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

21 (3) the complaint is frivolous; or

22 (4) the complaint is done specifically for competitive
23 or economic advantage.

24 (f) Upon completion of an investigation where the
25 department [~~commission~~] determines a complaint is groundless,
26 frivolous, made in bad faith, or is not supported by evidence or is
27 done specifically for competitive or economic advantage the

1 department [~~commission~~] shall notify the person who was the subject
2 of the complaint of its finding and the identity of the complainant.

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

4 CONFORMING AMENDMENTS WITHIN LABOR CODE

5 SECTION 3.001. Section 91.003(b), Labor Code, is amended to
6 read as follows:

7 (b) In particular, the Texas Workforce Commission, the
8 Texas Department of Insurance, the Texas Department of Workers'
9 Compensation [~~Commission~~], and the attorney general's office shall
10 assist in the implementation of this chapter and shall provide
11 information to the department on request.

12 SECTION 3.002. Section 401.002, Labor Code, is amended to
13 read as follows:

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

19 SECTION 3.003. Section 401.003(a), Labor Code, is amended
20 to read as follows:

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

24 (1) the structure and internal controls of the
25 department;

26 (2) the level and quality of service provided by the
27 department to employers, injured employees, insurance carriers,

1 self-insured governmental entities, and other participants;

2 (3) the implementation of statutory mandates by the
3 department;

4 (4) employee turnover;

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

7 (6) the adoption and implementation of administrative
8 rules by the commissioner; and

9 (7) assessment of administrative violations and the
10 penalties for those violations.

11 SECTION 3.004. Section 401.011, Labor Code, is amended by
12 amending Subdivisions (8), (15), (31), (37), and (39) and by adding
13 Subdivision (45) to read as follows:

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

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

21 (31) "Medical benefit" means payment for health care
22 reasonably required by the nature of a compensable injury and
23 intended to:

24 (A) cure or relieve the effects naturally
25 resulting from the compensable injury, including reasonable
26 expenses incurred by the employee for necessary treatment to cure
27 and relieve the employee from the effects of an occupational

1 disease before and after the employee knew or should have known the
2 nature of the disability and its relationship to the employment; or

3 (B) [~~promote recovery; or~~

4 [~~(C)~~] enhance the ability of the employee to
5 return to or retain employment.

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

11 (39) "Sanction" means a penalty or other punitive
12 action or remedy imposed by the commissioner [~~commission~~] on an
13 insurance carrier, representative, employee, employer, or health
14 care provider for an act or omission in violation of this subtitle
15 or a rule or order of the commissioner [~~commission~~].

16 (45) "Department" means the Texas Department of
17 Workers' Compensation.

18 SECTION 3.005. Section 401.021, Labor Code, is amended to
19 read as follows:

20 Sec. 401.021. APPLICATION OF OTHER ACTS. Except as
21 otherwise provided by this subtitle:

22 (1) a proceeding, hearing, judicial review, or
23 enforcement of a commissioner [~~commission~~] order, decision, or rule
24 is governed by the following subchapters and sections of Chapter
25 2001, Government Code:

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

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

2 (C) Sections 2001.056 through 2001.062; and

3 (D) Section 2001.141(c);

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

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

10 (A) a benefit review conference;

11 (B) a contested case hearing;

12 (C) an appeals panel proceeding;

13 (D) arbitration; or

14 (E) another proceeding involving a determination
15 on a workers' compensation claim; and

16 (4) Chapter 552, Government Code, applies to a record
17 of the department [~~commission~~] or the research center.

18 SECTION 3.006. Section 401.023(b), Labor Code, is amended to
19 read as follows:

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

1 SECTION 3.007. Sections 401.024(b), (c), and (d), Labor
2 Code, are amended to read as follows:

3 (b) Notwithstanding another provision of this subtitle that
4 specifies the form, manner, or procedure for the transmission of
5 specified information, the commissioner [~~commission~~] by rule may
6 permit or require the use of an electronic transmission instead of
7 the specified form, manner, or procedure. If the electronic
8 transmission of information is not authorized or permitted by
9 [~~commission~~] rule, the transmission of that information is governed
10 by any applicable statute or rule that prescribes the form, manner,
11 or procedure for the transmission, including standards adopted by
12 the Department of Information Resources.

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

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

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

22 Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE
23 DIRECTOR. (a) A reference in this code or other law to the Texas
24 Workers' Compensation Commission or the executive director of that
25 commission means the department or the commissioner as consistent
26 with the respective duties of the commissioner and the department
27 under this code and other workers' compensation laws of this state.

1 **(b) A reference in this code or other law to the executive**
2 **director of the Texas Workers' Compensation Commission means the**
3 **commissioner.**

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

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

7 SECTION 3.010. Section 403.001, Labor Code, is amended to
8 read as follows:

9 Sec. 403.001. DEPARTMENT [~~COMMISSION~~] FUNDS. (a) Except
10 as provided by Sections 403.006 and 403.007 or as otherwise
11 provided by law, money collected under this subtitle, including
12 administrative penalties and advance deposits for purchase of
13 services, shall be deposited in the general revenue fund of the
14 state treasury to the credit of the department [~~commission~~].

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

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

21 SECTION 3.011. Section 403.003, Labor Code, is amended to
22 read as follows:

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

- 27 (1) any expenditure projected as necessary for the

1 department [~~commission~~] to:

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

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

6 (2) projected employee benefits paid from general
7 revenues;

8 (3) a surplus or deficit produced by the tax in the
9 preceding year;

10 (4) revenue recovered from other sources, including
11 reappropriated receipts, grants, payments, fees, gifts, and
12 penalties recovered under this subtitle; and

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

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

17 (1) the State Office of Risk Management;

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

21 (3) any other revenue or expenditure excluded from
22 consideration by law.

23 SECTION 3.012. Section 403.004, Labor Code, is amended to
24 read as follows:

25 Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM
26 BUSINESS. The insurance commissioner or the commissioner
27 [~~executive director of the commission~~] immediately shall proceed to

1 collect taxes due under this chapter from an insurance carrier that
2 withdraws from business in this state, using legal process as
3 necessary.

4 SECTION 3.013. Section 403.005, Labor Code, is amended to
5 read as follows:

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

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

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

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

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

25 (1) the payment of compensation as provided by Section
26 408.162;

27 (2) reimbursement of insurance carrier claims of

1 overpayment of benefits made under an interlocutory order or
2 decision of the commissioner [~~commission~~] as provided by this
3 subtitle, consistent with the priorities established by rule by the
4 commission; and

5 (3) reimbursement of insurance carrier claims as
6 provided by Sections 408.042 and 413.0141, consistent with the
7 priorities established by rule by the commissioner [~~commission; and~~

8 [~~(4) the payment of an assessment of feasibility and~~
9 ~~the development of regional networks established under Section~~
10 ~~408.0221]~~.

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

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

17 SECTION 3.015. Section 403.007, Labor Code, is amended to
18 read as follows:

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

25 (b) The insurance carrier may elect or the commissioner
26 [~~commission~~] may order that death benefits payable to the fund be
27 commuted on written approval of the commissioner [~~executive~~

1 ~~director~~]. The commutation may be discounted for present payment
2 at the rate established in Section 401.023, compounded annually.

3 (c) If a claim for death benefits is not filed with the
4 department [~~commission~~] by a legal beneficiary on or before the
5 first anniversary of the date of the death of the employee, it is
6 presumed, for purposes of this section only, that no legal
7 beneficiary survived the deceased employee. The presumption does
8 not apply against a minor beneficiary or an incompetent beneficiary
9 for whom a guardian has not been appointed.

10 (d) If the insurance carrier makes payment to the subsequent
11 injury fund and it is later determined by a final award of the
12 commissioner [~~commission~~] or the final judgment of a court of
13 competent jurisdiction that a legal beneficiary is entitled to the
14 death benefits, the commissioner [~~commission~~] shall order the fund
15 to reimburse the insurance carrier for the amount overpaid to the
16 fund.

17 (e) If the commissioner [~~commission~~] determines that the
18 funding under Subsection (a) is not adequate to meet the expected
19 obligations of the subsequent injury fund established under Section
20 403.006, the fund shall be supplemented by the collection of a
21 maintenance tax paid by insurance carriers, other than a
22 governmental entity, as provided by Sections 403.002 and 403.003.
23 The rate of assessment must be adequate to provide 120 percent of
24 the projected unfunded liabilities of the fund for the next
25 biennium as certified by an independent actuary or financial
26 advisor.

27 (f) The commissioner's [~~commission's~~] actuary or financial

1 advisor shall report biannually to the Texas Department of
2 Insurance [~~Research and Oversight Council on Workers'~~
3 ~~Compensation~~] on the financial condition and projected assets and
4 liabilities of the subsequent injury fund. The commissioner
5 [~~commission~~] shall make the reports available to members of the
6 legislature and the public. The department [~~commission~~] may
7 purchase annuities to provide for payments due to claimants under
8 this subtitle if the commissioner [~~commission~~] determines that the
9 purchase of annuities is financially prudent for the administration
10 of the fund.

11 SECTION 3.016. Section 405.001, Labor Code, is amended to
12 read as follows:

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

14 (1) "Commissioner" means the commissioner of
15 insurance.

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

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

21 (a) The department shall conduct professional studies and
22 research related to:

23 (1) the delivery of benefits;

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

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

27 (4) rehabilitation and reemployment of injured

1 workers;

2 (5) workplace health and safety issues;

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

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

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

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

11 (1) biennially evaluate the cost and quality of
12 health care provided by workers' compensation health care networks;
13 and

14 (2) issue annual consumer report cards comparing
15 workers' compensation health care networks certified by the
16 department under Chapter 1305, Insurance Code.

17 (e) The commissioner of insurance shall adopt rules as
18 necessary to establish data reporting requirements to support the
19 research duties of the department under this chapter.

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

22 Sec. 405.0021. RESEARCH AGENDA. (a) The department shall
23 prepare and publish annually in the Texas Register a proposed
24 workers' compensation research agenda for commissioner review and
25 approval.

26 (b) The commissioner shall:

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

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

3 SECTION 3.019. The heading to Section 406.004, Labor Code,
4 is amended to read as follows:

5 Sec. 406.004. EMPLOYER NOTICE TO DEPARTMENT [~~COMMISSION~~];
6 ADMINISTRATIVE VIOLATION.

7 SECTION 3.020. Sections 406.004(a), (b), (c), and (d), Labor
8 Code, are amended to read as follows:

9 (a) An employer who does not obtain workers' compensation
10 insurance coverage shall notify the department [~~commission~~] in
11 writing, in the time and as prescribed by commissioner [~~commission~~]
12 rule, that the employer elects not to obtain coverage.

13 (b) The commissioner [~~commission~~] shall prescribe forms to
14 be used for the employer notification and shall require the
15 employer to provide reasonable information to the department
16 [~~commission~~] about the employer's business.

17 (c) The department [~~commission~~] may contract with the Texas
18 Workforce [~~Employment~~] Commission or the comptroller for
19 assistance in collecting the notification required under this
20 section. Those agencies shall cooperate with the department
21 [~~commission~~] in enforcing this section.

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

25 SECTION 3.021. Section 406.005(c), Labor Code, is amended to
26 read as follows:

27 (c) Each employer shall post a notice of whether the

1 employer has workers' compensation insurance coverage at
2 conspicuous locations at the employer's place of business as
3 necessary to provide reasonable notice to the employees. The
4 commissioner [~~commission~~] may adopt rules relating to the form and
5 content of the notice. The employer shall revise the notice when
6 the information contained in the notice is changed.

7 SECTION 3.022. Sections 406.006(a), (b), and (c), Labor
8 Code, are amended to read as follows:

9 (a) An insurance company from which an employer has obtained
10 workers' compensation insurance coverage, a certified
11 self-insurer, and a political subdivision shall file notice of the
12 coverage and claim administration contact information with the
13 department [~~commission~~] not later than the 10th day after the date
14 on which the coverage or claim administration agreement takes
15 effect, unless the commissioner [~~commission~~] adopts a rule
16 establishing a later date for filing. Coverage takes effect on the
17 date on which a binder is issued, a later date and time agreed to by
18 the parties, on the date provided by the certificate of
19 self-insurance, or on the date provided in an interlocal agreement
20 that provides for self-insurance. The commissioner [~~commission~~]
21 may adopt rules that establish the coverage and claim
22 administration contact information required under this subsection.

23 (b) The notice required under this section shall be filed
24 with the department [~~commission~~] in accordance with Section
25 406.009.

26 (c) An insurance company, certified self-insurer, or
27 political subdivision commits a violation if the person fails to

1 file notice with the department [~~commission~~] as provided by this
2 section. A violation under this subsection is a Class C
3 administrative violation. Each day of noncompliance constitutes a
4 separate violation.

5 SECTION 3.023. Sections 406.007(a), (b), and (c), Labor
6 Code, are amended to read as follows:

7 (a) An employer who terminates workers' compensation
8 insurance coverage obtained under this subtitle shall file a
9 written notice with the department [~~commission~~] by certified mail
10 not later than the 10th day after the date on which the employer
11 notified the insurance carrier to terminate the coverage. The
12 notice must include a statement certifying the date that notice was
13 provided or will be provided to affected employees under Section
14 406.005.

15 (b) The notice required under this section shall be filed
16 with the department [~~commission~~] in accordance with Section
17 406.009.

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

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

21 (2) the cancellation date of the policy.

22 SECTION 3.024. Section 406.008, Labor Code, is amended to
23 read as follows:

24 Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY
25 INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels
26 a policy of workers' compensation insurance or that does not renew
27 the policy by the anniversary date of the policy shall deliver

1 notice of the cancellation or nonrenewal by certified mail or in
2 person to the employer and the department [~~commission~~] not later
3 than:

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

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

9 (A) fraud in obtaining coverage;

10 (B) misrepresentation of the amount of payroll
11 for purposes of premium calculation;

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

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

17 (i) reasonable recommendations for loss
18 control; or

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

21 (E) a determination made by the commissioner of
22 insurance that the continuation of the policy would place the
23 insurer in violation of the law or would be hazardous to the
24 interest of subscribers, creditors, or the general public.

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

27 (c) Failure of the insurance company to give notice as

1 required by this section extends the policy until the date on which
2 the required notice is provided to the employer and the department
3 [~~commission~~].

4 SECTION 3.025. Sections 406.009(a), (b), (c), and (d), Labor
5 Code, are amended to read as follows:

6 (a) The department [~~commission~~] shall collect and maintain
7 the information required under this subchapter and shall monitor
8 compliance with the requirements of this subchapter.

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

11 (c) The commissioner [~~commission~~] may designate a data
12 collection agent, implement an electronic reporting and public
13 information access program, and adopt rules as necessary to
14 implement the data collection requirements of this subchapter. The
15 commissioner [~~executive director~~] may establish the form, manner,
16 and procedure for the transmission of information to the department
17 [~~commission as authorized by Section 402.042(b)(11)~~].

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

22 SECTION 3.026. Section 406.010(c), Labor Code, is amended to
23 read as follows:

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

26 SECTION 3.027. Section 406.011(a), Labor Code, is amended to
27 read as follows:

1 (a) The commissioner [~~commission~~] by rule may require an
2 insurance carrier to designate a representative in Austin to act as
3 the insurance carrier's agent before the department [~~commission~~] in
4 Austin. Notice to the designated agent constitutes notice to the
5 insurance carrier.

6 SECTION 3.028. Section 406.012, Labor Code, is amended to
7 read as follows:

8 Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The commissioner
9 [~~commission~~] shall enforce the administrative penalties
10 established under this subchapter in accordance with Chapter 415.

11 SECTION 3.029. Section 406.051(c), Labor Code, is amended to
12 read as follows:

13 (c) The employer may not transfer:

14 (1) the obligation to accept a report of injury under
15 Section 409.001;

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

18 (3) the obligation to report injuries to the insurance
19 carrier under Section 409.005;

20 (4) liability for a violation of Section 415.006 or
21 415.008 or of Chapter 451; or

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

24 SECTION 3.030. Section 406.073(b), Labor Code, is amended to
25 read as follows:

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

1 SECTION 3.031. Sections 406.074(a) and (b), Labor Code, are
2 amended to read as follows:

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

6 (1) conflicts of jurisdiction;

7 (2) assumption of jurisdiction in a case in which the
8 contract of employment arises in one state and the injury is
9 incurred in another;

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

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

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

18 SECTION 3.032. Section 406.093(b), Labor Code, is amended to
19 read as follows:

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

23 SECTION 3.033. Section 406.095(b), Labor Code, is amended to
24 read as follows:

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

27 SECTION 3.034. Sections 406.144(c) and (d), Labor Code, are

1 amended to read as follows:

2 (c) An agreement under this section shall be filed with the
3 department [~~commission~~] either by personal delivery or by
4 registered or certified mail and is considered filed on receipt by
5 the department [~~commission~~].

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

10 SECTION 3.035. Sections 406.145(a), (b), (c), (d), and (f),
11 Labor Code, are amended to read as follows:

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

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

27 (c) The hiring contractor shall send a copy of a joint

1 agreement signed under this section to the hiring contractor's
2 workers' compensation insurance carrier on filing of the joint
3 agreement with the department [~~commission~~].

4 (d) The department [~~commission~~] shall maintain a system for
5 accepting and maintaining the joint agreements.

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

11 SECTION 3.036. Section 406.162(b), Labor Code, is amended to
12 read as follows:

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

18 SECTION 3.037. Section 407.001(3), Labor Code, is amended to
19 read as follows:

20 (3) "Impaired employer" means a certified
21 self-insurer:

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

24 (B) who has filed for relief under bankruptcy
25 laws;

26 (C) against whom bankruptcy proceedings have
27 been filed; or

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

3 SECTION 3.038. Section 407.021, Labor Code, is amended to
4 read as follows:

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

7 SECTION 3.039. Section 407.022, Labor Code, is amended to
8 read as follows:

9 Sec. 407.022. DIRECTOR. (a) The commissioner [~~executive~~
10 ~~director of the commission~~] shall appoint the director of the
11 division.

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

15 SECTION 3.040. Section 407.023, Labor Code, is amended to
16 read as follows:

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

20 (1) approve or deny a recommendation by the director
21 concerning the issuance or revocation of a certificate of authority
22 to self-insure; and

23 (2) certify that a certified self-insurer has
24 suspended payment of compensation or has otherwise become an
25 impaired employer.

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

1 SECTION 3.041. Sections 407.041(a), (b), and (c), Labor
2 Code, are amended to read as follows:

3 (a) An employer who desires to self-insure under this
4 chapter must submit an application to the department [~~commission~~]
5 for a certificate of authority to self-insure.

6 (b) The application must be:

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

9 (2) accompanied by a nonrefundable \$1,000 application
10 fee.

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

14 SECTION 3.042. Section 407.042, Labor Code, is amended to
15 read as follows:

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

22 SECTION 3.043. Section 407.043, Labor Code, is amended to
23 read as follows:

24 Sec. 407.043. PROCEDURES ON DENIAL OF
25 APPLICATION. (a) If the commissioner [~~commission~~] determines
26 that an applicant for a certificate of authority to self-insure
27 does not meet the certification requirements, the commissioner

1 ~~[commission]~~ shall notify the applicant in writing of the
2 commissioner's ~~[its]~~ determination, stating the specific reasons
3 for the denial and the conditions to be met before approval may be
4 granted.

5 (b) The applicant is entitled to a reasonable period, as
6 determined by the commissioner ~~[commission]~~, to meet the conditions
7 for approval before the application is considered rejected for
8 purposes of appeal.

9 SECTION 3.044. Section 407.044(a), Labor Code, is amended to
10 read as follows:

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

14 SECTION 3.045. Section 407.045, Labor Code, is amended to
15 read as follows:

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

26 (b) A certified self-insurer who withdraws from
27 self-insurance shall surrender to the department ~~[commission]~~ the

1 certificate of authority to self-insure.

2 SECTION 3.046. Sections 407.046(a), (b), and (d), Labor
3 Code, are amended to read as follows:

4 (a) The commissioner [~~commission by majority vote~~] may
5 revoke the certificate of authority to self-insure of a certified
6 self-insurer who fails to comply with requirements or conditions
7 established by this chapter or a rule adopted by the commissioner
8 [~~commission~~] under this chapter.

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

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

20 SECTION 3.047. Section 407.047(b), Labor Code, is amended to
21 read as follows:

22 (b) The security required under Sections 407.064 and
23 407.065 shall be maintained with the department [~~commission~~] or
24 under the department's [~~commission's~~] control until each claim for
25 workers' compensation benefits is paid, is settled, or lapses under
26 this subtitle.

27 SECTION 3.048. Sections 407.061(a), (c), (e), and (f), Labor

1 Code, are amended to read as follows:

2 (a) To be eligible for a certificate of authority to
3 self-insure, an applicant for an initial or renewal certificate
4 must present evidence satisfactory to the commissioner
5 [~~commission~~] and the association of sufficient financial strength
6 and liquidity, under standards adopted by the commissioner
7 [~~commission~~], to ensure that all workers' compensation obligations
8 incurred by the applicant under this chapter are met promptly.

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

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

20 (f) The commissioner [~~commission~~] shall adopt rules for the
21 requirements for the financial statements required by Subsection
22 (b)(2).

23 SECTION 3.049. Section 407.062, Labor Code, is amended to
24 read as follows:

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

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

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

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

5 (4) the source and reliability of the financial
6 information submitted by the applicant;

7 (5) the number of employees affected by
8 self-insurance;

9 (6) the applicant's access to excess insurance
10 markets;

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

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

15 SECTION 3.050. Section 407.063(a), Labor Code, is amended to
16 read as follows:

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

23 SECTION 3.051. Section 407.064(b), Labor Code, is amended to
24 read as follows:

25 (b) If an applicant who has provided a letter of credit as
26 all or part of the security required under this section desires to
27 cancel the existing letter of credit and substitute a different

1 letter of credit or another form of security, the applicant shall
2 notify the department [~~commission~~] in writing not later than the
3 60th day before the effective date of the cancellation of the
4 original letter of credit.

5 SECTION 3.052. Sections 407.081(a), (b), (c), (d), (f), and
6 (g), Labor Code, are amended to read as follows:

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

11 (b) The report must:

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

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

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

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

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

27 (f) The report must include an estimate of future liability

1 for compensation. The estimate must be signed and sworn to by a
2 certified casualty actuary every third year, or more frequently if
3 required by the commissioner [~~commission~~].

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

9 SECTION 3.053. Sections 407.082(a), (c), and (d), Labor
10 Code, are amended to read as follows:

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

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

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

25 SECTION 3.054. Section 407.101(b), Labor Code, is amended to
26 read as follows:

27 (b) The department [~~commission~~] shall deposit the

1 application fee for a certificate of authority to self-insure in
2 the state treasury to the credit of the workers' compensation
3 self-insurance fund.

4 SECTION 3.055. Section 407.102, Labor Code, is amended to
5 read as follows:

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

10 (b) The department [~~commission~~] shall base the fee on the
11 total amount of income benefit payments made in the preceding
12 calendar year. The department [~~commission~~] shall assess each
13 certified self-insurer a pro rata share based on the ratio that the
14 total amount of income benefit payments made by that certified
15 self-insurer bears to the total amount of income benefit payments
16 made by all certified self-insurers.

17 SECTION 3.056. Sections 407.103(a) and (d), Labor Code, are
18 amended to read as follows:

19 (a) Each certified self-insurer shall pay a self-insurer
20 maintenance tax for the administration of the department
21 [~~commission~~] and to support the prosecution of workers'
22 compensation insurance fraud in this state. Not more than two
23 percent of the total tax base of all certified self-insurers, as
24 computed under Subsection (b), may be assessed for a maintenance
25 tax under this section.

26 (d) In setting the rate of maintenance tax assessment for
27 insurance companies, the commissioner [~~commission~~] may not

1 consider revenue or expenditures related to the division.

2 SECTION 3.057. Sections 407.104(b), (c), and (e), Labor
3 Code, are amended to read as follows:

4 (b) The department [~~commission~~] shall compute the fee and
5 taxes of a certified self-insurer and notify the certified
6 self-insurer of the amounts due. The taxes and fees shall be
7 remitted to the department [~~commission~~].

8 (c) The regulatory fee imposed under Section 407.102 shall
9 be deposited in the state treasury to the credit of the workers'
10 compensation self-insurance fund. The self-insurer maintenance
11 tax shall be deposited in the state treasury to the credit of the
12 department [~~commission~~].

13 (e) If the certificate of authority to self-insure of a
14 certified self-insurer is terminated, the insurance commissioner
15 or the commissioner [~~executive director of the commission~~] shall
16 proceed immediately to collect taxes due under this subtitle, using
17 legal process as necessary.

18 SECTION 3.058. Sections 407.122(b) and (c), Labor Code, are
19 amended to read as follows:

20 (b) The board of directors is composed of the following
21 voting members:

22 (1) three certified self-insurers;

23 (2) the commissioner [~~one commission member~~
24 ~~representing wage earners,~~

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

26 and

27 (3) [~~(4)~~] the public counsel of the office of public

1 insurance counsel.

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

5 SECTION 3.059. Section 407.123(b), Labor Code, is amended to
6 read as follows:

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

9 SECTION 3.060. Sections 407.124(a) and (c), Labor Code, are
10 amended to read as follows:

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

15 (1) the amount of additional funds needed to
16 supplement the security deposit;

17 (2) the available assets of the impaired employer for
18 the purpose of making payment of all incurred liabilities for
19 compensation; and

20 (3) the funds maintained by the association for the
21 emergency payment of compensation liabilities.

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

26 SECTION 3.061. Section 407.126(d), Labor Code, is amended to
27 read as follows:

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

3 SECTION 3.062. Section 407.127(a), Labor Code, is amended to
4 read as follows:

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

11 SECTION 3.063. Section 407.133(a), Labor Code, is amended to
12 read as follows:

13 (a) The commissioner [~~commission, after notice and hearing~~
14 ~~and by majority vote,~~] may suspend or revoke the certificate of
15 authority to self-insure of a certified self-insurer who fails to
16 pay an assessment. The association promptly shall report such a
17 failure to the director.

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

20 (d) Any securities posted must be deposited in the state
21 treasury and must be assigned to and made negotiable by the
22 commissioner of the Texas Department of Workers' Compensation
23 [~~executive director of the commission~~] under a trust document
24 acceptable to the commissioner of insurance. Interest accruing on
25 a negotiable security deposited under this subsection shall be
26 collected and transmitted to the depositor if the depositor is not
27 in default.

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

3 (c) The membership of an individual member of a group is
4 subject to cancellation by the group as provided by the bylaws of
5 the group. An individual member may also elect to terminate
6 participation in the group. The group shall notify the
7 commissioner and the Texas Department of Workers' Compensation
8 [~~commission~~] of the cancellation or termination of a membership not
9 later than the 10th day after the date on which the cancellation or
10 termination takes effect and shall maintain coverage of each
11 canceled or terminated member until the 30th day after the date of
12 the notice, at the terminating member's expense, unless before that
13 date the Texas Department of Workers' Compensation [~~commission~~]
14 notifies the group that the canceled or terminated member has:

15 (1) obtained workers' compensation insurance
16 coverage;

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

18 (3) become a member of another group.

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

21 Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT OF WORKERS'
22 COMPENSATION [~~COMMISSION~~] AND RESEARCH FUNCTIONS OF INSURANCE
23 DEPARTMENT [~~AND OVERSIGHT COUNCIL~~].

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

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

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

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

5 (3) the research functions of the department under
6 Chapter 405 [~~Research and Oversight Council on Workers'~~
7 ~~Compensation~~].

8 SECTION 3.068. Sections 407A.303(a) and (c), Labor Code,
9 are amended to read as follows:

10 (a) The group shall remit the taxes for deposit in the state
11 treasury to the credit of the Texas Department of Workers'
12 Compensation [~~commission~~].

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

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

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

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

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

27 (3) one member designated by the insurance

1 commissioner; and

2 (4) the public counsel of the office of public
3 insurance counsel.

4 SECTION 3.070. Section 408.003(c), Labor Code, is amended to
5 read as follows:

6 (c) The employer shall notify the department [~~commission~~]
7 and the insurance carrier on forms prescribed by the commissioner
8 [~~commission~~] of the initiation of and amount of payments made under
9 this section.

10 SECTION 3.071. Section 408.004, Labor Code, is amended by
11 amending Subsections (a), (b), (d), (e), and (f), and by adding
12 Subsection (h) to read as follows:

13 (a) The commissioner [~~commission~~] may require an employee
14 to submit to medical examinations to resolve any question about ~~+~~

15 [~~(1)~~] the appropriateness of the health care received
16 by the employee [~~+~~ or

17 [~~(2)~~ similar issues].

18 (b) The commissioner [~~commission~~] may require an employee
19 to submit to a medical examination at the request of the insurance
20 carrier, but only after the insurance carrier has attempted and
21 failed to receive the permission and concurrence of the employee
22 for the examination. Except as otherwise provided by this
23 subsection, the insurance carrier is entitled to the examination
24 only once in a 180-day period. The commissioner [~~commission~~] may
25 adopt rules that require an employee to submit to not more than
26 three medical examinations in a 180-day period under specified
27 circumstances, including to determine whether there has been a

1 change in the employee's condition and~~[,]~~ whether it is necessary
2 to change the employee's diagnosis~~[, and whether treatment should~~
3 ~~be extended to another body part or system]~~. The commissioner
4 ~~[commission]~~ by rule shall adopt a system for monitoring requests
5 made under this subsection by insurance carriers. That system must
6 ensure that good cause exists for any additional medical
7 examination allowed under this subsection that is not requested by
8 the employee. A subsequent examination must be performed by the
9 same doctor unless otherwise approved by the commissioner
10 ~~[commission]~~.

11 (d) An injured employee is entitled to have a doctor of the
12 employee's choice present at an examination required by the
13 commission at the request of an insurance carrier. The insurance
14 carrier shall pay a fee set by the commissioner ~~[commission]~~ to the
15 doctor selected by the employee.

16 (e) An employee who, without good cause as determined by the
17 commissioner ~~[commission]~~, fails or refuses to appear at the time
18 scheduled for an examination under Subsection (a) or (b) commits a
19 violation. A violation under this subsection is a Class D
20 administrative violation. ~~[An employee is not entitled to~~
21 ~~temporary income benefits, and an insurance carrier may suspend the~~
22 ~~payment of temporary income benefits, during and for a period in~~
23 ~~which the employee fails to submit to an examination under~~
24 ~~Subsection (a) or (b) unless the commission determines that the~~
25 ~~employee had good cause for the failure to submit to the~~
26 ~~examination. The commission may order temporary income benefits to~~
27 ~~be paid for the period that the commission determines the employee~~

1 ~~had good cause. The commission by rule shall ensure that an~~
2 ~~employee receives reasonable notice of an examination and of the~~
3 ~~insurance carrier's basis for suspension of payment, and that the~~
4 ~~employee is provided a reasonable opportunity to reschedule an~~
5 ~~examination missed by the employee for good cause.]~~

6 (f) This section does not apply to health care provided
7 through a workers' compensation health care network established
8 under Chapter 1305, Insurance Code [~~If the report of a doctor~~
9 ~~selected by an insurance carrier indicates that an employee can~~
10 ~~return to work immediately or has reached maximum medical~~
11 ~~improvement, the insurance carrier may suspend or reduce the~~
12 ~~payment of temporary income benefits on the 14th day after the date~~
13 ~~on which the insurance carrier files a notice of suspension with the~~
14 ~~commission as provided by this subsection. The commission shall~~
15 ~~hold an expedited benefit review conference, by personal appearance~~
16 ~~or by telephone, not later than the 10th day after the date on which~~
17 ~~the commission receives the insurance carrier's notice of~~
18 ~~suspension. If a benefit review conference is not held by the 14th~~
19 ~~day after the date on which the commission receives the insurance~~
20 ~~carrier's notice of suspension, an interlocutory order, effective~~
21 ~~from the date of the report certifying maximum medical improvement,~~
22 ~~is automatically entered for the continuation of temporary income~~
23 ~~benefits until a benefit review conference is held, and the~~
24 ~~insurance carrier is eligible for reimbursement for any overpayment~~
25 ~~of benefits as provided by Chapter 410. The commission is not~~
26 ~~required to automatically schedule a contested case hearing as~~
27 ~~required by Section 410.025(b) if a benefit review conference is~~

1 ~~scheduled under this subsection. If a benefit review conference is~~
2 ~~held not later than the 14th day, the commission may enter an~~
3 ~~interlocutory order for the continuation of benefits, and the~~
4 ~~insurance carrier is eligible for reimbursement for any~~
5 ~~overpayments of benefits as provided by Chapter 410. The~~
6 ~~commission shall adopt rules as necessary to implement this~~
7 ~~subsection under which:~~

8 ~~[(1) an insurance carrier is required to notify the~~
9 ~~employee and the treating doctor of the suspension of benefits~~
10 ~~under this subsection by certified mail or another verifiable~~
11 ~~delivery method;~~

12 ~~[(2) the commission makes a reasonable attempt to~~
13 ~~obtain the treating doctor's opinion before the commission makes a~~
14 ~~determination regarding the entry of an interlocutory order; and~~

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

18 (h) A person who makes a frivolous request for a medical
19 examination under Subsection (b), as determined by the
20 commissioner, commits a violation. A violation under this
21 subsection is a Class B administrative violation.

22 SECTION 3.072. Section 408.0041, Labor Code, is amended to
23 read as follows:

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

- 1 (1) the impairment caused by the compensable injury;
2 [~~or~~]
3 (2) the attainment of maximum medical improvement;
4 (3) the extent of the employee's compensable injury;
5 (4) the ability of the employee to return to work; or
6 (5) issues similar to those described by Subdivisions
7 (1)-(4).

8 (b) A medical examination requested under Subsection (a)
9 shall be performed by the next available doctor on the department's
10 [~~commission's~~] list of designated doctors whose credentials are
11 appropriate for the issue in question and the injured employee's
12 medical condition. The designated doctor doing the review must be
13 trained and experienced with the treatment and procedures used by
14 the doctor treating the patient's medical condition, and the
15 treatment and procedures performed must be within the scope of
16 practice of the designated doctor. The department [~~commission~~]
17 shall assign a designated doctor not later than the 10th day after
18 the date on which the request under Subsection (a) is received, and
19 the examination must be conducted not later than the 21st day after
20 the date on which the commissioner [~~commission~~] issues the order
21 under Subsection (a). An examination under this section may not be
22 conducted more frequently than every 60 days, unless good cause for
23 more frequent examinations exists, as defined by commissioner
24 [~~commission~~] rules.

25 (c) The treating doctor and the insurance carrier are both
26 responsible for sending to the designated doctor all of the injured
27 employee's medical records relating to the issue to be evaluated by

1 the designated doctor that are in their possession. The treating
2 doctor and insurance carrier may send the records without a signed
3 release from the employee. The designated doctor is authorized to
4 receive the employee's confidential medical records to assist in
5 the resolution of disputes. The treating doctor and insurance
6 carrier may also send the designated doctor an analysis of the
7 injured employee's medical condition, functional abilities, and
8 return-to-work opportunities.

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

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

1 report.

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

12 (g) An injured employee is entitled to have a doctor of the
13 employee's choice present at an examination requested by an
14 insurance carrier under Subsection (f). The insurance carrier
15 shall pay a fee set by the commissioner to the doctor selected by
16 the employee.

17 (h) The insurance carrier shall pay for:

18 (1) an examination required under Subsection (a) or
19 (f); and

20 (2) the reasonable expenses incident to the employee
21 in submitting to the examination.

22 (i) [~~(h)~~] An employee who, without good cause as determined
23 by the commissioner, fails or refuses to appear at the time
24 scheduled for an examination under Subsections (a) or (f), commits
25 a violation. A violation under this subsection is a Class D
26 administrative violation.

27 (j) An employee is not entitled to temporary income benefits

1 ~~[compensation]~~, and an insurance carrier is authorized to suspend
2 the payment of temporary income benefits, during and for a period in
3 which the employee fails to submit to an examination required by
4 Subsection (a) [this chapter] unless the commissioner ~~[commission]~~
5 determines that the employee had good cause for the failure to
6 submit to the examination. The commissioner ~~[commission]~~ may order
7 temporary income benefits to be paid for the period for which the
8 commissioner ~~[commission]~~ determined that the employee had good
9 cause. The commissioner ~~[commission]~~ by rule shall ensure that:

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

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

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

19 (l) A person who makes a frivolous request for a medical
20 examination under Subsection (a) or (f), as determined by the
21 commissioner, commits a violation. A violation under this
22 subsection is a Class B administrative violation.

23 SECTION 3.073. Section 408.005(e), Labor Code, is amended to
24 read as follows:

25 (e) The director of the division of hearings shall approve a
26 settlement if the director is satisfied that:

27 (1) the settlement accurately reflects the agreement

1 between the parties;

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

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

7 SECTION 3.074. Section 408.021(a), Labor Code, is amended
8 to read as follows:

9 (a) An employee who sustains a compensable injury is
10 entitled to all health care reasonably required by the nature of the
11 injury as and when needed. For purposes of this section, "health
12 care reasonably required" means health care provided in accordance
13 with evidence-based medical treatment guidelines that are
14 generally recognized by the medical community or generally accepted
15 standards of medical practice that are based on credible scientific
16 evidence published in peer-reviewed medical literature generally
17 recognized in the relevant community, and that is clinically
18 appropriate and considered effective for the employee's injury. An
19 injured [~~The~~] employee is specifically entitled to health care
20 that:

21 (1) cures or relieves the effects naturally resulting
22 from the compensable injury; or

23 (2) [~~promotes recovery, or~~

24 [~~3~~] enhances the ability of the employee to return
25 to or retain employment.

26 SECTION 3.075. Section 408.022, Labor Code, is amended by
27 amending Subsections (a)-(c) and adding Subsection (f) to read as

1 follows:

2 (a) Except in an emergency, the department [~~commission~~]
3 shall require an employee to receive medical treatment from a
4 doctor chosen from a list of doctors approved by the commissioner
5 [~~commission~~]. A doctor may perform only those procedures that are
6 within the scope of the practice for which the doctor is licensed.
7 The employee is entitled to the employee's initial choice of a
8 doctor from the department's [~~commission's~~] list.

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

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

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

20 (2) the professional reputation of the doctor;

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

23 (4) whether a conflict exists between the employee and
24 the doctor to the extent that the doctor-patient relationship is
25 jeopardized or impaired.

26 (f) This section does not apply to requirements regarding
27 the selection of a doctor under a workers' compensation health care

1 network established under Chapter 1305, Insurance Code, except as
2 provided by that chapter.

3 SECTION 3.076. Section 408.023, Labor Code, is amended to
4 read as follows:

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

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

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

15 (b) The commissioner [~~commission~~] by rule shall establish
16 reasonable requirements for doctors and health care providers
17 financially related to those doctors regarding training,
18 impairment rating testing, and disclosure of financial interests as
19 required by Section 413.041, and for monitoring of those doctors
20 and health care providers as provided by Sections 408.0231 and
21 413.0512. The commissioner [~~commission~~] by rule shall provide a
22 reasonable period, not to exceed 18 months after the adoption of
23 rules under this section, for doctors to comply with the
24 registration and training requirements of this subchapter. Except
25 as otherwise provided by this section, the requirements under this
26 subsection apply to doctors and other health care providers who:

27 (1) provide health care services as treating doctors;

1 (2) provide health care services as authorized by this
2 chapter;

3 (3) perform medical peer review under this subtitle;

4 (4) perform utilization review of medical benefits
5 provided under this subtitle; or

6 (5) provide health care services on referral from a
7 treating doctor, as provided by commissioner [~~commission~~] rule.

8 (c) The department [~~commission~~] shall issue to a doctor who
9 is approved by the commissioner [~~commission~~] a certificate of
10 registration. In determining whether to issue a certificate of
11 registration, the commissioner [~~commission~~] may consider and
12 condition [~~its~~] approval on any practice restrictions applicable to
13 the applicant that are relevant to services provided under this
14 subtitle. The commissioner [~~commission~~] may also consider the
15 practice restrictions of an applicant when determining appropriate
16 sanctions under Section 408.0231.

17 (d) A certificate of registration issued under this section
18 is valid, unless revoked, suspended, or revised, for the period
19 provided by commissioner [~~commission~~] rule and may be renewed on
20 application to the department [~~commission~~]. The department
21 [~~commission~~] shall provide notice to each doctor on the approved
22 doctor list of the pending expiration of the doctor's certificate
23 of registration not later than the 60th day before the date of
24 expiration of the certificate.

25 (e) Notwithstanding other provisions of this section, a
26 doctor not licensed in this state but licensed in another state or
27 jurisdiction who treats employees or performs utilization review of

1 health care for an insurance carrier may apply for a certificate of
2 registration under this section to be included on the department's
3 ~~[commission's]~~ list of approved doctors.

4 (f) A doctor who contracts with a workers' compensation
5 health care network certified under Chapter 1305, Insurance Code,
6 is not subject to the registration requirements of this section for
7 the purpose of treating injured employees who are required to seek
8 medical care from a network. However, a doctor who contracts with a
9 workers' compensation health care network shall:

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

12 (2) if the doctor intends to provide certifications of
13 maximum medical improvement or assign impairment ratings, comply
14 with the impairment rating training and testing requirements
15 established by commissioner rule.

16 (g) A person required to comply with Subsection (f) who does
17 not comply commits a violation. A violation under this subsection
18 is a Class B administrative violation.

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

24 (i) Except in an emergency or for immediate post-injury
25 medical care as defined by commissioner ~~[commission]~~ rule, or as
26 provided by Subsection (k) ~~[(h)]~~ or (l) ~~[(i)]~~, each doctor who
27 performs functions under this subtitle, including examinations

1 under this chapter, must hold a certificate of registration and be
2 on the department's list of approved doctors in order to perform
3 services or receive payment for those services.

4 (j) [~~(g)~~] The commissioner [~~commission~~] by rule shall
5 modify registration and training requirements for doctors who
6 infrequently provide health care or [~~7~~] who perform utilization
7 review or peer review functions for insurance carriers [~~7~~, ~~or who~~
8 ~~participate in regional networks established under this~~
9 ~~subchapter,~~] as necessary to ensure that those doctors are informed
10 of the regulations that affect health care benefit delivery under
11 this subtitle.

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

18 (l) [~~(i)~~] The commissioner [~~commission~~] may grant
19 exceptions to the requirement imposed under Subsection (i) [~~(f)~~] as
20 necessary to ensure that:

21 (1) employees have access to health care; and

22 (2) insurance carriers have access to evaluations of
23 an employee's health care and income benefit eligibility as
24 provided by this subtitle.

25 (m) [~~(j)~~] The injured employee's treating doctor is
26 responsible for the efficient management of medical care as
27 required by Section 408.025(c) and commissioner [~~commission~~]

1 rules. The department [~~commission~~] shall collect information
2 regarding:

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

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

10 SECTION 3.077. Section 408.0231, Labor Code, is amended to
11 read as follows:

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

- 16 (1) who fails to register with the department
17 [~~commission~~] as provided by this chapter and commissioner
18 [~~commission~~] rules;
- 19 (2) who is deceased;
- 20 (3) whose license to practice in this state is
21 revoked, suspended, or not renewed by the appropriate licensing
22 authority; or
- 23 (4) who requests to be removed from the list.

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

- 26 (1) deleting or suspending a doctor from the list of
27 approved doctors;

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

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

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

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

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

15 (2) a sanction by the Medicare or Medicaid program
16 for:

17 (A) substandard medical care;

18 (B) overcharging;

19 (C) overutilization of medical services; or

20 (D) any other substantive noncompliance with
21 requirements of those programs regarding professional practice or
22 billing;

23 (3) evidence from the department's [~~commission's~~]
24 medical records that the applicable insurance carrier's
25 utilization review practices or the doctor's charges, fees,
26 diagnoses, treatments, evaluations, or impairment ratings are
27 substantially different from those the commissioner [~~commission~~]

1 finds to be fair and reasonable based on either a single
2 determination or a pattern of practice;

3 (4) a suspension or other relevant practice
4 restriction of the doctor's license by an appropriate licensing
5 authority;

6 (5) professional failure to practice medicine or
7 provide health care, including chiropractic care, in an acceptable
8 manner consistent with the public health, safety, and welfare;

9 (6) findings of fact and conclusions of law made by a
10 court, an administrative law judge of the State Office of
11 Administrative Hearings, or a licensing or regulatory authority; or

12 (7) a criminal conviction.

13 (d) The commissioner [~~commission~~] by rule shall establish
14 procedures under which a doctor may apply for:

15 (1) reinstatement to the list of approved doctors; or

16 (2) restoration of doctor practice privileges removed
17 by the commissioner [~~commission~~] based on sanctions imposed under
18 this section.

19 (e) The commissioner [~~commission~~] shall act on a
20 recommendation by the medical advisor selected under Section
21 413.0511 and, after notice and the opportunity for a hearing, may
22 impose sanctions under this section on a doctor or an insurance
23 carrier or may recommend action regarding a utilization review
24 agent. The department [~~commission~~] and the Texas Department of
25 Insurance shall enter into a memorandum of understanding to
26 coordinate the regulation of insurance carriers and utilization
27 review agents as necessary to ensure:

1 (1) compliance with applicable regulations; and

2 (2) that appropriate health care decisions are reached
3 under this subtitle and under Article 21.58A, Insurance Code.

4 (f) The sanctions the commissioner [~~commission~~] may
5 recommend or impose under this section include:

6 (1) reduction of allowable reimbursement;

7 (2) mandatory preauthorization of all or certain
8 health care services;

9 (3) required peer review monitoring, reporting, and
10 audit;

11 (4) deletion or suspension from the approved doctor
12 list and the designated doctor list;

13 (5) restrictions on appointment under this chapter;

14 (6) conditions or restrictions on an insurance carrier
15 regarding actions by insurance carriers under this subtitle in
16 accordance with the memorandum of understanding adopted between the
17 department [~~commission~~] and the Texas Department of Insurance
18 regarding Article 21.58A, Insurance Code; and

19 (7) mandatory participation in training classes or
20 other courses as established or certified by the department
21 [~~commission~~].

22 (g) The commissioner shall adopt rules regarding doctors
23 who perform peer review functions for insurance carriers. Those
24 rules may include standards for peer review, imposition of
25 sanctions on doctors performing peer review functions, including
26 restriction, suspension, or removal of the doctor's ability to
27 perform peer review on behalf of insurance carriers in the workers'

1 compensation system, and other issues important to the quality of
2 peer review, as determined by the commissioner.

3 SECTION 3.078. Section 408.024, Labor Code, is amended to
4 read as follows:

5 Sec. 408.024. NONCOMPLIANCE WITH SELECTION
6 REQUIREMENTS. Except as otherwise provided, and after notice and
7 an opportunity for hearing, the commissioner [~~commission~~] may
8 relieve an insurance carrier of liability for health care that is
9 furnished by a health care provider or another person selected in a
10 manner inconsistent with the requirements of this subchapter.

11 SECTION 3.079. Sections 408.025(a), (b), and (d), Labor
12 Code, are amended to read as follows:

13 (a) The commissioner [~~commission~~] by rule shall adopt
14 requirements for reports and records that are required to be filed
15 with the department [~~commission~~] or provided to the injured
16 employee, the employee's attorney, or the insurance carrier by a
17 health care provider.

18 (b) The commissioner [~~commission~~] by rule shall adopt
19 requirements for reports and records that are to be made available
20 by a health care provider to another health care provider to prevent
21 unnecessary duplication of tests and examinations.

22 (d) On the request of an injured employee, the employee's
23 attorney, or the insurance carrier, a health care provider shall
24 furnish records relating to treatment or hospitalization for which
25 compensation is being sought. The department [~~commission~~] may
26 regulate the charge for furnishing a report or record, but the
27 charge may not be less than the fair and reasonable charge for

1 furnishing the report or record. A health care provider may
2 disclose to the insurance carrier of an affected employer records
3 relating to the diagnosis or treatment of the injured employee
4 without the authorization of the injured employee to determine the
5 amount of payment or the entitlement to payment.

6 SECTION 3.080. Subchapter B, Chapter 408, Labor Code, is
7 amended by adding Section 408.0251 to read as follows:

8 Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) The
9 commissioner by rule shall establish requirements regarding:

10 (1) the electronic submission and processing of
11 medical bills by health care providers to insurance carriers; and

12 (2) the electronic payment of medical bills by
13 insurance carriers to health care providers.

14 (b) Insurance carriers shall accept medical bills submitted
15 electronically by health care providers in accordance with
16 commissioner rule.

17 (c) The commissioner shall by rule establish criteria for
18 granting exceptions to insurance carriers who are not able to
19 accept medical bills electronically.

20 SECTION 3.081. Section 408.026, Labor Code, is amended to
21 read as follows:

22 Sec. 408.026. SPINAL SURGERY. Except in a medical
23 emergency, an insurance carrier is liable for medical costs related
24 to spinal surgery only as provided by Section 413.014 and
25 commissioner [~~commission~~] rules.

26 SECTION 3.082. Section 408.027(d), Labor Code, is amended to
27 read as follows:

1 (d) If an insurance carrier disputes the amount of payment
2 or the health care provider's entitlement to payment, the insurance
3 carrier shall send to the department [~~commission~~], the health care
4 provider, and the injured employee a report that sufficiently
5 explains the reasons for the reduction or denial of payment for
6 health care services provided to the employee. The insurance
7 carrier is entitled to a hearing as provided by Section 413.031(d).

8 SECTION 3.083. Sections 408.028(b), (d), and (e), Labor
9 Code, are amended to read as follows:

10 (b) The commissioner [~~commission~~] by rule shall develop an
11 open formulary under Section 413.011 that requires the use of
12 generic pharmaceutical medications and clinically appropriate
13 over-the-counter alternatives to prescription medications unless
14 otherwise specified by the prescribing doctor, in accordance with
15 applicable state law.

16 (d) The commissioner [~~commission~~] shall adopt rules to
17 allow an employee to purchase over-the-counter alternatives to
18 prescription medications prescribed or ordered under Subsection
19 (a) or (b) and to obtain reimbursement from the insurance carrier
20 for those medications.

21 (e) Notwithstanding Subsection (b), the commissioner
22 [~~commission~~] by rule shall allow an employee to purchase a brand
23 name drug rather than a generic pharmaceutical medication or
24 over-the-counter alternative to a prescription medication if a
25 health care provider prescribes a generic pharmaceutical
26 medication or an over-the-counter alternative to a prescription
27 medication. The employee shall be responsible for paying the

1 difference between the cost of the brand name drug and the cost of
2 the generic pharmaceutical medication or of an over-the-counter
3 alternative to a prescription medication. The employee may not
4 seek reimbursement for the difference in cost from an insurance
5 carrier and is not entitled to use the medical dispute resolution
6 provisions of Chapter 413 with regard to the prescription. A
7 payment described by this subsection by an employee to a health care
8 provider does not violate Section 413.042. This subsection does
9 not affect the duty of a health care provider to comply with the
10 requirements of Subsection (b) when prescribing medications or
11 ordering over-the-counter alternatives to prescription
12 medications.

13 SECTION 3.084. Section 408.030, Labor Code, is amended to
14 read as follows:

15 Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. If the
16 department [~~commission~~] discovers an act or omission by a physician
17 that may constitute a felony, a misdemeanor involving moral
18 turpitude, a violation of a state or federal narcotics or
19 controlled substance law, an offense involving fraud or abuse under
20 the Medicare or Medicaid program, or a violation of this subtitle,
21 the department [~~commission~~] shall immediately report that act or
22 omission to the Texas State Board of Medical Examiners.

23 SECTION 3.085. Subchapter B, Chapter 408, Labor Code, is
24 amended by adding Section 408.031 to read as follows:

25 Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS.

26 (a) Notwithstanding any other provision of this chapter, an
27 injured employee may receive benefits under a workers' compensation

1 health care network established under Chapter 1305, Insurance Code,
2 in the manner provided by that chapter.

3 (b) In the event of a conflict between this title and
4 Chapter 1305, Insurance Code, as to the operation and regulation of
5 workers' compensation health care networks, regulation of the
6 health care providers who contract with those networks, or the
7 resolution of disputes regarding medical benefits provided through
8 those networks, Chapter 1305, Insurance Code, prevails.

9 SECTION 3.086. Section 408.041(c), Labor Code, is amended to
10 read as follows:

11 (c) If Subsection (a) or (b) cannot reasonably be applied
12 because the employee's employment has been irregular or because the
13 employee has lost time from work during the 13-week period
14 immediately preceding the injury because of illness, weather, or
15 another cause beyond the control of the employee, the commissioner
16 [~~commission~~] may determine the employee's average weekly wage by
17 any method that the commissioner [~~commission~~] considers fair, just,
18 and reasonable to all parties and consistent with the methods
19 established under this section.

20 SECTION 3.087. Sections 408.042(d), (f), and (g), Labor
21 Code, are amended to read as follows:

22 (d) The commissioner [~~commission~~] shall:

23 (1) prescribe a form to collect information regarding
24 the wages of employees with multiple employment; and

25 (2) by rule, determine the manner by which the
26 department [~~commission~~] collects and distributes wage information
27 to implement this section.

1 (f) If the commissioner [~~commission~~] determines that
2 computing the average weekly wage for an employee as provided by
3 Subsection (c) is impractical or unreasonable, the commissioner
4 [~~commission~~] shall set the average weekly wage in a manner that more
5 fairly reflects the employee's average weekly wage and that is fair
6 and just to both parties or is in the manner agreed to by the
7 parties. The commissioner [~~commission~~] by rule may define methods
8 to determine a fair and just average weekly wage consistent with
9 this section.

10 (g) An insurance carrier is entitled to apply for and
11 receive reimbursement at least annually from the subsequent injury
12 fund for the amount of income benefits paid to a worker under this
13 section that are based on employment other than the employment
14 during which the compensable injury occurred. The commissioner
15 [~~commission~~] may adopt rules that govern the documentation,
16 application process, and other administrative requirements
17 necessary to implement this subsection.

18 SECTION 3.088. Section 408.043(c), Labor Code, is amended to
19 read as follows:

20 (c) If, for good reason, the commissioner [~~commission~~]
21 determines that computing the average weekly wage for a seasonal
22 employee as provided by this section is impractical, the
23 commissioner [~~commission~~] shall compute the average weekly wage as
24 of the time of the injury in a manner that is fair and just to both
25 parties.

26 SECTION 3.089. Section 408.0445(b), Labor Code, is amended
27 to read as follows:

1 (b) For purposes of computing income benefits or death
2 benefits under Section 88.303, Education Code, the average weekly
3 wage of a Texas Task Force 1 member, as defined by Section 88.301,
4 Education Code, who is engaged in authorized training or duty is an
5 amount equal to the sum of the member's regular weekly wage at any
6 employment, including self-employment, that the member holds in
7 addition to serving as a member of Texas Task Force 1, except that
8 the amount may not exceed 100 percent of the state average weekly
9 wage as determined under Section 408.047. A member for whom an
10 average weekly wage cannot be computed shall be paid the minimum
11 weekly benefit established by the commissioner [~~commissioner~~].

12 SECTION 3.090. Sections 408.0446(d) and (e), Labor Code,
13 are amended to read as follows:

14 (d) If the commissioner [~~commissioner~~] determines that
15 computing the average weekly wage of a school district employee as
16 provided by this section is impractical because the employee did
17 not earn wages during the 12 months immediately preceding the date
18 of the injury, the commissioner [~~commissioner~~] shall compute the
19 average weekly wage in a manner that is fair and just to both
20 parties.

21 (e) The commissioner [~~commissioner~~] shall adopt rules as
22 necessary to implement this section.

23 SECTION 3.091. Section 408.045, Labor Code, is amended to
24 read as follows:

25 Sec. 408.045. NONPECUNIARY WAGES. The commissioner
26 [~~commissioner~~] may not include nonpecuniary wages in computing an
27 employee's average weekly wage during a period in which the

1 employer continues to provide the nonpecuniary wages.

2 SECTION 3.092. Section 408.047, Labor Code, is amended to
3 read as follows:

4 Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On and after
5 October 1, 2006, the state average weekly wage is equal to 85
6 percent of the average weekly wage in covered employment computed
7 by the Texas Workforce Commission under Section 207.002(c), Labor
8 Code.

9 (b) The state average weekly wage for the period [fiscal
10 year] beginning September 1, 2005 [2003], and ending September 30,
11 2006 [August 31, 2004], is \$540 [\$537, and for the fiscal year
12 beginning September 1, 2004, and ending August 31, 2005, is \$539].
13 This subsection expires October 1, 2006.

14 SECTION 3.093. Section 408.061(f), Labor Code, is amended to
15 read as follows:

16 (f) The commissioner [commission] shall compute the maximum
17 weekly income benefits for each state fiscal year not later than
18 October [September] 1 of each year.

19 SECTION 3.094. Section 408.062(b), Labor Code, is amended to
20 read as follows:

21 (b) The commissioner [commission] shall compute the minimum
22 weekly income benefit for each state fiscal year not later than
23 September 1 of each year.

24 SECTION 3.095. Section 408.063(a), Labor Code, is amended to
25 read as follows:

26 (a) To expedite the payment of income benefits, the
27 commissioner [commission] may by rule establish reasonable

1 presumptions relating to the wages earned by an employee, including
2 the presumption that an employee's last paycheck accurately
3 reflects the employee's usual wage.

4 SECTION 3.096. Sections 408.081(b) and (c), Labor Code, are
5 amended to read as follows:

6 (b) Except as otherwise provided by this section or this
7 subtitle, income benefits shall be paid weekly as and when they
8 accrue without order from the commissioner [~~commission~~]. Interest
9 on accrued but unpaid benefits shall be paid, without order of the
10 commissioner [~~commission~~], at the time the accrued benefits are
11 paid.

12 (c) The commissioner [~~commission~~] by rule shall establish
13 requirements for agreements under which income benefits may be paid
14 monthly. Income benefits may be paid monthly only:

15 (1) on the request of the employee and the agreement of
16 the employee and the insurance carrier; and

17 (2) in compliance with the requirements adopted by the
18 commissioner [~~commission~~].

19 SECTION 3.097. Section 408.082(c), Labor Code, is amended
20 to read as follows:

21 (c) If the disability continues for two [~~four~~] weeks or
22 longer after the date it begins, compensation shall be computed
23 from the date the disability begins.

24 SECTION 3.098. Sections 408.084(a) and (b), Labor Code, are
25 amended to read as follows:

26 (a) At the request of the insurance carrier, the
27 commissioner [~~commission~~] may order that impairment income

1 benefits and supplemental income benefits be reduced in a
2 proportion equal to the proportion of a documented impairment that
3 resulted from earlier compensable injuries.

4 (b) The commissioner [~~commission~~] shall consider the
5 cumulative impact of the compensable injuries on the employee's
6 overall impairment in determining a reduction under this section.

7 SECTION 3.099. Section 408.085, Labor Code, is amended to
8 read as follows:

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

17 (b) An employee must apply to the department [~~commission~~]
18 for an advance on a form prescribed by the commissioner
19 [~~commission~~]. The application must describe the hardship that is
20 the grounds for the advance.

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

26 (d) The commissioner [~~commission~~] may not grant an advance
27 to an employee who is receiving, on the date of the application

1 under Subsection (b), at least 90 percent of the employee's net
2 preinjury wages under Section 408.003 or 408.129.

3 SECTION 3.100. Section 408.086, Labor Code, is amended to
4 read as follows:

5 Sec. 408.086. DEPARTMENT [~~COMMISSION~~] DETERMINATION OF
6 EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) During the period
7 that impairment income benefits or supplemental income benefits are
8 being paid to an employee, the commissioner [~~commission~~] shall
9 determine at least annually whether any extended unemployment or
10 underemployment is a direct result of the employee's impairment.

11 (b) To make this determination, the commissioner
12 [~~commission~~] may require periodic reports from the employee and the
13 insurance carrier and, at the insurance carrier's expense, may
14 require physical or other examinations, vocational assessments, or
15 other tests or diagnoses necessary to perform the commissioner's
16 [~~its~~] duty under this section and Subchapter H.

17 SECTION 3.101. Section 408.102(b), Labor Code, is amended to
18 read as follows:

19 (b) The commissioner [~~commission~~] by rule shall establish a
20 presumption that maximum medical improvement has been reached based
21 on a lack of medical improvement in the employee's condition.

22 SECTION 3.102. Section 408.103(b), Labor Code, is amended to
23 read as follows:

24 (b) A temporary income benefit under Subsection (a)(2) may
25 not exceed the employee's actual earnings for the previous year. It
26 is presumed that the employee's actual earnings for the previous
27 year are equal to:

1 (1) the sum of the employee's wages as reported in the
2 most recent four quarterly wage reports to the Texas Workforce
3 ~~[Employment]~~ Commission divided by 52;

4 (2) the employee's wages in the single quarter of the
5 most recent four quarters in which the employee's earnings were
6 highest, divided by 13, if the commissioner ~~[commission]~~ finds that
7 the employee's most recent four quarters' earnings reported in the
8 Texas Workforce ~~[Employment]~~ Commission wage reports are not
9 representative of the employee's usual earnings; or

10 (3) the amount the commissioner ~~[commission]~~
11 determines from other credible evidence to be the actual earnings
12 for the previous year if the Texas Workforce ~~[Employment]~~
13 Commission does not have a wage report reflecting at least one
14 quarter's earnings because the employee worked outside the state
15 during the previous year.

16 SECTION 3.103. Sections 408.104(a) and (c), Labor Code, are
17 amended to read as follows:

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

27 (c) The commissioner ~~[commission]~~ shall adopt rules to

1 implement this section, including rules establishing procedures
2 for requesting and disputing an extension.

3 SECTION 3.104. Subchapter G, Chapter 408, Labor Code, is
4 amended by amending Section 408.122 and adding Section 408.1225 to
5 read as follows:

6 Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS[+
7 ~~DESIGNATED DOCTOR~~]. [~~(a)~~] A claimant may not recover impairment
8 income benefits unless evidence of impairment based on an objective
9 clinical or laboratory finding exists. If the finding of
10 impairment is made by a doctor chosen by the claimant and the
11 finding is contested, a designated doctor or a doctor selected by
12 the insurance carrier must be able to confirm the objective
13 clinical or laboratory finding on which the finding of impairment
14 is based.

15 Sec. 408.1225. DESIGNATED DOCTOR. (a) [~~(b)~~] To be
16 eligible to serve as a designated doctor, a doctor must meet
17 specific qualifications, including training in the determination
18 of impairment ratings and demonstrated expertise in performing
19 examinations and making evaluations as described by Section
20 408.0041. The commissioner [~~executive director~~] shall develop
21 qualification standards and administrative policies to implement
22 this subsection [7] and [~~the commission~~] may adopt rules as
23 necessary. The commissioner shall ensure the quality of designated
24 doctor decisions and reviews through active monitoring of the
25 decisions and reviews, and may take action as necessary to:

26 (1) restrict the participation of a designated doctor;
27 or

1 (2) remove a doctor from inclusion on the department's
2 list of designated doctors.

3 (b) The designated doctor doing the review must be trained
4 and experienced with the treatment and procedures used by the
5 doctor treating the patient's medical condition, and the treatment
6 and procedures performed must be within the scope of practice of the
7 designated doctor. A designated doctor's credentials must be
8 appropriate for the issue in question and the injured employee's
9 medical condition.

10 (c) The report of the designated doctor has presumptive
11 weight, and the commissioner [~~commission~~] shall base the
12 commissioner's [~~its~~] determination of whether the employee has
13 reached maximum medical improvement on the report unless the great
14 weight of the other medical evidence is to the contrary.

15 SECTION 3.105. Section 408.123, Labor Code, is amended and
16 reenacted to read as follows:

17 Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL
18 IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an
19 employee has been certified by a doctor as having reached maximum
20 medical improvement, the certifying doctor shall evaluate the
21 condition of the employee and assign an impairment rating using the
22 impairment rating guidelines described by Section 408.124. If the
23 certification and evaluation are performed by a doctor other than
24 the employee's treating doctor, the certification and evaluation
25 shall be submitted to the treating doctor, and the treating doctor
26 shall indicate agreement or disagreement with the certification and
27 evaluation.

1 (b) A certifying doctor shall issue a written report
2 certifying that maximum medical improvement has been reached,
3 stating the employee's impairment rating, and providing any other
4 information required by the commissioner [~~commission~~] to:

- 5 (1) the department [~~commission~~];
6 (2) the employee; and
7 (3) the insurance carrier.

8 (c) If an employee is not certified as having reached
9 maximum medical improvement before the expiration of 102 weeks
10 after the date income benefits begin to accrue, the department
11 [~~commission~~] shall notify the treating doctor of the requirements
12 of this subchapter.

13 (d) Except as otherwise provided by this section, an
14 employee's first valid certification of maximum medical
15 improvement and first valid assignment of an impairment rating is
16 final if the certification or assignment is not disputed before the
17 91st day after the date written notification of the certification
18 or assignment is provided to the employee and the carrier by
19 verifiable means.

20 (e) An employee's first certification of maximum medical
21 improvement or assignment of an impairment rating may be disputed
22 after the period described by Subsection (d) if:

- 23 (1) compelling medical evidence exists of:
24 (A) a significant error by the certifying doctor
25 in applying the appropriate American Medical Association
26 guidelines or in calculating the impairment rating;
27 (B) a clearly mistaken diagnosis or a previously

1 undiagnosed medical condition; or

2 (C) improper or inadequate treatment of the
3 injury before the date of the certification or assignment that
4 would render the certification or assignment invalid; or

5 (2) other compelling circumstances exist as
6 prescribed by commissioner [~~commission~~] rule.

7 (f) If an employee has not been certified as having reached
8 maximum medical improvement before the expiration of 104 weeks
9 after the date income benefits begin to accrue or the expiration
10 date of any extension of benefits under Section 408.104, the
11 impairment rating assigned after the expiration of either of those
12 periods is final if the impairment rating is not disputed before the
13 91st day after the date written notification of the certification
14 or assignment is provided to the employee and the carrier by
15 verifiable means. A certification or assignment may be disputed
16 after the 90th day only as provided by Subsection (e).

17 (g) If an employee's disputed certification of maximum
18 medical improvement or assignment of impairment rating is finally
19 modified, overturned, or withdrawn, the first certification or
20 assignment made after the date of the modification, overturning, or
21 withdrawal becomes final if the certification or assignment is not
22 disputed before the 91st day after the date notification of the
23 certification or assignment is provided to the employee and the
24 carrier by verifiable means. A certification or assignment may be
25 disputed after the 90th day only as provided by Subsection (e).

26 SECTION 3.106. Section 408.124, Labor Code, is amended to
27 read as follows:

1 Sec. 408.124. IMPAIRMENT RATING GUIDELINES. (a) An award
2 of an impairment income benefit, whether by the commissioner
3 [~~commission~~] or a court, shall be made on an impairment rating
4 determined using the impairment rating guidelines described in this
5 section.

6 (b) For determining the existence and degree of an
7 employee's impairment, the commissioner [~~commission~~] shall use
8 "Guides to the Evaluation of Permanent Impairment," third edition,
9 second printing, dated February 1989, published by the American
10 Medical Association.

11 (c) Notwithstanding Subsection (b), the commissioner
12 [~~commission~~] by rule may adopt the fourth edition of the "Guides to
13 the Evaluation of Permanent Impairment," published by the American
14 Medical Association, for determining the existence and degree of an
15 employee's impairment.

16 SECTION 3.107. Sections 408.125(a)-(d), Labor Code, are
17 amended to read as follows:

18 (a) If an impairment rating is disputed, the commissioner
19 [~~commission~~] shall direct the employee to the next available doctor
20 on the department's [~~commission's~~] list of designated doctors, as
21 provided by Section 408.0041.

22 (b) The designated doctor shall report in writing to the
23 department [~~commission~~].

24 (c) The report of the designated doctor shall have
25 presumptive weight, and the department [~~commission~~] shall base the
26 impairment rating on that report unless the great weight of the
27 other medical evidence is to the contrary. If the great weight of

1 the medical evidence contradicts the impairment rating contained in
2 the report of the designated doctor chosen by the department
3 [~~commission~~], the department [~~commission~~] shall adopt the
4 impairment rating of one of the other doctors.

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

17 SECTION 3.108. Section 408.127(c), Labor Code, is amended to
18 read as follows:

19 (c) The commissioner [~~commission~~] shall adopt rules and
20 forms to ensure the full reporting and the accuracy of reductions
21 and reimbursements made under this section.

22 SECTION 3.109. Sections 408.129(a), (b), and (d), Labor
23 Code, are amended to read as follows:

24 (a) On approval by the commissioner [~~commission~~] of a
25 written request received from an employee, an insurance carrier
26 shall accelerate the payment of impairment income benefits to the
27 employee. The accelerated payment may not exceed a rate of payment

1 equal to that of the employee's net preinjury wage.

2 (b) The commissioner [~~commission~~] shall approve the request
3 and order the acceleration of the benefits if the commissioner
4 [~~commission~~] determines that the acceleration is:

5 (1) required to relieve hardship; and

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

7 (d) The commissioner [~~commission~~] may prescribe forms
8 necessary to implement this section.

9 SECTION 3.110. Section 408.141, Labor Code, is amended to
10 read as follows:

11 Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An
12 award of a supplemental income benefit, whether by the commissioner
13 [~~commission~~] or a court, shall be made in accordance with this
14 subchapter.

15 SECTION 3.111. Sections 408.143(a) and (b), Labor Code, are
16 amended to read as follows:

17 (a) After the commissioner's [~~commission's~~] initial
18 determination of supplemental income benefits, the employee must
19 file a statement with the insurance carrier stating:

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

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

25 (3) that the employee has in good faith sought
26 employment commensurate with the employee's ability to work.

27 (b) The statement required under this section must be filed

1 quarterly on a form and in the manner provided by the commissioner
2 [~~commission~~]. The commissioner [~~commission~~] may modify the filing
3 period as appropriate to an individual case.

4 SECTION 3.112. Section 408.147(c), Labor Code, is amended to
5 read as follows:

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

16 SECTION 3.113. Section 408.148, Labor Code, is amended to
17 read as follows:

18 Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. The
19 commissioner [~~commission~~] may reinstate supplemental income
20 benefits to an employee who is discharged within 12 months of the
21 date of losing entitlement to supplemental income benefits under
22 Section 408.146(c) if the commissioner [~~commission~~] finds that the
23 employee was discharged at that time with the intent to deprive the
24 employee of supplemental income benefits.

25 SECTION 3.114. Section 408.149, Labor Code, is amended to
26 read as follows:

27 Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW

1 CONFERENCE. (a) Not more than once in each period of 12 calendar
2 months, an employee and an insurance carrier each may request the
3 commissioner [~~commission~~] to review the status of the employee and
4 determine whether the employee's unemployment or underemployment
5 is a direct result of impairment from the compensable injury.

6 (b) Either party may request a benefit review conference to
7 contest a determination of the commissioner [~~commission~~] at any
8 time, subject only to the limits placed on the insurance carrier by
9 Section 408.147.

10 SECTION 3.115. Section 408.150, Labor Code, is amended to
11 read as follows:

12 Sec. 408.150. VOCATIONAL REHABILITATION. (a) The
13 department [~~commission~~] shall refer an employee to the Department
14 of Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
15 ~~Commission~~] with a recommendation for appropriate services if the
16 department [~~commission~~] determines that an employee entitled to
17 supplemental income benefits could be materially assisted by
18 vocational rehabilitation or training in returning to employment or
19 returning to employment more nearly approximating the employee's
20 preinjury employment. The department [~~commission~~] shall also
21 notify insurance carriers of the need for vocational rehabilitation
22 or training services. The insurance carrier may provide services
23 through a private provider of vocational rehabilitation services
24 under Section 409.012.

25 (b) An employee who refuses services or refuses to cooperate
26 with services provided under this section by the Department of
27 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~

1 ~~Commissioner~~] or a private provider loses entitlement to supplemental
2 income benefits.

3 SECTION 3.116. Section 408.151, Labor Code, is amended to
4 read as follows:

5 Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME
6 BENEFITS. (a) On or after the second anniversary of the date the
7 commissioner [~~commission~~] makes the initial award of supplemental
8 income benefits, an insurance carrier may not require an employee
9 who is receiving supplemental income benefits to submit to a
10 medical examination more than annually if, in the preceding year,
11 the employee's medical condition resulting from the compensable
12 injury has not improved sufficiently to allow the employee to
13 return to work.

14 (b) If a dispute exists as to whether the employee's medical
15 condition has improved sufficiently to allow the employee to return
16 to work, the commissioner [~~commission~~] shall direct the employee to
17 be examined by a designated doctor chosen by the department
18 [~~commission~~]. The designated doctor shall report to the department
19 [~~commission~~]. The report of the designated doctor has presumptive
20 weight, and the commission shall base its determination of whether
21 the employee's medical condition has improved sufficiently to allow
22 the employee to return to work on that report unless the great
23 weight of the other medical evidence is to the contrary.

24 [~~(c) The commission may require an employee to whom~~
25 ~~Subsection (a) applies to submit to a medical examination under~~
26 ~~Section 408.004 only to determine whether the employee's medical~~
27 ~~condition is a direct result of impairment from a compensable~~

1 ~~injury.]~~

2 SECTION 3.117. Section 408.161(d), Labor Code, is amended to
3 read as follows:

4 (d) An insurance carrier may pay lifetime income benefits
5 through an annuity if the annuity agreement meets the terms and
6 conditions for annuity agreements adopted by the commissioner
7 [~~commission~~] by rule. The establishment of an annuity under this
8 subsection does not relieve the insurance carrier of the liability
9 under this title for ensuring that the lifetime income benefits are
10 paid.

11 SECTION 3.118. Sections 408.181(c) and (d), Labor Code, are
12 amended to read as follows:

13 (c) The commissioner [~~commission~~] by rule shall establish
14 requirements for agreements under which death benefits may be paid
15 monthly. Death benefits may be paid monthly only:

16 (1) on the request of the legal beneficiary and the
17 agreement of the legal beneficiary and the insurance carrier; and

18 (2) in compliance with the requirements adopted by the
19 commissioner [~~commission~~].

20 (d) An insurance carrier may pay death benefits through an
21 annuity if the annuity agreement meets the terms and conditions for
22 annuity agreements adopted by the commissioner [~~commission~~] by
23 rule. The establishment of an annuity under this subsection does
24 not relieve the insurance carrier of the liability under this title
25 for ensuring that the death benefits are paid.

26 SECTION 3.119. Section 408.182(f), Labor Code, is amended to
27 read as follows:

1 (f) In this section:

2 (1) "Eligible child" means a child of a deceased
3 employee if the child is:

4 (A) a minor;

5 (B) enrolled as a full-time student in an
6 accredited educational institution and is less than 25 years of
7 age; or

8 (C) a dependent of the deceased employee at the
9 time of the employee's death.

10 (2) "Eligible grandchild" means a grandchild of a
11 deceased employee who is a dependent of the deceased employee and
12 whose parent is not an eligible child.

13 (3) "Eligible spouse" means the surviving spouse of a
14 deceased employee unless the spouse abandoned the employee for
15 longer than the year immediately preceding the death without good
16 cause, as determined by the department [~~commission~~].

17 SECTION 3.120. Section 408.183(b), Labor Code, is amended to
18 read as follows:

19 (b) An eligible spouse is entitled to receive death benefits
20 for life or until remarriage. On remarriage, the eligible spouse is
21 entitled to receive 104 weeks of death benefits, commuted as
22 provided by commissioner [~~commission~~] rule.

23 SECTION 3.121. Section 408.187(c), Labor Code, is amended to
24 read as follows:

25 (c) The commissioner [~~commission~~] shall require the
26 insurance carrier to pay the costs of a procedure ordered under this
27 section.

1 SECTION 3.122. Section 408.202, Labor Code, is amended to
2 read as follows:

3 Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not
4 assignable, except a legal beneficiary may, with the commissioner's
5 [~~commission~~] approval, assign the right to death benefits.

6 SECTION 3.123. Sections 408.221(a)-(g), Labor Code, are
7 amended to read as follows:

8 (a) An attorney's fee, including a contingency fee, for
9 representing a claimant before the department [~~commission~~] or court
10 under this subtitle must be approved by the commissioner
11 [~~commission~~] or court.

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

17 (c) An insurance carrier that seeks judicial review under
18 Subchapter G, Chapter 410, of a final decision of a department
19 [~~commission~~] appeals panel regarding compensability or eligibility
20 for, or the amount of, income or death benefits is liable for
21 reasonable and necessary attorney's fees as provided by Subsection
22 (d) incurred by the claimant as a result of the insurance carrier's
23 appeal if the claimant prevails on an issue on which judicial review
24 is sought by the insurance carrier in accordance with the
25 limitation of issues contained in Section 410.302. If the carrier
26 appeals multiple issues and the claimant prevails on some, but not
27 all, of the issues appealed, the court shall apportion and award

1 fees to the claimant's attorney only for the issues on which the
2 claimant prevails. In making that apportionment, the court shall
3 consider the factors prescribed by Subsection (d). This subsection
4 does not apply to attorney's fees for which an insurance carrier may
5 be liable under Section 408.147. An award of attorney's fees under
6 this subsection is not subject to commissioner [~~commission~~] rules
7 adopted under Subsection (f). [~~This subsection expires September~~
8 ~~1, 2005.~~]

9 (d) In approving an attorney's fee under this section, the
10 commissioner [~~commission~~] or court shall consider:

- 11 (1) the time and labor required;
- 12 (2) the novelty and difficulty of the questions
13 involved;
- 14 (3) the skill required to perform the legal services
15 properly;
- 16 (4) the fee customarily charged in the locality for
17 similar legal services;
- 18 (5) the amount involved in the controversy;
- 19 (6) the benefits to the claimant that the attorney is
20 responsible for securing; and
- 21 (7) the experience and ability of the attorney
22 performing the services.

23 (e) The commissioner [~~commission~~] by rule or the court may
24 provide for the commutation of an attorney's fee, except that the
25 attorney's fee shall be paid in periodic payments in a claim
26 involving death benefits if the only dispute is as to the proper
27 beneficiary or beneficiaries.

1 (f) The commissioner [~~commission~~] by rule shall provide
2 guidelines for maximum attorney's fees for specific services in
3 accordance with this section.

4 (g) An attorney's fee may not be allowed in a case involving
5 a fatal injury or lifetime income benefit if the insurance carrier
6 admits liability on all issues and tenders payment of maximum
7 benefits in writing under this subtitle while the claim is pending
8 before the department [~~commission~~].

9 SECTION 3.124. Section 408.222, Labor Code, is amended to
10 read as follows:

11 Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a)
12 The amount of an attorney's fee for defending an insurance carrier
13 in a workers' compensation action brought under this subtitle must
14 be approved by the commissioner [~~commission~~] or court and
15 determined by the commissioner [~~commission~~] or court to be
16 reasonable and necessary.

17 (b) In determining whether a fee is reasonable under this
18 section, the commissioner [~~commission~~] or court shall consider
19 issues analogous to those listed under Section 408.221(d). The
20 defense counsel shall present written evidence to the commissioner
21 [~~commission~~] or court relating to:

22 (1) the time spent and expenses incurred in defending
23 the case; and

24 (2) other evidence considered necessary by the
25 commissioner [~~commission~~] or court in making a determination under
26 this section.

27 SECTION 3.125. Section 409.002, Labor Code, is amended to

1 read as follows:

2 Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to
3 notify an employer as required by Section 409.001(a) relieves the
4 employer and the employer's insurance carrier of liability under
5 this subtitle unless:

6 (1) the employer, a person eligible to receive notice
7 under Section 409.001(b), or the employer's insurance carrier has
8 actual knowledge of the employee's injury;

9 (2) the commissioner [~~commission~~] determines that
10 good cause exists for failure to provide notice in a timely manner;
11 or

12 (3) the employer or the employer's insurance carrier
13 does not contest the claim.

14 SECTION 3.126. Section 409.003, Labor Code, is amended to
15 read as follows:

16 Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a
17 person acting on the employee's behalf shall file with the
18 department [~~commission~~] a claim for compensation for an injury not
19 later than one year after the date on which:

20 (1) the injury occurred; or

21 (2) if the injury is an occupational disease, the
22 employee knew or should have known that the disease was related to
23 the employee's employment.

24 SECTION 3.127. Section 409.004, Labor Code, is amended to
25 read as follows:

26 Sec. 409.004. FAILURE TO FILE CLAIM FOR COMPENSATION.
27 Failure to file a claim for compensation with the department

1 ~~[commission]~~ as required under Section 409.003 relieves the
2 employer and the employer's insurance carrier of liability under
3 this subtitle unless:

4 (1) good cause exists for failure to file a claim in a
5 timely manner; or

6 (2) the employer or the employer's insurance carrier
7 does not contest the claim.

8 SECTION 3.128. Sections 409.005(d), (e), (f), (h), (i),
9 (j), and (k), Labor Code, are amended to read as follows:

10 (d) The insurance carrier shall file the report of the
11 injury on behalf of the policyholder. Except as provided by
12 Subsection (e), the insurance carrier must electronically file the
13 report with the department ~~[commission]~~ not later than the seventh
14 day after the date on which the carrier receives the report from the
15 employer.

16 (e) The commissioner ~~[executive director]~~ may waive the
17 electronic filing requirement under Subsection (d) and allow an
18 insurance carrier to mail or deliver the report to the department
19 ~~[commission]~~ not later than the seventh day after the date on which
20 the carrier receives the report from the employer.

21 (f) A report required under this section may not be
22 considered to be an admission by or evidence against an employer or
23 an insurance carrier in a proceeding before the department
24 ~~[commission]~~ or a court in which the facts set out in the report are
25 contradicted by the employer or insurance carrier.

26 (h) The commissioner ~~[commission]~~ may adopt rules relating
27 to:

1 (1) the information that must be contained in a report
2 required under this section, including the summary of rights and
3 responsibilities required under Subsection (g); and

4 (2) the development and implementation of an
5 electronic filing system for injury reports under this section.

6 (i) An employer and insurance carrier shall file subsequent
7 reports as required by commissioner [~~commission~~] rule.

8 (j) The employer shall, on the written request of the
9 employee, a doctor, the insurance carrier, or the commissioner
10 [~~commission~~], notify the employee, the employee's treating doctor
11 if known to the employer, and the insurance carrier of the existence
12 or absence of opportunities for modified duty or a modified duty
13 return-to-work program available through the employer. If those
14 opportunities or that program exists, the employer shall identify
15 the employer's contact person and provide other information to
16 assist the doctor, the employee, and the insurance carrier to
17 assess modified duty or return-to-work options.

18 (k) This section does not prohibit the commissioner
19 [~~commission~~] from imposing requirements relating to return-to-work
20 under other authority granted to the department [~~commission~~] in
21 this subtitle.

22 SECTION 3.129. Sections 409.006(b) and (c), Labor Code, are
23 amended to read as follows:

24 (b) The record shall be available to the department
25 [~~commission~~] at reasonable times and under conditions prescribed by
26 the commissioner [~~commission~~].

27 (c) The commissioner [~~commission~~] may adopt rules relating

1 to the information that must be contained in an employer record
2 under this section.

3 SECTION 3.130. Section 409.007(a), Labor Code, is amended
4 to read as follows:

5 (a) A person must file a claim for death benefits with the
6 department [~~commission~~] not later than the first anniversary of the
7 date of the employee's death.

8 SECTION 3.131. Section 409.009, Labor Code, is amended to
9 read as follows:

10 Sec. 409.009. SUBCLAIMS. A person may file a written claim
11 with the department [~~commission~~] as a subclaimant if the person
12 has:

13 (1) provided compensation, including health care
14 provided by a health care insurer, directly or indirectly, to or for
15 an employee or legal beneficiary; and

16 (2) sought and been refused reimbursement from the
17 insurance carrier.

18 SECTION 3.132. Section 409.010, Labor Code, is amended to
19 read as follows:

20 Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL
21 BENEFCIARY. Immediately on receiving notice of an injury or death
22 from any person, the department [~~commission~~] shall mail to the
23 employee or legal beneficiary a clear and concise description of:

24 (1) the services provided by the department
25 [~~commission~~], including the services of the ombudsman program;

26 (2) the department's [~~commission's~~] procedures; and

27 (3) the person's rights and responsibilities under

1 this subtitle.

2 SECTION 3.133. Sections 409.011(a) and (c), Labor Code, are
3 amended to read as follows:

4 (a) Immediately on receiving notice of an injury or death
5 from any person, the department [~~commission~~] shall mail to the
6 employer a description of:

7 (1) the services provided by the department
8 [~~commission~~];

9 (2) the department's [~~commission's~~] procedures; and

10 (3) the employer's rights and responsibilities under
11 this subtitle.

12 (c) The department [~~commission~~] is not required to provide
13 the information to an employer more than once during a calendar
14 year.

15 SECTION 3.134. Section 409.012, Labor Code, is amended to
16 read as follows:

17 Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION. (a)
18 The commissioner [~~commission~~] shall analyze each report of injury
19 received from an employer under this chapter to determine whether
20 the injured employee would be assisted by vocational
21 rehabilitation.

22 (b) If the commissioner [~~commission~~] determines that an
23 injured employee would be assisted by vocational rehabilitation,
24 the department [~~commission~~] shall notify the injured employee in
25 writing of the services and facilities available through the
26 Department of Assistive and Rehabilitative Services [~~Texas~~
27 ~~Rehabilitation Commission~~] and private providers of vocational

1 rehabilitation. The department [~~commission~~] shall notify the
2 Department of Assistive and Rehabilitative Services [~~Texas~~
3 ~~Rehabilitation Commission~~] and the affected insurance carrier that
4 the injured employee has been identified as one who could be
5 assisted by vocational rehabilitation.

6 (c) The department [~~commission~~] shall cooperate with the
7 Department of Assistive and Rehabilitative Services [~~Texas~~
8 ~~Rehabilitation Commission~~] and private providers of vocational
9 rehabilitation in the provision of services and facilities to
10 employees by the Department of Assistive and Rehabilitative
11 Services [~~Texas Rehabilitation Commission~~].

12 (d) A private provider of vocational rehabilitation
13 services may register with the department [~~commission~~].

14 (e) The commissioner [~~commission~~] by rule may require that a
15 private provider of vocational rehabilitation services maintain
16 certain credentials and qualifications in order to provide services
17 in connection with a workers' compensation insurance claim.

18 (f) The department and the Department of Assistive and
19 Rehabilitative Services shall report to the legislature not later
20 than August 1, 2006, on their actions to improve access to and the
21 effectiveness of vocational rehabilitation programs for injured
22 employees. The report must include:

23 (1) a description of the actions each agency has taken
24 to improve communication regarding and coordination of vocational
25 rehabilitation programs;

26 (2) an analysis identifying the population of injured
27 employees that have the poorest return-to-work outcomes and are in

1 the greatest need for return-to-work services;

2 (3) any changes recommended to improve the access to
3 and effectiveness of vocational rehabilitation programs for the
4 populations identified in Subdivision (2); and

5 (4) a plan to implement these changes.

6 SECTION 3.135. Section 409.013, Labor Code, is amended to
7 read as follows:

8 Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF
9 INJURED WORKER. (a) The department [~~commission~~] shall develop
10 information for public dissemination about the benefit process and
11 the compensation procedures established under this chapter. The
12 information must be written in plain language and must be available
13 in English and Spanish.

14 (b) On receipt of a report under Section 409.005, the
15 department [~~commission~~] shall contact the affected employee by mail
16 or by telephone and shall provide the information required under
17 Subsection (a) to that employee, together with any other
18 information that may be prepared by the department [~~commission~~] for
19 public dissemination that relates to the employee's situation, such
20 as information relating to back injuries or occupational diseases.

21 SECTION 3.136. Sections 409.021(a) and (b), Labor Code, are
22 amended to read as follows:

23 (a) An insurance carrier shall initiate compensation under
24 this subtitle promptly. Not later than the 15th day after the date
25 on which an insurance carrier receives written notice of an injury,
26 the insurance carrier shall:

27 (1) begin the payment of benefits as required by this

1 subtitle; or

2 (2) notify the department [~~commission~~] and the
3 employee in writing of its refusal to pay and advise the employee
4 of:

5 (A) the right to request a benefit review
6 conference; and

7 (B) the means to obtain additional information
8 from the department [~~commission~~].

9 (b) An insurance carrier shall notify the department
10 [~~commission~~] in writing of the initiation of income or death
11 benefit payments in the manner prescribed by commissioner
12 [~~commission~~] rules.

13 SECTION 3.137. Section 409.022(c), Labor Code, is amended
14 to read as follows:

15 (c) An insurance carrier commits a violation if the
16 insurance carrier does not have reasonable grounds for a refusal to
17 pay benefits, as determined by the commissioner [~~commission~~]. A
18 violation under this subsection is a Class B administrative
19 violation.

20 SECTION 3.138. Section 409.023(a), Labor Code, is amended
21 to read as follows:

22 (a) An insurance carrier shall continue to pay benefits
23 promptly as and when the benefits accrue without a final decision,
24 order, or other action of the commissioner [~~commission~~], except as
25 otherwise provided.

26 SECTION 3.139. Section 409.0231(b), Labor Code, is amended
27 to read as follows:

1 (b) The commissioner [~~commission~~] shall adopt rules in
2 consultation with the Texas Department of Information Resources as
3 necessary to implement this section, including rules prescribing a
4 period of benefits that is of sufficient duration to allow payment
5 by electronic funds transfer.

6 SECTION 3.140. Section 409.024, Labor Code, is amended to
7 read as follows:

8 Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE;
9 ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file
10 with the department [~~commission~~] a notice of termination or
11 reduction of benefits, including the reasons for the termination or
12 reduction, not later than the 10th day after the date on which
13 benefits are terminated or reduced.

14 (b) An insurance carrier commits a violation if the
15 insurance carrier does not have reasonable grounds to terminate or
16 reduce benefits, as determined by the commissioner [~~commission~~]. A
17 violation under this subsection is a Class B administrative
18 violation.

19 SECTION 3.141. Section 409.041(a), Labor Code, is amended
20 to read as follows:

21 (a) The department [~~commission~~] shall maintain an ombudsman
22 program as provided by this subchapter to assist injured workers
23 and persons claiming death benefits in obtaining benefits under
24 this subtitle.

25 SECTION 3.142. Sections 409.042(a) and (c), Labor Code, are
26 amended to read as follows:

27 (a) At least one specially qualified employee in each

1 department [~~commission~~] office shall be designated an ombudsman who
2 shall perform the duties under this section as the person's primary
3 responsibility.

4 (c) The commissioner [~~commission~~] by rule shall adopt
5 training guidelines and continuing education requirements for
6 ombudsmen. Training provided under this subsection must:

7 (1) include education regarding this subtitle, rules
8 adopted under this subtitle, and appeals panel decisions, with
9 emphasis on benefits and the dispute resolution process; and

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

13 SECTION 3.143. Section 409.043(a), Labor Code, is amended
14 to read as follows:

15 (a) Each employer shall notify its employees of the
16 ombudsman program in a manner prescribed by the commissioner
17 [~~commission~~].

18 SECTION 3.144. Section 409.044, Labor Code, is amended to
19 read as follows:

20 Sec. 409.044. PUBLIC INFORMATION. The department
21 [~~commission~~] shall widely disseminate information about the
22 ombudsman program.

23 SECTION 3.145. Section 410.002, Labor Code, is amended to
24 read as follows:

25 Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A
26 proceeding before the department [~~commission~~] to determine the
27 liability of an insurance carrier for compensation for an injury or

1 death under this subtitle is governed by this chapter.

2 SECTION 3.146. Section 410.004, Labor Code, is amended to
3 read as follows:

4 Sec. 410.004. DIVISION OF HEARINGS. The division shall
5 conduct benefit review conferences, contested case hearings,
6 arbitration, and appeals within the department [~~commission~~]
7 related to workers' compensation claims.

8 SECTION 3.147. Section 410.005(a), Labor Code, is amended
9 to read as follows:

10 (a) Unless the commissioner [~~commission~~] determines that
11 good cause exists for the selection of a different location, a
12 benefit review conference or a contested case hearing may not be
13 conducted at a site more than 75 miles from the claimant's residence
14 at the time of the injury.

15 SECTION 3.148. Section 410.021, Labor Code, is amended to
16 read as follows:

17 Sec. 410.021. PURPOSE. A benefit review conference is a
18 nonadversarial, informal dispute resolution proceeding designed
19 to:

20 (1) explain, orally and in writing, the rights of the
21 respective parties to a workers' compensation claim and the
22 procedures necessary to protect those rights;

23 (2) discuss the facts of the claim, review available
24 information in order to evaluate the claim, and delineate the
25 disputed issues; and

26 (3) mediate and resolve disputed issues by agreement
27 of the parties in accordance with this subtitle and the policies of

1 the department [~~commission~~].

2 SECTION 3.149. Sections 410.022(b) and (c), Labor Code, are
3 amended to read as follows:

4 (b) A benefit review officer must:

5 (1) be an employee of the department [~~commission~~]; and

6 (2) be trained in the principles and procedures of
7 dispute mediation.

8 (c) The department [~~commission~~] shall institute and
9 maintain an education and training program for benefit review
10 officers and shall consult or contract with the Federal Mediation
11 and Conciliation Service or other appropriate organizations for
12 this purpose.

13 SECTION 3.150. Section 410.023, Labor Code, is amended to
14 read as follows:

15 Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. On
16 receipt of a request from a party or on its own motion, the
17 department [~~commission~~] may direct the parties to a disputed
18 workers' compensation claim to meet in a benefit review conference
19 to attempt to reach agreement on disputed issues involved in the
20 claim.

21 SECTION 3.151. Section 410.024, Labor Code, is amended to
22 read as follows:

23 Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO
24 FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise
25 provided by law or commissioner [~~commission~~] rule, the parties to a
26 disputed compensation claim are not entitled to a contested case
27 hearing or arbitration on the claim unless a benefit review

1 conference is conducted as provided by this subchapter.

2 (b) The commissioner [~~commission~~] by rule shall adopt
3 guidelines relating to claims that do not require a benefit review
4 conference and may proceed directly to a contested case hearing or
5 arbitration.

6 SECTION 3.152. Section 410.025, Labor Code, is amended to
7 read as follows:

8 Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE;
9 NOTICE. (a) The commissioner [~~commission~~] by rule shall
10 prescribe the time within which a benefit review conference must be
11 scheduled.

12 (b) At the time a benefit review conference is scheduled,
13 the department [~~commission~~] shall schedule a contested case hearing
14 to be held not later than the 60th day after the date of the benefit
15 review conference if the disputed issues are not resolved at the
16 benefit review conference.

17 (c) The department [~~commission~~] shall send written notice
18 of the benefit review conference to the parties to the claim and the
19 employer.

20 (d) The commissioner [~~commission~~] by rule shall provide for
21 expedited proceedings in cases in which compensability or liability
22 for essential medical treatment is in dispute.

23 SECTION 3.153. Section 410.026(a), Labor Code, is amended
24 to read as follows:

25 (a) A benefit review officer shall:

26 (1) mediate disputes between the parties and assist in
27 the adjustment of the claim consistent with this subtitle and the

1 policies of the department [~~commission~~];

2 (2) thoroughly inform all parties of their rights and
3 responsibilities under this subtitle, especially in a case in which
4 the employee is not represented by an attorney or other
5 representative; and

6 (3) ensure that all documents and information relating
7 to the employee's wages, medical condition, and any other
8 information pertinent to the resolution of disputed issues are
9 contained in the claim file at the conference, especially in a case
10 in which the employee is not represented by an attorney or other
11 representative.

12 SECTION 3.154. Section 410.027(a), Labor Code, is amended
13 to read as follows:

14 (a) The commissioner [~~commission~~] shall adopt rules for
15 conducting benefit review conferences.

16 SECTION 3.155. Section 410.030, Labor Code, is amended to
17 read as follows:

18 Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An agreement
19 signed in accordance with Section 410.029 is binding on the
20 insurance carrier through the conclusion of all matters relating to
21 the claim, unless the department [~~commission~~] or a court, on a
22 finding of fraud, newly discovered evidence, or other good and
23 sufficient cause, relieves the insurance carrier of the effect of
24 the agreement.

25 (b) The agreement is binding on the claimant, if represented
26 by an attorney, to the same extent as on the insurance carrier. If
27 the claimant is not represented by an attorney, the agreement is

1 binding on the claimant through the conclusion of all matters
2 relating to the claim while the claim is pending before the
3 department [~~commission~~], unless the commissioner [~~commission~~] for
4 good cause relieves the claimant of the effect of the agreement.

5 SECTION 3.156. Section 410.034(b), Labor Code, is amended
6 to read as follows:

7 (b) The commissioner [~~commission~~] by rule shall prescribe
8 the times within which the agreement and report must be filed.

9 SECTION 3.157. Section 410.102, Labor Code, is amended to
10 read as follows:

11 Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An
12 arbitrator must be an employee of the department [~~commission~~],
13 except that the department [~~commission~~] may contract with qualified
14 arbitrators on a determination of special need.

15 (b) An arbitrator must:

16 (1) be a member of the National Academy of
17 Arbitrators;

18 (2) be on an approved list of the American Arbitration
19 Association or Federal Mediation and Conciliation Service; or

20 (3) meet qualifications established by the
21 commissioner [~~commission~~] by rule [~~and be approved by an~~
22 ~~affirmative vote of at least two commission members representing~~
23 ~~employers of labor and at least two commission members representing~~
24 ~~wage earners~~].

25 (c) The department [~~commission~~] shall require that each
26 arbitrator have appropriate training in the workers' compensation
27 laws of this state. The commissioner [~~commission~~] shall establish

1 procedures to carry out this subsection.

2 SECTION 3.158. Section 410.103, Labor Code, is amended to
3 read as follows:

4 Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

- 5 (1) protect the interests of all parties;
6 (2) ensure that all relevant evidence has been
7 disclosed to the arbitrator and to all parties; and
8 (3) render an award consistent with this subtitle and
9 the policies of the department [~~commission~~].

10 SECTION 3.159. Sections 410.104(b) and (c), Labor Code, are
11 amended to read as follows:

12 (b) To elect arbitration, the parties must file the election
13 with the department [~~commission~~] not later than the 20th day after
14 the last day of the benefit review conference. The commissioner
15 [~~commission~~] shall prescribe a form for that purpose.

16 (c) An election to engage in arbitration under this
17 subchapter is irrevocable and binding on all parties for the
18 resolution of all disputes arising out of the claims that are under
19 the jurisdiction of the department [~~commission~~].

20 SECTION 3.160. Section 410.105, Labor Code, is amended to
21 read as follows:

22 Sec. 410.105. LISTS OF ARBITRATORS. (a) The department
23 [~~commission~~] shall establish regional lists of arbitrators who meet
24 the qualifications prescribed under Sections 410.102(a) and (b).
25 Each regional list shall be initially prepared in a random name
26 order, and subsequent additions to a list shall be added
27 chronologically.

1 (b) The commissioner [~~commission~~] shall review the lists of
2 arbitrators annually and determine if each arbitrator is fair and
3 impartial and makes awards that are consistent with and in
4 accordance with this subtitle and the rules of the commissioner
5 [~~commission. The commission shall remove an arbitrator if after~~
6 ~~review the arbitrator does not receive an affirmative vote of at~~
7 ~~least two commission members representing employers of labor and at~~
8 ~~least two commission members representing wage earners].~~

9 (c) The department's [~~commission's~~] lists are confidential
10 and are not subject to disclosure under Chapter 552, Government
11 Code. The lists may not be revealed by any department [~~commission~~]
12 employee to any person who is not a department [~~commission~~]
13 employee. The lists are exempt from discovery in civil litigation
14 unless the party seeking the discovery establishes reasonable cause
15 to believe that a violation of the requirements of this section or
16 Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that
17 the violation is relevant to the issues in dispute.

18 SECTION 3.161. Section 410.106, Labor Code, is amended to
19 read as follows:

20 Sec. 410.106. SELECTION OF ARBITRATOR. The department
21 [~~commission~~] shall assign the arbitrator for a particular case by
22 selecting the next name after the previous case's selection in
23 consecutive order. The department [~~commission~~] may not change the
24 order of names once the order is established under this subchapter,
25 except that once each arbitrator on the list has been assigned to a
26 case, the names shall be randomly reordered.

27 SECTION 3.162. Section 410.107(a), Labor Code, is amended

1 to read as follows:

2 (a) The department [~~commission~~] shall assign an arbitrator
3 to a pending case not later than the 30th day after the date on which
4 the election for arbitration is filed with the department
5 [~~commission~~].

6 SECTION 3.163. Section 410.108(a), Labor Code, is amended
7 to read as follows:

8 (a) Each party is entitled, in its sole discretion, to one
9 rejection of the arbitrator in each case. If a party rejects the
10 arbitrator, the department [~~commission~~] shall assign another
11 arbitrator as provided by Section 410.106.

12 SECTION 3.164. Section 410.109, Labor Code, is amended to
13 read as follows:

14 Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The
15 arbitrator shall schedule arbitration to be held not later than the
16 30th day after the date of the arbitrator's assignment and shall
17 notify the parties and the department [~~commission~~] of the scheduled
18 date.

19 (b) If an arbitrator is unable to schedule arbitration in
20 accordance with Subsection (a), the department [~~commission~~] shall
21 appoint the next arbitrator on the applicable list. Each party is
22 entitled to reject the arbitrator appointed under this subsection
23 in the manner provided under Section 410.108.

24 SECTION 3.165. Section 410.111, Labor Code, is amended to
25 read as follows:

26 Sec. 410.111. RULES. The commissioner [~~commission~~] shall
27 adopt rules for arbitration consistent with generally recognized

1 arbitration principles and procedures.

2 SECTION 3.166. Section 410.114(b), Labor Code, is amended
3 to read as follows:

4 (b) The department [~~commission~~] shall make an electronic
5 recording of the proceeding.

6 SECTION 3.167. Section 410.118(d), Labor Code, is amended
7 to read as follows:

8 (d) The arbitrator shall file a copy of the award as part of
9 the permanent claim file at the department [~~commission~~] and shall
10 notify the parties in writing of the decision.

11 SECTION 3.168. Section 410.119(b), Labor Code, is amended
12 to read as follows:

13 (b) An arbitrator's award is a final order of the department
14 [~~commission~~].

15 SECTION 3.169. Sections 410.121(a) and (b), Labor Code, are
16 amended to read as follows:

17 (a) On application of an aggrieved party, a court of
18 competent jurisdiction shall vacate an arbitrator's award on a
19 finding that:

20 (1) the award was procured by corruption, fraud, or
21 misrepresentation;

22 (2) the decision of the arbitrator was arbitrary and
23 capricious; or

24 (3) the award was outside the jurisdiction of the
25 department [~~commission~~].

26 (b) If an award is vacated, the case shall be remanded to the
27 department [~~commission~~] for another arbitration proceeding.

1 SECTION 3.170. Section 410.151(b), Labor Code, is amended
2 to read as follows:

3 (b) An issue that was not raised at a benefit review
4 conference or that was resolved at a benefit review conference may
5 not be considered unless:

6 (1) the parties consent; or

7 (2) if the issue was not raised, the commissioner
8 [~~commission~~] determines that good cause existed for not raising the
9 issue at the conference.

10 SECTION 3.171. Section 410.153, Labor Code, is amended to
11 read as follows:

12 Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE
13 ACT. Chapter 2001, Government Code, applies to a contested case
14 hearing to the extent that the commissioner [~~commission~~] finds
15 appropriate, except that the following do not apply:

16 (1) Section 2001.054;

17 (2) Sections 2001.061 and 2001.062;

18 (3) Section 2001.202; and

19 (4) Subchapters F, G, I, and Z, except for Section
20 2001.141(c).

21 SECTION 3.172. Section 410.154, Labor Code, is amended to
22 read as follows:

23 Sec. 410.154. SCHEDULING OF HEARING. The department
24 [~~commission~~] shall schedule a contested case hearing in accordance
25 with Section 410.024 or 410.025(b).

26 SECTION 3.173. Section 410.155, Labor Code, is amended to
27 read as follows:

1 Sec. 410.155. CONTINUANCE. (a) A written request by a
2 party for a continuance of a contested case hearing to another date
3 must be directed to the commissioner [~~commission~~].

4 (b) The commissioner [~~commission~~] may grant a continuance
5 only if the commissioner [~~commission~~] determines that there is good
6 cause for the continuance.

7 SECTION 3.174. Section 410.157, Labor Code, is amended to
8 read as follows:

9 Sec. 410.157. RULES. The commissioner [~~commission~~] shall
10 adopt rules governing procedures under which contested case
11 hearings are conducted.

12 SECTION 3.175. Section 410.158(a), Labor Code, is amended
13 to read as follows:

14 (a) Except as provided by Section 410.162, discovery is
15 limited to:

16 (1) depositions on written questions to any health
17 care provider;

18 (2) depositions of other witnesses as permitted by the
19 hearing officer for good cause shown; and

20 (3) interrogatories as prescribed by the commissioner
21 [~~commission~~].

22 SECTION 3.176. Section 410.159, Labor Code, is amended to
23 read as follows:

24 Sec. 410.159. STANDARD INTERROGATORIES. (a) The
25 commissioner [~~commission~~] by rule shall prescribe standard form
26 sets of interrogatories to elicit information from claimants and
27 insurance carriers.

1 (b) Standard interrogatories shall be answered by each
2 party and served on the opposing party within the time prescribed by
3 commissioner [~~commission~~] rule, unless the parties agree
4 otherwise.

5 SECTION 3.177. Section 410.160, Labor Code, is amended to
6 read as follows:

7 Sec. 410.160. EXCHANGE OF INFORMATION. Within the time
8 prescribed by commissioner [~~commission~~] rule, the parties shall
9 exchange:

10 (1) all medical reports and reports of expert
11 witnesses who will be called to testify at the hearing;

12 (2) all medical records;

13 (3) any witness statements;

14 (4) the identity and location of any witness known to
15 the parties to have knowledge of relevant facts; and

16 (5) all photographs or other documents that a party
17 intends to offer into evidence at the hearing.

18 SECTION 3.178. Section 410.161, Labor Code, is amended to
19 read as follows:

20 Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who
21 fails to disclose information known to the party or documents that
22 are in the party's possession, custody, or control at the time
23 disclosure is required by Sections 410.158-410.160 may not
24 introduce the evidence at any subsequent proceeding before the
25 department [~~commission~~] or in court on the claim unless good cause
26 is shown for not having disclosed the information or documents
27 under those sections.

1 SECTION 3.179. Sections 410.168(d) and (e), Labor Code, are
2 amended to read as follows:

3 (d) On a form that the commissioner [~~commission~~] by rule
4 prescribes, the hearing officer shall issue a separate written
5 decision regarding attorney's fees and any matter related to
6 attorney's fees. The decision regarding attorney's fees and the
7 form may not be made known to a jury in a judicial review of an
8 award, including an appeal.

9 (e) The commissioner [~~commission~~] by rule shall prescribe
10 the times within which the hearing officer must file the decisions
11 with the division.

12 SECTION 3.180. Section 410.203(d), Labor Code, is amended
13 to read as follows:

14 (d) A hearing on remand shall be accelerated and the
15 commissioner [~~commission~~] shall adopt rules to give priority to the
16 hearing over other proceedings.

17 SECTION 3.181. Section 410.204(b), Labor Code, is amended
18 to read as follows:

19 (b) A copy of the decision of the appeals panel shall be sent
20 to each party not later than the seventh day after the date the
21 decision is filed with the department [~~commission~~].

22 SECTION 3.182. Section 410.206, Labor Code, is amended to
23 read as follows:

24 Sec. 410.206. CLERICAL ERROR. The commissioner [~~executive~~
25 ~~director~~] may revise a decision in a contested case hearing on a
26 finding of clerical error.

27 SECTION 3.183. Section 410.207, Labor Code, is amended to

1 read as follows:

2 Sec. 410.207. CONTINUATION OF COMMISSION
3 JURISDICTION. During judicial review of an appeals panel decision
4 on any disputed issue relating to a workers' compensation claim,
5 the department [~~commission~~] retains jurisdiction of all other
6 issues related to the claim.

7 SECTION 3.184. Section 410.208, Labor Code, is amended to
8 read as follows:

9 Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION;
10 ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to
11 comply with an interlocutory order, final order, or decision of the
12 commissioner [~~commission~~], the department [~~commission~~] may bring
13 suit in Travis County to enforce the order or decision.

14 (b) If an insurance carrier refuses or fails to comply with
15 an interlocutory order, a final order, or a decision of the
16 commissioner [~~commission~~], the claimant may bring suit in the
17 county of the claimant's residence or the county in which the injury
18 occurred to enforce the order or decision.

19 (c) If the department [~~commission~~] brings suit to enforce an
20 interlocutory order, final order, or decision of the commissioner
21 [~~commission~~], the department [~~commission~~] is entitled to
22 reasonable attorney's fees and costs for the prosecution and
23 collection of the claim, in addition to a judgment enforcing the
24 order or decision and any other remedy provided by law.

25 (d) A claimant who brings suit to enforce an interlocutory
26 order, final order, or decision of the commissioner [~~commission~~] is
27 entitled to a penalty equal to 12 percent of the amount of benefits

1 recovered in the judgment, interest, and reasonable attorney's fees
2 for the prosecution and collection of the claim, in addition to a
3 judgment enforcing the order or decision.

4 (e) A person commits a violation if the person fails or
5 refuses to comply with an interlocutory order, final order, or
6 decision of the commissioner [~~commission~~] within 20 days after the
7 date the order or decision becomes final. A violation under this
8 subsection is a Class A administrative violation.

9 SECTION 3.185. Section 410.209, Labor Code, is amended to
10 read as follows:

11 Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. The
12 subsequent injury fund shall reimburse an insurance carrier for any
13 overpayments of benefits made under an interlocutory order or
14 decision if that order or decision is reversed or modified by final
15 arbitration, order, or decision of the commissioner [~~commission~~] or
16 a court. The commissioner [~~commission~~] shall adopt rules to
17 provide for a periodic reimbursement schedule, providing for
18 reimbursement at least annually.

19 SECTION 3.186. Section 410.253, Labor Code, is amended to
20 read as follows:

21 Sec. 410.253. SERVICE; NOTICE. (a) A party seeking
22 judicial review shall simultaneously:

- 23 (1) file a copy of the party's petition with the court;
24 (2) serve any opposing party to the suit; and
25 (3) provide written notice of the suit or notice of
26 appeal to the department [~~commission~~].

27 (b) A party may not seek judicial review under Section

1 410.251 unless the party has provided written notice of the suit to
2 the department [~~commission~~] as required by this section.

3 SECTION 3.187. Section 410.254, Labor Code, is amended to
4 read as follows:

5 Sec. 410.254. [~~COMMISSION~~] INTERVENTION. On timely motion
6 initiated by the commissioner [~~executive director~~], the department
7 [~~commission~~] shall be permitted to intervene in any judicial
8 proceeding under this subchapter or Subchapter G.

9 SECTION 3.188. The heading to Section 410.258, Labor Code,
10 is amended to read as follows:

11 Sec. 410.258. NOTIFICATION OF DEPARTMENT [~~COMMISSION~~] OF
12 PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

13 SECTION 3.189. Sections 410.258(a), (b), (c), (d), and (e),
14 Labor Code, are amended to read as follows:

15 (a) The party who initiated a proceeding under this
16 subchapter or Subchapter G must file any proposed judgment or
17 settlement made by the parties to the proceeding, including a
18 proposed default judgment, with the commissioner [~~executive
19 director of the commission~~] not later than the 30th day before the
20 date on which the court is scheduled to enter the judgment or
21 approve the settlement. The proposed judgment or settlement must
22 be mailed to the department [~~executive director~~] by certified mail,
23 return receipt requested.

24 (b) The department [~~commission~~] may intervene in a
25 proceeding under Subsection (a) not later than the 30th day after
26 the date of receipt of the proposed judgment or settlement.

27 (c) The commissioner [~~commission~~] shall review the proposed

1 judgment or settlement to determine compliance with all appropriate
2 provisions of the law. If the commissioner [~~commission~~] determines
3 that the proposal is not in compliance with the law, the department
4 [~~commission~~] may intervene as a matter of right in the proceeding
5 not later than the 30th day after the date of receipt of the
6 proposed judgment or settlement. The court may limit the extent of
7 the department's [~~commission's~~] intervention to providing the
8 information described by Subsection (e).

9 (d) If the department [~~commission~~] does not intervene
10 before the 31st day after the date of receipt of the proposed
11 judgment or settlement, the court shall enter the judgment or
12 approve the settlement if the court determines that the proposed
13 judgment or settlement is in compliance with all appropriate
14 provisions of the law.

15 (e) If the department [~~commission~~] intervenes in the
16 proceeding, the commissioner [~~commission~~] shall inform the court of
17 each reason the commissioner [~~commission~~] believes the proposed
18 judgment or settlement is not in compliance with the law. The court
19 shall give full consideration to the information provided by the
20 commissioner [~~commission~~] before entering a judgment or approving a
21 settlement.

22 SECTION 3.190. Section 410.301(a), Labor Code, is amended
23 to read as follows:

24 (a) Judicial review of a final decision of a department
25 [~~commission~~] appeals panel regarding compensability or eligibility
26 for or the amount of income or death benefits shall be conducted as
27 provided by this subchapter.

1 SECTION 3.191. Section 410.302, Labor Code, is amended to
2 read as follows:

3 Sec. 410.302. LIMITATION OF ISSUES. A trial under this
4 subchapter is limited to issues decided by the department
5 [~~commission~~] appeals panel and on which judicial review is sought.
6 The pleadings must specifically set forth the determinations of the
7 appeals panel by which the party is aggrieved.

8 SECTION 3.192. Section 410.304, Labor Code, is amended to
9 read as follows:

10 Sec. 410.304. CONSIDERATION OF APPEALS PANEL
11 DECISION. (a) In a jury trial, the court, before submitting the
12 case to the jury, shall inform the jury in the court's instructions,
13 charge, or questions to the jury of the department [~~commission~~]
14 appeals panel decision on each disputed issue described by Section
15 410.301(a) that is submitted to the jury.

16 (b) In a trial to the court without a jury, the court in
17 rendering its judgment on an issue described by Section 410.301(a)
18 shall consider the decision of the department [~~commission~~] appeals
19 panel.

20 SECTION 3.193. Sections 410.306(b) and (c), Labor Code, are
21 amended to read as follows:

22 (b) The department [~~commission~~] on payment of a reasonable
23 fee shall make available to the parties a certified copy of the
24 department's [~~commission's~~] record. All facts and evidence the
25 record contains are admissible to the extent allowed under the
26 Texas Rules of [~~Civil~~] Evidence.

27 (c) Except as provided by Section 410.307, evidence of

1 extent of impairment shall be limited to that presented to the
2 department [~~commission~~]. The court or jury, in its determination
3 of the extent of impairment, shall adopt one of the impairment
4 ratings under Subchapter G, Chapter 408.

5 SECTION 3.194. Sections 410.307(a) and (d), Labor Code, are
6 amended to read as follows:

7 (a) Evidence of the extent of impairment is not limited to
8 that presented to the department [~~commission~~] if the court, after a
9 hearing, finds that there is a substantial change of condition. The
10 court's finding of a substantial change of condition may be based
11 only on:

12 (1) medical evidence from the same doctor or doctors
13 whose testimony or opinion was presented to the department
14 [~~commission~~];

15 (2) evidence that has come to the party's knowledge
16 since the contested case hearing;

17 (3) evidence that could not have been discovered
18 earlier with due diligence by the party; and

19 (4) evidence that would probably produce a different
20 result if it is admitted into evidence at the trial.

21 (d) If the court finds a substantial change of condition
22 under this section, new medical evidence of the extent of
23 impairment must be from and is limited to the same doctor or doctors
24 who made impairment ratings before the department [~~commission~~]
25 under Section 408.123.

26 SECTION 3.195. Section 410.308(a), Labor Code, is amended
27 to read as follows:

1 (a) The department [~~commission~~] or the Texas Department of
2 Insurance shall furnish any interested party in the claim with a
3 certified copy of the notice of the employer securing compensation
4 with the insurance carrier, filed with the department [~~commission~~].

5 SECTION 3.196. Section 411.001(1), Labor Code, is amended
6 to read as follows:

7 (1) "Division" means the division of workers' health
8 and safety of the department [~~commission~~].

9 SECTION 3.197. Section 411.013, Labor Code, is amended to
10 read as follows:

11 Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. With the
12 approval of the commissioner [~~commission~~], the division may:

13 (1) enter into contracts with the federal government
14 to perform occupational safety projects; and

15 (2) apply for federal funds through any federal
16 program relating to occupational safety.

17 SECTION 3.198. Section 411.032, Labor Code, is amended to
18 read as follows:

19 Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE
20 REPORT; ADMINISTRATIVE VIOLATION. (a) An employer shall file
21 with the department [~~commission~~] a report of each:

22 (1) on-the-job injury that results in the employee's
23 absence from work for more than one day; and

24 (2) occupational disease of which the employer has
25 knowledge.

26 (b) The commissioner [~~commission~~] shall adopt rules and
27 prescribe the form and manner of reports filed under this section.

1 (c) An employer commits an administrative violation if the
2 employer fails to report to the department [~~commission~~] as required
3 under Subsection (a) unless good cause exists, as determined by the
4 commissioner [~~commission~~], for the failure. A violation under this
5 subsection is a Class D administrative violation.

6 SECTION 3.199. Section 411.035, Labor Code, is amended to
7 read as follows:

8 Sec. 411.035. USE OF INJURY REPORT. A report made under
9 Section 411.032 may not be considered to be an admission by or
10 evidence against an employer or an insurance carrier in a
11 proceeding before the department [~~commission~~] or a court in which
12 the facts set out in the report are contradicted by the employer or
13 insurance carrier.

14 SECTION 3.200. Section 411.0415, Labor Code, is amended to
15 read as follows:

16 Sec. 411.0415. EXEMPTION FOR CERTAIN EMPLOYERS;
17 HEARING. (a) The commissioner [~~executive director~~] may exclude
18 from identification as a hazardous employer an employer who
19 presents evidence satisfactory to the commissioner [~~commission~~]
20 that the injury frequencies of the employer substantially exceed
21 those that may reasonably be expected in that employer's business
22 or industry only because of a fatality that:

23 (1) occurred because of factors beyond the employer's
24 control; or

25 (2) was outside the course and scope of the deceased
26 individual's employment.

27 (b) The commissioner [~~commission~~] by rule shall analyze and

1 list fatalities that may not be related to the work environment,
2 including:

- 3 (1) heart attacks;
- 4 (2) common diseases of life;
- 5 (3) homicides;
- 6 (4) suicides;
- 7 (5) vehicle accidents involving a third party;
- 8 (6) common carrier accidents; and
- 9 (7) natural events.

10 (c) If the commissioner [~~commission~~] determines that the
11 case history of the employee's fatality indicates that the employer
12 or the work environment was a proximate cause of the fatality, the
13 commissioner [~~commission~~] may request a hearing under Section
14 411.049. If the hearing establishes that a proximate cause of the
15 fatality was a factor or factors within the employer's control and
16 was within the course and scope of the employment, the commissioner
17 [~~commission~~] may identify the employer for the hazardous employer
18 program if that fatality causes the employer to be designated as a
19 hazardous employer.

20 SECTION 3.201. Section 411.042(b), Labor Code, is amended
21 to read as follows:

22 (b) The commissioner [~~commission~~] by rule shall require a
23 minimum interval of at least six months before a subsequent audit to
24 identify an employer who was previously identified as a hazardous
25 employer.

26 SECTION 3.202. Section 411.043(b), Labor Code, is amended
27 to read as follows:

1 (b) The safety consultant shall file a written report with
2 the department [~~commission~~] and the employer setting out any
3 hazardous conditions or practices identified by the safety
4 consultation.

5 SECTION 3.203. Section 411.045(a), Labor Code, is amended
6 to read as follows:

7 (a) Not earlier than six months or later than nine months
8 after the formulation of an accident prevention plan under Section
9 411.043, the division shall conduct a follow-up inspection of the
10 employer's premises. The department [~~commission~~] may require the
11 participation of the safety consultant who performed the initial
12 consultation and formulated the safety plan.

13 SECTION 3.204. Section 411.048, Labor Code, is amended to
14 read as follows:

15 Sec. 411.048. COSTS CHARGED TO EMPLOYER. (a) The
16 department [~~commission~~] shall charge an employer that is a
17 political subdivision for reimbursement of the reasonable cost of
18 services provided by the division, including a reasonable
19 allocation of the department's [~~commission's~~] administrative
20 costs, in formulating and monitoring the implementation of a plan
21 under Section 411.043 or 411.047, investigating an accident under
22 Section 411.044, or in conducting a follow-up inspection under
23 Section 411.045.

24 (b) The department [~~commission~~] shall charge a private
25 employer for reimbursement of the reasonable cost of services
26 provided by the division, including a reasonable allocation of the
27 department's [~~commission's~~] administrative costs, in providing

1 safety and health services under this program at the request of the
2 private employer. This subsection does not apply to services
3 provided to the employer under Section 411.018.

4 SECTION 3.205. Section 411.049(a), Labor Code, is amended
5 to read as follows:

6 (a) An employer may request a hearing to contest findings
7 made by the department [~~commission~~] under this subchapter.

8 SECTION 3.206. Section 411.050, Labor Code, is amended to
9 read as follows:

10 Sec. 411.050. ADMISSIBILITY OF IDENTIFICATION AS HAZARDOUS
11 EMPLOYER. The identification of an employer as a hazardous
12 employer under this subchapter is not admissible in any judicial
13 proceeding unless:

14 (1) the department [~~commission~~] has determined that
15 the employer is not in compliance with this subchapter; and

16 (2) that determination has not been reversed or
17 superseded at the time of the event giving rise to the judicial
18 proceeding.

19 SECTION 3.207. Section 411.062, Labor Code, is amended to
20 read as follows:

21 Sec. 411.062. FIELD SAFETY REPRESENTATIVE;
22 QUALIFICATIONS. (a) The commissioner [~~commission~~] by rule shall
23 establish qualifications for field safety representatives. The
24 rules must include education and experience requirements for those
25 representatives.

26 (b) Each field safety representative must meet the
27 qualifications established by the commissioner [~~commission~~].

1 SECTION 3.208. Section 411.064(c), Labor Code, is amended
2 to read as follows:

3 (c) The insurance company shall reimburse the department
4 [~~commission~~] for the reasonable cost of the reinspection, including
5 a reasonable allocation of the department's [~~commission's~~]
6 administrative costs incurred in conducting the inspections.

7 SECTION 3.209. Section 411.065(b), Labor Code, is amended
8 to read as follows:

9 (b) The information must include:

10 (1) the amount of money spent by the insurance company
11 on accident prevention services;

12 (2) the number and qualifications of field safety
13 representatives employed by the insurance company;

14 (3) the number of site inspections performed;

15 (4) accident prevention services for which the
16 insurance company contracts;

17 (5) a breakdown of the premium size of the risks to
18 which services were provided;

19 (6) evidence of the effectiveness of and
20 accomplishments in accident prevention; and

21 (7) any additional information required by the
22 department [~~commission~~].

23 SECTION 3.210. The heading to Section 411.067, Labor Code,
24 is amended to read as follows:

25 Sec. 411.067. DEPARTMENT [~~COMMISSION~~] PERSONNEL.

26 SECTION 3.211. Section 411.067(a), Labor Code, is amended
27 to read as follows:

1 (a) The department [~~commission~~] shall employ the personnel
2 necessary to enforce this subchapter, including at least 10 safety
3 inspectors to perform inspections at a job site and at an insurance
4 company to determine the adequacy of the accident prevention
5 services provided by the insurance company.

6 SECTION 3.212. Section 411.081(b), Labor Code, is amended
7 to read as follows:

8 (b) Each employer shall notify its employees of this service
9 in a manner prescribed by the department [~~commission~~].

10 SECTION 3.213. Section 411.092, Labor Code, is amended to
11 read as follows:

12 Sec. 411.092. ENFORCEMENT; RULES. The commissioner
13 [~~commission~~] shall enforce Section 411.091 and may adopt rules for
14 that purpose.

15 SECTION 3.214. Section 411.104(b), Labor Code, is amended
16 to read as follows:

17 (b) In addition to the duties specified in this chapter, the
18 division shall perform other duties as required by the department
19 [~~commission~~].

20 SECTION 3.215. Section 411.105, Labor Code, is amended to
21 read as follows:

22 Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. (a) The
23 department [~~commission~~] and its employees may not disclose at a
24 public hearing or otherwise information relating to secret
25 processes, methods of manufacture, or products.

26 (b) The commissioner [~~A member~~] or an employee of the
27 department [~~commission~~] commits an offense if the commissioner

1 ~~[member]~~ or employee wilfully discloses or conspires to disclose
2 information made confidential under this section. An offense under
3 this subsection is a misdemeanor punishable by a fine not to exceed
4 \$1,000 and by forfeiture of the person's appointment as
5 commissioner ~~[a member]~~ or as an employee of the department
6 ~~[commission]~~.

7 SECTION 3.216. Section 411.106, Labor Code, is amended to
8 read as follows:

9 Sec. 411.106. SAFETY CLASSIFICATION. (a) To establish a
10 safety classification for employers, the department ~~[commission]~~
11 shall:

12 (1) obtain medical and compensation cost information
13 regularly compiled by the Texas Department of Insurance in
14 performing that agency's rate-making duties and functions
15 regarding employer liability and workers' compensation insurance;
16 and

17 (2) collect and compile information relating to:
18 (A) the frequency rate of accidents;
19 (B) the existence and implementation of private
20 safety programs;
21 (C) the number of work-hour losses because of
22 injuries; and
23 (D) other facts showing accident experience.

24 (b) From the information obtained under Subsection (a), the
25 department ~~[commission]~~ shall classify employers as appropriate to
26 implement this subchapter.

27 SECTION 3.217. Section 411.107, Labor Code, is amended to

1 read as follows:

2 Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. The
3 department [~~commission~~] may endeavor to eliminate an impediment to
4 occupational or industrial safety that is reported to the
5 department [~~commission~~] by an affected employer. In attempting to
6 eliminate an impediment the department [~~commission~~] may advise and
7 consult with an employer, or a representative of an employer, who is
8 directly involved.

9 SECTION 3.218. Section 411.108, Labor Code, is amended to
10 read as follows:

11 Sec. 411.108. ACCIDENT REPORTS. The department
12 [~~commission~~] may require an employer and any other appropriate
13 person to report accidents, personal injuries, fatalities, or other
14 statistics and information relating to accidents on forms
15 prescribed by and covering periods designated by the department
16 [~~commission~~].

17 SECTION 3.219. Sections 412.041(g), (i), and (l), Labor
18 Code, are amended to read as follows:

19 (g) The director shall act as an adversary before the
20 department [~~commission~~] and courts and present the legal defenses
21 and positions of the state as an employer and insurer, as
22 appropriate.

23 (i) In administering Chapter 501, the director is subject to
24 the rules, orders, and decisions of the commissioner [~~commission~~]
25 in the same manner as a private employer, insurer, or association.

26 (l) The director shall furnish copies of all rules to:

27 (1) the department [~~commission~~];

1 (2) the commissioner of the Texas Department of
2 Insurance; and

3 (3) the administrative heads of all state agencies
4 affected by this chapter and Chapter 501.

5 SECTION 3.220. Section 413.001, Labor Code, is amended to
6 read as follows:

7 Sec. 413.001. DEFINITION. In this chapter, "division"
8 means the division of medical review of the department
9 [~~commission~~].

10 SECTION 3.221. Section 413.002, Labor Code, is amended to
11 read as follows:

12 Sec. 413.002. DIVISION OF MEDICAL REVIEW. (a) The
13 department [~~commission~~] shall maintain a division of medical review
14 to ensure compliance with the rules and to implement this chapter
15 under the policies adopted by the department [~~commission~~].

16 (b) The division shall monitor health care providers,
17 insurance carriers, [~~and~~] workers' compensation claimants who
18 receive medical services, and independent review organizations to
19 ensure the compliance of those persons with rules adopted by the
20 commissioner [~~commission~~] relating to health care, including
21 medical policies and fee guidelines.

22 (c) In monitoring health care providers who serve as
23 designated doctors under Chapter 408 and independent review
24 organizations who provide services described by this chapter, the
25 division shall evaluate:

26 (1) the [~~the~~] compliance [~~of those providers~~] with this
27 subtitle and with rules adopted by the commissioner [~~commission~~]

1 relating to medical policies, fee guidelines, and impairment
2 ratings; and

3 (2) the quality and timeliness of decisions made under
4 Section 408.0041, 408.122, or 413.031.

5 SECTION 3.222. Section 413.003, Labor Code, is amended to
6 read as follows:

7 Sec. 413.003. AUTHORITY TO CONTRACT. The department
8 [~~commission~~] may contract with a private or public entity to
9 perform a duty or function of the division.

10 SECTION 3.223. Section 413.004, Labor Code, is amended to
11 read as follows:

12 Sec. 413.004. COORDINATION WITH PROVIDERS. The division
13 shall coordinate its activities with health care providers as
14 necessary to perform its duties under this chapter. The
15 coordination may include:

16 (1) conducting educational seminars on commissioner
17 [~~commission~~] rules and procedures; or

18 (2) providing information to and requesting
19 assistance from professional peer review organizations.

20 SECTION 3.224. Sections 413.005(a), (b), and (d), Labor
21 Code, are amended to read as follows:

22 (a) The medical advisory committee advises the division in
23 developing and administering the medical policies, fee guidelines,
24 and utilization guidelines established under Section 413.011. The
25 committee shall advise the department [~~commission~~] or professional
26 organization in the review and revision of medical policies and fee
27 guidelines required under Section 413.012.

1 (b) The medical advisory committee is composed of members
2 appointed by the commissioner [~~commission~~] as follows:

- 3 (1) a representative of a public health care facility;
4 (2) a representative of a private health care
5 facility;
6 (3) a doctor of medicine;
7 (4) a doctor of osteopathic medicine;
8 (5) a chiropractor;
9 (6) a dentist;
10 (7) a physical therapist;
11 (8) a pharmacist;
12 (9) a podiatrist;
13 (10) an acupuncturist;
14 (11) an occupational therapist;
15 (12) a medical equipment supplier;
16 (13) a registered nurse;
17 (14) a representative of employers;
18 (15) a representative of employees;
19 (16) a representative of an insurance carrier; and
20 (17) two representatives of the general public.

21 (d) The commissioner [~~commission~~] shall designate the
22 presiding officer of the medical advisory committee.

23 SECTION 3.225. Section 413.006, Labor Code, is amended to
24 read as follows:

25 Sec. 413.006. ADVISORY COMMITTEES. The commissioner
26 [~~commission~~] may appoint advisory committees in addition to the
27 medical advisory committee as the commissioner [~~it~~] considers

1 necessary.

2 SECTION 3.226. Sections 413.007(a) and (c), Labor Code, are
3 amended to read as follows:

4 (a) The division shall maintain a statewide data base of
5 medical charges, actual payments, and treatment protocols that may
6 be used by:

7 (1) the department [~~commission~~] in adopting the
8 medical policies and fee guidelines; and

9 (2) the division in administering the medical
10 policies, fee guidelines, or rules.

11 (c) The division shall ensure that the data base is
12 available for public access for a reasonable fee established by the
13 commissioner [~~commission~~]. The identities of injured workers and
14 beneficiaries may not be disclosed.

15 SECTION 3.227. Sections 413.008(a) and (b), Labor Code, are
16 amended to read as follows:

17 (a) On request from the department [~~commission~~] for
18 specific information, an insurance carrier shall provide to the
19 division any information in its possession, custody, or control
20 that reasonably relates to the department's [~~commission's~~] duties
21 under this subtitle and to health care:

22 (1) treatment;

23 (2) services;

24 (3) fees; and

25 (4) charges.

26 (b) The department [~~commission~~] shall keep confidential
27 information that is confidential by law.

1 SECTION 3.228. Section 413.011, Labor Code, is amended to
2 read as follows:

3 Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES;
4 TREATMENT GUIDELINES AND PROTOCOLS. (a) The department
5 [~~commission~~] shall use health care reimbursement policies and
6 guidelines that reflect the standardized reimbursement structures
7 found in other health care delivery systems with minimal
8 modifications to those reimbursement methodologies as necessary to
9 meet occupational injury requirements. To achieve
10 standardization, the department [~~commission~~] shall adopt the most
11 current reimbursement methodologies, models, and values or weights
12 used by the federal Centers for Medicare & Medicaid Services
13 [~~Health Care Financing Administration~~], including applicable
14 payment policies relating to coding, billing, and reporting, and
15 may modify documentation requirements as necessary to meet the
16 requirements of Section 413.053.

17 (b) In determining the appropriate fees, the commissioner
18 [~~commission~~] shall also develop conversion factors or other payment
19 adjustment factors taking into account economic indicators in
20 health care and the requirements of Subsection (d). The
21 commissioner [~~commission~~] shall also provide for reasonable fees
22 for the evaluation and management of care as required by Section
23 408.025(c) and commissioner [~~commission~~] rules. This section does
24 not adopt the Medicare fee schedule, and the commissioner may
25 [~~commission shall~~] not adopt conversion factors or other payment
26 adjustment factors based solely on those factors as developed by
27 the federal Centers for Medicare & Medicaid Services [~~Health Care~~

1 ~~Financing Administration]~~.

2 (c) This section may not be interpreted in a manner that
3 would discriminate in the amount or method of payment or
4 reimbursement for services in a manner prohibited by Section
5 1451.104 [~~3(d), Article 21.52~~], Insurance Code, or as restricting
6 the ability of chiropractors to serve as treating doctors as
7 authorized by this subtitle. The commissioner [~~commission~~] shall
8 also develop guidelines relating to fees charged or paid for
9 providing expert testimony relating to an issue arising under this
10 subtitle.

11 (d) Guidelines for medical services fees must be fair and
12 reasonable and designed to ensure the quality of medical care and to
13 achieve effective medical cost control. The guidelines may not
14 provide for payment of a fee in excess of the fee charged for
15 similar treatment of an injured individual of an equivalent
16 standard of living and paid by that individual or by someone acting
17 on that individual's behalf. The commissioner [~~commission~~] shall
18 consider the increased security of payment afforded by this
19 subtitle in establishing the fee guidelines.

20 (e) The commissioner [~~commission~~] by rule shall [~~may~~] adopt
21 treatment guidelines and [~~, including~~] return-to-work guidelines,
22 and may adopt individual treatment protocols. Treatment [~~Except as~~
23 ~~otherwise provided by this subsection, the treatment~~] guidelines
24 and protocols must be evidence-based [~~nationally recognized~~],
25 scientifically valid, and outcome-focused [~~outcome-based~~] and
26 designed to reduce excessive or inappropriate medical care while
27 safeguarding necessary medical care. [~~If a nationally recognized~~

1 ~~treatment guideline or protocol is not available for adoption by~~
2 ~~the commission, the commission may adopt another treatment~~
3 ~~guideline or protocol as long as it is scientifically valid and~~
4 ~~outcome-based.]~~

5 (f) In addition to complying with the requirements of
6 Subsection (e), ~~[The commission by rule may establish medical~~
7 ~~policies or treatment guidelines or protocols relating to necessary~~
8 ~~treatments for injuries.]~~

9 ~~[(g) Any]~~ medical policies or guidelines adopted by the
10 commissioner ~~[commission]~~ must be:

11 (1) designed to ensure the quality of medical care and
12 to achieve effective medical cost control;

13 (2) designed to enhance a timely and appropriate
14 return to work; and

15 (3) consistent with Sections 413.013, 413.020,
16 413.052, and 413.053.

17 SECTION 3.229. Section 413.013, Labor Code, is amended to
18 read as follows:

19 Sec. 413.013. PROGRAMS. The commissioner ~~[commission]~~ by
20 rule shall establish:

21 (1) a program for prospective, concurrent, and
22 retrospective review and resolution of a dispute regarding health
23 care treatments and services;

24 (2) a program for the systematic monitoring of the
25 necessity of treatments administered and fees charged and paid for
26 medical treatments or services, including the authorization of
27 prospective, concurrent, or retrospective review under the medical

1 policies of the department [~~commission~~] to ensure that the medical
2 policies or guidelines are not exceeded;

3 (3) a program to detect practices and patterns by
4 insurance carriers in unreasonably denying authorization of
5 payment for medical services requested or performed if
6 authorization is required by the medical policies of the department
7 [~~commission~~]; and

8 (4) a program to increase the intensity of review for
9 compliance with the medical policies or fee guidelines for any
10 health care provider that has established a practice or pattern in
11 charges and treatments inconsistent with the medical policies and
12 fee guidelines.

13 SECTION 3.230. Sections 413.014(b)-(e), Labor Code, are
14 amended to read as follows:

15 (b) The commissioner [~~commission~~] by rule shall specify
16 which health care treatments and services require express
17 preauthorization or concurrent review by the insurance carrier.
18 Treatments and services for a medical emergency do not require
19 express preauthorization.

20 (c) The commissioner's [~~commission~~] rules adopted under
21 this section must provide that preauthorization and concurrent
22 review are required at a minimum for:

23 (1) spinal surgery, as provided by Section 408.026;

24 (2) work-hardening or work-conditioning services
25 provided by a health care facility that is not credentialed by an
26 organization recognized by commission rules;

27 (3) inpatient hospitalization, including any

1 procedure and length of stay;

2 (4) outpatient or ambulatory surgical services, as
3 defined by commissioner [~~commission~~] rule; and

4 (5) any investigational or experimental services or
5 devices.

6 (d) The insurance carrier is not liable for those specified
7 treatments and services requiring preauthorization unless
8 preauthorization is sought by the claimant or health care provider
9 and either obtained from the insurance carrier or ordered by the
10 commissioner [~~commission~~].

11 (e) The commissioner [~~commission~~] may not prohibit an
12 insurance carrier and a health care provider from voluntarily
13 discussing health care treatment and treatment plans and
14 pharmaceutical services, either prospectively or concurrently, and
15 may not prohibit an insurance carrier from certifying or agreeing
16 to pay for health care consistent with those agreements. The
17 insurance carrier is liable for health care treatment and treatment
18 plans and pharmaceutical services that are voluntarily
19 preauthorized and may not dispute the certified or agreed-on
20 preauthorized health care treatment and treatment plans and
21 pharmaceutical services at a later date.

22 SECTION 3.231. Section 413.0141, Labor Code, is amended to
23 read as follows:

24 Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The
25 commissioner [~~commission~~] may by rule provide that an insurance
26 carrier shall provide for payment of specified pharmaceutical
27 services sufficient for the first seven days following the date of

1 injury if the health care provider requests and receives
2 verification of insurance coverage and a verbal confirmation of an
3 injury from the employer or from the insurance carrier as provided
4 by Section 413.014. The rules adopted by the commissioner
5 [~~commission~~] shall provide that an insurance carrier is eligible
6 for reimbursement for pharmaceutical services paid under this
7 section from the subsequent injury fund in the event the injury is
8 determined not to be compensable.

9 SECTION 3.232. Section 413.015(b), Labor Code, is amended
10 to read as follows:

11 (b) The commissioner [~~commission~~] shall provide by rule for
12 the review and audit of the payment by insurance carriers of charges
13 for medical services provided under this subtitle to ensure
14 compliance of health care providers and insurance carriers with the
15 medical policies and fee guidelines adopted by the commissioner
16 [~~commission~~].

17 SECTION 3.233. Section 413.016(b), Labor Code, is amended
18 to read as follows:

19 (b) If the division determines that an insurance carrier has
20 paid medical charges that are inconsistent with the medical
21 policies or fee guidelines adopted by the commissioner
22 [~~commission~~], the division shall refer the insurance carrier
23 alleged to have violated this subtitle to the division of
24 compliance and practices. If the insurance carrier reduced a
25 charge of a health care provider that was within the guidelines, the
26 insurance carrier shall be directed to submit the difference to the
27 provider unless the reduction is in accordance with an agreement

1 between the health care provider and the insurance carrier.

2 SECTION 3.234. Section 413.017, Labor Code, is amended to
3 read as follows:

4 Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following
5 medical services are presumed reasonable:

6 (1) medical services consistent with the medical
7 policies and fee guidelines adopted by the commissioner
8 [~~commission~~]; and

9 (2) medical services that are provided subject to
10 prospective, concurrent, or retrospective review as required by the
11 medical policies of the department [~~commission~~] and that are
12 authorized by an insurance carrier.

13 SECTION 3.235. Sections 413.018(a), (c), (d), and (e),
14 Labor Code, are amended to read as follows:

15 (a) The commissioner [~~commission~~] by rule shall provide for
16 the periodic review of medical care provided in claims in which
17 guidelines for expected or average return to work time frames are
18 exceeded.

19 (c) The department [~~commission~~] shall implement a program
20 to encourage employers and treating doctors to discuss the
21 availability of modified duty to encourage the safe and more timely
22 return to work of injured employees. The department [~~commission~~]
23 may require a treating or examining doctor, on the request of the
24 employer, insurance carrier, or department [~~commission~~], to
25 provide a functional capacity evaluation of an injured employee and
26 to determine the employee's ability to engage in physical
27 activities found in the workplace or in activities that are

1 required in a modified duty setting.

2 (d) The department [~~commission~~] shall provide through the
3 department's [~~commission's~~] health and safety information and
4 medical review outreach programs information to employers
5 regarding effective return to work programs. This section does not
6 require an employer to provide modified duty or an employee to
7 accept a modified duty assignment. An employee who does not accept
8 an employer's offer of modified duty determined by the department
9 [~~commission~~] to be a bona fide job offer is subject to Section
10 408.103(e).

11 (e) The commissioner [~~commission~~] may adopt rules and forms
12 as necessary to implement this section.

13 SECTION 3.236. Section 413.020, Labor Code, is amended to
14 read as follows:

15 Sec. 413.020. DEPARTMENT [~~COMMISSION~~] CHARGES. The
16 commissioner [~~commission~~] by rule shall establish procedures to
17 enable the department [~~commission~~] to charge:

18 (1) an insurance carrier a reasonable fee for access
19 to or evaluation of health care treatment, fees, or charges under
20 this subtitle; and

21 (2) a health care provider who exceeds a fee or
22 utilization guideline established under this subtitle or an
23 insurance carrier who unreasonably disputes charges that are
24 consistent with a fee or utilization guideline established under
25 this subtitle a reasonable fee for review of health care treatment,
26 fees, or charges under this subtitle.

27 SECTION 3.237. Sections 413.021(a), (d), and (e), Labor

1 Code, are amended to read as follows:

2 (a) An insurance carrier shall, with the agreement of a
3 participating employer, provide the employer with return-to-work
4 coordination services as necessary to facilitate an employee's
5 return to employment. The insurance carrier shall notify the
6 employer of the availability of return-to-work coordination
7 services. In offering the services, insurance carriers and the
8 department [~~commission~~] shall target employers without
9 return-to-work programs and shall focus return-to-work efforts on
10 workers who begin to receive temporary income benefits. These
11 services may be offered by insurance carriers in conjunction with
12 the accident prevention services provided under Section 411.061.
13 Nothing in this section supersedes the provisions of a collective
14 bargaining agreement between an employer and the employer's
15 employees, and nothing in this section authorizes or requires an
16 employer to engage in conduct that would otherwise be a violation of
17 the employer's obligations under the National Labor Relations Act
18 (29 U.S.C. Section 151 et seq.) [~~, and its subsequent amendments~~].

19 (d) The department [~~commission~~] shall use certified
20 rehabilitation counselors or other appropriately trained or
21 credentialed specialists to provide training to department
22 [~~commission~~] staff regarding the coordination of return-to-work
23 services under this section.

24 (e) The commissioner [~~commission~~] shall adopt rules
25 necessary to collect data on return-to-work outcomes to allow full
26 evaluations of successes and of barriers to achieving timely return
27 to work after an injury.

1 SECTION 3.238. Subchapter B, Chapter 413, Labor Code, is
2 amended by adding Section 413.022 to read as follows:

3 Sec. 413.022. RETURN-TO-WORK PILOT PROGRAM FOR SMALL
4 EMPLOYERS; FUND. (a) In this section:

5 (1) "Account" means the workers' compensation
6 return-to-work account.

7 (2) "Eligible employer" means any employer, other than
8 this state or a political subdivision subject to Subtitle C, who
9 employs at least two but not more than 50 employees on each business
10 day during the preceding calendar year.

11 (b) The commissioner shall establish by rule a
12 return-to-work pilot program designed to promote the early and
13 sustained return to work of an injured employee who sustains a
14 compensable injury.

15 (c) The pilot program shall reimburse from the account an
16 eligible employer for expenses incurred by the employer to make
17 workplace modifications necessary to accommodate an injured
18 employee's return to modified or alternative work. Reimbursement
19 under this section to an eligible employer may not exceed \$2,500.
20 The expenses must be incurred to allow the employee to perform
21 modified or alternative work within doctor-imposed work
22 restrictions. Allowable expenses may include:

23 (1) physical modifications to the worksite;
24 (2) equipment, devices, furniture, or tools; and
25 (3) other costs necessary for reasonable
26 accommodation of the employee's restrictions.

27 (d) The account is established as a special account in the

1 general revenue fund. From administrative penalties received by
2 the department under this subtitle, the commissioner shall deposit
3 in the account an amount not to exceed \$100,000 annually. Money in
4 the account may be spent by the department, on appropriation by the
5 legislature, only for the purposes of implementing this section.

6 (e) An employer who wilfully applies for or receives
7 reimbursement from the account under this section knowing that the
8 employer is not an eligible employer commits a violation. A
9 violation under this subsection is a Class B administrative
10 violation.

11 (f) Notwithstanding Subsections (a)-(e), this section may
12 be implemented only to the extent funds are available.

13 (g) This section expires September 1, 2009.

14 SECTION 3.239. Sections 413.031(a), (b), (c), (d), (e-1),
15 (f)-(h), (k), and (m), Labor Code, are amended to read as follows:

16 (a) A party, including a health care provider, is entitled
17 to a review of a medical service provided or for which authorization
18 of payment is sought if a health care provider is:

19 (1) denied payment or paid a reduced amount for the
20 medical service rendered;

21 (2) denied authorization for the payment for the
22 service requested or performed if authorization is required or
23 allowed by this subtitle or commissioner [~~commission~~] rules;

24 (3) ordered by the commissioner [~~commission~~] to refund
25 a payment received; or

26 (4) ordered to make a payment that was refused or
27 reduced for a medical service rendered.

1 (b) A health care provider who submits a charge in excess of
2 the fee guidelines or treatment policies is entitled to a review of
3 the medical service to determine if reasonable medical
4 justification exists for the deviation. A claimant is entitled to a
5 review of a medical service for which preauthorization is sought by
6 the health care provider and denied by the insurance carrier. The
7 commissioner [~~commission~~] shall adopt rules to notify claimants of
8 their rights under this subsection.

9 (c) In resolving disputes over the amount of payment due for
10 services determined to be medically necessary and appropriate for
11 treatment of a compensable injury, the role of the department
12 [~~commission~~] is to adjudicate the payment given the relevant
13 statutory provisions and commissioner [~~commission~~] rules. The
14 department [~~commission~~] shall publish on its Internet website its
15 medical dispute decisions, including decisions of independent
16 review organizations, and any subsequent decisions by the State
17 Office of Administrative Hearings. Before publication, the
18 department [~~commission~~] shall redact only that information
19 necessary to prevent identification of the injured worker.

20 (d) A review of the medical necessity of a health care
21 service requiring preauthorization under Section 413.014 or
22 commissioner [~~commission~~] rules under that section shall be
23 conducted by an independent review organization under Article
24 21.58C, Insurance Code, in the same manner as reviews of
25 utilization review decisions by health maintenance organizations.
26 It is a defense for the insurance carrier if the carrier timely
27 complies with the decision of the independent review organization.

1 (e-1) In performing a review of medical necessity under
2 Subsection (d) or (e), the independent review organization shall
3 consider the department's [~~commission's~~] health care reimbursement
4 policies and guidelines adopted under Section 413.011 [~~if those~~
5 ~~policies and guidelines are raised by one of the parties to the~~
6 ~~dispute~~]. If the independent review organization's decision is
7 contrary to the department's [~~commission's~~] policies or guidelines
8 adopted under Section 413.011, the independent review organization
9 must indicate in the decision the specific basis for its divergence
10 in the review of medical necessity. [~~This subsection does not~~
11 ~~prohibit an independent review organization from considering the~~
12 ~~payment policies adopted under Section 413.011 in any dispute,~~
13 ~~regardless of whether those policies are raised by a party to the~~
14 ~~dispute.~~]

15 (f) The commissioner [~~commission~~] by rule shall specify the
16 appropriate dispute resolution process for disputes in which a
17 claimant has paid for medical services and seeks reimbursement.

18 (g) In performing a review of medical necessity under
19 Subsection (d) or (e), an independent review organization may
20 request that the commissioner [~~commission~~] order an examination by
21 a designated doctor under Chapter 408.

22 (h) The insurance carrier shall pay the cost of the review
23 if the dispute arises in connection with a request for health care
24 services that require preauthorization under Section 413.014 or
25 commissioner [~~commission~~] rules under that section.

26 (k) Except as provided by Subsection (l), a party to a
27 medical dispute that remains unresolved after a review of the

1 medical service under this section [~~is entitled to a hearing. The~~
 2 ~~hearing shall be conducted by the State Office of Administrative~~
 3 ~~Hearings within 90 days of receipt of a request for a hearing in the~~
 4 ~~manner provided for a contested case under Chapter 2001, Government~~
 5 ~~Code (the administrative procedure law). A party who has exhausted~~
 6 ~~the party's administrative remedies under this subtitle and who is~~
 7 ~~aggrieved by a final decision of the State Office of Administrative~~
 8 ~~Hearings]~~ may seek judicial review of the decision. Judicial
 9 review under this subsection shall be conducted in the manner
 10 provided for judicial review of contested cases under Subchapter G,
 11 Chapter 2001, Government Code.

12 (m) The commissioner [~~commission~~] by rule may prescribe an
 13 alternate dispute resolution process to resolve disputes regarding
 14 medical services costing less than the cost of a review of the
 15 medical necessity of a health care service by an independent review
 16 organization. The cost of a review under the alternate dispute
 17 resolution process shall be paid by the nonprevailing party.

18 SECTION 3.240. Sections 413.041(a), (b), and (d), Labor
 19 Code, are amended to read as follows:

20 (a) Each health care practitioner shall disclose to the
 21 department [~~commission~~] the identity of any health care provider in
 22 which the health care practitioner, or the health care provider
 23 that employs the health care practitioner, has a financial
 24 interest. The health care practitioner shall make the disclosure
 25 in the manner provided by commissioner [~~commission~~] rule.

26 (b) The commissioner [~~commission~~] shall require by rule
 27 that a doctor disclose financial interests in other health care

1 providers as a condition of registration for the approved doctor
2 list established under Section 408.023 and shall define "financial
3 interest" for purposes of this subsection as provided by analogous
4 federal regulations. The commissioner [~~commission~~] by rule shall
5 adopt the federal standards that prohibit the payment or acceptance
6 of payment in exchange for health care referrals relating to fraud,
7 abuse, and antikickbacks.

8 (d) The department [~~commission~~] shall publish all final
9 disclosure enforcement orders issued under this section on the
10 department's [~~commission's~~] Internet website.

11 SECTION 3.241. Section 413.044, Labor Code, is amended to
12 read as follows:

13 Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. (a) In
14 addition to or in lieu of an administrative penalty under Section
15 415.021 or a sanction imposed under Section 415.023, the
16 commissioner [~~commission~~] may impose sanctions against a person who
17 serves as a designated doctor under Chapter 408 who, after an
18 evaluation conducted under Section 413.002(c), is determined by the
19 division to be out of compliance with this subtitle or with rules
20 adopted by the commissioner [~~commission~~] relating to:

21 (1) medical policies, fee guidelines, and impairment
22 ratings; or

23 (2) the quality of decisions made under Section
24 408.0041 or Section 408.122.

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

26 (1) removal or suspension from the department list of
27 designated doctors; or

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

3 SECTION 3.242. Sections 413.051(a)-(d), Labor Code, are
4 amended to read as follows:

5 (a) The department [~~commission~~] may contract with a health
6 care provider, health care provider professional review
7 organization, or other entity to develop, maintain, or review
8 medical policies or fee guidelines or to review compliance with the
9 medical policies or fee guidelines.

10 (b) For purposes of review or resolution of a dispute as to
11 compliance with the medical policies or fee guidelines, the
12 department [~~commission~~] may contract with a health care provider,
13 health care provider professional review organization, or other
14 entity that includes in the review process health care
15 practitioners who are licensed in the category under review and are
16 of the same field or specialty as the category under review.

17 (c) The department [~~commission~~] may contract with a health
18 care provider, health care provider professional review
19 organization, or other entity for medical consultant services,
20 including:

- 21 (1) independent medical examinations;
22 (2) medical case reviews; or
23 (3) establishment of medical policies and fee
24 guidelines.

25 (d) The commissioner [~~commission~~] shall establish standards
26 for contracts under this section.

27 SECTION 3.243. Section 413.0511, Labor Code, is amended to

1 read as follows:

2 Sec. 413.0511. MEDICAL ADVISOR. (a) The department
3 [~~commission~~] shall employ or contract with a medical advisor, who
4 must be a doctor as that term is defined by Section 401.011.

5 (b) The medical advisor shall make recommendations
6 regarding the adoption of rules and policies to:

7 (1) develop, maintain, and review guidelines as
8 provided by Section 413.011, including rules regarding impairment
9 ratings;

10 (2) review compliance with those guidelines;

11 (3) regulate or perform other acts related to medical
12 benefits as required by the commissioner [~~commission~~];

13 (4) impose sanctions or delete doctors from the
14 department's [~~commission's~~] list of approved doctors under Section
15 408.023 for:

16 (A) any reason described by Section 408.0231; or

17 (B) noncompliance with commissioner [~~commission~~]
18 rules;

19 (5) impose conditions or restrictions as authorized by
20 Section 408.0231(f);

21 (6) receive, and share with the medical quality review
22 panel established under Section 413.0512, confidential
23 information, and other information to which access is otherwise
24 restricted by law, as provided by Sections 413.0512, 413.0513, and
25 413.0514 from the Texas State Board of Medical Examiners, the Texas
26 Board of Chiropractic Examiners, or other occupational licensing
27 boards regarding a physician, chiropractor, or other type of doctor

1 who applies for registration or is registered with the department
2 [~~commission~~] on the list of approved doctors; [~~and~~]

3 (7) determine minimal modifications to the
4 reimbursement methodology and model used by the Medicare system as
5 necessary to meet occupational injury requirements; and

6 (8) monitor the quality and timeliness of decisions
7 made by designated doctors and independent review organizations,
8 and the imposition of sanctions regarding those decisions.

9 SECTION 3.244. Section 413.0512(c), Labor Code, is amended
10 to read as follows:

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

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

16 (2) the addition or deletion of doctors from the list
17 of approved doctors under Section 408.023 or the list of designated
18 doctors established under Section 408.122.

19 SECTION 3.245. Section 413.0513, Labor Code, is amended to
20 read as follows:

21 Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a)
22 Information collected, assembled, or maintained by or on behalf of
23 the department [~~commission~~] under Section 413.0511 or 413.0512
24 constitutes an investigation file for purposes of Section 402.092
25 and may not be disclosed under Section 413.0511 or 413.0512 except
26 as provided by that section.

27 (b) Confidential information, and other information to

1 which access is restricted by law, developed by or on behalf of the
2 department [~~commission~~] under Section 413.0511 or 413.0512 is not
3 subject to discovery or court subpoena in any action other than:

4 (1) an action to enforce this subtitle brought by the
5 commission, an appropriate licensing or regulatory agency, or an
6 appropriate enforcement authority; or

7 (2) a criminal proceeding.

8 SECTION 3.246. Section 413.0514, Labor Code, is amended to
9 read as follows:

10 Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL
11 LICENSING BOARDS. (a) This section applies only to information
12 held by or for the department [~~commission~~], the Texas State Board of
13 Medical Examiners, and Texas Board of Chiropractic Examiners that
14 relates to a person who is licensed or otherwise regulated by any of
15 those state agencies.

16 (b) The department [~~commission~~] and the Texas State Board of
17 Medical Examiners on request or on its own initiative, may share
18 with each other confidential information or information to which
19 access is otherwise restricted by law. The department [~~commission~~]
20 and the Texas State Board of Medical Examiners shall cooperate with
21 and assist each other when either agency is conducting an
22 investigation by providing information to each other that the
23 sending agency determines is relevant to the investigation. Except
24 as provided by this section, confidential information that is
25 shared under this section remains confidential under law and legal
26 restrictions on access to the information remain in effect.
27 Furnishing information by the Texas State Board of Medical

1 Examiners to the department [~~commission~~] or by the department
2 [~~commission~~] to the Texas State Board of Medical Examiners under
3 this subsection does not constitute a waiver of privilege or
4 confidentiality as established by law.

5 (c) Information that is received by the department
6 [~~commission~~] from the Texas State Board of Medical Examiners or by
7 the Texas State Board of Medical Examiners from the department
8 [~~commission~~] remains confidential, may not be disclosed by the
9 department [~~commission~~] except as necessary to further the
10 investigation, and shall be exempt from disclosure under Sections
11 402.092 and 413.0513.

12 (d) The department [~~commission~~] and the Texas Board of
13 Chiropractic Examiners on request or on its own initiative, may
14 share with each other confidential information or information to
15 which access is otherwise restricted by law. The department
16 [~~commission~~] and the Texas Board of Chiropractic Examiners shall
17 cooperate with and assist each other when either agency is
18 conducting an investigation by providing information to each other
19 that is relevant to the investigation. Except as provided by this
20 section, confidential information that is shared under this section
21 remains confidential under law and legal restrictions on access to
22 the information remain in effect unless the agency sharing the
23 information approves use of the information by the receiving agency
24 for enforcement purposes. Furnishing information by the Texas
25 Board of Chiropractic Examiners to the department [~~commission~~] or
26 by the department [~~commission~~] to the Texas Board of Chiropractic
27 Examiners under this subsection does not constitute a waiver of

1 privilege or confidentiality as established by law.

2 (e) Information that is received by the department
3 [~~commission~~] from the Texas Board of Chiropractic Examiners or by
4 the Texas Board of Chiropractic Examiners remains confidential and
5 may not be disclosed by the department [~~commission~~] except as
6 necessary to further the investigation unless the agency sharing
7 the information and the agency receiving the information agree to
8 use of the information by the receiving agency for enforcement
9 purposes.

10 (f) The department [~~commission~~] and the Texas State Board of
11 Medical Examiners shall provide information to each other on all
12 disciplinary actions taken.

13 (g) The department [~~commission~~] and the Texas Board of
14 Chiropractic Examiners shall provide information to each other on
15 all disciplinary actions taken.

16 SECTION 3.247. Section 413.0515, Labor Code, is amended to
17 read as follows:

18 Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR
19 VIOLATIONS. (a) If the department [~~commission~~] or the Texas
20 State Board of Medical Examiners discovers an act or omission by a
21 physician that may constitute a felony, a misdemeanor involving
22 moral turpitude, a violation of state or federal narcotics or
23 controlled substance law, an offense involving fraud or abuse under
24 the Medicare or Medicaid program, or a violation of this subtitle,
25 the agency shall report that act or omission to the other agency.

26 (b) If the department [~~commission~~] or the Texas Board of
27 Chiropractic Examiners discovers an act or omission by a

1 chiropractor that may constitute a felony, a misdemeanor involving
2 moral turpitude, a violation of state or federal narcotics or
3 controlled substance law, an offense involving fraud or abuse under
4 the Medicare or Medicaid program, or a violation of this subtitle,
5 the agency shall report that act or omission to the other agency.

6 SECTION 3.248. Section 413.052, Labor Code, is amended to
7 read as follows:

8 Sec. 413.052. PRODUCTION OF DOCUMENTS. The commissioner
9 [~~commission~~] by rule shall establish procedures to enable the
10 commission to compel the production of documents.

11 SECTION 3.249. Section 413.053, Labor Code, is amended to
12 read as follows:

13 Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The
14 commissioner [~~commission~~] by rule shall establish standards of
15 reporting and billing governing both form and content.

16 SECTION 3.250. Section 413.054(a), Labor Code, is amended
17 to read as follows:

18 (a) A person who performs services for the department
19 [~~commission~~] as a designated doctor, an independent medical
20 examiner, a doctor performing a medical case review, or a member of
21 a peer review panel has the same immunity from liability as the
22 commissioner [~~a commission member~~] under Section 402.011
23 [~~402.010~~].

24 SECTION 3.251. Sections 413.055(a) and (b), Labor Code, are
25 amended to read as follows:

26 (a) The department [~~executive director~~], as provided by
27 commissioner [~~commission~~] rule, may enter an interlocutory order

1 for the payment of all or part of medical benefits. The order may
2 address accrued benefits, future benefits, or both accrued benefits
3 and future benefits.

4 (b) The subsequent injury fund shall reimburse an insurance
5 carrier for any overpayments of benefits made under an order
6 entered under Subsection (a) if the order is reversed or modified by
7 final arbitration, order, or decision of the commissioner
8 [~~commission~~] or a court. The commissioner [~~commission~~] shall adopt
9 rules to provide for a periodic reimbursement schedule, providing
10 for reimbursement at least annually.

11 SECTION 3.252. Section 414.002(a), Labor Code, is amended
12 to read as follows:

13 (a) The division shall monitor for compliance with
14 commissioner [~~commission~~] rules, this subtitle, and other laws
15 relating to workers' compensation the conduct of persons subject to
16 this subtitle, other than persons monitored by the division of
17 medical review. Persons to be monitored include:

- 18 (1) persons claiming benefits under this subtitle;
19 (2) employers;
20 (3) insurance carriers; and
21 (4) attorneys and other representatives of parties.

22 SECTION 3.253. Section 414.003, Labor Code, is amended to
23 read as follows:

24 Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The
25 division shall compile and maintain statistical and other
26 information as necessary to detect practices or patterns of conduct
27 by persons subject to monitoring under this chapter that:

1 (1) violate this subtitle or commissioner
2 [~~commission~~] rules; or

3 (2) otherwise adversely affect the workers'
4 compensation system of this state.

5 (b) The department [~~commission~~] shall use the information
6 compiled under this section to impose appropriate penalties and
7 other sanctions under Chapters 415 and 416.

8 SECTION 3.254. Section 414.005, Labor Code, is amended to
9 read as follows:

10 Sec. 414.005. INVESTIGATION UNIT. The division shall
11 maintain an investigation unit to conduct investigations relating
12 to alleged violations of this subtitle or commissioner [~~commission~~]
13 rules, with particular emphasis on violations of Chapters 415 and
14 416.

15 SECTION 3.255. Section 415.001, Labor Code, is amended to
16 read as follows:

17 Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE
18 OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee
19 or legal beneficiary commits an administrative violation if,
20 regardless of the person's mental state, the person [~~wilfully or~~
21 ~~intentionally~~]:

22 (1) fails without good cause to attend a dispute
23 resolution proceeding within the department [~~commission~~];

24 (2) attends a dispute resolution proceeding within the
25 department [~~commission~~] without complete authority or fails to
26 exercise authority to effectuate an agreement or settlement;

27 (3) commits an act of barratry under Section 38.12,

1 Penal Code;

2 (4) withholds from the employee's or legal
3 beneficiary's weekly benefits or from advances amounts not
4 authorized to be withheld by the department [~~commission~~];

5 (5) enters into a settlement or agreement without the
6 knowledge, consent, and signature of the employee or legal
7 beneficiary;

8 (6) takes a fee or withholds expenses in excess of the
9 amounts authorized by the department [~~commission~~];

10 (7) refuses or fails to make prompt delivery to the
11 employee or legal beneficiary of funds belonging to the employee or
12 legal beneficiary as a result of a settlement, agreement, order, or
13 award;

14 (8) violates the Texas Disciplinary Rules of
15 Professional Conduct of the State Bar of Texas;

16 (9) misrepresents the provisions of this subtitle to
17 an employee, an employer, a health care provider, or a legal
18 beneficiary;

19 (10) violates a commissioner [~~commission~~] rule; or

20 (11) fails to comply with this subtitle.

21 SECTION 3.256. Section 415.002, Labor Code, is amended to
22 read as follows:

23 Sec. 415.002. ADMINISTRATIVE VIOLATION BY AN INSURANCE
24 CARRIER. (a) An insurance carrier or its representative commits
25 an administrative violation if, regardless of the person's mental
26 state, that person [~~wilfully or intentionally~~]:

27 (1) misrepresents a provision of this subtitle to an

1 employee, an employer, a health care provider, or a legal
2 beneficiary;

3 (2) terminates or reduces benefits without
4 substantiating evidence that the action is reasonable and
5 authorized by law;

6 (3) instructs an employer not to file a document
7 required to be filed with the department [~~commission~~];

8 (4) instructs or encourages an employer to violate a
9 claimant's right to medical benefits under this subtitle;

10 (5) fails to tender promptly full death benefits if a
11 legitimate dispute does not exist as to the liability of the
12 insurance carrier;

13 (6) allows an employer, other than a self-insured
14 employer, to dictate the methods by which and the terms on which a
15 claim is handled and settled;

16 (7) fails to confirm medical benefits coverage to a
17 person or facility providing medical treatment to a claimant if a
18 legitimate dispute does not exist as to the liability of the
19 insurance carrier;

20 (8) fails, without good cause, to attend a dispute
21 resolution proceeding within the department [~~commission~~];

22 (9) attends a dispute resolution proceeding within the
23 department [~~commission~~] without complete authority or fails to
24 exercise authority to effectuate agreement or settlement;

25 (10) adjusts a workers' compensation claim in a manner
26 contrary to license requirements for an insurance adjuster,
27 including the requirements of Chapter 4101, Insurance Code [~~407,~~

1 ~~Acts of the 63rd Legislature, Regular Session, 1973 (Article~~
2 ~~21.07-4, Vernon's Texas Insurance Code)], or the rules of the~~
3 commissioner [~~State Board~~] of insurance [~~Insurance~~];

4 (11) fails to process claims promptly in a reasonable
5 and prudent manner;

6 (12) fails to initiate or reinstate benefits when due
7 if a legitimate dispute does not exist as to the liability of the
8 insurance carrier;

9 (13) misrepresents the reason for not paying benefits
10 or terminating or reducing the payment of benefits;

11 (14) dates documents to misrepresent the actual date
12 of the initiation of benefits;

13 (15) makes a notation on a draft or other instrument
14 indicating that the draft or instrument represents a final
15 settlement of a claim if the claim is still open and pending before
16 the department [~~commission~~];

17 (16) fails or refuses to pay benefits from week to week
18 as and when due directly to the person entitled to the benefits;

19 (17) fails to pay an order awarding benefits;

20 (18) controverts a claim if the evidence clearly
21 indicates liability;

22 (19) unreasonably disputes the reasonableness and
23 necessity of health care;

24 (20) violates a commissioner [~~commission~~] rule; or

25 (21) fails to comply with a provision of this
26 subtitle.

27 (b) An insurance carrier or its representative does not

1 commit an administrative violation under Subsection (a)(6) by
2 allowing an employer to:

- 3 (1) freely discuss a claim;
- 4 (2) assist in the investigation and evaluation of a
5 claim; or
- 6 (3) attend a proceeding of the department [~~commission~~]
7 and participate at the proceeding in accordance with this subtitle.

8 SECTION 3.257. Section 415.003, Labor Code, is amended to
9 read as follows:

10 Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE
11 PROVIDER. A health care provider commits an administrative
12 violation if, regardless of the person's mental state, the person
13 [~~wilfully or intentionally~~]:

- 14 (1) submits a charge for health care that was not
15 furnished;
- 16 (2) administers improper, unreasonable, or medically
17 unnecessary treatment or services;
- 18 (3) makes an unnecessary referral;
- 19 (4) violates the department's [~~commission's~~] fee and
20 treatment guidelines;
- 21 (5) violates a commissioner [~~commission~~] rule; or
- 22 (6) fails to comply with a provision of this subtitle.

23 SECTION 3.258. Sections 415.0035(a), (b), (e), and (f),
24 Labor Code, are amended to read as follows:

25 (a) An insurance carrier or its representative commits an
26 administrative violation if that person:

- 27 (1) fails to submit to the department [~~commission~~] a

1 settlement or agreement of the parties;

2 (2) fails to timely notify the department [~~commission~~]
3 of the termination or reduction of benefits and the reason for that
4 action; or

5 (3) denies preauthorization in a manner that is not in
6 accordance with rules adopted by the commissioner [~~commission~~]
7 under Section 413.014.

8 (b) A health care provider commits an administrative
9 violation if that person:

10 (1) fails or refuses to timely file required reports
11 or records; or

12 (2) fails to file with the department [~~commission~~] the
13 annual disclosure statement required by Section 413.041.

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

17 (f) A subsequent administrative violation under this
18 section, after prior notice to the insurance carrier or health care
19 provider of noncompliance, is subject to penalties as provided by
20 Section 415.021. Prior notice under this subsection is not
21 required [~~if the violation was committed wilfully or intentionally,~~
22 ~~or~~] if the violation was of a decision or order of the commissioner
23 [~~commission~~].

24 SECTION 3.259. Section 415.007(a), Labor Code, is amended
25 to read as follows:

26 (a) An attorney who represents a claimant before the
27 department [~~commission~~] may not lend money to the claimant during

1 the pendency of the workers' compensation claim.

2 SECTION 3.260. Section 415.008(e), Labor Code, is amended
3 to read as follows:

4 (e) If an administrative violation proceeding is pending
5 under this section against an employee or person claiming death
6 benefits, the department [~~commission~~] may not take final action on
7 the person's benefits.

8 SECTION 3.261. Section 415.009(a), Labor Code, is amended
9 to read as follows:

10 (a) A person commits a violation if, regardless of the
11 person's mental state, the person [~~knowingly~~] brings, prosecutes,
12 or defends an action for benefits under this subtitle or requests
13 initiation of an administrative violation proceeding that does not
14 have a basis in fact or is not warranted by existing law or a good
15 faith argument for the extension, modification, or reversal of
16 existing law.

17 SECTION 3.262. Section 415.010(a), Labor Code, is amended
18 to read as follows:

19 (a) A party to an agreement approved by the department
20 [~~commission~~] commits a violation if, regardless of the person's
21 mental state, the person [~~knowingly~~] breaches a provision of the
22 agreement.

23 SECTION 3.263. Sections 415.021(a), (b), and (c), Labor
24 Code, are amended to read as follows:

25 (a) The commissioner [~~commission~~] may assess an
26 administrative penalty against a person who commits an
27 administrative violation. Notwithstanding Subsection (c), the

1 commissioner [~~commission~~] by rule shall adopt a schedule of
2 specific monetary administrative penalties for specific violations
3 under this subtitle.

4 (b) The commissioner [~~commission~~] may assess an
5 administrative penalty not to exceed \$10,000 and may enter a cease
6 and desist order against a person who:

- 7 (1) commits repeated administrative violations;
8 (2) allows, as a business practice, the commission of
9 repeated administrative violations; or
10 (3) violates an order or decision of the commissioner
11 [~~commission~~].

12 (c) In assessing an administrative penalty, the
13 commissioner [~~commission~~] shall consider:

- 14 (1) the seriousness of the violation, including the
15 nature, circumstances, consequences, extent, and gravity of the
16 prohibited act;
17 (2) the history and extent of previous administrative
18 violations;
19 (3) the demonstrated good faith of the violator,
20 including actions taken to rectify the consequences of the
21 prohibited act;
22 (4) the economic benefit resulting from the prohibited
23 act;
24 (5) the penalty necessary to deter future violations;
25 and
26 (6) other matters that justice may require.

27 SECTION 3.264. Section 415.023(b), Labor Code, is amended

1 to read as follows:

2 (b) The commissioner [~~commission~~] may adopt rules providing
3 for:

4 (1) a reduction or denial of fees;

5 (2) public or private reprimand by the commissioner
6 [~~commission~~];

7 (3) suspension from practice before the commissioner
8 [~~commission~~];

9 (4) restriction, suspension, or revocation of the
10 right to receive reimbursement under this subtitle; or

11 (5) referral and petition to the appropriate licensing
12 authority for appropriate disciplinary action, including the
13 restriction, suspension, or revocation of the person's license.

14 SECTION 3.265. Section 415.024, Labor Code, is amended to
15 read as follows:

16 Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT;
17 ADMINISTRATIVE VIOLATION. A material and substantial breach of a
18 settlement agreement that establishes a compliance plan is a Class
19 A administrative violation. In determining the amount of the
20 penalty, the commissioner [~~commission~~] shall consider the total
21 volume of claims handled by the insurance carrier.

22 SECTION 3.266. Section 415.032(b), Labor Code, is amended
23 to read as follows:

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

26 (1) remit the amount of the penalty to the department
27 [~~commission~~]; or

1 (2) submit to the department [~~commission~~] a written
2 request for a hearing.

3 SECTION 3.267. Section 415.033, Labor Code, is amended to
4 read as follows:

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

9 SECTION 3.268. Section 415.034(a), Labor Code, is amended
10 to read as follows:

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

16 SECTION 3.269. Sections 415.035(b) and (d), Labor Code, are
17 amended to read as follows:

18 (b) If an administrative penalty is assessed, the person
19 charged shall:

20 (1) forward the amount of the penalty to the
21 commissioner [~~executive director~~] for deposit in an escrow account;
22 or

23 (2) post with the commissioner [~~executive director~~] a
24 bond for the amount of the penalty, effective until all judicial
25 review of the determination is final.

26 (d) If the court determines that the penalty should not have
27 been assessed or reduces the amount of the penalty, the

1 commissioner [~~executive director~~] shall:

2 (1) remit the appropriate amount, plus accrued
3 interest, if the administrative penalty was paid; or

4 (2) release the bond.

5 SECTION 3.270. Section 416.001, Labor Code, is amended to
6 read as follows:

7 Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An
8 action taken by an insurance carrier under an order of the
9 commissioner [~~commission~~] or recommendations of a benefit review
10 officer under Section 410.031, 410.032, or 410.033 may not be the
11 basis of a cause of action against the insurance carrier for a
12 breach of the duty of good faith and fair dealing.

13 SECTION 3.271. Sections 417.001(c) and (d), Labor Code, are
14 amended to read as follows:

15 (c) If a claimant receives benefits from the subsequent
16 injury fund, the department [~~commission~~] is:

17 (1) considered to be the insurance carrier under this
18 section for purposes of those benefits;

19 (2) subrogated to the rights of the claimant; and

20 (3) entitled to reimbursement in the same manner as
21 the insurance carrier.

22 (d) The department [~~commission~~] shall remit money recovered
23 under this section to the comptroller for deposit to the credit of
24 the subsequent injury fund.

25 SECTION 3.272. Section 417.003(b), Labor Code, is amended
26 to read as follows:

27 (b) An attorney who represents the claimant and is also to

1 represent the subrogated insurance carrier shall make a full
2 written disclosure to the claimant before employment as an attorney
3 by the insurance carrier. The claimant must acknowledge the
4 disclosure and consent to the representation. A signed copy of the
5 disclosure shall be furnished to all concerned parties and made a
6 part of the department [~~commission~~] file. A copy of the disclosure
7 with the claimant's consent shall be filed with the claimant's
8 pleading before a judgment is entered and approved by the court. The
9 claimant's attorney may not receive a fee under this section to
10 which the attorney is otherwise entitled under an agreement with
11 the insurance carrier unless the attorney complies with the
12 requirements of this subsection.

13 SECTION 3.273. Section 501.001(1), Labor Code, is amended
14 to read as follows:

15 (1) "Department" [~~"Commission"~~] means the Texas
16 Department of Workers' Compensation [~~Commission~~].

17 SECTION 3.274. Section 501.026(d), Labor Code, is amended
18 to read as follows:

19 (d) A person entitled to benefits under this section may
20 receive the benefits only if the person seeks medical attention
21 from a doctor for the injury not later than 48 hours after the
22 occurrence of the injury or after the date the person knew or should
23 have known the injury occurred. The person shall comply with the
24 requirements of Section 409.001 by providing notice of the injury
25 to the department [~~commission~~] or the state agency with which the
26 officer or employee under Subsection (b) is associated.

27 SECTION 3.275. Section 501.050(a), Labor Code, is amended

1 to read as follows:

2 (a) In each case appealed from the department [~~commission~~]
3 to a county or district court:

4 (1) the clerk of the court shall mail to the department
5 [~~commission~~]:

6 (A) not later than the 20th day after the date the
7 case is filed, a notice containing the style, number, and date of
8 filing of the case; and

9 (B) not later than the 20th day after the date the
10 judgment is rendered, a certified copy of the judgment; and

11 (2) the attorney preparing the judgment shall file the
12 original and a copy of the judgment with the clerk.

13 SECTION 3.276. Section 502.001(1), Labor Code, is amended
14 to read as follows:

15 (1) "Department" means the Texas Department of
16 Workers' Compensation [~~"Commission" means the Texas Workers'~~
17 ~~Compensation Commission~~].

18 SECTION 3.277. Section 502.041, Labor Code, is amended to
19 read as follows:

20 Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An
21 employee may elect to use accrued sick leave before receiving
22 income benefits. An employee who elects to use sick leave is not
23 entitled to income benefits under this chapter until the employee
24 has exhausted the employee's accrued sick leave [~~institution may~~
25 ~~provide that an injured employee may remain on the payroll until the~~
26 ~~employee's earned annual and sick leave is exhausted~~].

27 (b) An employee may elect to use all or any number of weeks

1 of accrued annual leave after the employee's accrued sick leave is
2 exhausted. An employee who elects to use annual leave is not
3 entitled to income benefits under this chapter until the elected
4 number of weeks of leave have been exhausted. [~~While an injured~~
5 ~~employee remains on the payroll under Subsection (a), medical~~
6 ~~services remain available to the employee, but workers'~~
7 ~~compensation benefits do not accrue or become payable to the~~
8 ~~injured employee.~~]

9 SECTION 3.278. The heading to Section 502.063, Labor Code,
10 is amended to read as follows:

11 Sec. 502.063. CERTIFIED COPIES OF DEPARTMENT [~~COMMISSION~~]
12 DOCUMENTS.

13 SECTION 3.279. Sections 502.063(a) and (c), Labor Code, are
14 amended to read as follows:

15 (a) The department [~~commission~~] shall furnish a certified
16 copy of an order, award, decision, or paper on file in the
17 department's [~~commission's~~] office to a person entitled to the copy
18 on written request and payment of the fee for the copy. The fee is
19 the same as that charged for similar services by the secretary of
20 state's office.

21 (c) A fee or salary may not be paid to an [~~a member or~~]
22 employee of the department [~~commission~~] for making a copy under
23 Subsection (a) that exceeds the fee charged for the copy.

24 SECTION 3.280. Section 502.065(a), Labor Code, is amended
25 to read as follows:

26 (a) In addition to a report of an injury filed with the
27 department [~~commission~~] under Section 409.005(a), an institution

1 shall file a supplemental report that contains:

2 (1) the name, age, sex, and occupation of the injured
3 employee;

4 (2) the character of work in which the employee was
5 engaged at the time of the injury;

6 (3) the place, date, and hour of the injury; and

7 (4) the nature and cause of the injury.

8 SECTION 3.281. Sections 502.066(a) and (e), Labor Code, are
9 amended to read as follows:

10 (a) The department [~~commission~~] may require an employee who
11 claims to have been injured to submit to an examination by the
12 department [~~commission~~] or a person acting under the department's
13 [~~commission's~~] authority at a reasonable time and place in this
14 state.

15 (e) The institution shall pay the fee set by the department
16 [~~commission~~] of a physician or chiropractor selected by the
17 employee under Subsection (b) or (d).

18 SECTION 3.282. Section 502.067(a), Labor Code, is amended
19 to read as follows:

20 (a) The commissioner [~~commission~~] may order or direct the
21 institution to reduce or suspend the compensation of an injured
22 employee who:

23 (1) persists in insanitary or injurious practices that
24 tend to imperil or retard the employee's recovery; or

25 (2) refuses to submit to medical, surgical,
26 chiropractic, or other remedial treatment recognized by the state
27 that is reasonably essential to promote the employee's recovery.

1 SECTION 3.283. Section 502.068, Labor Code, is amended to
2 read as follows:

3 Sec. 502.068. POSTPONEMENT OF HEARING. If an injured
4 employee is receiving benefits under this chapter and the
5 institution is providing hospitalization, medical treatment, or
6 chiropractic care to the employee, the department [~~commission~~] may
7 postpone the hearing on the employee's claim. An appeal may not be
8 taken from a department [~~commission~~] order under this section.

9 SECTION 3.284. Section 502.069(a), Labor Code, is amended
10 to read as follows:

11 (a) In each case appealed from the department [~~commission~~]
12 to a county or district court:

13 (1) the clerk of the court shall mail to the department
14 [~~commission~~]:

15 (A) not later than the 20th day after the date the
16 case is filed, a notice containing the style, number, and date of
17 filing of the case; and

18 (B) not later than the 20th day after the date the
19 judgment is rendered, a certified copy of the judgment; and

20 (2) the attorney preparing the judgment shall file the
21 original and a copy of the judgment with the clerk.

22 SECTION 3.285. Section 503.001, Labor Code, is amended by
23 amending Subdivision (1) and by adding Subdivision (1-a) to read as
24 follows:

25 (1) "Commissioner" means the commissioner of the Texas
26 Department of Workers' Compensation [~~"Commission" means the Texas~~
27 ~~Workers' Compensation Commission~~].

1 (1-a) "Department" means the Texas Department of
2 Workers' Compensation.

3 SECTION 3.286. Section 503.041, Labor Code, is amended to
4 read as follows:

5 Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An
6 employee may elect to use accrued sick leave before receiving
7 income benefits. An employee who elects to use sick leave is not
8 entitled to income benefits under this chapter until the employee
9 has exhausted the employee's accrued sick leave. [~~An institution~~
10 ~~may provide that an injured employee may remain on the payroll until~~
11 ~~the employee's earned annual and sick leave is exhausted.~~]

12 (b) An employee may elect to use all or any number of weeks
13 of accrued annual leave after the employee's accrued sick leave is
14 exhausted. An employee who elects to use annual leave is not
15 entitled to income benefits under this chapter until the elected
16 number of weeks of leave have been exhausted. [~~While an injured~~
17 ~~employee remains on the payroll under Subsection (a), the employee~~
18 ~~is entitled to medical benefits but income benefits do not accrue.~~]

19 SECTION 3.287. The heading to Section 503.063, Labor Code,
20 is amended to read as follows:

21 Sec. 503.063. CERTIFIED COPIES OF DEPARTMENT [~~COMMISSION~~]
22 DOCUMENTS.

23 SECTION 3.288. Sections 503.063(a) and (c), Labor Code, are
24 amended to read as follows:

25 (a) The department [~~commission~~] shall furnish a certified
26 copy of an order, award, decision, or paper on file in the
27 department's [~~commission's~~] office to a person entitled to the copy

1 on written request and payment of the fee for the copy. The fee is
2 the same as that charged for similar services by the secretary of
3 state's office.

4 (c) A fee or salary may not be paid to an [~~a member or~~]
5 employee of the department [~~commission~~] for making a copy under
6 Subsection (a) that exceeds the fee charged for the copy.

7 SECTION 3.289. Section 503.065(a), Labor Code, is amended
8 to read as follows:

9 (a) In addition to a report of an injury filed with the
10 department [~~commission~~] under Section 409.005(a), an institution
11 shall file a supplemental report that contains:

12 (1) the name, age, sex, and occupation of the injured
13 employee;

14 (2) the character of work in which the employee was
15 engaged at the time of the injury;

16 (3) the place, date, and hour of the injury; and

17 (4) the nature and cause of the injury.

18 SECTION 3.290. Sections 503.066(a) and (e), Labor Code, are
19 amended to read as follows:

20 (a) The department [~~commission~~] may require an employee who
21 claims to have been injured to submit to an examination by the
22 department [~~commission~~] or a person acting under the department's
23 [~~commission's~~] authority at a reasonable time and place in this
24 state.

25 (e) The institution shall pay the fee, as set by the
26 department [~~commission~~], of a physician selected by the employee
27 under Subsection (b) or (d).

1 SECTION 3.291. Section 503.067(a), Labor Code, is amended
2 to read as follows:

3 (a) The commissioner [~~commission~~] may order or direct the
4 institution to reduce or suspend the compensation of an injured
5 employee who:

6 (1) persists in insanitary or injurious practices that
7 tend to imperil or retard the employee's recovery; or

8 (2) refuses to submit to medical, surgical, or other
9 remedial treatment recognized by the state that is reasonably
10 essential to promote the employee's recovery.

11 SECTION 3.292. Section 503.068, Labor Code, is amended to
12 read as follows:

13 Sec. 503.068. POSTPONEMENT OF HEARING. If an injured
14 employee is receiving benefits under this chapter and the
15 institution is providing hospitalization or medical treatment to
16 the employee, the department [~~commission~~] may postpone the hearing
17 on the employee's claim. An appeal may not be taken from a
18 commissioner [~~commission~~] order under this section.

19 SECTION 3.293. Section 503.069(a), Labor Code, is amended
20 to read as follows:

21 (a) In each case appealed from the department [~~commission~~]
22 to a county or district court:

23 (1) the clerk of the court shall mail to the department
24 [~~commission~~]:

25 (A) not later than the 20th day after the date the
26 case is filed, a notice containing the style, number, and date of
27 filing of the case; and

1 (B) not later than the 20th day after the date the
2 judgment is rendered, a certified copy of the judgment; and

3 (2) the attorney preparing the judgment shall file the
4 original and a copy of the judgment with the clerk.

5 SECTION 3.294. Section 503.070(a), Labor Code, is amended
6 to read as follows:

7 (a) A party who does not consent to abide by the final
8 decision of the commissioner [~~commission~~] shall file notice with
9 the department [~~commission~~] as required by Section 410.253 and
10 bring suit in the county in which the injury occurred to set aside
11 the final decision of the commissioner [~~commission~~].

12 SECTION 3.295. Section 504.001(1), Labor Code, is amended
13 to read as follows:

14 (1) "Department" means the Texas Department of
15 Workers' Compensation [~~"Commission" means the Texas Workers'~~
16 ~~Compensation Commission~~].

17 SECTION 3.296. The heading to Section 504.018, Labor Code,
18 is amended to read as follows:

19 Sec. 504.018. NOTICE TO DEPARTMENT [~~COMMISSION~~] AND
20 EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

21 SECTION 3.297. Section 504.018(a), Labor Code, is amended
22 to read as follows:

23 (a) A political subdivision shall notify the department
24 [~~commission~~] of the method by which its employees will receive
25 benefits, the approximate number of employees covered, and the
26 estimated amount of payroll.

27 SECTION 3.298. The heading to Section 505.053, Labor Code,

1 is amended to read as follows:

2 Sec. 505.053. CERTIFIED COPIES OF TEXAS DEPARTMENT OF
3 WORKERS' COMPENSATION [~~COMMISSION~~] DOCUMENTS.

4 SECTION 3.299. Sections 505.053(a) and (c), Labor Code, are
5 amended to read as follows:

6 (a) The Texas Department of Workers' Compensation
7 [~~commission~~] shall furnish a certified copy of an order, award,
8 decision, or paper on file in that department's [~~the commission's~~]
9 office to a person entitled to the copy on written request and
10 payment of the fee for the copy. The fee shall be the same as that
11 charged for similar services by the secretary of state's office.

12 (c) A fee or salary may not be paid to a person in the Texas
13 Department of Workers' Compensation [~~commission~~] for making the
14 copies that exceeds the fee charged for the copies.

15 SECTION 3.300. Section 505.054(d), Labor Code, is amended
16 to read as follows:

17 (d) A physician designated under Subsection (c) who
18 conducts an examination shall file with the department a complete
19 transcript of the examination on a form furnished by the
20 department. The department shall maintain all reports under this
21 subsection as part of the department's permanent records. A report
22 under this subsection is admissible in evidence before the Texas
23 Department of Workers' Compensation [~~commission~~] and in an appeal
24 from a final award or ruling of that department [~~the commission~~] in
25 which the individual named in the examination is a claimant for
26 compensation under this chapter. A report under this subsection
27 that is admitted is prima facie evidence of the facts stated in the

1 report.

2 SECTION 3.301. Section 505.055, Labor Code, is amended to
3 read as follows:

4 Sec. 505.055. REPORTS OF INJURIES. (a) A report of an
5 injury filed with the Texas Department of Workers' Compensation
6 [~~commission~~] under Section 409.005, in addition to the information
7 required by commissioner of workers' compensation [~~commission~~]
8 rules, must contain:

9 (1) the name, age, sex, and occupation of the injured
10 employee;

11 (2) the character of work in which the employee was
12 engaged at the time of the injury;

13 (3) the place, date, and hour of the injury; and

14 (4) the nature and cause of the injury.

15 (b) In addition to subsequent reports of an injury filed
16 with the Texas Department of Workers' Compensation [~~commission~~]
17 under Section 409.005(e), the department shall file a subsequent
18 report on a form obtained for that purpose:

19 (1) on the termination of incapacity of the injured
20 employee; or

21 (2) if the incapacity extends beyond 60 days.

22 SECTION 3.302. Sections 505.056(a) and (d), Labor Code, are
23 amended to read as follows:

24 (a) The Texas Department of Workers' Compensation
25 [~~commission~~] may require an employee who claims to have been
26 injured to submit to an examination by that department [~~the~~
27 ~~commission~~] or a person acting under the [~~commission's~~] authority

1 of that department at a reasonable time and place in this state.

2 (d) On the request of an employee or the department, the
3 employee or the department is entitled to have a physician selected
4 by the employee or the department present to participate in an
5 examination under Subsection (a) or Section 408.004. The employee
6 is entitled to have a physician selected by the employee present to
7 participate in an examination under Subsection (c). The department
8 shall pay the fee set by the commissioner of the Texas Department of
9 Workers' Compensation [~~commission~~] of a physician selected by the
10 employee under this subsection.

11 SECTION 3.303. Section 505.057(a), Labor Code, is amended
12 to read as follows:

13 (a) The commissioner of the Texas Department of Workers'
14 Compensation [~~commission~~] may order or direct the department to
15 reduce or suspend the compensation of an injured employee if the
16 employee:

17 (1) persists in insanitary or injurious practices that
18 tend to imperil or retard the employee's recovery; or

19 (2) refuses to submit to medical, surgical, or other
20 remedial treatment recognized by the state that is reasonably
21 essential to promote the employee's recovery.

22 SECTION 3.304. Section 505.058, Labor Code, is amended to
23 read as follows:

24 Sec. 505.058. POSTPONEMENT OF HEARING. If an injured
25 employee is receiving benefits under this chapter and the
26 department is providing hospitalization or medical treatment to the
27 employee, the Texas Department of Workers' Compensation

1 ~~[commission]~~ may postpone the hearing of the employee's claim. An
2 appeal may not be taken from an ~~[a commission]~~ order of the
3 commissioner of workers' compensation under this section.

4 SECTION 3.305. Section 505.059(a), Labor Code, is amended
5 to read as follows:

6 (a) In each case appealed from the Texas Department of
7 Workers' Compensation ~~[commission]~~ to a county or district court:

8 (1) the clerk of the court shall mail to the Texas
9 Department of Workers' Compensation ~~[commission]~~:

10 (A) not later than the 20th day after the date the
11 case is filed, a notice containing the style, number, and date of
12 filing of the case; and

13 (B) not later than the 20th day after the date the
14 judgment is rendered, a certified copy of the judgment; and

15 (2) the attorney preparing the judgment shall file the
16 original and a copy of the judgment with the clerk.

17 ARTICLE 4. PROVISION OF WORKERS' COMPENSATION MEDICAL BENEFITS
18 THROUGH PROVIDER NETWORKS

19 SECTION 4.01. The heading to Subtitle D, Title 8, Insurance
20 Code, as effective April 1, 2005, is amended to read as follows:

21 SUBTITLE D. ~~[PREFERRED]~~ PROVIDER ~~[BENEFIT]~~ PLANS

22 SECTION 4.02. Subtitle D, Title 8, Insurance Code, as
23 effective April 1, 2005, is amended by adding Chapter 1305 to read
24 as follows:

25 CHAPTER 1305. WORKERS' COMPENSATION HEALTH CARE NETWORKS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 1305.001. SHORT TITLE. This chapter may be cited as

1 the Workers' Compensation Health Care Network Act.

2 Sec. 1305.002. PURPOSE. The purpose of this chapter is to:

3 (1) authorize the establishment of workers'
4 compensation health care networks for the provision of workers'
5 compensation medical benefits; and

6 (2) provide standards for the certification,
7 administration, evaluation, and enforcement of the delivery of
8 health care services to injured employees by networks contracting
9 with or established by:

10 (A) workers' compensation insurance carriers;

11 (B) employers certified to self-insure under
12 Chapter 407, Labor Code;

13 (C) groups of employers certified to self-insure
14 under Chapter 407A, Labor Code; and

15 (D) governmental entities that self-insure,
16 either individually or collectively.

17 Sec. 1305.003. LIMITATIONS ON APPLICABILITY. (a) This
18 chapter does not affect the authority of the Texas Department of
19 Workers' Compensation to exercise the powers granted to that agency
20 under Title 5, Labor Code, that do not conflict with this chapter.

21 (b) In the event of a conflict between Title 5, Labor Code,
22 and this chapter as to the operation and regulation of health care
23 networks that provide workers' compensation medical benefits or the
24 provision of health care to injured employees who are subject to
25 workers' compensation health care networks, this chapter prevails.

26 Sec. 1305.004. DEFINITIONS. (a) In this chapter, unless
27 the context clearly indicates otherwise:

1 (1) "Adverse determination" means a determination,
2 made through utilization review or retrospective review, that the
3 health care services furnished or proposed to be furnished to an
4 employee are not medically necessary or appropriate.

5 (2) "Affiliate" means a person that directly, or
6 indirectly through one or more intermediaries, controls or is
7 controlled by, or is under common control with, the person
8 specified.

9 (3) "Capitation" means a method of compensation for
10 arranging for or providing health care services to employees for a
11 specified period that is based on a predetermined payment for each
12 employee for the specified period, without regard to the quantity
13 of services provided for the compensable injury.

14 (4) "Complainant" means a person who files a complaint
15 under this chapter. The term includes:

- 16 (A) an employee;
17 (B) an employer;
18 (C) a health care provider; and
19 (D) another person designated to act on behalf of
20 an employee.

21 (5) "Complaint" means any dissatisfaction expressed
22 orally or in writing by a complainant to a network regarding any
23 aspect of the network's operation. The term includes
24 dissatisfaction relating to medical fee disputes and the network's
25 administration and the manner in which a service is provided. The
26 term does not include:

- 27 (A) a misunderstanding or a problem of

1 misinformation that is resolved promptly by clearing up the
2 misunderstanding or supplying the appropriate information to the
3 satisfaction of the complainant; or

4 (B) an oral or written expression of
5 dissatisfaction or disagreement with an adverse determination.

6 (6) "Credentialing" means the review, under
7 nationally recognized standards to the extent that those standards
8 do not conflict with other laws of this state, of qualifications and
9 other relevant information relating to a health care provider who
10 seeks a contract with a network.

11 (7) "Emergency" means either a medical or mental
12 health emergency.

13 (8) "Employee" has the meaning assigned by Section
14 401.012, Labor Code.

15 (9) "Fee dispute" means a dispute over the amount of
16 payment due for health care services determined to be medically
17 necessary and appropriate for treatment of a compensable injury.

18 (10) "Health care facility" means a general or
19 specialty hospital, emergency clinic, outpatient clinic, or other
20 facility providing health care.

21 (11) "Health care provider" or "provider" means:

22 (A) a doctor or other person licensed to practice
23 one or more of the healing arts within the scope of the license of
24 the license holder;

25 (B) a health care facility; or

26 (C) an entity providing health care that is
27 covered under this chapter.

1 (12) "Independent review" means a system for final
2 administrative review of the medical necessity and appropriateness
3 of health care services being provided or proposed to be provided to
4 an employee by an independent review organization.

5 (13) "Independent review organization" means an
6 entity that is certified by the commissioner to conduct independent
7 review under Article 21.58C and rules adopted by the commissioner.

8 (14) "Life-threatening" has the meaning assigned by
9 Section 2, Article 21.58A.

10 (15) "Medical emergency" means the sudden onset of a
11 medical condition manifested by acute symptoms of sufficient
12 severity, including severe pain, that the absence of immediate
13 medical attention could reasonably be expected to result in:

14 (A) placing the patient's health or bodily
15 functions in serious jeopardy; or

16 (B) serious dysfunction of any body organ or
17 part.

18 (16) "Medical records" means the history of diagnosis
19 and treatment for an injury, including medical, dental, and other
20 health care records from each health care practitioner who provides
21 care to an injured employee.

22 (17) "Mental health emergency" means a condition that
23 could reasonably be expected to present danger to the person
24 experiencing the mental health condition or another person.

25 (18) "Network" or "workers' compensation health care
26 network" means an organization that is:

27 (A) formed as a health care provider network to

1 provide health care services to injured employees;

2 (B) certified in accordance with this chapter and
3 commissioner rules; and

4 (C) established by, or operates under contract
5 with, an insurance carrier.

6 (19) "Nurse" has the meaning assigned by Section 2,
7 Article 21.58A.

8 (20) "Person" means any natural or artificial person,
9 including an individual, partnership, association, corporation,
10 organization, trust, hospital district, community mental health
11 center, mental retardation center, mental health and mental
12 retardation center, limited liability company, or limited
13 liability partnership.

14 (21) "Preauthorization" means the process required to
15 request approval from the network to provide a specific treatment
16 or service before the treatment or service is provided.

17 (22) "Quality improvement program" means a system
18 designed to continuously examine, monitor, and revise processes and
19 systems that support and improve administrative and clinical
20 functions.

21 (23) "Retrospective review" means the process of
22 reviewing the medical necessity and reasonableness of health care
23 that has been provided to an injured employee.

24 (24) "Rural area" means:

25 (A) a county with a population of 50,000 or less;

26 (B) an area that is not designated as an
27 urbanized area by the United States Census Bureau; or

1 (C) any other area designated as rural under
2 rules adopted by the commissioner.

3 (25) "Screening criteria" means the written policies,
4 decision rules, medical protocols, and treatment guidelines used by
5 a network as part of utilization review.

6 (26) "Service area" means a geographic area within
7 which health care services from network providers are available and
8 accessible to employees who reside within that geographic area.

9 (27) "Texas Workers' Compensation Act" means Subtitle
10 A, Title 5, Labor Code.

11 (28) "Transfer of risk" means, for purposes of this
12 chapter only, an insurance carrier's transfer of risk to a network
13 for the provision of health care services.

14 (29) "Utilization review" has the meaning assigned by
15 Section 2, Article 21.58A.

16 (30) "Utilization review agent" means any entity with
17 which the network contracts or subcontracts to provide utilization
18 review under Article 21.58A.

19 (31) "Utilization review plan" means the screening
20 criteria and utilization review procedures of a workers'
21 compensation health care network or utilization review agent.

22 (b) In this chapter, the following terms have the meanings
23 assigned by Section 401.011, Labor Code:

24 (1) "compensable injury";

25 (2) "doctor";

26 (3) "employer";

27 (4) "health care";

1 (5) "injury";

2 (6) "insurance carrier"; and

3 (7) "treating doctor."

4 Sec. 1305.005. PARTICIPATION IN NETWORK; NOTICE OF NETWORK
5 REQUIREMENTS. (a) An employer that elects to provide workers'
6 compensation insurance coverage under the Texas Workers'
7 Compensation Act may receive workers' compensation health care
8 services for the employer's injured employees through a workers'
9 compensation health care network.

10 (b) An insurance carrier may establish or contract with
11 networks certified under this chapter to provide health care
12 services under the Texas Workers' Compensation Act. If an employer
13 elects to contract with an insurance company for the provision of
14 health care services through a network, or if a self-insured
15 employer elects to establish or contract with a network, the
16 employer's employees who live or work within the network's service
17 area are required to obtain medical treatment for a compensable
18 injury within the network.

19 (c) The insurance carrier shall provide to the employer, and
20 shall ensure that the employer provides to the employer's
21 employees, notice of network requirements, including all
22 information required by Section 1305.451. The carrier shall
23 require the employer to:

24 (1) obtain a signed acknowledgment from each employee,
25 written in English, Spanish, and any other language common to the
26 employer's employees, that the employee has received information
27 concerning the network and the network's requirements; and

1 (2) post notice of the network requirements at each
2 place of employment.

3 (d) The insurance carrier shall ensure that an employer
4 provides to each employee hired after the notice is given under
5 Subsection (c) the notice and information required under that
6 subsection not later than the third day after the date of hire.

7 (e) The insurance carrier shall require the employer to
8 notify an injured employee of the network requirements at the time
9 the employer receives actual or constructive notice of an injury.

10 (f) An injured employee is not required to comply with the
11 network requirements until the employee receives the notice under
12 Subsection (c) or (d).

13 (g) The commissioner may adopt rules as necessary to
14 implement this section.

15 Sec. 1305.006. INSURANCE CARRIER LIABILITY FOR
16 OUT-OF-NETWORK HEALTH CARE. An insurance carrier that establishes
17 or contracts with a network is not liable for all or part of the cost
18 of a health care service, other than emergency services, if the
19 employee obtains the health care service, without network approval,
20 from:

21 (1) a network provider other than the employee's
22 treating doctor or a specialist to whom the employee is referred by
23 the treating doctor; or

24 (2) a non-network provider.

25 Sec. 1305.007. RULES. The commissioner may adopt rules as
26 necessary to implement this chapter.

27 [Sections 1305.008-1305.050 reserved for expansion]

SUBCHAPTER B. CERTIFICATION

1 Sec. 1305.051. CERTIFICATION REQUIRED. (a) A person may
2 not organize or operate a workers' compensation health care network
3 in this state unless the person holds a certificate issued under
4 this chapter and rules adopted by the commissioner.

5 (b) A person, including a provider, may not perform any act
6 of a workers' compensation health care network except in accordance
7 with the specific authorization of this chapter or rules adopted by
8 the commissioner.

9 (c) A health maintenance organization regulated under
10 Chapter 843 or an organization of physicians and providers that
11 operates as a preferred provider under Chapter 1301 may be
12 certified as a workers' compensation health care network if that
13 entity meets the requirements of this chapter and rules adopted by
14 the commissioner under this chapter.

15 Sec. 1305.052. CERTIFICATE APPLICATION. (a) A person who
16 seeks to operate as a workers' compensation health care network
17 shall apply to the department for a certificate to organize and
18 operate as a network.

19 (b) A certificate application must be:

20 (1) filed with the department in the form prescribed
21 by the commissioner;

22 (2) verified by the applicant or an officer or other
23 authorized representative of the applicant; and

24 (3) accompanied by a nonrefundable fee set by
25 commissioner rule.

26 Sec. 1305.053. CONTENTS OF APPLICATION. (a) Each
27

1 certificate application must include:

2 (1) a copy of the applicant's basic organizational
3 documents and other related documents;

4 (2) biographical information regarding each person
5 who governs or manages the affairs of the applicant, accompanied by
6 information sufficient to allow the commissioner to determine the
7 competence, fitness, and reputation of each officer or director of
8 the applicant or other person having control of the applicant,
9 including criminal history information that demonstrates that none
10 of those individuals has been convicted of a felony involving moral
11 turpitude or a breach of fiduciary duty;

12 (3) organizational charts or lists that show:

13 (A) the relationships between the applicant and
14 any affiliates of the applicant;

15 (B) any outstanding loans or contracts between
16 the applicant and the affiliates; and

17 (C) the internal organizational structure of the
18 applicant's management and administrative staff;

19 (4) a copy of the form of any contract between the
20 applicant and any provider or group of providers, and with any third
21 party performing services on behalf of the applicant under
22 Subchapter D;

23 (5) a copy of the form of each contract with an
24 insurance carrier, as described by Section 1305.153;

25 (6) a financial statement, current as of the date of
26 the application, that is prepared using generally accepted
27 accounting practices and includes:

1 (A) a balance sheet that reflects a solvent
2 financial position;

3 (B) an income statement;

4 (C) a cash flow statement; and

5 (D) the sources and uses of all funds;

6 (7) a proposed business plan that describes the
7 applicant's organizational structure and intended operations,
8 including any proposed contractual arrangements, and includes pro
9 forma financial statement projections for the initial three-year
10 period of operations, as required by commissioner rules;

11 (8) a statement acknowledging that lawful process in a
12 legal action or proceeding against the network on a cause of action
13 arising in this state is valid if served in the manner provided by
14 Chapter 804 for a domestic company;

15 (9) a description and a map of the applicant's service
16 area or areas, with key and scale, that identifies each county or
17 part of a county to be served;

18 (10) a description of the complaint system, as
19 required under Subchapter G;

20 (11) a description of the procedures and programs to
21 be implemented by the applicant to comply with the quality
22 improvement program requirements adopted under Subchapter E;

23 (12) a description of the procedures and programs to
24 be implemented by the applicant to comply with the utilization
25 review and retrospective review requirements adopted under
26 Subchapter F;

27 (13) a description of the configuration of the

1 network, which must demonstrate the adequacy of contracted
2 providers and health care facilities to provide comprehensive
3 health care services sufficient to serve the population of injured
4 employees within the service area;

5 (14) a description of the types of compensation
6 arrangements, such as fee-for-service arrangements, or capitation
7 arrangements, made or to be made between the parties in exchange for
8 the provision of, or an arrangement to provide, health care
9 services to employees; and

10 (15) any other information that the commissioner
11 requires by rule to implement this chapter.

12 (b) Compensation arrangements described by Subsection
13 (a)(14) are confidential and are not subject to disclosure under
14 Chapter 552, Government Code.

15 Sec. 1305.054. ACTION ON APPLICATION; RENEWAL OF
16 CERTIFICATION. (a) The commissioner shall approve or disapprove
17 an application for certification as a network not later than the
18 60th day after the date the completed application is received by the
19 department. An application is considered complete on receipt of
20 all information required by this chapter and any commissioner
21 rules, including receipt of any additional information requested by
22 the commissioner as needed to make the determination.

23 (b) Additional information requested by the commissioner
24 under Subsection (a) may include information derived from an
25 on-site quality-of-care examination.

26 (c) The department shall notify the applicant of any
27 deficiencies in the application and may allow the applicant to

1 request additional time to revise the application, in which case
2 the 60-day period for approval or disapproval is tolled. The
3 commissioner may grant or deny requests for additional time at the
4 commissioner's discretion.

5 (d) An order issued by the commissioner disapproving an
6 application must specify in what respects the application does not
7 comply with applicable statutes and rules. An applicant whose
8 application is disapproved may request a hearing not later than the
9 30th day after the date of the commissioner's disapproval order.
10 The hearing is a contested case hearing under Chapter 2001,
11 Government Code.

12 (e) A certificate issued under this subchapter is valid for
13 the period set by commissioner rule. The commissioner by rule shall
14 establish renewal requirements for a certificate issued under this
15 subchapter.

16 Sec. 1305.055. USE OF CERTAIN INSURANCE TERMS BY NETWORK
17 PROHIBITED. A network is not an insurer and may not use in the
18 network's name, contracts, or informational literature the word
19 "insurance," "casualty," "surety," or "mutual" or any other word
20 that is:

21 (1) descriptive of the insurance, casualty, or surety
22 business; or

23 (2) deceptively similar to the name or description of
24 an insurer or surety corporation engaging in the business of
25 insurance in this state.

26 Sec. 1305.056. RESTRAINT OF TRADE; APPLICATION OF CERTAIN
27 LAWS. (a) A network that contracts with a provider or providers

1 practicing individually or as a group is not, because of the
2 contract or arrangement, considered to have entered into a
3 conspiracy in restraint of trade in violation of Chapter 15,
4 Business & Commerce Code.

5 (b) Notwithstanding any other law, a person who contracts
6 under this chapter with one or more providers in the process of
7 conducting activities that are permitted by law but that do not
8 require a certificate of authority or other authorization under
9 this code is not, because of the contract, considered to have
10 entered into a conspiracy in restraint of trade in violation of
11 Chapter 15, Business & Commerce Code.

12 (c) A network is subject to Articles 21.28 and 21.28-A and
13 is considered an insurer or insurance company, as applicable, for
14 purposes of those laws.

15 Sec. 1305.057. MINUTES; BOOKS AND RECORDS. (a) A network's
16 governing body must specify, in the minutes of a meeting of the
17 governing body, each officer who is responsible for the handling of
18 the funds of the network.

19 (b) A network may maintain the documents specified by this
20 subsection outside this state if the network complies with Section
21 803.003 and commissioner rules and the commissioner has not
22 disapproved the notice as described by Section 803.003(a) or has
23 approved the agreement as described by Section 803.003(b). This
24 subsection applies to the following documents:

25 (1) financial and accounting records;

26 (2) investment records;

27 (3) corporate governance records; and

1 (4) all minutes of any meetings of the network's
2 governing body and executive and management committees that reflect
3 the type and date of each meeting.

4 (c) Notwithstanding Subsection (b), the network must make
5 available, at the network's principal office in this state, all
6 documents and materials required for an examination.

7 [Sections 1305.058-1305.100 reserved for expansion]

8 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION

9 HEALTH CARE NETWORKS

10 Sec. 1305.101. PROVIDING OR ARRANGING FOR HEALTH CARE. (a)
11 Except for emergencies and out-of-network referrals, a network
12 shall provide or arrange for health care services only through
13 providers or provider groups that are under contract with or are
14 employed by the network.

15 (b) A network provider who has treated an employee may not
16 serve as a designated doctor or perform a required medical
17 examination, as those terms are used under the Texas Workers'
18 Compensation Act, for that employee for the compensable injury for
19 which the provider provided treatment.

20 Sec. 1305.102. MANAGEMENT CONTRACTS. (a) A network may not
21 enter into a contract with another entity for management services
22 unless the proposed contract is first filed with the department and
23 approved by the commissioner.

24 (b) The commissioner shall approve or disapprove the
25 contract not later than the 30th day after the date the contract is
26 filed, or within a reasonable extended period that the commissioner
27 specifies by notice given within the 30-day period.

1 (c) The contract must state that:

2 (1) the contract may not be canceled without cause
3 without at least 90 days' prior written notice; and

4 (2) notice of any cancellation for cause must be sent
5 simultaneously to the commissioner by certified mail.

6 (d) The management contractor proposing to contract shall
7 provide to the commissioner information sufficient to allow the
8 commissioner to determine the competence, fitness, or reputation of
9 each of the contractor's officers and directors or other person
10 having control of the contractor, including criminal history
11 information demonstrating that none of those individuals has been
12 convicted of a felony involving moral turpitude or breach of
13 fiduciary duty.

14 (e) The commissioner shall disapprove the proposed contract
15 if the commissioner determines that the contract authorizes a
16 person who is not sufficiently trustworthy, competent,
17 experienced, and free from conflict of interest to manage the
18 network with due regard for the interests of employers, employees,
19 creditors, or the public.

20 (f) The commissioner may not approve a proposed management
21 contract unless the management contractor has in force in the
22 management contractor's own name a fidelity bond on the
23 contractor's officers and employees in the amount of \$250,000 or a
24 greater amount prescribed by the commissioner.

25 (g) The fidelity bond must be issued by an insurer
26 authorized to engage in business in this state and must be filed
27 with the department. If the commissioner determines that a

1 fidelity bond is not available from an insurer authorized to engage
2 in business in this state, the management contractor may obtain a
3 fidelity bond procured by a surplus lines agent under Chapter 981.

4 (h) The fidelity bond must obligate the surety to pay any
5 loss of money or other property or damage that the network sustains
6 because of an act of fraud or dishonesty by an employee or officer
7 of the management contractor during the period that the management
8 contract is in effect.

9 (i) In lieu of a fidelity bond, and at the commissioner's
10 discretion, the management contractor may deposit with the
11 comptroller cash or readily marketable liquid securities
12 acceptable to the commissioner. The deposit must be maintained in
13 the amount of, and is subject to the same conditions required for, a
14 fidelity bond under this section.

15 (j) A management contract approved by the commissioner
16 under this section may not be assigned to any other entity.

17 (k) A management contract filed with the department under
18 this section is confidential and is not subject to disclosure as
19 public information under Chapter 552, Government Code.

20 Sec. 1305.103. TREATING DOCTOR; REFERRALS. (a) A network
21 shall determine the specialty or specialties of doctors who may
22 serve as treating doctors.

23 (b) For each injury, an injured employee shall select a
24 treating doctor from the list of all treating doctors under
25 contract with the network.

26 (c) An employee being treated by a non-network provider for
27 an injury that occurred before the employer's insurance carrier

1 contracted with the network shall select a network treating doctor
2 on notification by the carrier that health care services are being
3 provided through the network. The carrier shall provide to the
4 employee all information required by Section 1305.451. If the
5 employee fails to select a treating doctor on or before the 14th day
6 after the date of receipt of the information required by Section
7 1305.451, the network may assign the employee a network treating
8 doctor.

9 (d) Each network shall, by contract, require treating
10 doctors to provide, at a minimum, the functions and services for
11 injured employees described by this section.

12 (e) A treating doctor shall provide health care to the
13 employee for the employee's compensable injury and shall make
14 referrals to other network providers, or request referrals to
15 out-of-network providers if medically necessary services are not
16 available within the network. If medically necessary services are
17 not available through network providers, the network shall allow
18 referral to an out-of-network provider on the request of the
19 treating doctor and within the time appropriate to the
20 circumstances related to the delivery of the services and the
21 condition of the employee, but not later than the seventh day after
22 the date of the treating doctor's request. If the network denies
23 the referral request, the employee may appeal the decision through
24 the network's complaint process under Subchapter G.

25 (f) The treating doctor shall participate in the medical
26 case management process as required by the network, including
27 participation in return-to-work planning.

1 Sec. 1305.104. SELECTION OF TREATING DOCTOR. (a) An
2 injured employee is entitled to the employee's initial choice of a
3 treating doctor from the list provided by the network of all
4 treating doctors under contract with the network who provide
5 services within the service area in which the injured employee
6 resides. The following does not constitute an initial choice of
7 treating doctor, unless the doctor is on the network's list of
8 treating doctors who provide services within the service area in
9 which the injured employee resides and the employee selects that
10 doctor:

11 (1) a doctor salaried by the employer;

12 (2) a doctor recommended by the insurance carrier or
13 the employer;

14 (3) a doctor providing emergency care; or

15 (4) any doctor who provides care before the employee
16 is enrolled in the network.

17 (b) An employee who is dissatisfied with the initial choice
18 of a treating doctor is entitled to select an alternate treating
19 doctor from the network's list of treating doctors who provide
20 services within the service area in which the injured employee
21 resides by notifying the network in the manner prescribed by the
22 network. The network may not deny a selection of an alternate
23 treating doctor.

24 (c) An employee who is dissatisfied with an alternate
25 treating doctor must obtain authorization from the network to
26 select any subsequent treating doctor. The network shall establish
27 procedures and criteria to be used in authorizing an employee to

1 select subsequent treating doctors. The criteria must include, at
2 a minimum, whether:

3 (1) treatment by the current treating doctor is
4 medically inappropriate;

5 (2) the employee is receiving appropriate medical care
6 to reach maximum medical improvement or medical care in compliance
7 with the network's treatment guidelines; and

8 (3) a conflict exists between the employee and the
9 current treating doctor to the extent that the doctor-patient
10 relationship is jeopardized or impaired.

11 (d) Denial of a request for any subsequent treating doctor
12 is subject to the appeal process for a complaint filed under
13 Subchapter G.

14 (e) For purposes of this section, the following does not
15 constitute the selection of an alternate or any subsequent treating
16 doctor:

17 (1) a referral made by the treating doctor, including
18 a referral for a second or subsequent opinion;

19 (2) the selection of a treating doctor because the
20 original treating doctor:

21 (A) dies;

22 (B) retires; or

23 (C) leaves the network; or

24 (3) a change of treating doctor required because of a
25 change of residence by the employee to a location outside the
26 service area distance requirements, as described by Section
27 1305.202(f).

1 Sec. 1305.105. TELEPHONE ACCESS. (a) Each network shall
2 have appropriate personnel reasonably available through a
3 toll-free telephone service at least 40 hours per week during
4 normal business hours, in both time zones in this state if
5 applicable, to discuss an employee's care and to allow response to
6 requests for information, including information regarding adverse
7 determinations.

8 (b) A network must have a telephone system capable of
9 accepting or recording or providing instructions to incoming calls
10 during other than normal business hours. The network shall respond
11 to those calls not later than two business days after the date:

12 (1) the call was received by the network; or

13 (2) the details necessary to respond were received by
14 the network from the caller.

15 [Sections 1305.106-1305.150 reserved for expansion]

16 SUBCHAPTER D. CONTRACTING PROVISIONS

17 Sec. 1305.151. NETWORK CONTRACTS WITH PROVIDERS. (a) A
18 network shall enter into a written contract with each provider or
19 group of providers that participates in the network. A provider
20 contract under this section is confidential and is not subject to
21 disclosure as public information under Chapter 552, Government
22 Code.

23 (b) A network is not required to accept an application for
24 participation in the network from a health care provider who
25 otherwise meets the requirements specified in this chapter for
26 participation if the network determines that the network has
27 contracted with a sufficient number of qualified health care

1 providers.

2 (c) Provider contracts and subcontracts must include, at a
3 minimum, the following provisions:

4 (1) a hold-harmless clause stating that the network
5 and the network's contracted providers are prohibited from billing
6 or attempting to collect any amounts from employees for health care
7 services under any circumstances, including the insolvency of the
8 insurance carrier or the network, except as provided by Section
9 1305.451(b)(6);

10 (2) a statement that the provider agrees to follow
11 treatment guidelines adopted by the network under Section 1305.204,
12 as applicable to an employee's injury;

13 (3) a continuity of treatment clause that states that
14 if a provider leaves the network, the insurance carrier or network
15 is obligated to continue to reimburse the provider for a period not
16 to exceed 90 days at the contracted rate for care of an employee
17 with a life-threatening condition or an acute condition for which
18 disruption of care would harm the employee;

19 (4) a clause regarding appeal by the provider of
20 termination of provider status and applicable written notification
21 to employees regarding such a termination, including provisions
22 determined by the commissioner; and

23 (5) any other provisions required by the commissioner
24 by rule.

25 (d) Continued care as described by Subsection (c)(3) must be
26 requested by a provider. A dispute involving continuity of care is
27 subject to the dispute resolution process under Subchapter G.

1 (e) An insurance carrier and a network may not use any
2 financial incentive or make a payment to a health care provider that
3 acts directly or indirectly as an inducement to limit medically
4 necessary services.

5 Sec. 1305.152. PROVIDER REIMBURSEMENT. (a) The amount of
6 reimbursement for services provided by a network provider is
7 determined by the contract between the network and the provider or
8 group of providers.

9 (b) If a network has preauthorized a health care service,
10 the insurance carrier or network or the network's agent or other
11 representative may not deny payment to a provider except for
12 reasons other than medical necessity.

13 (c) Out-of-network providers who provide emergency care or
14 whose referral by a network provider has been approved by the
15 network shall be reimbursed as provided by the Texas Workers'
16 Compensation Act and applicable rules of the commissioner of the
17 Texas Department of Workers' Compensation.

18 (d) Subject to Subsection (a), billing by, and
19 reimbursement to, contracted and out-of-network providers is
20 subject to standard reimbursement requirements as provided by the
21 Texas Workers' Compensation Act and applicable rules of the
22 commissioner of the Texas Department of Workers' Compensation, as
23 consistent with this chapter. This subsection may not be construed
24 to require application of rules of the commissioner of the Texas
25 Department of Workers' Compensation regarding reimbursement if
26 application of those rules would negate reimbursement amounts
27 negotiated by the network.

1 (e) An insurance carrier shall notify in writing a network
2 provider if the carrier contests the compensability of the injury
3 for which the provider provides health care services. A carrier may
4 not deny payment for health care services provided by a network
5 provider before that notification on the grounds that the injury
6 was not compensable.

7 Sec. 1305.153. NETWORK-CARRIER CONTRACTS. (a) Except for
8 emergencies and out-of-network referrals, a network may provide
9 services to employees only through a written contract with an
10 insurance carrier. A network-carrier contract under this section
11 is confidential and is not subject to disclosure as public
12 information under Chapter 552, Government Code.

13 (b) A carrier and a network may negotiate the functions to
14 be provided by the network, except that the network shall contract
15 with providers for the provision of health care, and shall perform
16 utilization review, functions related to the operation of a quality
17 improvement program, and credentialing in accordance with the
18 requirements of this chapter.

19 (c) A network's contract with a carrier must include:

20 (1) a description of the functions that the carrier
21 delegates to the network, consistent with the requirements of
22 Subsection (b), and the reporting requirements for each function;

23 (2) a statement that the network and any third party to
24 which the network delegates a function will perform all delegated
25 functions in full compliance with all requirements of this chapter,
26 the Texas Workers' Compensation Act, and rules of the commissioner
27 of insurance and the commissioner of the Texas Department of

1 Workers' Compensation;

2 (3) a provision that the contract:

3 (A) may not be terminated without cause by either
4 party without 90 days' prior written notice; and

5 (B) must be terminated immediately if cause
6 exists;

7 (4) a hold-harmless provision stating that the
8 network, a third party to which the network delegates a function,
9 and the network's contracted providers are prohibited from billing
10 or attempting to collect any amounts from employees for health care
11 services under any circumstances, including the insolvency of the
12 carrier or the network, except as provided by Section
13 1305.451(b)(6);

14 (5) a statement that the carrier retains ultimate
15 responsibility for ensuring that all delegated functions are
16 performed in accordance with applicable statutes and rules and that
17 the contract may not be construed to limit in any way the carrier's
18 responsibility, including financial responsibility, to comply with
19 all statutory and regulatory requirements;

20 (6) a statement that the network's role is to provide
21 the services described under Subsection (b) as well as any other
22 services or functions delegated by the carrier, subject to the
23 carrier's oversight and monitoring of the network's performance;

24 (7) a requirement that the network provide the
25 carrier, at least monthly and in a form usable for audit purposes,
26 the data necessary for the carrier to comply with department and
27 commission reporting requirements with respect to any services

1 provided under the contract, as determined by commissioner rules;

2 (8) a requirement that the carrier, or, if the carrier
3 transfers risk to the network, the network and any third party to
4 which the network delegates a function comply with the data
5 reporting requirements of the Texas Workers' Compensation Act and
6 rules of the commissioner of the Texas Department of Workers'
7 Compensation;

8 (9) a contingency plan under which the carrier would,
9 in the event of termination of the contract or a failure to perform,
10 reassume one or more functions of the network under the contract,
11 including functions related to:

12 (A) payments to providers and notification to
13 employees;

14 (B) quality of care;

15 (C) utilization review; and

16 (D) continuity of care, including a plan for
17 identifying and transitioning employees to new providers;

18 (10) a provision that requires that any agreement by
19 which the network delegates any function to a third party be in
20 writing, and that such an agreement require the delegated third
21 party to be subject to all the requirements of this subchapter;

22 (11) a provision that requires the network to provide
23 to the department the license number of any delegated third party
24 who performs a function that requires a license as a utilization
25 review agent under Article 21.58A or any other license under this
26 code or another insurance law of this state;

27 (12) an acknowledgment that:

1 (A) any third party to whom the network delegates
2 a function must perform in compliance with this chapter and other
3 applicable statutes and rules, and that the third party is subject
4 to the carrier's and the network's oversight and monitoring of its
5 performance; and

6 (B) if the third party fails to meet monitoring
7 standards established to ensure that functions delegated to the
8 third party under the delegation contract are in full compliance
9 with all statutory and regulatory requirements, the carrier or the
10 network may cancel the delegation of one or more delegated
11 functions; and

12 (13) a requirement that the network and any third
13 party to which the network delegates a function provide all
14 necessary information to allow the carrier to provide information
15 to employees as required by Section 1305.451.

16 (d) An insurance carrier and a network may not use any
17 financial incentive or make a payment to a health care provider that
18 acts directly or indirectly as an inducement to limit medically
19 necessary services.

20 Sec. 1305.154. TRANSFER OF RISK; REQUIRED CONTRACTUAL
21 PROVISIONS. (a) In addition to the provisions required under
22 Section 1305.153, an insurance carrier that transfers risk to a
23 network must include the following provisions in the
24 network-carrier contract:

25 (1) a monitoring plan that allows the carrier to
26 monitor compliance with the minimum solvency requirements
27 established under Subchapter H and that includes:

1 (A) a description of financial practices that
2 will ensure that the network tracks and reports liabilities that
3 have been incurred but not reported;

4 (B) a monthly summary of the total amount paid by
5 the network to providers; and

6 (C) a monthly summary of complaints from
7 employees and providers regarding delays in payments of claims or
8 nonpayment of claims, including the status of each complaint;

9 (2) a provision that requires the network, in
10 contracting with a third party directly or through another third
11 party, to require the third party to permit the commissioner to
12 examine at any time any information the commissioner believes is
13 relevant to the third party's financial condition or the ability of
14 the network to meet the network's responsibilities in connection
15 with any function the third party performs or has been delegated;

16 (3) a provision that requires the network to provide
17 the carrier, on at least a monthly basis and in a format usable for
18 audit purposes, the data necessary for the carrier to comply with
19 department reporting requirements regarding claims payment,
20 including the period that claims and debts for health care services
21 owed by the network have been pending and the aggregate dollar
22 amount of those claims and debts; and

23 (4) specific provisions related to the collateral
24 required by Section 1305.353, including how the collateral is
25 computed.

26 (b) An insurance carrier shall provide to each network with
27 which it has a contract, at a minimum and on at least a monthly basis

1 unless otherwise stated in the contract, the following:

2 (1) the names and dates of birth or social security
3 numbers of employees who are covered by the network, including
4 employees who, since the previous reporting period, have been added
5 to the network or whose case files have closed;

6 (2) if the carrier pays provider bills for the
7 network, a summary of the number and amount of bills paid by the
8 carrier on behalf of the network during the previous reporting
9 period;

10 (3) if the carrier pays provider bills for the
11 network, a summary of the number and amount of pharmacy
12 prescriptions paid for each employee for which the network has
13 taken partial risk during the previous reporting period;

14 (4) information as necessary to enable the network to
15 file claims for reinsurance and subrogation; and

16 (5) employee complaint data that relates to the
17 network.

18 (c) A network is not precluded from receiving on request
19 additional nonproprietary information regarding a bill described
20 under Subsection (b)(2) or (3).

21 Sec. 1305.155. COMPLIANCE REQUIREMENTS. (a) An insurance
22 carrier that becomes aware of any information that indicates that
23 the network or any third party to which the network delegates a
24 function is not operating in accordance with the contract or is
25 operating in a condition that renders the continuance of the
26 network's business hazardous to employees shall:

27 (1) notify the network in writing of those findings;

1 (2) request in writing a written explanation, with
2 documentation supporting the explanation, of:

3 (A) the network's apparent noncompliance with
4 the contract; or

5 (B) the existence of the condition that
6 apparently renders the continuance of the network's business
7 hazardous to employees; and

8 (3) notify the commissioner and provide the department
9 with copies of all notices and requests submitted to the network and
10 the responses and other documentation the carrier generates or
11 receives in response to the notices and requests.

12 (b) A network shall respond to a request from a carrier
13 under Subsection (a) in writing not later than the 30th day after
14 the date the request is received.

15 (c) The carrier shall cooperate with the network to correct
16 any failure by the network to comply with any regulatory
17 requirement of the department.

18 (d) On receipt of a notice under Subsection (a), or if a
19 complaint is filed with the department, on receipt of that
20 complaint, the commissioner or the commissioner's designated
21 representative shall examine the matters contained in the notice or
22 complaint as well as any other matter relating to the financial
23 solvency of the network or the network's ability to meet its
24 responsibilities in connection with any function performed by the
25 network or delegated to the network by the carrier.

26 (e) Except as provided by this subsection, on completion of
27 the examination, the department shall report to the network and the

1 carrier the results of the examination and any action the
2 department determines is necessary to ensure that the carrier meets
3 its responsibilities under this chapter, this code, and rules
4 adopted by the commissioner, and that the network can meet the
5 network's responsibilities in connection with any function
6 delegated by the carrier or performed by the network or any third
7 party to which the network delegates a function. The department may
8 not report to the carrier any information regarding fee schedules,
9 prices, cost of care, or other information not relevant to the
10 monitoring plan.

11 (f) The network and the carrier shall respond to the
12 department's report and submit a corrective plan to the department
13 not later than the 30th day after the date of receipt of the report.

14 (g) The commissioner may order a carrier to take any action
15 the commissioner determines is necessary to ensure that the carrier
16 can provide all health care services under a workers' compensation
17 insurance policy, including:

18 (1) reassuming the functions performed by or delegated
19 to the network, including claims payments for services previously
20 provided to injured employees;

21 (2) temporarily or permanently ceasing coverage of
22 employees through the network;

23 (3) complying with the contingency plan required by
24 Section 1305.153(c)(9), including permitting an injured employee
25 to select a treating doctor in the manner provided by Section
26 408.022, Labor Code; or

27 (4) terminating the carrier's contract with the

1 network.

2 [Sections 1305.156-1305.200 reserved for expansion]

3 SUBCHAPTER E. PROVISION OF SERVICES BY NETWORK; QUALITY

4 IMPROVEMENT PROGRAM

5 Sec. 1305.201. NETWORK ORGANIZATION; SERVICE AREAS. (a)

6 The chief executive officer, operations officer, or governing body
7 of a network is responsible for:

8 (1) the development, approval, implementation, and
9 enforcement of:

10 (A) administrative, operational, personnel, and
11 patient care policies; and

12 (B) network procedures, including the
13 utilization review plan; and

14 (2) the development of any documents necessary for the
15 operation of the network.

16 (b) Each network shall have a chief executive officer or
17 operations officer who:

18 (1) is accountable for the day-to-day administration
19 of the network; and

20 (2) shall ensure compliance with all applicable
21 statutes and rules pertaining to the operation of the network.

22 (c) Each network shall have a medical director, who must be
23 an occupational medicine specialist or employ or contract with an
24 occupational medicine specialist, and who must be licensed to
25 practice medicine. The medical director shall:

26 (1) be available at all times to address complaints,
27 clinical issues, utilization review, and any quality improvement

1 issues on behalf of the network;

2 (2) be actively involved in all quality improvement
3 activities; and

4 (3) comply with the network's credentialing
5 requirements.

6 (d) The network shall establish one or more service areas
7 within this state. For each defined service area, the network must:

8 (1) demonstrate to the satisfaction of the department
9 the ability to provide continuity, accessibility, availability,
10 and quality of services;

11 (2) specify the counties and zip code areas, or any
12 parts of a county or zip code area, included in the service area;

13 (3) provide a complete provider directory to all
14 employers in the service area; and

15 (4) maintain separate cost center accounting for each
16 designated service area to facilitate the reporting of divisional
17 operations as required for workers' compensation health care
18 network financial reporting.

19 Sec. 1305.202. ACCESSIBILITY AND AVAILABILITY
20 REQUIREMENTS. (a) All services specified by this section must be
21 provided by a provider who holds an appropriate license, unless the
22 provider is exempt from license requirements.

23 (b) The network shall ensure that the network's provider
24 panel includes an adequate number of treating doctors and
25 specialists, who must be available and accessible to employees 24
26 hours a day, seven days a week within the network's service area.
27 An adequate number of the treating doctors and specialists must

1 have admitting privileges at one or more network hospitals located
2 within the network's service area to ensure that any necessary
3 hospital admissions are made.

4 (c) Hospital services must be available and accessible 24
5 hours a day, seven days a week within the network's service area.
6 The network shall provide for the necessary hospital services by
7 contracting with general, special, and psychiatric hospitals.

8 (d) Emergency care must be available and accessible 24 hours
9 a day, seven days a week without restrictions as to where the
10 services are rendered.

11 (e) Except for emergencies, a network shall arrange for
12 services, including referrals to specialists, to be accessible to
13 employees on a timely basis on request, but not later than the last
14 day of the third week after the date of the request.

15 (f) Each network shall provide that network services are
16 sufficiently accessible and available as necessary to ensure that
17 the distance from any point in the network's service area to a point
18 of service is not greater than 30 miles in nonrural areas and 60
19 miles in rural areas. For portions of the service area in which the
20 network identifies noncompliance with this subsection, the network
21 must file an access plan with the department in accordance with
22 Subsection (g).

23 (g) The network shall submit an access plan, as required by
24 commissioner rules, to the department for approval at least 30 days
25 before implementation of the plan if any health care service or a
26 network provider is not available to an employee within the
27 distance specified by Subsection (f) because:

1 (1) providers are not located within that distance;

2 (2) the network is unable to obtain provider contracts
3 after good faith attempts; or

4 (3) providers meeting the network's minimum quality of
5 care and credentialing requirements are not located within that
6 distance.

7 (h) The network may make arrangements with providers
8 outside the service area to enable employees to receive a higher
9 level of skill or specialty than the level available within the
10 network service area.

11 (i) The network may not be required to expand services
12 outside the network's service area to accommodate employees who
13 reside outside the service area.

14 Sec. 1305.203. QUALITY OF CARE REQUIREMENTS. (a) A network
15 shall develop and maintain an ongoing quality improvement program
16 designed to objectively and systematically monitor and evaluate the
17 quality and appropriateness of care and services and to pursue
18 opportunities for improvement. The quality improvement program
19 must include return-to-work and medical case management programs.

20 (b) The network's governing body is ultimately responsible
21 for the quality improvement program. The governing body shall:

22 (1) appoint a quality improvement committee that
23 includes network providers;

24 (2) approve the quality improvement program;

25 (3) approve an annual quality improvement plan;

26 (4) meet at least annually to receive and review
27 reports of the quality improvement committee or group of

1 committees, and take action as appropriate; and

2 (5) review the annual written report on the quality
3 improvement program.

4 (c) The quality improvement committee or committees shall
5 evaluate the overall effectiveness of the quality improvement
6 program as determined by commissioner rules.

7 (d) The quality improvement program must be continuous and
8 comprehensive and must address both the quality of clinical care
9 and the quality of services. The network shall dedicate adequate
10 resources, including adequate personnel and information systems,
11 to the quality improvement program.

12 (e) The network shall develop a written description of the
13 quality improvement program that outlines the organizational
14 structure of the program, the functional responsibilities of the
15 program, and the frequency of committee meetings.

16 (f) The network shall develop an annual quality improvement
17 work plan designed to reflect the type of services and the
18 populations served by the network in terms of age groups, disease or
19 injury categories, and special risk status, such as type of
20 industry.

21 (g) The network shall prepare an annual written report to
22 the department on the quality improvement program. The report must
23 include:

24 (1) completed activities;

25 (2) the trending of clinical and service goals;

26 (3) an analysis of program performance; and

27 (4) conclusions regarding the effectiveness of the

1 program.

2 (h) Each network shall implement a documented process for
3 the selection and retention of contracted providers, in accordance
4 with rules adopted by the commissioner.

5 (i) The quality improvement program must provide for a peer
6 review action procedure for providers, as described by Section
7 151.002, Occupations Code.

8 (j) The network shall have a medical case management program
9 with certified case managers. Case managers shall work with
10 treating doctors, referral providers, and employers to facilitate
11 cost-effective care and employee return-to-work.

12 Sec. 1305.204. GUIDELINES AND PROTOCOLS. (a) Each network
13 shall adopt treatment guidelines, return-to-work guidelines, and
14 individual treatment protocols. The treatment guidelines and
15 individual treatment protocols must be nationally recognized,
16 scientifically valid, and outcome-based and be designed to reduce
17 inappropriate or unnecessary health care while safeguarding
18 necessary care.

19 (b) If a nationally recognized treatment guideline or
20 protocol is not available, the network may adopt another treatment
21 guideline or protocol if the other guideline or protocol is
22 scientifically valid and outcome-based.

23 [Sections 1305.205-1305.250 reserved for expansion]

24 SUBCHAPTER F. UTILIZATION REVIEW; RETROSPECTIVE REVIEW

25 Sec. 1305.251. REQUIREMENTS FOR PERFORMANCE OF UTILIZATION
26 REVIEW BY NETWORK. As a condition of certification under this
27 chapter, each network must perform utilization review and

1 retrospective review in accordance with this subchapter and
2 commissioner rules.

3 Sec. 1305.252. GENERAL STANDARDS FOR UTILIZATION REVIEW;
4 SCREENING CRITERIA. (a) A network shall use a utilization review
5 plan. The plan must be reviewed and approved by a physician and
6 conducted in accordance with standards developed with input from
7 appropriate providers, including doctors engaged in an active
8 practice.

9 (b) The utilization review plan must include:

10 (1) a list of the health care services that require
11 preauthorization;

12 (2) written procedures for:

13 (A) identification of injured employees whose
14 injuries or circumstances may not fit the screening criteria and
15 who thus may require flexibility in the application of screening
16 criteria through utilization review decisions;

17 (B) notification of the network's determinations
18 provided in accordance with Section 1305.254;

19 (C) informing appropriate parties of the process
20 for reconsideration of an adverse determination, as required by
21 Section 1305.255;

22 (D) receiving or redirecting toll-free normal
23 business hour and after-hour calls, either in person or by
24 recording, and assurance that a toll-free telephone number is
25 maintained 40 hours a week during normal business hours;

26 (E) review, including review of any form used
27 during the review process and the time frames that must be met

1 during the review;

2 (F) ensuring that providers used by the network
3 to perform utilization review:

4 (i) meet the network's credentialing
5 standards; and

6 (ii) are appropriately trained to perform
7 utilization review in accordance with Section 1305.253; and

8 (G) ensuring that any employee-specific
9 information obtained during the process of utilization review is
10 kept confidential in accordance with applicable federal and state
11 laws; and

12 (3) screening criteria that meet the requirements of
13 Subsection (c).

14 (c) Each network shall use written medically acceptable
15 screening criteria and review procedures that are established and
16 periodically evaluated and updated with appropriate involvement
17 from providers, including providers engaged in an active practice.
18 Utilization review decisions must be made in accordance with
19 currently accepted medical or health care practices, taking into
20 account any special circumstances of a case that may require
21 deviation from the norm stated in the screening criteria. The
22 screening criteria may be used only to determine whether to approve
23 the requested treatment and must be:

24 (1) objective;

25 (2) clinically valid;

26 (3) compatible with established principles of health
27 care; and

1 (4) flexible enough to allow deviations from the norm
2 when justified on a case-by-case basis.

3 (d) The utilization review plan must provide that denials of
4 care be referred to an appropriate doctor to determine whether
5 health care is medically reasonable and necessary.

6 (e) The written screening criteria and review procedures
7 must be available for review and inspection as determined necessary
8 by the commissioner or the commissioner's designated
9 representative. However, any information obtained or acquired
10 under the authority of this subchapter related to the screening
11 criteria and the utilization review plan is confidential and
12 privileged and is not subject to disclosure under Chapter 552,
13 Government Code, or to subpoena except to the extent necessary for
14 the commissioner to enforce this chapter.

15 Sec. 1305.253. UTILIZATION REVIEW PERSONNEL. (a)
16 Personnel employed by or under contract with a network to perform
17 utilization review must be appropriately trained and qualified and,
18 if applicable, appropriately licensed. Personnel who obtain
19 information regarding an injured employee's specific medical
20 condition, diagnosis, and treatment options or protocols directly
21 from the treating doctor or other health care provider, either
22 orally or in writing, and who are not doctors must be nurses,
23 physician assistants, or other health care providers qualified to
24 provide the service requested by the provider. This subsection may
25 not be interpreted to require personnel who perform only clerical
26 or administrative tasks to have the qualifications prescribed by
27 this subsection.

1 (b) A network may not permit or provide compensation or any
2 thing of value to a network employee or agent, condition employment
3 or an employee or agent evaluation, or set the network's employee or
4 agent performance standards based, in a manner inconsistent with
5 the requirements of this subchapter, on:

6 (1) the amount or volume of adverse determinations;

7 (2) reductions or limitations on lengths of stay,
8 duration of treatment, medical benefits, services, or charges; or

9 (3) the number or frequency of telephone calls or
10 other contacts with health care providers or injured employees.

11 (c) Utilization review conducted by a network must be under
12 the direction of a doctor licensed to practice medicine. The doctor
13 may be employed by or under contract to the network.

14 Sec. 1305.254. NOTICE OF NETWORK DETERMINATIONS;
15 PREAUTHORIZATION REQUIREMENTS. (a) Each network shall notify the
16 employee or the employee's representative, if any, and the
17 requesting provider of a determination made in a utilization review
18 or retrospective review.

19 (b) Notification of an adverse determination by the network
20 must include:

21 (1) the principal reasons for the adverse
22 determination;

23 (2) the clinical basis for the adverse determination;

24 (3) a description of or the source of the screening
25 criteria that were used as guidelines in making the determination;

26 (4) a description of the procedure for the
27 reconsideration process; and

1 (5) notification of the availability of independent
2 review in the form prescribed by the commissioner.

3 (c) On receipt of a preauthorization request from a provider
4 for proposed services that require preauthorization, the network
5 shall issue and transmit a determination indicating whether the
6 proposed health care services are preauthorized. The network shall
7 respond to requests for preauthorization within the periods
8 prescribed by this section.

9 (d) For services not described under Subsection (e) or (f),
10 the determination under Subsection (c) must be issued and
11 transmitted not later than the third calendar day after the date the
12 request is received by the network.

13 (e) If the proposed services are for concurrent
14 hospitalization care, the network shall, within 24 hours of receipt
15 of the request, transmit a determination indicating whether the
16 proposed services are preauthorized.

17 (f) If the proposed health care services involve
18 poststabilization treatment or a life-threatening condition, the
19 network shall transmit to the requesting provider a determination
20 indicating whether the proposed services are preauthorized within
21 the time appropriate to the circumstances relating to the delivery
22 of the services and the condition of the patient, not to exceed one
23 hour from receipt of the request. If the network issues an adverse
24 determination in response to a request for poststabilization
25 treatment or a request for treatment involving a life-threatening
26 condition, the network shall provide to the employee or the
27 employee's representative, if any, and the employee's treating

1 provider the notification required under Subsection (a).

2 (g) For life-threatening conditions, the notification of
3 adverse determination must include notification of the
4 availability of independent review in the form prescribed by the
5 commissioner.

6 Sec. 1305.255. RECONSIDERATION OF ADVERSE DETERMINATION.

7 (a) Each network shall maintain and make available a written
8 description of the network's reconsideration procedures involving
9 an adverse determination. The reconsideration procedures must be
10 reasonable and must include:

11 (1) a provision stating that reconsideration must be
12 performed by a provider other than the provider who made the
13 original adverse determination;

14 (2) a provision that an employee, a person acting on
15 behalf of the employee, or the employee's requesting provider may,
16 not later than the 30th day after the date of issuance of the
17 network's written notification of an adverse determination,
18 request reconsideration of the adverse determination either orally
19 or in writing;

20 (3) a provision that, not later than the fifth
21 calendar day after the date of receipt of the request, the network
22 shall send to the requesting party a letter acknowledging the date
23 of the receipt of the request that includes a reasonable list of
24 documents the requesting party is required to submit to the
25 network;

26 (4) a provision that, after the network has completed
27 the review of the request for reconsideration of the adverse

1 determination, the network shall issue a response letter to the
2 employee or person acting on behalf of the employee, and the
3 employee's requesting provider, that:

4 (A) explains the resolution of the
5 reconsideration; and

6 (B) includes:

7 (i) a statement of the specific medical or
8 clinical reasons for the resolution;

9 (ii) the medical or clinical basis for the
10 decision;

11 (iii) the professional specialty of any
12 provider consulted by the network; and

13 (iv) notice of the requesting party's right
14 to seek review of the denial by an independent review organization
15 and the procedures for obtaining that review; and

16 (5) written notification to the requesting party of
17 the determination of the request for reconsideration as soon as
18 practicable, but not later than the 30th day after the date the
19 network received the request.

20 (b) In addition to the written request for reconsideration,
21 the reconsideration procedures must include a method for expedited
22 reconsideration procedures for denials of proposed health care
23 services involving poststabilization treatment or life-threatening
24 conditions, and for denials of continued stays for hospitalized
25 employees. The procedures must include a review by a provider who
26 has not previously reviewed the case and who is of the same or a
27 similar specialty as a provider who typically manages the

1 condition, procedure, or treatment under review. The period during
2 which that reconsideration must be completed shall be based on the
3 medical or clinical immediacy of the condition, procedure, or
4 treatment, but may not exceed one calendar day from the date the
5 network receives all information necessary to complete the
6 reconsideration.

7 (c) Notwithstanding Subsection (a) or (b), an employee with
8 a life-threatening condition is entitled to an immediate review by
9 an independent review organization and is not required to comply
10 with the network's procedures for a reconsideration of an adverse
11 determination.

12 Sec. 1305.256. INDEPENDENT REVIEW OF ADVERSE
13 DETERMINATION. (a) Each network shall:

14 (1) permit the employee or person acting on behalf of
15 the employee and the employee's requesting provider whose
16 reconsideration of an adverse determination is denied by the
17 network to seek review of that determination within the period
18 prescribed by Subsection (b) by an independent review organization
19 assigned in accordance with Article 21.58C and commissioner rules;
20 and

21 (2) provide to the appropriate independent review
22 organization, not later than the third business day after the date
23 the network receives notification of the assignment of the request
24 to an independent review organization:

25 (A) any medical records of the employee that are
26 relevant to the review;

27 (B) any documents used by the network in making

1 the determination;

2 (C) the response letter described by Section
3 1305.255(a)(4);

4 (D) any documentation and written information
5 submitted to the network in support of the request for
6 reconsideration; and

7 (E) a list of the providers who provided care to
8 the employee and who may have medical records relevant to the
9 review.

10 (b) A request for independent review under Subsection (a)
11 must be timely filed by the requestor with the network as follows:

12 (1) for a request for preauthorization or concurrent
13 review by an independent review organization, not later than the
14 45th day after the date on which the network denied a
15 reconsideration for health care for which the network requires
16 preauthorization or concurrent review; or

17 (2) for a request for retrospective medical necessity
18 review, not later than the 45th day after the date the network
19 denied a reconsideration.

20 (c) The network shall pay for the independent review
21 provided under this subchapter.

22 (d) The network shall comply with the independent review
23 organization's determination with respect to the medical necessity
24 or appropriateness of health care treatment and services for an
25 employee.

26 [Sections 1305.257-1305.300 reserved for expansion]

1 SUBCHAPTER G. COMPLAINT RESOLUTION

2 Sec. 1305.301. COMPLAINT SYSTEM REQUIRED. (a) Each
3 network shall implement and maintain a complaint system that
4 provides reasonable procedures to resolve an oral or written
5 complaint.

6 (b) The network may require a complainant to file the
7 complaint not later than the 90th day after the date of the event or
8 occurrence that is the basis for the complaint.

9 (c) The complaint system must include a process for the
10 notice and appeal of a complaint.

11 (d) The commissioner may adopt rules as necessary to
12 implement this section.

13 Sec. 1305.302. COMPLAINT INITIATION AND INITIAL RESPONSE;
14 DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant
15 notifies a network of a complaint, the network, not later than the
16 seventh calendar day after the date the network receives the
17 complaint, shall respond to the complainant, acknowledging the date
18 of receipt of the complaint and providing a description of the
19 network's complaint procedures and deadlines.

20 (b) The network shall investigate and resolve a complaint
21 not later than the 30th calendar day after the date the network
22 receives the complaint.

23 Sec. 1305.303. RECORD OF COMPLAINTS. (a) Each network
24 shall maintain a complaint and appeal log regarding each complaint.
25 Complaints and appeals must be classified as follows:

- 26 (1) network administration;
27 (2) accessibility and availability;

1 (3) quality of the treating doctor or other provider
2 care;

3 (4) services for injured employees; and

4 (5) fee disputes.

5 (b) Each network shall maintain a record of and
6 documentation on each complaint, complaint proceeding, and action
7 taken on the complaint until the third anniversary of the date the
8 complaint was received.

9 (c) A complainant is entitled to a copy of the network's
10 record regarding the complaint and any proceeding relating to that
11 complaint.

12 (d) The department, during any investigation or examination
13 of a network, may review documentation maintained under this
14 subchapter, including original documentation, regarding a
15 complaint and action taken on the complaint.

16 Sec. 1305.304. RETALIATORY ACTION PROHIBITED. A network
17 may not engage in any retaliatory action against an employer or
18 employee because the employer or employee or a person acting on
19 behalf of the employer or employee has filed a complaint against the
20 network.

21 Sec. 1305.305. POSTING OF INFORMATION ON COMPLAINT PROCESS
22 REQUIRED. (a) A contract between a network and a provider must
23 require the provider to post, in the provider's office, a notice to
24 injured employees on the process for resolving complaints with the
25 network.

26 (b) The notice required under Subsection (a) must include
27 the department's toll-free telephone number for filing a complaint.

1 [Sections 1305.306-1305.350 reserved for expansion]

2 SUBCHAPTER H. SOLVENCY REQUIREMENTS

3 Sec. 1305.351. NETWORK RESERVE REQUIREMENTS. (a) Each
4 network shall establish and maintain reserves adequate for any
5 liabilities and risks assumed by the network, as computed in
6 accordance with generally accepted accounting and actuarial
7 standards, principles, and practices relating to the liabilities
8 and risks reserved, including incurred but not reported obligations
9 relating to providing benefits or services.

10 (b) The reserves required under this section must be secured
11 by, and may only consist of, legal tender of the United States or
12 investments authorized under Article 2.10.

13 Sec. 1305.352. ANNUAL AUDIT. (a) Each network shall have
14 an annual audit conducted by an independent certified public
15 accountant. The network must file an audited financial report for
16 the preceding calendar year with the department on or before April 1
17 of each year.

18 (b) For purposes of this section, an accountant must:

19 (1) be in good standing with the American Institute of
20 Certified Public Accountants or a similar national organization
21 recognized by the commissioner;

22 (2) be in good standing with each state in which the
23 accountant or firm is licensed to practice; and

24 (3) comply with the Code of Professional Ethics of the
25 American Institute of Certified Public Accountants and with the
26 rules and Code of Ethics and Rules of Professional Conduct of the
27 Texas State Board of Public Accountancy, or a similar code of ethics

1 recognized by the commissioner.

2 (c) The audited financial report must report the financial
3 condition of the network as of the end of the most recent calendar
4 year and the results of the network's operations, changes in
5 financial position, and changes in net worth in conformity with
6 generally accepted accounting principles. The audited financial
7 report must include:

8 (1) the report of the accountant;

9 (2) a balance sheet that reports assets, liabilities,
10 and net worth;

11 (3) an income statement;

12 (4) a statement of cash flows;

13 (5) a statement of changes in net worth;

14 (6) appropriate notes to the financial statements; and

15 (7) a summary of the ownership of the network and the
16 relationship of the network to any affiliate.

17 (d) In addition to the audited financial report, each
18 network shall provide to the department the written report of
19 significant deficiencies required and prepared in accordance with
20 the Professional Standards of the American Institute of Certified
21 Public Accountants not later than the 60th day after the date the
22 audited report is filed. The network shall also provide a
23 description of any remedial actions taken or proposed to correct
24 significant deficiencies, if those actions are not described in the
25 accountant's report.

26 Sec. 1305.353. COLLATERAL REQUIREMENTS FOR CARRIERS THAT
27 TRANSFER RISK. (a) An insurance carrier whose contract with a

1 network transfers risk to the network shall maintain collateral as
2 security for the credit risk of the network. Contracts between
3 carriers and networks that involve a transfer of risk must contain
4 specific provisions related to the required collateral, including
5 how the collateral is computed. The collateral held by the carrier
6 may not be less than the greater of:

7 (1) 50 percent of all obligations and liabilities,
8 including incurred but not reported liabilities, that are required
9 to be funded under Section 1305.351; or

10 (2) three months of consideration under the contract
11 with the network.

12 (b) Notwithstanding Subsection (a), a carrier-network
13 contract may provide that the collateral required may be subject to
14 a straight-line phase-in period not to exceed three years. The
15 contract may also specify that the carrier may hold back a
16 percentage of the periodic consideration otherwise owed so that the
17 collateral may accrete to 100 percent by the end of the third year.

18 [Sections 1305.354-1305.400 reserved for expansion]

19 SUBCHAPTER I. EXAMINATIONS

20 Sec. 1305.401. EXAMINATION OF NETWORK. (a) As often as the
21 commissioner considers necessary, the commissioner or the
22 commissioner's designated representative may review the operations
23 of a network to determine compliance with this chapter. The review
24 may include on-site visits to the network's premises.

25 (b) During on-site visits, the network must make available
26 to the department all records relating to the network's operations.

27 Sec. 1305.402. EXAMINATION OF PROVIDER OR THIRD PARTY. If

1 requested by the commissioner or the commissioner's
2 representative, each provider, provider group, or third party with
3 which the network has contracted to provide health care services or
4 any other services delegated to the network by an insurance carrier
5 shall make available for examination by the department that portion
6 of the books and records of the provider, provider group, or third
7 party that is relevant to the relationship with the network of the
8 provider, provider group, or third party.

9 [Sections 1305.403-1305.450 reserved for expansion]

10 SUBCHAPTER J. EMPLOYEE INFORMATION AND RESPONSIBILITIES

11 Sec. 1305.451. EMPLOYEE INFORMATION; RESPONSIBILITIES OF
12 EMPLOYEE. (a) An insurance carrier that contracts with a network
13 shall provide to employers, and ensure that the employer provides
14 to its employees, an accurate written description of the terms and
15 conditions for obtaining health care within the network's service
16 area.

17 (b) The written description required under Subsection (a)
18 must be in English, Spanish, and any additional language common to
19 an employer's employees, must be in plain language and in a readable
20 and understandable format, and must include, in a clear, complete,
21 and accurate format:

22 (1) a statement that the entity providing health care
23 to employees is a workers' compensation health care network;

24 (2) the network's toll-free number and address for
25 obtaining additional information about the network, including
26 information about network providers;

27 (3) a statement that in the event of an injury, the

1 employee must select a treating doctor from a list of all the
2 network's treating doctors who have contracts with the network;

3 (4) a statement that, except for emergency services,
4 the employee shall obtain all health care and specialist referrals
5 through the employee's treating doctor;

6 (5) an explanation that network providers have agreed
7 to look only to the network or insurance carrier and not to
8 employees for payment of providing health care, except as provided
9 by Subdivision (6);

10 (6) a statement that if the employee obtains health
11 care from non-network providers without network approval, the
12 insurance carrier may not be liable, and the employee may be liable,
13 for payment for that health care;

14 (7) information about how to obtain emergency care
15 services, including emergency care outside the service area, and
16 after-hours care;

17 (8) a list of the health care services for which the
18 network requires preauthorization;

19 (9) an explanation regarding continuity of treatment
20 in the event of the termination from the network of a treating
21 doctor;

22 (10) a description of the network's complaint system,
23 including a statement that the network is prohibited from
24 retaliating against:

25 (A) an employee if the employee files a complaint
26 against the network or appeals a decision of the network; or

27 (B) a provider if the provider, on behalf of an

1 employee, reasonably files a complaint against the network or
2 appeals a decision of the network;

3 (11) a summary of the network's procedures relating to
4 adverse determinations and the availability of the independent
5 review process;

6 (12) a list of network providers, including behavioral
7 health providers, that is updated at least quarterly, including:

8 (A) the names and addresses of the providers;

9 (B) a statement of limitations of accessibility
10 and referrals to specialists; and

11 (C) a disclosure of which providers are accepting
12 new patients; and

13 (13) a description of the network's service area.

14 (c) The network and the network's representatives and
15 agents may not cause or knowingly permit the use or distribution to
16 employees of information that is untrue or misleading.

17 (d) A network that contracts with an insurance carrier shall
18 provide all the information necessary to allow the carrier to
19 comply with this section.

20 [Sections 1305.452-1305.500 reserved for expansion]

21 SUBCHAPTER K. EVALUATION OF NETWORKS; CONSUMER REPORT CARD

22 Sec. 1305.501. EVALUATION OF NETWORKS. (a) In accordance
23 with the research duties assigned to the department under Chapter
24 405, Labor Code, the department shall:

25 (1) objectively evaluate the cost and the quality of
26 medical care provided by networks certified under this chapter; and

27 (2) report the department's findings to the governor,

1 the lieutenant governor, the speaker of the house of
2 representatives, and the members of the legislature not later than
3 September 1 of each even-numbered year.

4 (b) At the minimum, the report required under Subsection (a)
5 must evaluate:

6 (1) the average medical and indemnity cost per claim
7 for health care services provided through networks;

8 (2) the utilization by injured employees of health
9 care provided through networks;

10 (3) injured employee return-to-work outcomes;

11 (4) injured employee satisfaction and health-related
12 functional outcomes; and

13 (5) the frequency, duration, and outcome of disputes
14 regarding medical benefits.

15 (c) The department shall include in the report a comparison
16 of the administrative burdens incurred by health care providers who
17 provide workers' compensation medical benefits through networks
18 with those incurred by providers who provide analogous medical
19 benefits outside the network structure.

20 Sec. 1305.502. CONSUMER REPORT CARDS. (a) The department
21 shall annually issue consumer report cards that identify and
22 compare, on an objective basis, the networks certified by the
23 department under this chapter.

24 (b) The department shall ensure that consumer report cards
25 issued by the department under this section are accessible to the
26 public on the department's Internet website and available to any
27 person on request. The commissioner, by rule, may set a reasonable

1 fee to obtain a paper copy of consumer report cards.

2 Sec. 1305.503. CONFIDENTIALITY REQUIREMENTS. (a) As
3 necessary to implement this subchapter, the department is entitled
4 to information that is otherwise confidential under any law of this
5 state, including the Texas Workers' Compensation Act.

6 (b) Confidential information provided to or obtained by the
7 department under this section remains confidential and is not
8 subject to disclosure under Chapter 552, Government Code. The
9 department may not release, and a person may not gain access to, any
10 information that:

11 (1) could reasonably be expected to reveal the
12 identity of an injured employee or doctor; or

13 (2) discloses provider discounts or differentials
14 between payments and billed charges for individual providers or
15 networks.

16 (c) Information that is in the possession of the department
17 and that relates to an individual injured employee or doctor, and
18 any compilation, report, or analysis produced from the information
19 that identifies an individual injured employee or doctor, are not:

20 (1) subject to discovery, subpoena, or other means of
21 legal compulsion for release to any person; or

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

24 [Sections 1305.504-1305.550 reserved for expansion]

25 SUBCHAPTER L. DISCIPLINARY ACTIONS

26 Sec. 1305.551. DETERMINATION OF VIOLATION; NOTICE. (a) If
27 the commissioner determines that a network, insurance carrier, or

1 any other person or third party operating under this chapter,
2 including a third party to which a network delegates a function, is
3 in violation of this chapter, rules adopted by the commissioner
4 under this chapter, or applicable provisions of the Labor Code or
5 rules adopted under that code, the commissioner or a designated
6 representative shall notify the network, insurance carrier,
7 person, or third party of the alleged violation and may compel the
8 production of any documents or other information as necessary to
9 determine whether the violation occurred.

10 (b) The commissioner's designated representative may
11 initiate the proceedings under this section.

12 (c) A proceeding under this section is a contested case
13 under Chapter 2001, Government Code.

14 Sec. 1305.552. DISCIPLINARY ACTIONS. If under Section
15 1305.551 the commissioner determines that a network, insurance
16 carrier, or other person or third party described under Section
17 1305.551 has violated or is violating this chapter, rules adopted
18 by the commissioner under this chapter, or the Labor Code or rules
19 adopted under that code, the commissioner may:

20 (1) suspend or revoke a certificate issued under this
21 code;

22 (2) impose sanctions under Chapter 82;

23 (3) issue a cease and desist order under Chapter 83; or

24 (4) impose administrative penalties under Chapter 84.

25 ARTICLE 5. RATES AND UNDERWRITING REQUIREMENTS

26 SECTION 5.01. Section 1(4), Article 5.55, Insurance Code,
27 is amended to read as follows:

1 (4) "Rate" means the cost of workers' compensation
2 insurance per exposure unit, whether expressed as a single number
3 or as a prospective loss cost, with an adjustment to account for the
4 treatment of expenses, profit, and individual insurer variation in
5 loss experience, including ~~[before]~~ any application of individual
6 risk variations based on loss or expense considerations. ~~[The term~~
7 ~~does not include a minimum premium.]~~

8 SECTION 5.02. Sections 2(b) and (d), Article 5.55,
9 Insurance Code, are amended to read as follows:

10 (b) In setting rates, an insurer shall consider:

- 11 (1) past and prospective loss cost experience;
12 (2) operation expenses;
13 (3) investment income;
14 (4) a reasonable margin for profit and contingencies;

15 ~~[and]~~

16 (5) the effect of individual risk variations based on
17 loss or experience considerations; and

18 (6) any other relevant factors.

19 (d) Rates established under this article may not be
20 excessive, inadequate, or unfairly discriminatory for the risks to
21 which they apply.

22 SECTION 5.03. Section 3, Article 5.55, Insurance Code, is
23 amended by adding Subsections (e)-(h) to read as follows:

24 (e) Not later than December 1 of each even-numbered year,
25 the commissioner shall report to the governor, lieutenant governor,
26 and speaker of the house of representatives regarding the impact
27 that legislation enacted during the regular session of the 79th

1 Legislature reforming the workers' compensation system of this
2 state has had on the affordability and availability of workers'
3 compensation insurance for the employers of this state. The report
4 must include an analysis of:

5 (1) the projected workers' compensation premium
6 savings realized by employers as a result of the reforms;

7 (2) the impact of the reforms on:

8 (A) the percentage of employers who provide
9 workers' compensation insurance coverage for their employees; and

10 (B) to the extent possible, economic development
11 and job creation; and

12 (3) the effects of the reforms on market competition
13 and carrier financial solvency, including an analysis of how
14 carrier loss ratios, combined ratios, and use of competitive rating
15 tools have changed since implementation of the reforms.

16 (f) If the commissioner determines that workers'
17 compensation rate filings or premium levels analyzed by the
18 department do not appropriately reflect the savings associated with
19 the reforms described by Subsection (e) of this section, the
20 commissioner shall include in the report required under Subsection
21 (e) of this section any recommendations, including any recommended
22 legislative changes, necessary to identify the tools needed by the
23 department to more effectively regulate workers' compensation
24 rates.

25 (g) At the request of the department, each insurer shall
26 submit to the department all data and other information considered
27 necessary by the commissioner to generate the report required under

1 Subsection (e) of this section. Failure by an insurer to submit the
2 data and information in a timely fashion, as determined by
3 commissioner rule, constitutes grounds for an administrative
4 violation on the insurer in the manner provided by Chapter 415,
5 Labor Code.

6 (h) A workers' compensation rate filing made by an insurer
7 with the department on or after January 1, 2007, must include a
8 certification, in the form and manner determined by the
9 commissioner, that the filing reflects the savings realized from
10 the workers' compensation reforms described by Subsection (e) of
11 this section. The department shall make a certification filed
12 under this subsection available to the public on the department's
13 Internet website.

14 SECTION 5.04. Section 6(b), Article 5.55, Insurance Code,
15 is amended to read as follows:

16 (b) The disapproval order must be issued not later than the
17 15th day after the close of a hearing and must specify how the rate
18 fails to meet the requirements of this article. The disapproval
19 order must state the date on which the further use of that rate is
20 prohibited. [~~A disapproval order does not affect a policy made or~~
21 ~~issued in accordance with this code before the expiration of the~~
22 ~~period established in the order.~~]

23 SECTION 5.05. Section 7, Article 5.55, Insurance Code, is
24 amended to read as follows:

25 Sec. 7. EFFECT OF DISAPPROVAL; PENALTY. (a) If a policy is
26 issued and the commissioner [~~board~~] subsequently disapproves the
27 rate or filing that governs the premium charged on the policy:

1 (1) the policyholder may continue the policy at the
2 original rate;

3 (2) the policyholder may cancel the policy without
4 penalty; or

5 (3) the policyholder and the insurer may agree to
6 amend the policy to reflect the premium that would have been charged
7 based on the insurer's most recently approved rate; the amendment
8 may not take effect before the date on which further use of the rate
9 is prohibited under the disapproval order.

10 (b) If a policy is issued and the commissioner subsequently
11 disapproves the rate or filing that governs the premium charged on
12 the policy, the commissioner, after notice and the opportunity for
13 a hearing, may:

14 (1) impose sanctions under Chapter 82;

15 (2) issue a cease and desist order under Chapter 83; or

16 (3) impose administrative penalties under Chapter 84.

17 ~~[If the board determines, based on a pattern of charges for~~
18 ~~premiums, that an insurer is consistently overcharging or~~
19 ~~undercharging, the board may assess an administrative penalty. The~~
20 ~~penalty shall be assessed in accordance with Article 10, Texas~~
21 ~~Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's~~
22 ~~Texas Civil Statutes), and set by the board in an amount reasonable~~
23 ~~and necessary to deter the overcharging or undercharging of~~
24 ~~policyholders.]~~

25 SECTION 5.06. Subchapter D, Chapter 5, Insurance Code, is
26 amended by adding Article 5.55A to read as follows:

27 Art. 5.55A. UNDERWRITING GUIDELINES

1 Texas Department of Workers' Compensation does not affect or impair
2 any act done or taken, any rule, standard, or rate adopted, any
3 order or certificate issued, or any form approved by the Texas
4 Workers' Compensation Commission as a state agency, or any penalty
5 assessed by the Texas Workers' Compensation Commission as a state
6 agency before the change in designation made by this Act.

7 SECTION 7.002. ABOLITION OF TEXAS WORKERS' COMPENSATION
8 COMMISSION. (a) The Texas Workers' Compensation Commission is
9 abolished on the effective date of this Act. The term of a person
10 who is serving on the Texas Workers' Compensation Commission on the
11 effective date of this Act expires on the date the commissioner of
12 workers' compensation is appointed.

13 (b) All appropriations made by the legislature for the use
14 and benefit of the Texas Workers' Compensation Commission are
15 available for the use and benefit of the Texas Department of
16 Workers' Compensation.

17 SECTION 7.003. COMMISSIONER. The governor shall appoint
18 the commissioner of workers' compensation not later than September
19 30, 2005.

20 SECTION 7.004. ELECTRONIC BILLING RULES. The commissioner
21 of the Texas Department of Workers' Compensation shall adopt rules
22 under Section 408.0251, Labor Code, as added by this Act, not later
23 than January 1, 2006.

24 SECTION 7.005. ACCRUAL OF RIGHT TO INCOME BENEFITS.
25 Section 408.082(c), Labor Code, as amended by this Act, applies
26 only to a claim for workers' compensation benefits based on a
27 compensable injury that occurs on or after the effective date of

1 this Act. A claim based on a compensable injury that occurs before
2 that date is governed by the law in effect on the date that the
3 compensable injury occurred, and the former law is continued in
4 effect for that purpose.

5 SECTION 7.006. ELIGIBILITY FOR PILOT PROGRAM. Section
6 413.022, Labor Code, as added by this Act, applies only to a
7 compensable injury sustained on or after January 1, 2006, by an
8 employee of an eligible employer.

9 SECTION 7.007. REPORTS. (a) Not later than October 1,
10 2006, the commissioner of the Texas Department of Workers'
11 Compensation shall report to the governor, the lieutenant governor,
12 the speaker of the house of representatives, and the members of the
13 79th Legislature regarding the implementation of Section 408.1225,
14 Labor Code, as added by this Act.

15 (b) Not later than October 1, 2008, the commissioner of the
16 Texas Department of Workers' Compensation shall report to the
17 governor, the lieutenant governor, the speaker of the house of
18 representatives, and the members of the legislature regarding the
19 implementation of the pilot program established by Section 413.022,
20 Labor Code, as added by this Act, and the results of the pilot
21 program. The report must include any recommendations regarding the
22 continuation of the pilot program, including any changes required
23 to enhance the effectiveness of the program.

24 (c) The commissioner of insurance shall submit the initial
25 report required under Section 3(e), Article 5.55, Insurance Code,
26 as added by this Act, not later than December 1, 2006.

27 (d) The commissioner of insurance shall submit to the

1 governor, the lieutenant governor, the speaker of the house of
2 representatives, and the members of the legislature the first
3 report under Section 1305.501(a), Insurance Code, as added by this
4 Act, not later than September 1, 2008.

5 SECTION 7.008. IMPLEMENTATION OF PROVIDER NETWORKS. (a)
6 The commissioner of insurance and the commissioner of the Texas
7 Department of Workers' Compensation shall adopt rules as necessary
8 to implement Chapter 1305, Insurance Code, as added by this Act, not
9 later than December 1, 2005.

10 (b) An insurance carrier may begin to offer workers'
11 compensation medical benefits through a network under Chapter 1305,
12 Insurance Code, as added by this Act, on certification of the
13 network by the commissioner of insurance.

14 SECTION 7.009. CONSUMER REPORT CARD. The Texas Department
15 of Insurance shall issue the first annual workers' compensation
16 consumer report card under Section 1305.502, Insurance Code, as
17 added by this Act, not later than the first anniversary of the date
18 on which that department certifies the first workers' compensation
19 health care network under Chapter 1305, Insurance Code, as added by
20 this Act.

21 SECTION 7.010. APPLICATION TO MEDICAL BENEFITS. (a)
22 Article 4 of this Act applies to a claim for workers' compensation
23 medical benefits based on a compensable injury incurred by an
24 employee whose employer elects to provide workers' compensation
25 insurance coverage if the insurance carrier of the employer enters
26 into a contract to provide workers' compensation medical benefits
27 through a network certified under Chapter 1305, Insurance Code, as

1 added by this Act.

2 (b) A claim for workers' compensation medical benefits
3 based on a compensable injury that occurs on or after the effective
4 date of a contract described by Subsection (a) of this section is
5 subject to the provisions of Chapter 1305, Insurance Code, as added
6 by this Act.

7 (c) Notwithstanding Subsection (a) of this section, an
8 injured employee who receives workers' compensation medical
9 benefits based on a compensable injury that occurs before the
10 effective date of this Act is subject to the provisions of Chapter
11 1305, Insurance Code, as added by this Act, and must receive
12 treatment through a network health care provider if the insurer
13 liable for the payment of benefits on that claim elects to use a
14 workers' compensation health care network to provide medical
15 benefits and the claimant resides in a network service area. The
16 insurer shall notify affected injured employees in writing of the
17 election.

18 SECTION 7.011. EFFECTIVE DATE. This Act takes effect
19 September 1, 2005.