

## **BILL ANALYSIS**

Senate Research Center

H.B. 7  
By: Solomons (Staples)  
State Affairs  
5/4/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Under current Texas law, the Texas workers' compensation system is governed by the Texas Workers' Compensation Act (Texas Labor Code, Title 5, Subtitle A). The Act lays out a system of benefits for employees injured on the job and imposes duties and regulations on participants in the system, including employees, employers, health care providers, insurance carriers, and attorneys. The state administers the system through the Texas Workers' Compensation Commission (TWCC) and to some extent through the Texas Department of Insurance.

Numerous studies and analyses by both the state and other entities demonstrate that Texas has one of the most costly and least effective (in terms of returning injured employees to work) workers' compensation systems in the country. Medical care costs and quality is an issue of particular concern.

H.B. 7 allows the formation of networks, and requires those networks to be certified and regulated by the Texas Department of Insurance (TDI), similar to TDI's regulations of other types of networks. It also abolishes the Texas Workers' Compensation Commission. H.B. 7 requires the adoption of treatment guidelines, increases the cap on income benefits for workers' compensation injuries, shortens the retroactive period an injured worker is required to wait to receive benefits, and increases TDI oversight of rates and premiums charged by insurance carriers.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 1.002 (Section 401.003, Labor Code), SECTION 1.030 (Section 402.159, Labor Code), SECTION 1.031 (Section 402.160), SECTION 1.032 (Section 402.166, Labor Code), SECTION 1.034 (Section 402.168, Labor Code), SECTION 1.073 (Section 405.0027, Labor Code), SECTION 1.201 (Section 408A.011, Labor Code), SECTION 1.201 (Section 408A.012, Labor Code), SECTION 1.201 (Section 408A.013, Labor Code), SECTION 1.201 (Section 408A.056, Labor Code), SECTION 1.201 (Section 408B.007, Labor Code), SECTION 1.202 (Section 408B.0545), SECTION 1.202 (Section 408B.055, Labor Code), SECTION 1.202 (Section 408B.153, Labor Code), SECTION 1.202 (Section 408B.401, Labor Code), SECTION 1.202 (Section 408B.403, Labor Code), SECTION 1.202 (Section 408C.003, Labor Code), SECTION 1.202 (Section 408C.004, Labor Code), SECTION 1.251 (Section 408D.153, Labor Code), SECTION 1.354 (Section 410.008, Labor Code), SECTION 1.356 (Section 410.051, Labor Code), SECTION 1.371 (Section 410.151, Labor Code), SECTION 1.415 (Section 411.081, Labor Code), SECTION 1.515 (Section 413.020, Labor Code), SECTION 1.516 (Section 413.032, Labor Code), SECTION 1.751 (Section 419.003, Labor Code), SECTION 2A.001 (Section 551.052, Labor Code), SECTION 2A.001 (Section 551.053, Labor Code), SECTION 2A.001 (Section 551.054, Labor Code), SECTION 3.062 (Article 5.55A, Insurance Code), SECTION 3.062 (Article 5.55D, Insurance Code), SECTION 3.064 (Article 5.60A, Insurance Code) of this bill.

Rulemaking authority previously granted to the Texas Workers' Compensation Commission is rescinded and transferred to the Commissioner of Insurance in SECTION 1.006 (Section 401.024, Labor Code), SECTION 1.023 (Section 402.152, Labor Code), SECTION 1.033 (Section 402.167, Labor Code), SECTION 1.035 (Section 402.169, Labor Code), SECTION 1.038 (Section 402.203), SECTION 1.056 (Section 403.006, Labor Code), SECTION 1.081 (Section 406.005, Labor Code), SECTION 1.082 (Section 406.006), SECTION 1.085 (Section 406.009), SECTION 1.086 (Section 406.010, Labor Code), SECTION 1.087 (Section 406.011,

Labor Code), SECTION 1.092 (Section 406.074, Labor Code), SECTION 1.093 (Section 406.093, Labor Code), SECTION 1.094 (Section 406.095, Labor Code), SECTION 1.110 (Section 407.061, Labor Code), SECTION 1.155 (Section 408.009, Labor Code), SECTION 1.157 (Section 408.042, Labor Code), SECTION 1.160 (Section 408.0446, Labor Code), SECTION 1.165 (Section 408.063, Labor Code), SECTION 1.167 (Section 408.221, Labor Code), SECTION 1.201 (Section 408A.002, Labor Code), SECTION 1.201 (Sec. 408A.003, Labor Code), SECTION 1.201 (Section 408A.007, Labor Code), SECTION 1.201 (Section 408A.010, Labor Code), SECTION 1.251 (Section 408D.001, Labor Code), SECTION 1.251 (Section 408D.052, Labor Code), SECTION 1.251 (Section 408D.054, Labor Code), SECTION 1.251 (Section 408D.102, Labor Code), SECTION 1.251 (Section 408D.104, Labor Code), SECTION 1.251 (Section 408D.107, Labor Code), SECTION 1.251 (Section 408D.201, Labor Code), SECTION 1.252 (Section 408E.001, Labor Code), SECTION 1.304 (Section 409.005, Labor Code), SECTION 1.310 (Section 409.012, Labor Code), SECTION 1.313 (Section 409.023, Labor Code), SECTION 1.357 (Section 410.102, Labor Code), SECTION 1.366 (Section 410.111, Labor Code), SECTION 1.375 (Section 410.157, Labor Code), SECTION 1.377 (Section 410.159, Labor Code), SECTION 1.378 (Section 410.160, Labor Code), SECTION 1.380 (Section 410.168, Labor Code), SECTION 1.508 (Section 413.001, Labor Code), SECTION 1.509 (Section 413.013, Labor Code), SECTION 1.510 (Section 413.014, Labor Code), SECTION 1.511 (Section 413.0141, Labor Code), SECTION 1.512 (Section 413.015, Labor Code), SECTION 1.514 (Section 413.018, Labor Code), SECTION 1.516 (Section 413.031, Labor Code), SECTION 1.516 (Section 413.036, Labor Code), SECTION 1.517 (Section 413.041, Labor Code), SECTION 1.527 (Section 413.052, Labor Code), SECTION 1.528 (Section 413.053, Labor Code), SECTION 1.530 (Section 413.055, Labor Code), SECTION 1.607 (Section 415.021, Labor Code), SECTION 1.608 (Section 415.023, Labor Code), SECTION 3.074 (Article 21.58A, Insurance Code) of this bill.

Rulemaking authority previously granted to the Texas State Library and Archives Commission is modified in SECTION 1.036 (Section 402.201, Labor Code) of this bill.

Rulemaking authority previously granted to the General Services Commission is rescinded and transferred to the Texas Building and Procurement Commission in SECTION 1.036 (Section 402.201, Labor Code) of this bill.

Rulemaking authority is expressly granted to the Public Counsel of the Office of Injured Employee Counsel in SECTION 1.061 (Section 404.006, Labor Code), SECTION 1.061 (Section 404.105, Labor Code), of this bill.

Rulemaking authority previously granted to the Texas Workers' Compensation Commission is rescinded and transferred to the Public Counsel of the Office of Injured Employee Counsel in SECTION 1.062 (Section 404.152, Labor Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Insurance is rescinded and granted to the Commissioner of Insurance in SECTION 1.095 (Section 406.098, Labor Code) of this bill.

Rulemaking authority previously granted to the Texas Workers' Compensation Commission is rescinded and transferred to the Texas Department of Insurance in SECTION 1.157 (Section 408.042) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Insurance in SECTION 1.201 (Section 408A.0071) of this bill.

Rulemaking authority previously granted to the Texas Workers' Compensation Commission is rescinded in SECTION 3.075 (Article 21.58A, Insurance Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. AMENDMENTS TO SUBTITLE A, TITLE 5, LABOR CODE

#### PART 1. AMENDMENTS TO CHAPTER 401, LABOR CODE

SECTION 1.001. Amends the heading to Subchapter A, Chapter 401, Labor Code, to read as follows:

#### SUBCHAPTER A. GENERAL PROVISIONS

SECTION 1.002. Amends Section 401.003(a), Labor Code, to provide that the Texas Department of Insurance (TDI), rather than the Texas Workers' Compensation Commission (TWCC), is subject to audit by the state auditor in accordance with Chapter 321 (State Auditor), Government Code and authorizes the state auditor to audit the adoption and implementation of administrative rules by the Commissioner of Insurance (commissioner). Makes conforming changes.

SECTION 1.003. Amends Section 401.011, Labor Code, by amending Subdivisions (1), (8), (14), (15), (19), (28), (30), (37), (39), (42), and (44) to redefine "adjuster," "commissioner," "department," "dependent," "designated doctor," "health care," "insurance company," "maximum medical improvement," "representative," "sanction," "treating doctor," and "workers' compensation insurance coverage," and adding Subdivisions (2-a), (4-a), (5-a), (5-b), (5-c), (11-a), (11-b), (12-a), (13-a), (16-a), (17-a), (18-a), (25-a), (29-a), (31-a), (31-b), (34-a), (34-b), (34-c), (34-d), (35-a), (35-b), (35-c), (35-d), (38-a), (38-b), (39-a), (39-b), (42-a), (42-b), (42-c), and (42-d) to define "adverse determination," "appeal process," "carrier-network contract," "case management," "certified provider network," "complainant," "complaint," "credentialing," "dispute," "emergency care," "fee dispute," "independent review," "independent review organization," "life threatening," "medical records," "nurse," "participating health care provider and participating provider," "participating provider contract," "pattern of practice of under-utilization or over-utilization," "pattern of practice review," "person," "preauthorization," "certified provider network and provider network," "quality improvement program," "retrospective review," "rural area," screening criteria," "service area," "utilization control," "utilization review," "utilization review agent," and "utilization review plan."

SECTION 1.004. Amends Section 401.021, Labor Code, as follows:

Sec. 401.021. APPLICATION OF OTHER ACTS. Provides that, except as otherwise provided by this subtitle, enforcement of a commissioner, rather than a TWCC, order, decision, or rule under this title is governed by specific subchapters and sections of Chapter 2001 (Administrative Procedure), Government Code and includes an exception for Section 2002.001(3), rather than Section 2002.001(2). Provides that Chapter 551 (Open Meetings), Government Code, applies to a proceeding under this subtitle, other than a contested case hearing, arbitration, or another proceeding involving a determination on a worker's compensation claim and deletes existing text providing exceptions for a benefit review conference and an appeals panel proceeding and redesignates existing subsections accordingly. Provides that Chapter 552 (Public Information), Government Code, applies to a worker's compensation record of TDI, the office of injured employee counsel.

SECTION 1.005. Amends Section 401.023(b), Labor Code, to make conforming changes.

SECTION 1.006. Amends Sections 401.024(b)-(d), Labor Code, to make conforming changes.

SECTION 1.007. Repealers: Sections 401.002 (Application of Sunset Act), Labor Code and 401.011(38) (relating to the definition of "research center"), Labor Code.

#### PART 2. AMENDMENTS TO CHAPTER 402, LABOR CODE

SECTION 1.011. Amends the heading to Chapter 402, Labor Code, to read as follows:

#### CHAPTER 402. OPERATION AND ADMINISTRATION OF WORKERS' COMPENSATION SYSTEM

SECTION 1.012. Amends the heading to Subchapter A, Chapter 402, Labor Code, to read as follows:

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM.

SECTION 1.013. Amends Section 402.001, Labor Code, as follows:

Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF INSURANCE. Provides that, except as provided by Sections 402.002, TDI is the state agency designated to oversee and operate the workers' compensation system of this state. Deletes existing text relating to membership requirements of TWCC.

SECTION 1.014. Amends Section 402.002, Labor Code, as follows:

Sec. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED EMPLOYEE COUNSEL. Requires the office of injured employee counsel (office) established under Chapter 404 to perform the functions regarding the provision of workers' compensation benefits in this state designated by this subtitle as under the authority of that office. Deletes existing text relating to the terms and vacancies for members of TWCC.

SECTION 1.015. Amends the heading to Subchapter B, Chapter 402, Labor Code, to read as follows:

SUBCHAPTER B. SYSTEM GOALS

SECTION 1.016. Renumbers Section 402.021, Labor Code, as Section 402.051, Labor Code, and amends it as follows:

Sec. 402.051. GOALS; LEGISLATIVE INTENT. Redesignates text from Section 402.021. Sets forth the basic goals of the workers' compensation system of this state and the intent of the legislature in implementing such goals. Deletes existing text relating to TWCC divisions.

SECTION 1.017. Amends Subchapter B, Chapter 402, Labor Code, by adding Section 402.052, as follows:

Sec. 402.052. WORKERS' COMPENSATION MISSION OF DEPARTMENT. Requires TDI, as provided by this subtitle, to work to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.

SECTION 1.018. Amends the heading to Subchapter C, Chapter 402, Labor Code, to read as follows:

SUBCHAPTER C. DEPARTMENT WORKFORCE EDUCATION AND SAFETY FUNCTIONS

SECTION 1.019. Amends Subchapter C, Chapter 402, Labor Code, by adding Sections 402.101 and 402.102, as follows:

Sec. 402.101. GENERAL DUTIES; FUNDING. Requires TDI to perform the workforce education and safety functions of the workers' compensation system of Texas. Provides that the operations of TDI under this subtitle are funded through the maintenance tax assessed under Section 403.002 (Maintenance Taxes).

Sec. 402.102. EDUCATIONAL PROGRAMS. Requires TDI to provide education on best practices for return-to-work programs and workplace safety and to evaluate and develop the most efficient, cost-effective procedures for implementing this section.

SECTION 1.020. Transfers and renumbers Section 402.082, Labor Code, to Subchapter C, Chapter 402, Labor Code, as Section 402.103, Labor Code, and amends it as follows:

Sec. 402.103. New heading: INJURY INFORMATION MAINTAINED BY DEPARTMENT. Redesignates text of Section 402.082. (a) Requires TDI, rather than TWCC, to maintain specific information on every compensable injury, including

identification of whether the claimant is receiving medical care through the workers' compensation health care network certified under Chapter 408B.

(b) Requires TDI to provide information maintained under Subsection (a) to the office. Provides that the confidentiality requirements imposed under Section 402.202 apply to injury information maintained by TDI.

SECTION 1.021. Amends the heading to Subchapter D, Chapter 402, Labor Code, to read as follows:

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

SECTION 1.022. Transfers and renumbers Section 402.042, Labor Code, to Subchapter D, Chapter 402, Labor Code, as Section 402.151, Labor Code, and amends it as follows:

Sec. 402.151. New heading: GENERAL POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT. (a) Redesignates existing text from Section 402.042. Requires the commissioner to conduct the operations of TDI under this subtitle, rather than the executive director to conduct the operations of TDI under this article.

(b) Authorizes the commissioner or the commissioner's designee, acting under this subtitle, rather than the executive director, to issue subpoenas to compel the attendance of witnesses and the production of documents in accordance with Subchapter C, Chapter 36 (Department Rules and Procedures), Insurance Code. Requires the department to operate regional offices throughout the state as necessary to implement its duties under this subtitle. Makes conforming changes.

(c) Provides that the commissioner is the agent for service of process under this subtitle on out-of-state employees.

(d) Requires TDI to operate regional offices throughout this state as necessary to implement the duties of TDI under this subtitle.

SECTION 1.023. Renumbers Section 402.061, Labor Code, as Section 402.152, Labor Code, and amends it as follows:

Sec. 402.152. ADOPTION OF RULES. Redesignates existing text from Section 402.061. Makes a conforming change.

SECTION 1.024. Renumbers Section 402.062, Labor Code, as Section 402.153, Labor Code, and amends it as follows:

Sec. 402.153. New heading: ACCEPTANCE OF CERTAIN GIFTS, GRANTS, OR DONATIONS. Redesignates existing text from Section 402.062. Authorizes TDI to accept gifts, grants, or donations for the operation of this subtitle as provided by rules adopted by the commissioner. Deletes existing text authorizing TWCC to accept a grant paid by a specific company. Makes conforming changes.

SECTION 1.025. Renumbers Section 402.064, Labor Code, as Section 402.154, Labor Code, and amends it as follows:

Sec. 402.154. FEES. Redesignates existing text from Section 402.064. Makes conforming changes.

SECTION 1.026. Renumbers Section 402.065, Labor Code, as Section 402.155, Labor Code, and amends it as follows:

Sec. 402.155. EMPLOYMENT OF COUNSEL. Redesignates existing text from Section 402.065. Authorizes the commissioner, notwithstanding Article 1.09-1, Insurance Code,

or any other law, to employ counsel to represent TDI in certain legal actions. Makes conforming changes.

SECTION 1.027. Renumbers Section 402.066, Labor Code, as Section 402.156, Labor Code, and amends it as follows:

Sec. 402.156. RECOMMENDATIONS TO LEGISLATURE. Redesignates existing text from Section 402.066. Requires the commissioner to consider and recommend changes to this subtitle to the legislature, including any statutory changes required by an evaluation conducted under Section 402.162. Makes conforming changes.

SECTION 1.028. Renumbers Section 402.067, Labor Code, as Section 402.157, Labor Code, and amends it as follows:

Sec. 402.157. ADVISORY COMMITTEES. Redesignates existing text from Section 402.067. Makes conforming changes.

SECTION 1.029. Renumbers Section 402.068, Labor Code, as Section 402.158, Labor Code, and amends it as follows:

Sec. 402.158. DELEGATION OF RIGHTS AND DUTIES. Redesignates existing text from Section 402.068. Prohibits the commissioner, rather than TWCC, except as expressly provided by this chapter, from delegating rulemaking and policy-making functions, rather than rights and duties, imposed on the commissioner and TDI by this subchapter. Makes conforming changes.

SECTION 1.030. Transfers and renumbers Section 402.022, Labor Code, to Subchapter D, Chapter 402, Labor Code, as Section 402.159, Labor Code, and amends it as follows:

Sec. 402.159. PUBLIC INTEREST INFORMATION. Redesignates existing text from Section 402.022. Requires the commissioner, by rule, to ensure that each TDI form, standard letter, and brochure under this subtitle is written in plain language, is in a readable and understandable format, and complies with all applicable requirements relating to minimum readability requirements. Requires TDI to make informational materials described by this section available in English and Spanish. Makes conforming changes.

SECTION 1.031. Transfers and renumbers Section 402.023, Labor Code, to Subchapter D, Chapter 402, Labor Code, as Section 402.160, Labor Code, and amends it as follows:

Sec. 402.160. COMPLAINT INFORMATION. Redesignates existing text from Section 402.023. Sets forth specific procedures for the commissioner in handling complaint information. Makes conforming changes.

SECTION 1.032. Amends Subchapter D, Chapter 402, Labor Code, by adding Sections 402.161-402.166, as follows:

Sec. 402.161. PRIORITIES FOR COMPLAINT INVESTIGATIONS. Requires TDI to assign priorities to complaint investigations under this subtitle based on risk and, in developing priorities under this section, to develop a formal risk-based complaint investigation system that considers specific factors. Authorizes the commissioner to develop additional risk-based criteria as necessary.

Sec. 402.162. STRATEGIC MANAGEMENT; EVALUATION. Requires the commissioner to implement a strategic management plan that requires TDI to evaluate and analyze its effectiveness in implementing certain goals, standards, and requirements and modifies the organizational structure and programs of TDI as necessary to address shortfalls in the performance of the workers' compensation system of this state. Requires TDI to conduct research regarding the system as provided by Chapter 405 to obtain the necessary data and analysis to perform the evaluations required by this section.

Sec. 402.163. INFORMATION TO EMPLOYERS. Requires TDI to provide employers with information on methods to enhance the ability of an injured employee to return to work. Authorizes information to include access to available research and best practice information regarding return-to-work programs for employers.

(b) Requires TDI to augment return-to-work program information provided to employers to include information regarding methods for an employer to appropriately assist an injured employee to obtain access to specific doctors.

(c) Requires information provided to employers under this section to help foster effective working relationships with specific entities to improve return-to-work communication and access to specific coordination services.

(d) Requires TDI to develop and make available the information described by this section.

Sec. 402.164. INFORMATION TO EMPLOYEES. Requires TDI to provide injured employees with information regarding the benefits of early return to work. Requires such information to include information on how to receive assistance in accessing high-quality medical care through the workers' compensation system.

Sec. 402.165. SINGLE POINT OF CONTACT. Requires TDI, to the extent determined feasible by the commissioner, to establish a single point of contact for injured employees receiving services from TDI.

Sec. 402.166. INCENTIVES; PERFORMANCE-BASED OVERSIGHT. (a) Requires the commissioner, by rule, to adopt requirements that provide incentives for overall compliance in the workers' compensation system of this state and emphasize performance-based oversight linked to regulatory outcomes.

(b) Requires the commissioner to develop key regulatory goals to be used in assessing the performance of insurance carriers, provider networks, and health care providers. Requires the goals adopted under this subsection to align with the general regulatory goals of TDI under this subtitle, in addition to goals that support timely payment of benefits and increased communication.

(c) Requires TDI, at least biennially, to assess the performance of insurance carriers, provider networks, and health care providers in meeting the key regulatory goals. Requires TDI to examine overall compliance records and dispute resolution and complaint resolution practices to identify insurance carriers, provider networks, and health care providers who adversely impact the workers' compensation system and who may require enhanced regulatory oversight. Requires TDI to conduct the assessment through the analysis of data maintained by TDI and through self-reporting by insurance carriers, provider networks, and health care providers.

(d) Requires TDI, based on the performance assessment, to develop regulatory tiers that distinguish among insurance carriers, provider networks, and health care providers who are poor performers, average performers and high performers. Requires TDI to focus its regulatory oversight on those identified as poor performers.

(e) Requires the commissioner, by rule, to develop incentives within each tier under Subsection (d) that promote greater overall compliance and performance. Authorizes such incentives to include modified penalties, self-audits, or flexibility based on performance.

(f) Requires TDI to ensure that high-performing entities are publicly recognized and allow those entities to use that designation as a marketing tool.

(g) Requires TDI, in conjunction with its accident prevention services under Subchapter E, Chapter 411 (Workers' Health and Safety), to conduct audits of accident prevention services offered by insurance carriers based on comprehensive risk assessment. Requires TDI to periodically review those services, but authorizes TDI to provide incentives for less regulation of carriers based on performance.

SECTION 1.033. Renumbers Section 402.071, Labor Code, as Section 402.167, Labor Code, and amends it as follows:

Sec. 402.167. REPRESENTATIVES. Redesignates existing text from Section 402.071. Makes conforming and nonsubstantive changes.

SECTION 1.034. Renumbers Section 402.072, Labor Code, as Section 402.168, Labor Code, and amends it as follows:

Sec. 402.168. SANCTIONS. Redesignates existing text from Section 402.072. (a) Authorizes TDI to impose sanctions against any individual or entity monitored or regulated by TDI under this subtitle.

(b) Requires the commissioner, by rule, to establish criteria for imposing sanctions pursuant to this subtitle. Provides that rules adopted under this section are in addition to, and do not affect, the rules adopted under Section 415.023(b).

(c) Authorizes the criteria for recommending or imposing sanctions to include anything the commissioner considers relevant, including those sanctions involving a doctor or other health care provider, Medicare or Medicaid program, certain fees, suspensions or relevant practice restrictions, professional failure to provide health care, findings of fact and conclusions of law made by a court, an initial criminal conviction, or agreeing to an order of probation without adjudication of guilt under deferred adjudication.

(d) Requires the commissioner, by rule, to establish procedures under which an individual may apply for restoration of practice privileges removed by the commissioner based on sanctions imposed under this subtitle.

(e) Requires TDI to act on a recommendation by the medical advisor selected under Section 413.0511 (Medical Advisor) and, after notice, and the opportunity for a hearing, authorizes TDI to impose sanctions under this section on a doctor or health care provider or an insurance carrier or to recommend action regarding a utilization review agent.

(f) Authorizes sanctions to include specific deprivations, suspensions, revocations, reductions, monitoring, deletions, conditions, restrictions, mandatory participating in training, or other appropriate sanctions.

(g) Provides that only the commissioner may impose a sanction that deprives a person of the right to practice before TDI under this subtitle or of the right to receive remuneration under this subtitle for a period exceeding 30 days or another sanction suspending for more than 30 days or revoking a certificate of authority, license, certification, or permit required for practice in the field of workers' compensation.

(h) Provides that a sanction imposed by TDI is binding pending appeal. Deletes text regarding certain sanctions imposed by TWCC.

SECTION 1.035. Renumbers Section 402.073, Labor Code, as Section 402.169, Labor Code, and amends it as follows:



Sec. 402.169. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. Redesignates existing text from Section 402.073. (a) Makes conforming changes.

(b) Requires the administrative law judge who conducts the hearing for the State Office of Administrative Hearings, in a case held under Section 411.049, 413.055, or 415.034, to enter the final decision in the case after the completion of the hearing. Deletes existing reference to Section 413.031.

(c) Requires the administrative law judge who conducts the hearing for the State Office of Administrative Hearing, in a case in which a hearing is conducted in conjunction with Section 402.168 or 407.046 and in other cases under this subtitle other than cases subject to Subchapter C, Chapter 413 (Medical Review), to propose a decision to the commissioner, rather than TWCC, for final consideration and decision by the commissioner. Deletes existing reference to Sections 402.072 and 408.023. Makes conforming changes.

SECTION 1.036. Renumbers Section 402.081, Labor Code, as Section 402.201, Labor Code, and amends it as follows:

Sec. 402.201. WORKERS' COMPENSATION RECORDS. Redesignates existing text from Section 402.081. (a) Makes conforming changes.

(b) Requires TDI to comply with records retention schedules as provided by Section 441.185 (Record Retention Schedules), Government Code. Deletes existing text authorizing the executive director of TWCC to destroy a record after 50 years. Makes conforming changes.

(c) Authorizes a record maintained by TDI under this subtitle to be preserved in any format permitted by Chapter 441 (Libraries and Archives), Government Code, and rules adopted by the Texas State Library and Archives Commission under that chapter. Makes conforming changes.

(d) Requires the fee for access to information under Chapter 552, Government Code, to be in accord with the rules of the Texas Building and Procurement Commission, rather than the General Services Commission, that prescribe the method for computing the charge for copies under that chapter. Makes conforming changes.

SECTION 1.037. Renumbers Section 402.083, Labor Code, as Section 402.202, Labor Code, and amends it as follows:

Sec. 402.202. CONFIDENTIALITY OF INJURY INFORMATION. Redesignates existing text from Section 402.083. Provides that information in or derived from a claim file regarding an employee is confidential and prohibits that information from being disclosed by TDI or the State Office of Risk Management, rather than TWCC, except as provided by this subtitle.

SECTION 1.038. Renumbers Section 402.084, Labor Code, as Section 402.203, Labor Code, and amends it as follows:

Sec. 402.203. RECORD CHECK; RELEASE OF INFORMATION. Redesignates existing text from Section 402.084. Authorizes information on a claim to be released as provided by Subsection (a) to a subclaimant under Section 409.009 (Subclaims) that is an insurance carrier that has adopted an antifraud plan under Subchapter B, Chapter 704 (Antifraud Programs), rather than Article 3.97-3, Insurance Code, or the authorized representative of such a subclaimant. Makes conforming changes.

SECTION 1.039. Renumbers Section 402.085, Labor Code, as Section 402.204, Labor Code, and amends it as follows:

Sec. 402.204. EXCEPTIONS TO CONFIDENTIALITY. Redesignates existing text from Section 402.085. Requires TDI to release information on a claim to a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.203(b), rather than 402.084(b); the workers' compensation research and evaluation group, rather than the Research and Oversight Council on Workers' Compensation, for research purposes; or the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office. Makes conforming changes.

SECTION 1.040. Renumbers Section 402.086, Labor Code, as Section 402.205, Labor Code, and amends it as follows:

Sec. 402.205. TRANSFER OF CONFIDENTIALITY. Redesignates existing text from Section 402.086.

SECTION 1.041. Renumbers Section 402.087, Labor Code, as Section 402.206, Labor Code, and amends it as follows:

Sec. 402.206. INFORMATION AVAILABLE TO EMPLOYERS. Redesignates text of Section 402.087. (a) Provides that a prospective employer who has workers' compensation insurance coverage and who complies with this subchapter is entitled to obtain information from TDI on the prior injuries of an applicant for employment, if the employer obtains written authorization from the applicant before making the request.

(b) Provides that a current employer who has workers' compensation insurance and who complies with this subchapter is entitled to obtain information from TDI on the prior injuries of an employee, if the employer obtains written authorization from the employee before making the request, and requests the information from TDI not later than the 30th day after the date of hire of the employee. Authorizes the employer to only use the information obtained under this subsection to verify information the employee has provided to the employer in an employment application.

(c) Requires the employer to make a request for information under Subsection (a) by telephone or file the request in writing not later than the 14th day after the date on which the application for employment is made.

(d) Requires a request under this section to include the applicant's or employee's name, address, and social security number.

(e) Requires the authorization, if a request under Subsection (a) is made in writing, to be filed simultaneously. Requires the employer, if the request is made by telephone, to file the authorization not later than the 10th day after the date on which the request is made.

(f) Prohibits an employer to use information obtained under this section in a manner that violated the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.).

SECTION 1.042. Renumbers Section 402.088, Labor Code, as Section 402.207, Labor Code, and amends it as follows:

Sec. 402.207. REPORT OF PRIOR INJURY. Redesignates existing text from Section 402.088. (a) Redesignates existing text from Subsection (e). Defines "general injury."

(b) Requires TDI, on receipt of a valid request made under and complying with Section 402.206, rather than 402.087, to review its records. Makes a conforming change.

(c) Requires TDI, upon finding that an applicant or an employee has made any general injury claims in the preceding five years, to release the date and

description of each injury regarding the applicant, to the prospective employer and the employee, to the current employer.

(d) Redesignates existing text from Subsection (c).

(e) Redesignates exiting text from Subsection (d).

SECTION 1.043. Renumbers Section 402.089, Labor Code, as Section 402.208, Labor Code, and amends it as follows:

Sec. 402.208. FAILURE TO FILE AUTHORIZATION; ADMINISTRATIVE VIOLATION. Redesignates existing text from Section 402.089. Makes conforming changes.

SECTION 1.044. Renumbers Section 402.090, Labor Code, as Section 402.209, Labor Code, and amends it as follows:

Sec. 402.209. STATISTICAL INFORMATION. Redesignates existing text from Section 402.090. Makes conforming changes.

SECTION 1.045. Renumbers Section 402.091, Labor Code, as Section 402.210, Labor Code, and amends it as follows:

Sec. 402.210. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY. Redesignates existing text from Section 402.091. Makes a conforming change.

SECTION 1.046. Renumbers Section 402.092, Labor Code, as Section 402.211, Labor Code, and amends it as follows:

Sec. 402.211. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE OF CERTAIN INFORMATION. Redesignates existing text from Section 402.092. Redefines "investigation file." Provides that information maintained in the investigation files of TDI is confidential and prohibits such information from being disclosed except to an insurance carrier if the investigation file relates directly to a felony regarding workers' compensation or to a claim in which restitution is required to be paid to the insurance carrier. Deletes existing text regarding a frivolous complaint. Makes conforming and nonsubstantive changes.

SECTION 1.047. Amends Chapter 402, Labor Code, by adding Subchapter F, as follows:

#### SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

Sec. 402.251. COOPERATION; FACILITIES. Requires TDI to cooperate with the office in providing services to claimants under this subtitle and to provide facilities to the office in each regional department office operated to administer the duties of the department under this subtitle.

SECTION 1.048. Repealers, effective March 1, 2006:

(1) Section 402.0015 (Training Program for Commission Members), Labor Code;

(2) Sections 403.003 (Effect of Lobbying Activity), 402.004 (Voting Requirements), 402.005 (Removal of Commission Members), 402.006 (Prohibited Gifts; Administrative Violation), 402.007 (Meetings), 402.008 (Chairman), 402.009 (Leave of Absence), 402.010 (Civil Liability of Member), 402.011 (Reimbursement), 402.012 (Conflict of Interest);

(3) Sections 402.024 (Public Participation), 402.025 (Audit), Labor Code;

(4) Section 402.041 (Executive Director), Labor Code;

(5) Sections 402.043 (Administrative Assistants), 402.044 (Career Ladder; Annual Performance Evaluations), 402.045 (Equal Employment Opportunity Policy Statement), Labor Code;

(6) Section 402.063 (Appointment of Executive Director), Labor Code;

(7) Section 402.0665 (Legislative Oversight), Labor Code; and

(8) Sections 402.069 (Qualifications and Standards of Conduct Information) and 402.070 (Annual Report), Labor Code.

SECTION 1.049. (a) Requires the commissioner to conduct a review of the rules, policies, and practices of TDI regarding the operation of the workers' compensation system of this state. Requires the review to include an analysis of the rules, policies, and practices of TWCC, as it existed before abolishment under this Act, that are continued as rules, policies, and practices of TDI until replaced by the commissioner. Requires the commissioner to review the effectiveness of specific goals of the workers' compensation system and evaluate the existence of any statutory barriers to the implementation of those goals.

(b) Requires the commissioner to report the results of the review, together with any recommendations for statutory changes to specific legislative members, including members of the 80th Legislature, not later than December 1, 2006.

### PART 3. AMENDMENTS TO CHAPTER 403, LABOR CODE

SECTION 1.051. Amends the heading to Chapter 403, Labor Code, to read as follows:

#### CHAPTER 403. FINANCING OF WORKERS' COMPENSATION SYSTEM

SECTION 1.052. Amends Section 403.001, Labor Code, as follows:

Sec. 403.001. New heading: FUNDS. (a) Requires money collected under this subtitle, except as provided by Sections 403.006 (Subsequent Injury Fund) and 403.007 (Funding of Subsequent Injury Fund) or as otherwise provided by law, including administrative penalties and advance deposits for purchase of services, to be deposited in the general revenue fund of the state treasury to the credit of the Texas Department of Insurance operating account.

Authorizes money deposited in the account under this section, notwithstanding Section 202.101 (Deposit and Use of Fees Generally), Insurance Code, or any other law, to be appropriated only for the use and benefit of TDI and the office as provided by the General Appropriations Act to pay salaries and other expenses arising from and in connection with the duties under this title of TDI and the office.

(b) Makes a conforming change.

(c) Authorizes money deposited in the general revenue fund under this section to be used to satisfy the requirements of Section 201.052 (Reimbursement), rather than Article 4.19, Insurance Code.

SECTION 1.053. Amends Section 403.003, Labor Code, as follows:

Sec. 403.003. RATE OF ASSESSMENT. Requires the commissioner to set and certify the rate of maintenance tax assessment not later than October 31 of each year, taking into account specific expenditures, projected employee benefits, a surplus or deficit produced by the tax, and recovered revenue. Makes conforming changes.

SECTION 1.054. Amends Section 403.004, Labor Code, to make conforming changes.

SECTION 1.055. Amends Section 403.005, Labor Code, to require excess revenue from a set tax rate by the commissioner that exceeds the amount required to make all expenditures authorized by the legislature to be deposited in the general revenue fund to the credit of the TDI operating account. Authorizes money deposited in the account under this section, notwithstanding Section 202.101, Insurance Code, or any other law, to be appropriated only for the use and benefit of TDI as provided by the General Appropriations Act to pay salaries and other expenses arising from and in connection with TDI's duties under this title. Makes conforming changes.

SECTION 1.056. Reenacts Section 403.006, Labor Code, as amended by Chapters 211 and 1296, Acts of the 78th Legislature, Regular Session, 2003, and amends it as follows:

Sec. 403.006. SUBSEQUENT INJURY FUND. (a) Provides that the subsequent injury fund is a dedicated account, rather than dedicated general revenue account, in the general revenue fund, rather than the state treasury. Provides that the subsequent injury fund is not subject to any provision of law that makes dedicated revenue available for general governmental purposes and available for the purpose of certification under Section 403.121 (Acceptance of Federal Money), Government Code. Deletes existing text making Section 403.095, Government Code, inapplicable to the subsequent injury fund.

(b) Provides that the subsequent injury fund is liable for the payment of compensation as provided by Section 408D.202, rather than 408.162. Deletes existing text making the fund liable for the payment of an assessment of feasibility and the development of regional networks established under Section 408.0221. Makes conforming changes.

(c)-(d) Makes conforming changes.

SECTION 1.057. Amends Section 403.007, Labor Code, to make conforming changes.

#### PART 4. ADOPTION OF CHAPTER 404, LABOR CODE

SECTION 1.061. Amends Subtitle A, Title 5, Labor Code, by adding Chapter 404, as follows:

#### CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

##### SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. Defines "office" and "public counsel."

Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO DEPARTMENT. (a) Provides that the office of injured employee counsel (office) is established to represent the interests of workers' compensation claimants in this state.

(b) Provides that the office is administratively attached to TDI but is independent of direction by the commissioner and TDI.

(c) Requires TDI to provide the staff and facilities necessary to enable the office to perform its duties under this subtitle and sets forth its duties.

(d) Authorizes the public counsel and the commissioner to enter into interagency contracts and other agreements as necessary to implement this chapter.

Sec. 404.003. SUNSET PROVISION. Provides that the office is subject to Chapter 325 (Sunset Law), Government Code and, unless continued in existence as provided by that chapter, is abolished September 1, 2019.

Sec. 404.004. PUBLIC INTEREST INFORMATION. Requires the office to prepare information of public interest describing its functions and to make such information available to the public and appropriate state agencies.

Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. Requires the office to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to its programs and to comply with federal and state laws for program and facility accessibility.

Sec. 404.006. RULEMAKING. Requires the public counsel to adopt rules as necessary to implement this chapter and provides that rulemaking under this section is subject to Chapter 2001, Government Code.

[Reserves Sections 404.007-404.050 for expansion.]

#### SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

Sec. 404.051. APPOINTMENT; TERM. (a) Requires the governor, with the advice and consent of the senate, to appoint the injured employee public counsel. Provides that the public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) Requires the governor to appoint the public counsel without regard to specific criteria.

(c) Requires the governor, if a vacancy occurs during a term, to fill the vacancy for the unexpired term.

(d) Requires the governor, in appointing the public counsel, to consider recommendations made by groups that represent wage earners.

Sec. 404.052. QUALIFICATIONS. Sets forth qualifications and eligibility requirements for the public counsel.

Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. Provides that certain persons are ineligible to serve as public counsel based on pre-determined criteria.

Sec. 404.054. LOBBYING ACTIVITIES. Prohibits a person from serving as public counsel if that person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation related to the operation of TDI or the office.

Sec. 404.055. GROUNDS FOR REMOVAL. Sets forth grounds for removal from office for the public counsel.

Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. (a) Prohibits a former public counsel from making any communication to or appearance before TDI, the commissioner, or an employee of TDI before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made for certain purposes.

(b) Prohibits a former public counsel from representing any person or receiving compensation for services rendered on behalf of any person regarding a matter before TDI before the second anniversary of the date the person ceases to serve as public counsel.

(c) Provides that a person commits an offense if the person violates this section and that an offense under this subsection is a Class A misdemeanor.

(d) Prohibits a former employee of the office from:

(1) being employed by an insurance carrier regarding a matter that was in the scope of the employee's official responsibility while the employee was associated with the office; or

(2) representing a person before TDI or a court in certain matters.

(e) Provides that the prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) Provides that the prohibition of Subsection (d)(2) applies to a current employee of the office while the employee is associated with the office and at any time after.

Sec. 404.057. TRADE ASSOCIATIONS. Defines "trade association" and prohibits certain persons associated with trade associations from serving as public counsel.

[Reserves Sections 404.058-404.100 for expansion.]

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

Sec. 404.101. GENERAL DUTIES. (a) Requires the office to provide representation and assistance to workers' compensation claimants as provided by this subtitle and advocate on behalf of injured employees as a class regarding rulemaking by the commissioner relating to workers' compensation.

(b) Requires the office to accept or reject cases for representation and assistance in disputes subject to Chapter 410 (Adjudication of Disputes) or 413 (Medical Review) based on standards set by TDI policy.

(c) Requires the office, to the extent determined feasible by the public counsel, to establish a single point of contact for injured employees receiving services from the office.

(d) Authorizes the office to assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state and requires the office to monitor the performance and operation of the workers' compensation system, assist injured employees and workers with specific issues, and advocate for the office.

Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL. Requires the public counsel to administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. Requires the office to operate the ombudsman program under Subchapter D. Requires the office to coordinate services provided by the ombudsman program with those provided by the Department of Assistive and Rehabilitative Services.

Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. Authorizes the public counsel to appear or intervene on behalf of injured employees in certain matters involving rules and forms affecting workers' compensation insurance, a judicial proceeding involving or arising from an action taken by an administrative agency, or instances where employees are in need of representation.

Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) Authorizes the office to appear before the commissioner or TDI on behalf of an individual injured employee during an administrative dispute resolution process.

(b) Authorizes the office to represent injured employees either through attorney representation or by an ombudsman whose assistance will be under the direction of an attorney.

(c) Requires the public counsel to adopt rules and policies for representation and assistance of individual injured employees before TDI. Requires the rules to include a process for determining which cases need direct attorney involvement, taking into consideration the complexity of the case and the issue or issues in dispute.

(d) Provides that a determination of an injured employee's need for direct attorney representation does not constitute a fact determination on the validity of the claim.

(e) Prohibits the office from representing an injured employee in an informal dispute resolution process before an insurance carrier or certified provider network, a judicial review, or a hearing before TDI alleging an administrative violation or fraud.

Sec. 404.106. RESOLUTION OF COMPLAINTS. (a) Requires the office to receive and attempt to resolve complaints from injured employees against system participants, including state agencies. Requires the office to assist various state agencies and injured employees in specific situations.

(b) Requires the office, at least quarterly and until final disposition of the complaint, to notify the injured employee of the status of the complaint unless the notice would jeopardize an investigation by law enforcement or the fraud units of an individual insurance company or a state or federal regulatory body.

Sec. 404.107. LEGISLATIVE REPORT. (a) Requires the office to submit a specific report regarding office activities, identification of any problems in the workers' compensation system, and an analysis of the ability of the workers' compensation system to provide specific services to injured employees at a reasonable cost to employers, to specific legislative officials not later than December 31 of each even-numbered year.

(b) Requires the office to coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.

(c) Requires the office to publish and disseminate the legislative report to interested persons, and authorizes the office to charge a fee for the publication as necessary to achieve optimal dissemination.

Sec. 404.108. ACCESS TO INFORMATION BY PUBLIC COUNSEL. Provides that the public counsel is entitled to the same access as a party, other than TDI staff, to TDI records available in a proceeding before the commissioner or TDI under the authority granted by this chapter and to obtain discovery under Chapter 2001, Government Code, of any non-privileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner or TDI as authorized by this chapter.

Sec. 404.109. LEGISLATIVE RECOMMENDATIONS. Authorizes the public counsel to recommend proposed legislation upon determining that such recommendations would positively affect the interests of injured employees.

Sec. 404.110. INJURED EMPLOYEE RIGHTS; NOTICE. Requires the public counsel to submit a notice of injured employee rights and responsibilities to be distributed, as provided by commissioner rules, on first report of injury to TDI for adoption by the commissioner.

Sec. 404.111. PROHIBITED INTERVENTIONS OR APPEARANCES. Prohibits the public counsel from intervening or appearing in any proceeding or hearing before the commissioner or TDI, or any other proceeding, that relates to specific issues.

Sec. 404.112. APPLICABILITY OF CONFIDENTIALITY REQUIREMENTS. Provides that confidentiality requirements applicable to examination reports under Article



1.18 (Oath of Examiners and Assistants), Insurance Code, and to the commissioner under Section 3A, Article 21.28-A (Confidentiality of Certain Proceedings and Records), Insurance Code, apply to the public counsel.

Sec. 404.113. ACCESS TO INFORMATION. (a) Provides that the office is entitled to information that is otherwise confidential under a law of this state, including information made confidential under specific codes.

(b) Requires TDI, the Department of Assistive and Rehabilitative Services, Texas Workforce Commission, Health and Human Services Commission, and any other state agency with relevant information, on request by the public counsel, to provide any information or data requested by the office in furtherance of the duties of the office under this chapter.

(c) Requires the office to use information collected or received under this chapter for the benefit of the public.

Sec. 404.114. CONFIDENTIALITY AND USE OF INFORMATION. (a) Provides that except as provided by this section, information collected under this subchapter is subject to Chapter 552, Government Code. Requires the office to make determinations on requests for information in favor of access.

(b) Prohibits the office from making public any confidential information provided to the office under this chapter but, authorizes the office to disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. Prohibits the office from releasing, and prohibits an individual or entity from gaining access to, any information that could reasonably be expected to reveal or disclose specific information.

(c) Provides that information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of specific codes.

(d) Provides that information on doctors, health care providers, and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies doctors, health care providers, and injured employees is not subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity or admissible in any civil, administrative, or criminal proceeding.

(e) Authorizes the office, notwithstanding Subsection (b)(2), to use zip code information to analyze information on a geographical basis.

Sec. 404.115. LITERACY AND BASIC SKILLS CURRICULUM. (a) Requires the office to coordinate with TWC and local workforce development boards to develop a workplace literacy and basic skills curriculum designed to eliminate the skills gap between employees and current and emerging jobs.

(b) Authorizes the public counsel to enter into memoranda of understanding or other agreements with TWC and local workforce development boards as necessary to implement Subsection (a).

SECTION 1.062. Redesignates Subchapter C, Chapter 409, Labor Code, as Subchapter D, Chapter 404, Labor Code, renumbers them as Sections 404.151-404.154, Labor Code, and amends them as follows:

#### SUBCHAPTER D. OMBUDSMAN PROGRAM

Sec. 404.151. OMBUDSMAN PROGRAM. Redesignates existing text from Section 409.041. (a) Requires the office, rather than TWCC, to maintain an ombudsman

program as provided by this subchapter to assist injured employees, rather than workers, and persons claiming death benefits in obtaining benefits under this subtitle.

(b) Requires an ombudsman, in addition to previous requirements, to meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any prehearing conference or formal hearing. Makes conforming changes.

Sec. 404.152. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. Redesignates existing text from Section 409.042. Requires at least one specially qualified employee in each TDI workers' compensation office, rather than TWC, to be an ombudsman designated by the office to perform duties under this subchapter, rather than section, as the person's primary responsibility. Deletes existing text requiring training provided under this section to include appeals panel decisions. Makes conforming changes.

Sec. 404.153. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION. Redesignates existing text from Section 409.043. Makes conforming and nonsubstantive changes.

Sec. 404.154. PUBLIC INFORMATION. Redesignates existing text from Section 409.044. Makes a conforming change.

SECTION 1.063. Requires the ombudsman program operated by the office of employee assistance under Subchapter D, Chapter 404, Labor Code, as added by this Act, to begin providing services under that subchapter no later than March 1, 2006.

#### PART 5. AMENDMENTS TO CHAPTER 405, LABOR CODE.

SECTION 1.071. Amends Section 405.001, Labor Code, as follows:

Sec. 405.001. DEFINITION. Defines "group." Deletes existing definition of "department."

SECTION 1.072. Amends Section 405.002, Labor Code, as follows:

Sec. 405.002. New heading: WORKERS' COMPENSATION RESEARCH DUTIES OF DEPARTMENT; RESEARCH AND EVALUATION GROUP. Provides that the workers' compensation research and evaluation group (group) is located within TDI and serves as a resource for the commissioner on workers' compensation issues. Deletes existing text requiring the group to conduct certain professional studies and research.

SECTION 1.073. Amends Chapter 405, Labor Code, by adding Sections 405.0025, 405.0026, and 405.0027, as follows:

Sec. 405.0025. RESEARCH DUTIES OF GROUP. (a) Requires the group to conduct professional studies and research related to specific issues concerning benefits, litigation and controversy related to workers' compensation, insurance rates and ratemaking procedures, rehabilitation and reemployment of injured employees, employer participation in the workers' compensation system, employment health and safety issues, and other relevant matters.

(b) Requires the group to objectively evaluate the impact of the workers' compensation health care networks certified under this subtitle on the cost and the quality of medical care provided to injured employees and report the group's findings to specific legislative members, not later than December 1 of each even-numbered year.

(c) Requires the report required under Subsection (b), at a minimum, to evaluate the impact of workers' compensation health care networks on specific issues concerning claims, satisfaction with the network, complaints, and disputes.

Sec. 405.0026. RESEARCH AGENDA. (a) Requires the group to prepare and publish an annual proposed workers' compensation research agenda in the Texas Register from commissioner review and approval.

(b) Requires the commissioner to accept public comments on the research agenda and hold a public hearing on the proposed research agenda if a hearing is requested by interested persons.

Sec. 405.0027. REPORT CARD. (a) Requires the group to develop and issue an annual informational report card that objectively identifies and compares various analogous factors of provider networks operating under the workers' compensation system of this state.

(b) Authorizes the group to procure services, as necessary, to produce a report card. Requires the report card to include a risk-adjusted evaluation of employee access to care, return-to-work outcomes, health-related outcomes, employee satisfaction with care, and health care costs and utilization of health care.

(c) Authorizes the report cards to be based on information or data from any person, agency, organization, or governmental entity that the group considers reliable. Prohibits the group from endorsing or recommending a specific provider network or plan, or subjectively rate or rank provider networks or plans, other than through comparison and evaluation of objective criteria.

(d) Requires the commissioner to ensure that consumer report cards issued by the group under this section are accessible to the public on TDI's Internet website and available to any person on request. Authorizes the commissioner, by rule, to set a reasonable fee for obtaining a paper copy of report cards.

SECTION 1.074. Amends Sections 405.003(a) and (e), Labor Code, to provide that amounts received under this section are in accordance with Section 251.001, rather than Article 5.68(e), Insurance Code and reimbursement of the general revenue fund under this section is in accordance with Section 201.052, rather than Article 4.19, Insurance Code. Makes conforming changes.

SECTION 1.075. Amends Sections 405.004(a), (b), and (d), and adds Subsections (e) and (f), Labor Code, as follows:

(a) Provides that the group, under this chapter, is entitled to access the files and records of the Department of Assistive and Rehabilitative Services, rather than the Texas Department of Human Services, and other appropriate state agencies, rather than other state agencies. Makes conforming changes.

(b) Makes a conforming change.

(d) Provides that except as provided by this subsection, the identity of an individual or entity selected to participate in survey conducted by the group or who participates in such a survey is confidential and is not subject to public disclosure under Chapter 552, Government Code. Provides that this subsection does not prohibit the identification of a provider network in a report card issued under Section 405.0027, provided that the report card is prohibited from identifying any injured employee or other individual.

(e) Provides that a working paper, including all documentary or other information, prepared or maintained by the group in performing the group's duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021 (Availability of Public Information), Government Code.

(f) Provides that a record held by another entity that is considered to be confidential by law and that the group receives in connection with the performance of the group's

functions under this chapter or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021, Government Code.

#### PART 6. AMENDMENTS TO CHAPTER 406, LABOR CODE

SECTION 1.081. Amends Sections 406.005(c), Labor Code, to require an employer who has workers' compensation insurance coverage and who employs part-time employees to include a statement that the coverage applies to the part-time employees in the notice required under this subsection.

SECTION 1.082. Amends Sections 406.006(a)-(c), to make conforming changes.

SECTION 1.083. Amends Sections 406.007(a)-(c), to make conforming changes.

SECTION 1.084. Amends Section 406.008, Labor Code, to make conforming changes.

SECTION 1.085. Amends Sections 406.009(a)-(d), to create two new subsections from existing text and delete existing text authorizing the executive director to establish the form, manner, and procedure for the transmission of information to the commission as authorized by Section 402.042(b)(11). Makes conforming changes.

SECTION 1.086. Amends Section 406.010(c), Labor Code, to make a conforming change.

SECTION 1.087. Amends Section 406.011(a), Labor Code, to provide that notice to the designated representative, rather than agent, constitutes notice under this subtitle or the Insurance Code to the insurance carrier. Makes conforming changes.

SECTION 1.088. Amends Section 406.012, Labor Code, to make a conforming change.

SECTION 1.089. Amends Sections 406.051(b) and (c), Labor Code, to make conforming changes.

SECTION 1.090. Amends Section 406.053, Labor Code, to make conforming changes.

SECTION 1.091. Amends Section 406.073(b), Labor Code, to make a conforming change.

SECTION 1.092. Amends Sections 406.074(a) and (b), Labor Code, to make conforming changes.

SECTION 1.093. Amends Section 406.093(b), Labor Code, to make a conforming change.

SECTION 1.094. Amends Section 406.095(b), Labor Code, to make a conforming change.

SECTION 1.095. Amends Section 406.098(c), Labor Code, to make a conforming change.

SECTION 1.096. Amends Section 406.123(f), Labor Code, to require that copies filed under this section, if the general contractor is a certified self-insurer, to be filed with TDI, rather than the division of self-insurance regulation.

SECTION 1.097. Amends Sections 406.144(c) and (d), Labor Code, to make conforming changes.

SECTION 1.098. Amends Sections 406.145(a)-(d) and (f), Labor Code, to make conforming changes.

SECTION 1.099. Repealer: Section 406.004 (Employer Notice to Commission; Administrative Violation), Labor Code.

#### PART 7. AMENDMENTS TO CHAPTER 407, LABOR CODE

SECTION 1.101. Amends Sections 407.001(3) and (5), Labor Code, to redefine "qualified claims servicing contractor." Makes conforming changes.

SECTION 1.102. Amends Subchapter A, Chapter 407, Labor Code, by adding Section 407.002, as follows:

Sec. 407.002. CLAIM; SUIT. Requires a claim or suit brought by a claimant or a certified self-insurer to be styled in a specific manner. Provides that the commissioner is the agent for service of process for a claim or suit brought by a workers' compensation claimant against the qualified claims servicing contractor or a certified self-insurer.

SECTION 1.103. Amends Sections 407.041(a)-(c), Labor Code, to require that the commissioner approve or deny, rather than that the director recommend approval or denial of, an application to self-insure, under this section. Makes conforming changes.

SECTION 1.104. Amends Section 407.042, Labor Code, as follows:

Sec. 407.042. New heading: ISSUANCE OF CERTIFICATE OF AUTHORITY. Requires the commissioner, rather than the commission by majority vote, with the approval of the Texas Certified Self-Insurer Guaranty Association, to issue a certificate of authority to self-insure to an applicant who meets the certification requirements under this chapter and pays the required fee.

SECTION 1.105. Amends Section 407.043, Labor Code, to make conforming changes.

SECTION 1.106. Amends Section 407.044, Labor Code, as follows:

Sec. 407.044. New heading: TERM OF CERTIFICATE OF AUTHORITY; RENEWAL. Makes conforming changes.

SECTION 1.107. Amends Section 407.045, Labor Code, to make conforming changes.

SECTION 1.108. Amends Sections 407.046(a), (b), and (d), Labor Code, to provide that hearings conducted under this section shall be conducted under Chapter 2001, Government Code, rather than the administrative procedure law. Makes conforming changes.

SECTION 1.109. Amends Section 407.047(b), Labor Code, to make conforming changes.

SECTION 1.110. Amends Sections 407.061(a), (c), (e), and (f), Labor Code, to make conforming changes.

SECTION 1.111. Amends Section 407.062, Labor Code, to make conforming changes.

SECTION 1.112. Amends Section 407.063(a), Labor Code, to make a conforming change.

SECTION 1.113. Amends Sections 407.064(a), (b), and (e), Labor Code to make conforming changes.

SECTION 1.114. Amends Sections 407.065(b)-(f), Labor Code, to make conforming changes.

SECTION 1.115. Amends Sections 407.066(a) and (b), Labor Code, to make conforming changes.

SECTION 1.116. Amends Sections 407.067(a)-(c), Labor Code, to make conforming changes.

SECTION 1.117. Amends Sections 407.081(a)-(d), (f), and (g), Labor Code, to make conforming changes.

SECTION 1.118. Amends Sections 407.082(a), (c), and (d), Labor Code, to make conforming changes.

SECTION 1.119. Amends Section 407.101(b), Labor Code, to make a conforming change.

SECTION 1.120. Amends Section 407.102, Labor Code, to make conforming changes.

SECTION 1.121. Amends Sections 407.103(a), (b), and (d), Labor Code, to prohibit TDI, in setting the rate of maintenance tax assessment for insurance companies, from considering revenue or expenditures related to the operation of the self-insurer program under this chapter, rather than those related to the division. Makes conforming changes.

SECTION 1.122. Amends Sections 407.104(b), (c), and (e), Labor Code, as follows:

(b) Makes conforming changes.

(c) Requires the self-insurer maintenance tax to be deposited in the state treasury to the credit of the TDI operating account. Authorizes money deposited in the account under this section, notwithstanding Section 202.101, Insurance Code, or any other law, to be appropriated only for the use and benefit of TDI as provided by the General Appropriations Act to pay salaries and other expenses arising from and in connection with TDI's duties under this title.

(e) Makes conforming changes.

SECTION 1.123. Amends Section 407.122(b), Labor Code, to provide that the board of directors is composed of four, rather than three, certified self-insurers, and the commissioner, rather than one commission member representing wage-earners and one commission member representing employers.

SECTION 1.124. Amends Section 407.123(b), Labor Code, to make a conforming change.

SECTION 1.125. Amends Section 407.124, Labor Code, to make conforming changes.

SECTION 1.126. Amends Section 407.125, Labor Code, to make a conforming change.

SECTION 1.127. Amends Section 407.126(d), Labor Code, to make a conforming change.

SECTION 1.128. Amends Section 407.127(a), Labor Code, to make conforming changes.

SECTION 1.129. Amends Section 407.128, Labor Code, to make a conforming change.

SECTION 1.130. Amends Section 407.132, Labor Code, to make a conforming change.

SECTION 1.131. Amends Section 407.133(a), Labor Code, to make conforming changes.

SECTION 1.132. Repealers: Section 407.001(2) (Definitions), 407.122(c) (Board of Directors, and Subchapter B, Chapter 407 (Division of Self-Insurance Regulation), Labor Code.

#### PART 8. AMENDMENTS TO CHAPTER 407A, LABOR CODE

SECTION 1.141. Amends Section 407A.053(d), Labor Code, to make a conforming change.

SECTION 1.142. Amends Section 407A.201(c), Labor Code, to make conforming changes.

SECTION 1.143. Amends the heading to Section 407A.301, Labor Code, to read as follows:

Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT AND WORKERS' COMPENSATION RESEARCH AND EVALUATION GROUP

SECTION 1.144. Amends Sections 407A.301(a) and (c), Labor Code, to provide that the tax liability of group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carries under Section 405.003, rather than 404.003. Makes conforming changes.

SECTION 1.145. Amends Section 407A.303(c), Labor Code, to make a conforming change.

SECTION 1.146. Amends Section 407A.357(b), Labor Code, to provide that the guaranty association advisory committee includes one member designated by the commissioner, rather than one commission member, who represents wage earners and one member designated by the commissioner who represents employers, rather than one member designated by the commissioner.

#### PART 9. AMENDMENTS TO CHAPTER 408, LABOR CODE

SECTION 1.151. Amends the heading to Chapter 408, Labor Code, to read as follows:

#### CHAPTER 408. WORKERS' COMPENSATION BENEFITS: GENERAL PROVISIONS

SECTION 1.152. Amends Section 408.001, Labor Code, by adding Subsection (d), as follows:

(d) Provides that a determination under Section 406.032, 409.002, or 409.004 that a work-related injury is noncompensable does not adversely affect the exclusive remedy provisions under Subsection (a).

SECTION 1.153. Amends Sections 408.003(b) and (c), Labor Code, to authorize payments that are not reimbursed or reimburseable under Section 408D.107, rather than 408.127. Makes conforming changes.

SECTION 1.154. Amends Sections 408.005(a)-(g), Labor Code, to provide that a settlement may not provide for payment of benefits in a lump sum except as provided by Section 408D.108, rather than Section 408.021, an employee's right to medical benefits as provided by Section 408A.001, rather than 408.021, may not be limited or terminated, and a settlement or agreement resolving an issue of impairment must adopt an impairment rating using the impairment rating guidelines described by Section 408D.104, rather than 408.124. Makes conforming changes.

SECTION 1.155. Amends and transfers Section 413.021, Labor Code, to Subchapter A, Chapter 408, Labor Code, renumbered as Section 408.009, Labor Code, as follows:

Sec. 408.009. RETURN-TO-WORK COORDINATION SERVICES. Requires the insurance carrier to evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. Requires case managers who are appropriately licensed to practice in the State of Texas, when necessary, to be used. Prohibits claims adjusters from being used as case managers. Makes conforming and nonsubstantive changes.

SECTION 1.156. Amends Section 408.041(c), Labor Code, to make conforming changes.

SECTION 1.157. Amends Sections 408.042(d), (f), and (g), Labor Code, to make conforming changes.

SECTION 1.158. Amends Section 408.043(c), Labor Code, to make conforming changes.

SECTION 1.159. Amends Section 408.0445, Labor Code, to make conforming changes.

SECTION 1.160. Amends Sections 408.0446(d) and (e), Labor Code, to make conforming changes.

SECTION 1.161. Amends Section 408.045, Labor Code, to make a conforming change.

SECTION 1.162. Amends Section 408.047, Labor Code, as follows:

Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) Provides that on or after October 1, 2005, the state average weekly wage for a state fiscal year is the amount

computed by the Texas Workforce Commission under Section 207.002 as the average weekly wage in covered employment in this state. Deletes existing text providing that the state average weekly wage for the fiscal year beginning September 1, 2003, and ending August 31, 2004, is \$537, and for the fiscal year beginning September 1, 2004, and ending August 31, 2005, is \$539.

(b) Provides that the state average weekly wage for the period beginning September 1, 2005, and ending September 30, 2005, is \$539. Provides that this subsection expires on October 1, 2005.

SECTION 1.163. Amends Sections 408.061(a), (b), (c), (d), (e), and (f), Labor Code, to prohibit specific weekly income benefits from exceeding certain percentages of the state average weekly wage rounded to the nearest whole dollar. Requires TDI to compute the maximum weekly income benefits for each state fiscal year not later than October, rather September, 1 of each year.

SECTION 1.164. Amends Section 408.062(b), Labor Code, to make a conforming change.

SECTION 1.165. Amends Section 408.063(a), Labor Code, to make a conforming change.

SECTION 1.166. Amends Section 408.202, Labor Code, to make a conforming change.

SECTION 1.167. Amends Sections 408.221(a), (b), (d)-(g), and (i), and adds Subsection (c), Labor Code,

(a)-(b) Makes conforming changes.

(c) Provides that an insurance carrier that seeks judicial review under Subchapter G, Chapter 410, of a final decision of a commission appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits is liable for reasonable and necessary attorney's fees as provided by Subsection (d) incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues contained in Section 410.302 (Limitation of Issues). Requires the court, if the carrier appeals multiple issues and the claimant prevails on some, but not all, of the issues appealed, to apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. Requires the court, in making that apportionment, to consider the factors prescribed by Subsection (d). Provides that this subsection does not apply to attorney's fees for which an insurance carrier may be liable under Section 408.147 (Contest of Supplemental Income Benefits by Insurance Carrier; Attorney's Fees). Provides that an award of attorney's fees under this subsection is not subject to commission rules adopted under Subsection (f). [Subsection (f) transfers rulemaking authority from TWC to the commissioner, as in other sections of the bill.]

(d)-(i) Makes conforming changes.

SECTION 1.168. Amends Section 408.222, Labor Code, to make conforming changes.

#### PART 10. ADOPTION OF CHAPTERS 408A, 408B, AND 408C, LABOR CODE

SECTION 1.201. Redesignates the heading to Subchapter B, Chapter 408, Labor Code, and Sections 408.004, 408.0041, 408.006-408.008, 408.021, 408.026, and 408.028-408.030, Labor Code, as Chapter 408A, Labor Code, and amends them as follows:

#### CHAPTER 408A. WORKERS' COMPENSATION BENEFITS: GENERAL PROVISIONS REGARDING MEDICAL BENEFITS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 408A.001. ENTITLEMENT TO MEDICAL BENEFITS. Redesignates existing text from Section 408.021.



Sec. 408A.002. REQUIRED MEDICAL EXAMINATIONS; ADMINISTRATIVE VIOLATION. Redesignates existing text from Section 408.004. (a) Authorizes the commissioner to require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee or similar issues.

(b)-(e) Makes conforming changes.

(f) Requires the commissioner to adopt rules as necessary to implement this subsection under which TDI makes a reasonable attempt to obtain the treating doctor's opinion before the commissioner or a hearings officer makes a determination regarding the entry of an interlocutory order under this subtitle requiring continuation of benefits. Deletes existing text requiring TWC to hold an expedited benefit review conference upon notification of an insurance carrier's notice of suspension. Makes conforming changes.

(g) Makes no changes to this section.

Sec. 408A.003. DESIGNATED DOCTOR EXAMINATION. Redesignates text from existing Section 408.0041.

(a)-(c) Makes conforming changes.

(d) Authorizes the designated doctor who has previously treated or examined the injured employee for the work-related injury or with peer reviewers identified by the insurance carrier. Makes conforming changes.

(e) Authorizes an employer to make a bona fide offer of employment subject to Sections 408D.053(e) and 408D.156(c), rather than Sections 408.103(e) and 408.144(c), respectively. Makes a conforming change.

(f)-(h) Makes conforming changes.

(i) Authorizes the insurance carrier to suspend or reduce the payment of temporary income benefits immediately upon written notice to the employee, if the report of a designated doctor indicated that an employee has reached maximum medical improvement. Requires the written notice to include a clear statement of the employee's right to appeal the determination of the designated doctor.

Sec. 408A.004. MENTAL TRAUMA INJURIES. Redesignates existing text from Section 408.006. Makes no changes to this section.

Sec. 408A.005. DATE OF INJURY FOR OCCUPATIONAL DISEASE. Redesignates existing text from Section 408.008. Makes no changes to this section.

Sec. 408A.006. COMPENSABILITY OF HEART ATTACKS. Redesignates existing text from Section 408.028. Makes no changes to this section.

Sec. 408A.007. PHARMACEUTICAL SERVICES. Redesignates existing text from Section 408.028. (a) Requires a physician providing care to an injured employee under this subtitle to prescribe any necessary medications, in accordance with applicable state law and as provided by Subsection (b) for the employee.

(b) Requires the commissioner, by rule, to develop a closed, rather than open, formulary under Section 413.011 that requires the use of generic pharmaceutical medications and clinically appropriate over-the counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law.

(c)-(e) Makes conforming changes.

Sec. 408A.0071. FEE SCHEDULE FOR PHARMACY AND PHARMACEUTICAL SERVICES. (a) Requires TDI, by rule, notwithstanding any other provision of this title, to adopt a specific fee schedule for pharmacy and pharmaceutical services for reimbursement rates, adequate access to medications and services, minimize costs to employees and insurance carriers, and fees for medications and pharmacy services.

(b) Requires insurance carriers and health care provider networks to reimburse for pharmacy benefits and services using the fee schedule as developed by this section, or at rates negotiated in advance by contract.

Sec. 408A.008. NURSE FIRST ASSISTANT SERVICES. Redesignates existing text from Section 408.029. Makes no changes to this section.

Sec. 408A.009. REPORTS OF PHYSICIAN VIOLATIONS. Redesignates existing text from Section 408.030. Makes conforming changes.

Sec. 408A.010. SPINAL SURGERY. Redesignates existing text from Section 408.026. Makes a conforming change.

Sec. 408A.011. UNDERSERVED AREAS. Requires the commissioner, by rule, to identify areas of this state in which access to health care providers is less available and to adopt appropriate standards and guidelines regarding health care, including any use of provider networks, in those areas.

Sec. 408A.012. ELECTRONIC BILLING REQUIREMENTS. (a) Requires the commissioner, by rule, to establish requirements regarding the electronic submission and processing of medical bills by health care providers to insurance carriers.

(b) Requires insurance carriers to accept medical bills submitted electronically by health care providers in accordance with commissioner rule.

(c) Authorizes the commissioner to adopt rules, but not before January 1, 2008, regarding the electronic payment of medical bills by insurance carriers to health care providers upon sufficient evidence that such payments can be made without undue burden to carriers.

Sec. 408A.013. PEER REVIEW. (a) Requires the commissioner to adopt rules regarding doctors who perform peer review functions for insurance carriers. Authorizes those rules to include standards for peer review, imposition of sanctions on doctors performing peer review functions, including restriction, suspension, or removal of the doctor's ability to perform peer review on behalf of insurance carriers in the workers' compensation system, and other issues important to the quality of peer review, as determined by the commissioner.

(b) Requires a doctor who performs peer review under this section to hold the appropriate professional license issued by this state.

[Reservation of Sections 408A.014-408A.050 is presumed.]

## SUBCHAPTER B. PAYMENT OF CLAIMS TO HEALTH CARE PROVIDERS

Sec. 408A.051. CARRIER NOTICE. (a) Requires an insurance carrier to simultaneously notify TDI, the injured employee, any representative of the injured employee, and the injured employee's treating doctor, and all other known health care providers providing direct services to the employee, of any disputes regarding compensability or extent of injury.

(b) Prohibits an insurance carrier from denying payment on the ground of compensability for health care services provided before the date of the notification required under Subsection (a).

(c) Provides that if the insurance carrier successfully contests compensability, the carrier is liable for health care provided before the notice in Subsection (a) up to a maximum of \$7,000.

Sec. 408A.052. RECOVERY FROM HEALTH INSURER. (a) Provides that if the injury is finally determined to be noncompensable, the health care provider is entitled to recover from the injured employee's group health insurance company, if any, to the extent covered under the employee's health benefit plan.

(b) Prohibits a health care provider from filing a claim with the injured employee's group health insurance company plan until final adjudication under the workers' compensation system of the compensability under Subtitle A of the services provided by the health care provider.

(c) Authorizes the accident insurance carrier, health insurance carrier, or other person to recover the amounts paid for such services from the workers' compensation insurance carrier, if an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which a workers' compensation insurance carrier denies compensability, and the injury is later determined to be compensable.

Sec. 408A.053. SUBMISSION OF CLAIM BY PROVIDER. (a) Requires a health care provider to submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Provides that failure by the health care provider to timely remit a claim constitutes a forfeiture of the provider's right to reimbursement on the claim.

(b) Requires the insurance carrier to review the provider's claim not later than the 65th day after the date on which the claim is received by the carrier. Authorizes the carrier to request further documentation necessary to clarify the provider's charges at any time during the 65-day period. Requires the provider to provide the requested clarification not later than the 15th day after the date of receipt of the carrier's request, if the insurance carrier requests clarification under this subsection.

Sec. 408A.054. DEADLINE FOR CARRIER ACTION. (a) Requires the insurance carrier to pay, reduce, deny, or determine to audit the health care provider's claim not later than the 65th day after the date of receipt by the carrier of the provider's claim.

(b) Requires the carrier, if the insurance carrier elects to audit the claim, to complete the audit not later than the 160th day after the date of receipt by the carrier of the provider's claim, and, not later than the 160th day after the receipt of the claim, to make a determination regarding the relationship of the health care services provided to the compensable injury, the extent of the injury, and the medical necessity of the services provided.

(c) Requires the insurance carrier, upon choosing to audit the claim, to pay the health care provider 85 percent of the amount for the health care service established under the fee guidelines, if the health care service is not provided through a provider network under Chapter 408B, or the amount of the contracted rate for that health care service, if the health care service is provided through a provider network under Chapter 408B.

(d) Requires the insurance carrier to pay the health care provider the remaining 15 percent of the claim not later than the 160th day after the receipt of the claim, if the health care services provided are determined to be appropriate.

(e) Provides that failure of the insurance carrier under Subsection (a) to pay, reduce, deny, or notify the health care provider of the intent to audit the claim by the 65th day after the date of receipt by the carrier of the provider's claim constitutes a Class C administrative violation.

(f) Provides that failure of the insurance carrier under Subsection (b) to pay, reduce, or deny an audited claim by the 160th day after the date of receipt of the claim constitutes a Class C administrative violation.

Sec. 408A.055. REIMBURSEMENT BY HEALTH CARE PROVIDER. (a) Requires the insurance carrier to notify the health care provider in writing of the carrier's decision and demand a refund by the provider of the portion of payment on the claim that was received by the provider for the inappropriate services, if the health care services provided are determined to be inappropriate.

(b) Authorizes the health care provider to appeal the insurance carrier's determination under Subsection (a). Requires the provider to file an appeal under this subsection with the insurance carrier not later than the 45th day after the date of the insurance carrier's request for the refund. Requires the insurance carrier to act on the appeal not later than the 45th day after the date on which the provider files the appeal.

(c) Requires a health care provider to reimburse the insurance carrier for payments received by the provider for inappropriate charges not later than the 65th day after the date of the carrier's notice. Provides that failure by the health care provider to timely remit payment to the carrier constitutes a Class D administrative violation.

Sec. 408A.056. MEDICAL EXAMINATION BY TREATING DOCTOR TO DEFINE COMPENSABLE INJURY. (a) Requires TDI to require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier.

(b) Requires a medical examination under this section to be performed by the employee's treating doctor. Requires the insurance carrier to pay the costs of the examination.

(c) Requires the treating doctor, after the medical examination is performed, to submit to the insurance carrier a report that details all injuries and diagnoses related to the compensable injury, on receipt of which the insurance carrier is required to accept all injuries and diagnoses as related to the compensable injury or to dispute the determination of specific injuries and diagnoses.

(d) Requires any treatment for an injury or diagnosis that is not accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) to be preauthorized before treatment is rendered. Authorizes the injured employee or affected health care provider to file an extent of injury dispute, if the insurance carrier denies preauthorization because the treatment is for an injury or diagnosis unrelated to the compensable injury.

(e) Prohibits any treatment for an injury or diagnosis that is accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) from being reviewed for compensability, but authorizes a review for medical necessity.

(f) Authorizes the commissioner to adopt rules relating to requirements for a report under this section, including requirements regarding the contents of a report.

SECTION 1.202. Amends Subtitle A, Title 5, Labor Code, by adding Chapters 408B and 408C, transferring Sections 408.022 and 408.025, Labor Code, to Chapter 408C, and renumbering those sections as Section 408C.002 and 408C.004, respectively, and amending those sections as follows:

CHAPTER 408B. WORKERS' COMPENSATION BENEFITS: REQUIREMENTS  
FOR INSURANCE CARRIERS THAT USE PROVIDER NETWORKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 408B.001. USE OF PROVIDER NETWORK: GENERAL REQUIREMENTS FOR INSURANCE CARRIER. (a) Authorizes an insurance carrier to arrange for health care services for injured employees through a provider network certified under this chapter. Provides that the obligations and requirements imposed under this chapter apply only to an insurance carrier that arranges for health care services for injured employees through a certified provider network and services provided for compensable injuries for which the insurance carrier is liable under this chapter.

(b) Prohibits a person from operating a provider network in this state unless the person holds a certificate issued under this chapter and under rules adopted by the commissioner.

(c) Prohibits a person from performing any act of a provider network except in accordance with the specific authorization of this chapter or rules adopted by the commissioner.

Sec. 408B.002. USE OF PROVIDER NETWORK PROVIDERS. (a) Provides that except for emergency care, or network-approved referrals, if an insurance carrier elects to use a certified provider network, an injured employee who is covered by that insurance carrier is required to obtain treatment for a compensable injury within the provider network if the injured employee lives within the provider network's service area.

(b) Requires a provider network, except for emergencies and out-of-network referrals, to provide or arrange for health care services only through providers or provider groups that are under contract with or are employed by the provider network.

(c) Requires a carrier, notwithstanding Subsections (a) and (b), to provide and reimburse under TDI rule health care related to the compensable injury for an injured employee who is covered by a network but lives outside the service area in accordance with all provisions of this code, except this chapter.

(d) Prohibits a network provider who has treated an employee from serving as a designated doctor or perform a required medical examination for that employee for the compensable injury for which the provider provided treatment.

(e) Prohibits prescription medication or services, as defined by Section 401.011(19)(E), notwithstanding any other provision of this chapter, from being delivered through a workers' compensation health care network. Requires prescription medication and services to be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of TDI.

Sec. 408B.003. GENERAL PROVIDER NETWORK REQUIREMENTS. (a) Requires each provider network certified under this chapter to be a fee-for-service network designed to improve the quality and reduce the cost of health care provided to injured employees.

(b) Provides that insurance carriers and the provider networks are prohibited from using capitation as a form of payment for contracted providers.

(c) Provides that a provider network is not an insurer and prohibits the use of specific words in the provider network's name, contracts, or informational literature.

Sec. 408B.004. INSURANCE CARRIER LIABILITY FOR OUT-OF-NETWORK HEALTH CARE. (a) Provides that an insurance carrier that establishes or contracts with a provider network is not liable for all or part of the cost of a health care service related to the compensable injury, other than emergency services, if the employee lives within a service area of any network established by the insurance carrier or with which the insurance carrier has a contract and obtains the health care service without provider network approval from specific entities.

(b) Provides that an insurance carrier that establishes or contracts with a provider network is liable for health care services related to a compensable injury provided by non-network providers to an injured employee who does not live within the geographical service area. Provides that a health care provided by a non-network provider is not subject to the provisions of this chapter other than this section, and is subject to all other provisions of this code.

Sec. 408B.005. RESTRAINT OF TRADE. (a) Provides that a provider network that contracts with a provider or providers practicing individually or as a group is not, because of the contract or arrangement, considered to have entered into a conspiracy in restraint of trade in violation of Chapter 15 (Monopolies, Trusts, and Conspiracies in Restraint of Trade), Business & Commerce Code.

(b) Provides that notwithstanding any other law, a person who contracts under this chapter with one or more providers in the process of conducting activities that are permitted by law but that do not require a certificate of authority or other authorization under this code or the Insurance Code is not, because of the contract, considered to have entered into a conspiracy in restraint of trade in violation of Chapter 15, Business & Commerce Code.

Sec. 408B.006. AUTHORITY OF COMMISSIONER. Provides that except as expressly provided by this chapter, the powers and duties created by Chapter 36, Insurance Code, Article 21.58D (Standardizes Form for Verification of Certain Credentials), Insurance Code, and Sections 843.080 (Modification or Amendment of Application Information), 843.082 (Requirements for Approval of Application), 843.102 (Health Maintenance Organization Quality Assurance), and 843.151 (Rules), Insurance Code, do not apply to this chapter.

Sec. 408B.007. RULES. Authorizes the commissioner to adopt rules as necessary to implement this chapter.

[Reservation of Sections 408B.008-408B.050 is presumed.]

#### SUBCHAPTER B. GENERAL POWERS AND DUTIES OF INSURANCE CARRIER AND PROVIDER NETWORK

Sec. 408B.051. NOTICE TO EMPLOYEES REQUIRED. (a) Requires an insurance carrier that uses a certified provider network to provide to the employer, and to ensure that the employer provides to the employer's employees, notice of the provider network requirements, including all information required by Section 408B.052. Requires the insurance carrier to require the employer to obtain a signed acknowledgment from each employee, written in any language common to the employer's employees, that the employee has received information concerning the provider network and the provider network's requirements, and post notice of the provider network's requirements at each place of employment.

(b) Requires the insurance carrier to ensure that an employer provides to each employee hired after the date notice is given under Subsection (a) the notice and

information required under that subsection not later than the third day after the date of hire.

(c) Requires the insurance carrier to require the employer to notify an injured employee of the provider network requirements at the time the employer receives actual or constructive notice of an injury.

(d) Provides that an injured employee is not required to comply with the provider network requirements until the employee receives the notice required under Subsection (a).

(e) Requires each self-insured employer, employer group, and governmental entity that qualifies as an insurance carrier and establishes or contracts with a certified provider network to also comply with the notice obligations established under Subsection (a).

Sec. 408B.052. CONTENTS OF NOTICE. (a) Requires the written notice required under Section 408B.051(a) to be written in plain language and in a readable and understandable format, and to be provided in English, Spanish, and any additional language common to an employer's employees.

(b) Requires the notice to include specific information, in a clear, complete, and accurate format.

(c) Requires that nothing in this title prohibits an insurance carrier that uses a certified provider network to provide to each covered employee a workers' compensation coverage identification card.

Sec. 408B.053. ACCESS TO CARE; APPLICABILITY TO CLAIMS. (a) Requires all claims, including claims with a date of injury before, on, or after September 1, 2005, if the insurance carrier has opted to offer workers' compensation benefits through a certified provider network, to be administered under the provisions of this subchapter.

(b) Requires the carrier, except as provided by Section 408B.054, if the insurance carrier is responsible for a claim and provides benefits through a certified provider network, to notify an injured employee at the time a claim is filed that the injured employee must select a treating doctor and obtain health care services from participating providers in accordance with the requirements of Subchapter G.

(c) Requires the carrier, except as provided by Section 408B.054, if the insurance carrier responsible for the claim does not arrange for health care services through a certified provider network on the date of injury, but arranges for health care services through a certified provider network at a later date, to notify the injured employee that, not later than the 30th day after the date on which the notice is sent, the injured employee is required to select a treating doctor and obtain health care services from participating providers in accordance with the requirements of Subchapter G. Authorizes the carrier to assign the injured employee a treating doctor within the certified provider network, if the injured employee fails to select a treating doctor on or before the 30th day after the date of receipt of the notice.

Sec. 408B.054. PRE-EXISTING RELATIONSHIPS; CONTINUITY OF CARE. (a) Defines "acute condition" and "terminal illness."

(b) Provides that this section applies to medical benefits regarding an existing claim in which the insurance carrier has decided to offer coverage solely through a workers' compensation certified provider network or treatment is being provided by the insurance carrier through a workers' compensation certified provider network and the network contract with the injured employee's treating doctor is being terminated.

(c) Requires the insurance carrier to provide for completion of treatment by non-participating providers for injured employees who are being treated by a treating doctor for specific conditions, illnesses, surgical procedures, or other procedures.

(d) Requires completion of treatment to be provided for the duration of a terminal illness.

(e) Requires the insurance carrier to notify the injured worker of the determination regarding the completion of treatment, following the determination of the injured employee's medical condition in accordance with Subsection (c). Requires the notification to be sent to the address at which the employee lives, with a copy of the letter sent to the non-participating provider.

(f) Requires the injured employee, if disputing the medical determination under Subsection (c), to request a report from the injured employee's non-participating provider that addresses whether the injured employee falls within any of the conditions set forth in Subsection (c).

(g) Requires the dispute regarding the medical determination made by the non-participating provider, upon objection from specific individuals to the medication determination by the non-participating provider, to be resolved by use of the carrier's internal reconsideration process, to be followed, if necessary, by review by an independent review organization. Requires the non-participating provider to have the burden of proving that one of the conditions set forth in Subsection (c) exists.

(h) Requires the independent review organization to order transfer of the care to a treating doctor and other participating providers in accordance with Subchapter G if the documented evidence fails to establish that one of the conditions set forth in Subsection (c) exists.

(i) Requires the transfer of care to go forward during the dispute resolution process if the non-participating provider agrees with the carrier's determination that the injured employee's medical condition does not meet the conditions set forth in Subsection (c).

(j) Prohibits the transfer of care from going forward until the dispute is resolved, if the non-participating provider does not agree with the carrier's determination that the injured employee's medical condition does not meet the conditions set forth in Subsection (c). Provides that the non-participating provider's performed and prescribed medical services are subject to carrier preauthorization while the dispute is pending.

Sec. 408B.0545. TREATMENT BY PRIMARY CARE PHYSICIAN UNDER CHAPTERS 843 AND 1301, INSURANCE CODE. (a) Requires the commissioner, notwithstanding any other provision of this chapter, to adopt rules to allow an injured employee required to receive health care services within a network to select a specific physician.

(b) Requires a physician selected by an employee under this section to agree and comply with specific terms, conditions, and provisions of this chapter.

(c) Provides that health care services provided by a physician under this section are considered to be network services and are subject to the provisions of this chapter.

(d) Requires any change of treating doctor requested by an injured employee being treated by a physician under this section to be to a network doctor and provides that the request is subject to the requirements of this chapter.



Sec. 408B.055. ACCESSIBILITY AND AVAILABILITY REQUIREMENTS. (a) Requires all services provided under this chapter to be provided by a provider who holds an appropriate license, unless the provider is exempt from license requirements. Requires each provider network to ensure that the provider network's provider panel includes a broad choice of health care providers, including an adequate number of treating doctors and specialists, to be available and accessible to employees 24 hours a day, seven days a week, within the provider network's service area. Requires an adequate number of the treating doctors and specialists to have admitting privileges at one or more provider network hospitals located within the provider network's service area to ensure that any necessary hospital admissions are made.

(b) Requires hospital services to be available and accessible 24 hours a day, seven days a week, within the provider network's service area. Requires the provider network to provide for the necessary hospital services by contracting with general, special, and psychiatric hospitals.

(c) Requires emergency care to be available and accessible 24 hours a day, seven days a week, without restrictions as to where the services are rendered.

(d) Requires a provider network to arrange for services, including referrals to specialists, except for emergencies, to be accessible to employees on a timely basis on request, but not later than the 10th day.

(e) Requires each provider network to provide services that are sufficiently accessible and available as necessary to ensure that the distance from any point in the provider network's service area to a point of service by a treating doctor or general hospital is not greater than a specific distance. Requires the provider network to file an access plan with TDI in accordance with Subsection (f) for portions of the service area in which the provider network identifies as noncompliant with this subsection.

(f) Requires the provider network to submit an access plan, as required by commissioner rules, to TDI for approval at least 30 days before implementation of the plan, if any health care service or a provider network provider is not available to an employee within the distance specified by Subsection (e) for specific reasons.

(g) Authorizes the provider network to make arrangements with providers outside the service area to enable employees to receive a higher level of skill or specialty not available within the provider network service area. Requires the commissioner to establish, by rule, what constitutes a higher level of skill necessary for a carrier to use providers outside the geographic service area. Requires the rules to include a required adequacy review by the commissioner.

(h) Prohibits the provider network from being required to expand services outside the provider network's service area to accommodate employees who live outside the service area.

Sec. 408B.056. TELEPHONE ACCESS. (a) Requires each provider network to have appropriate personnel reasonably available through a toll-free telephone service for a specific amount of time, in both time zones, to discuss certain issues concerning employee care and requests for information.

(b) Requires a provider network to have a telephone system capable of accepting, recording, or providing instructions to incoming calls during other than normal business hours. Requires the provider network to respond to those calls not later than two business days after a certain date.

[Reservation of Sections 408B.057-408B.100 is presumed.]

#### SUBCHAPTER C. CERTIFICATION OF PROVIDER NETWORKS

Sec. 408B.101. APPLICATION FOR CERTIFICATION. Requires an insurance carrier that seeks to offer workers' compensation benefits through a certified provider network to use a specific TDI certificate application to determine the adequacy of the provider network to provide benefits under this subtitle.

Sec. 408B.102. CONTENTS OF APPLICATION. Requires each certificate application to include specific information regarding the insurance carrier's service area, a list of all contracted providers, descriptions of compensation arrangements, programs, and procedures, and any other information determined necessary by the commissioner to establish the adequacy and economic stability of the provider network.

Sec. 408B.103. COMMISSIONER ACTION ON APPLICATION. (a) Requires the commissioner to approve or disapprove an application for certification of a provider network not later than the 60th day after the date the completed application is received by TDI. Sets forth requirements for an application to be considered complete.

(b) Authorizes additional information requested by the commissioner under Subsection (a) to include information derived from an on-site quality-of-care examination.

(c) Requires TDI to notify the applicant of any deficiencies in the application and authorizes TDI to allow the applicant to request additional time to revise the application, in which case the 60-day period for approval or disapproval is tolled. Authorizes the commissioner to grant or deny requests for additional time at the commissioner's discretion.

(d) Requires an order issued by the commissioner disapproving an application to specify in what respects the application does not comply with applicable statutes and rules. Authorizes an applicant whose application is disapproved to request a hearing within a specific time from the date of the commissioner's disapproval order. Provides that the hearing is a contested case hearing under Chapter 2001, Government Code.

Sec. 408B.104. TERM OF CERTIFICATE. Provides that a certificate issued under this subchapter is valid until revoked or suspended by the commissioner.

[Reservation of Sections 408B.105-408B.150 is presumed.]

#### SUBCHAPTER D. GENERAL REQUIREMENTS RELATING TO CONTRACTS

Sec. 408B.151. GENERAL CONTRACT REQUIREMENTS. (a) Requires each carrier-network contract or participating provider contract to comply with this subchapter, as applicable.

(b) Requires an insurance carrier, before entering into a carrier-network contract, to make a reasonable effort to evaluate the provider network's current and prospective ability to provide or arrange for health care services through participating providers, and to perform any functions delegated to the provider network in accordance with the provisions of this section.

(c) Authorizes an insurance carrier and a provider network to negotiate the functions to be delegated to the provider network. Prohibits a carrier from transferring risk through a contract with a provider network.

(d) Provides that a provider network is not required to accept an application for participation from a health care provider who otherwise meets the requirements specified in this chapter for participation, if the provider network determines it has contracted with a sufficient number of qualified health care providers.

(e) Provides that an insurance carrier or certified provider network is not liable for any damages or losses alleged by the health care provider arising from a decision to withhold designation as a participating provider. Provides that no cause of action related to a refusal to include a provider in a certified provider network may be maintained against an insurance carrier or the certified provider network.

(f) Requires a provider network that employs health care providers to obtain a written agreement that the provider acknowledges and agrees to the contractual provisions under this subchapter.

Sec. 408B.152. CARRIER-NETWORK CONTRACT REQUIREMENTS. Requires a carrier-network contract to include specific statements, descriptions, provisions, acknowledgements, and contingency plans.

Sec. 408B.153. CONTRACTS WITH PARTICIPATING PROVIDERS. Requires a carrier-network contract and a participating provider contract to include specific provisions, requirements, clauses, statements, mechanisms, and any other provisions required by the commissioner, by rule.

Sec. 408B.154. APPLICATION OF PROMPT PAY REQUIREMENTS. Provides that the prompt payment of health care services provided by the carrier or certified provider network is subject to Subchapter B, Chapter 408A.

Sec. 408B.155. REIMBURSEMENT. (a) Provides that the amount of reimbursement for services provided by a provider network provider is determined by the contract between the provider network and the provider or group of providers.

(b) Prohibits the insurance carrier, provider network, the provider network's agent, or other representative from denying payment, except for reasons other than medical necessity, if a provider network has preauthorized a health care service or as a result of an emergency.

(c) Requires a carrier to reimburse out-of-network providers who provide health care related to a compensable injury to an injured employee who does not live within a service area of any network established by the insurance carrier or with which the insurance carrier has a contract, who provide emergency care, or whose referral by a provider network provider has been approved by the provider network either at a rate that is agreed to by both the provider network and the out-of-network provider, or in accordance with Section 413.011.

(d) Provides that subject to Subsection (a), billing by, and reimbursement to, contracted and out-of-network providers is subject to standard reimbursement requirements as provided by this subtitle and applicable rules of the commissioner, as consistent with this subtitle. Prohibits this subsection from being construed to require application of rules of the commissioner regarding reimbursement, if application of those rules would negate reimbursement amounts negotiated by the provider network.

(e) Requires an insurance carrier to notify, in writing, a network provider if the carrier contests the compensability of the injury for which provided health care services. Prohibits a carrier from denying payment for health care services by a provider network on the grounds that the injury was not compensable. Provides that the carrier is liable for a maximum of \$7,000 for health care services that were provided before the notice required in this subsection was given.

(f) Authorizes the carrier to recover the amounts paid for health care services from the employee's accident or health insurance carrier, or any other person who may be obligated for the cost of the health services, if the carrier contests compensability of an injury and the injury is determined not to be compensable.

(g) Authorizes the accident or health insurance carrier or other person to recover the amounts paid for specific services from the workers' compensation insurance carrier, if a specific entity has paid for services that are denied compensability, and the injury is later determined to be compensable.

Sec. 408B.156. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT. (a) Prohibits an insurance carrier or third-party administrator from reimbursing a doctor or other health care practitioner, an institutional provider, or an organization of doctors and health care providers on a discounted fee basis for services that are provided to an injured employee unless specific guidelines are met.

(b) Prohibits a party to a carrier-network contract from selling, leasing, or otherwise transferring information regarding the payment or reimbursement terms of the contract without the express authority of and prior adequate notification to the other contracting parties. Provides that this subsection does not affect the authority of the commissioner under this code to request and obtain information.

(c) Sets forth penalties for an insurance carrier or third-party administrator who violates this section.

[Reservation of Sections 408B.157-408B.200 is presumed.]

#### SUBCHAPTER E. MONITORING PLAN; QUALITY IMPROVEMENT

Sec. 408B.201. MONITORING PLAN REQUIRED. Requires each insurance carrier (carrier), or entity contracting with a carrier, that enters into carrier-network contracts or participating provider contracts to monitor the acts of provider networks and participating providers through a monitoring plan. Requires the monitoring plan to be set forth in each carrier-network contract and participating provider contract, and to contain specific minimum requirements.

Sec. 408B.202. COMPLIANCE WITH MONITORING PLAN. (a) Requires an insurance carrier that becomes aware of any information indicating that specific entities are not operating in accordance with the monitoring plan to notify the pertinent entities of the findings, in writing, and request a written explanation including specific information.

(b) Requires a provider network or participating provider to respond to a request from a carrier under Subsection (a) in writing not later than the 30th day after the date the request is received. Requires the carrier to reasonably assist the participating provider or provider network in its efforts to correct any failure to comply with the monitoring plan or any hazardous condition that forms the basis of the carrier's findings.

(c) Requires the carrier to notify the commissioner and provide TDI with copies of pertinent documents, upon the belief that a provider network or participating provider has corrected its failure to comply with the monitoring plan or any hazardous condition by the 90th day after the date the request under Subsection (a) is received.

(d) Requires the commissioner or the commissioner's designated representative to examine the matters contained in the notice or complaint under Subsection (c), as well as any other matters relating to the ability to meet its responsibilities in connection with any function performed by the provider network or participating provider.

(e) Requires TDI to report the results of the examination to pertinent entities and any action determined necessary to ensure that responsibilities under this chapter are met, and that the provider network can meet its responsibilities in connection with any function delegated by the carrier or performed by the provider network or any third party to which the provider network delegates a function.

(f) Requires the carrier to respond to the report and submit a corrective plan to TDI within 30 days after receiving the report.

(g) Authorizes the commissioner to order a carrier, regarding the examination and report previously discussed, to take any action determined necessary to ensure that the carrier can provide health care services under a workers' compensation insurance policy, including certain specific measures.

(h) Provides that a carrier-network contract or participating provider contract that is provided to TDI in connection with an examination under this section is confidential and is not subject to disclosure as public information under Chapter 552, Government Code.

Sec. 408B.203. QUALITY IMPROVEMENT PROGRAM. (a) Requires a carrier to develop and maintain an ongoing quality improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and services and to pursue opportunities for improvement. Requires the quality improvement program to include return-to-work and medical case management programs.

(b) Provides that the carrier is ultimately responsible for the quality improvement program (program) and requires the carrier to perform specific functions concerning the program.

(c) Requires the quality improvement committee to evaluate the overall effectiveness of the program.

(d) Requires the program to be continuous and comprehensive and to address both the quality of clinical care and the quality of services. Requires the carrier to dedicate adequate personnel, information systems, and resources program.

(e) Requires the carrier to develop a written description of the program that outlines the organizational structure, functional responsibilities, and design.

(f) Requires each carrier to implement a documented process for the credentialing of participating providers, in accordance with Section 408B.301.

(g) Requires the program to provide an effective peer review procedure for participating providers.

[Reservation of Sections 408B.204-408B.250 is presumed.]

#### SUBCHAPTER F. EXAMINATIONS

Sec. 408B.251. EXAMINATION OF PROVIDER NETWORK. Authorizes the commissioner or a designated representative, as often as considered necessary, to review the operations of a provider network to determine compliance with this chapter. Authorizes the review to include on-site visits to the provider network's premises. Requires the provider network to make all record relating to operations available to TDI during on-site visits.

Sec. 408B.252. EXAMINATION OF PROVIDER OR THIRD PARTY. Requires each provider, provider group, or third party which has contracted with the provider to make all portions of the books and records relevant to the relationship with the provider available to TDI, upon request of the commissioner or a designated representative.

[Reservation of Sections 408B.253-408B.300 is presumed.]

#### SUBCHAPTER G. NETWORK PROVIDERS

Sec. 408B.301. CREDENTIALING. Requires each carrier to have processes for credentialing participating providers that appropriately assess and validate the qualifications and other relevant information relating to the providers.

Sec. 408B.302. TREATING DOCTORS. (a) Requires an insurance carrier to, by contract, require treating doctors to provide, at a minimum, the functions and services for employees described by this section.

(b) Requires an injured employee to notify the employer or carrier of his or her selection of a treating doctor from a specific list for each injury.

(c) Sets forth doctors who do not constitute an initial choice of treating doctor.

(d) Requires the employee or participating employer to provide the selection of the treating doctor to the carrier not later than the fifth business day.

(e) Requires a treating doctor to participate in the medical case management process as required by the carrier or provider network, including participation in return-to-work planning.

Sec. 408B.303. CHANGE IN TREATING DOCTOR. (a) Provides that an employee is entitled to select an alternate treating doctor from a specific list if the employee is dissatisfied with the initial choice. Prohibits the provider network from denying an initial selection of an alternate treating doctor.

(b) Authorizes the employee to notify the carrier and request permission to select an alternate treating doctor if the employee is dissatisfied with their second choice.

(c) Requires the carrier to establish specific procedures and criteria to be used in authorizing an employee to select an alternate treating doctor.

(d) Prohibits a change of treating doctor from being made to secure a new impairment rating or medical report.

(e) Provides that denial of a request for a change of treating doctor is subject to the appeal process for a dispute filed under Subchapter C, Chapter 413.

(f) Sets forth the criteria that does not constitute the selection of an alternate treating doctor for the purposes of this section.

Sec. 408B.304. DESIGNATION OF SPECIALIST AS TREATING DOCTOR. Requires a provider network to ensure that an injured employee with a specific condition is authorized to apply to the network's medical director to use a non-primary care specialist who is a participating health care provider, using a specific application. Sets forth requirements to serve as an injured employee's treating doctor. Authorizes the employee to appeal the decision upon denial under this section.

Sec. 408B.305. REFERRALS. (a) Requires a treating doctor to provide health care services for the compensable injury and make referrals to specific entities if a service is not available within the certified provider network.

(b) Requires a carrier to allow referral to a non-participating provider, if the medically necessary treatment is not available within the network, on request of the treating doctor within a specific time, but not later than the seventh day of the request.

(c) Requires health care services by a non-participating provider to be arranged by the carrier or certified provider network.

(d) Requires health care services by a non-participating provider to be preauthorized by the carrier or certified provider network and prohibits services from being retrospectively reviewed for medical necessity.

(e) Authorizes the employee to appeal the decision to an independent review organization as provided by this subtitle, if the provider network denies the referral request.

Sec. 408B.306. TERMINATION OF CONTRACT. (a) Authorizes a certified provider network to decline to renew a contract with a participating provider for any reason. Requires a carrier to provide a written notice 90 days prior to termination.

(b) Authorizes a certified provider network to terminate a contract with a participating provider for cause in specific cases.

(c) On request, before the effective date of the termination and within a period not later than the 60th day after the date the carrier gave written notice under Subsection (a), Provides that a participating provider is entitled to request a review, within 60 days of receiving the notice, by an advisory review panel of the carrier's proposed termination, except in specific cases.

(d) Provides that the health care provider is entitled to an expedited review process by the carrier, upon request by the provider.

Sec. 408B.307. ADVISORY REVIEW PANEL. (a) Sets forth requirements of an advisory review panel.

(b) Requires the carrier to consider the recommendations of the panel, but provides that the carrier is not bound by those recommendations.

(c) Requires the carrier to provide a copy of the panel's recommendations and the carrier's subsequent determination, upon request of the affected participating provider.

Sec. 408B.308. NOTIFICATION OF INJURED EMPLOYEE. Requires the carrier to provide notification of the termination to each injured employee currently receiving care at least 30 days before termination, that notification of termination for reasons related to imminent harm is authorized to be given immediately.

[Reservation of Sections 408B.309-408B.350 is presumed.]

#### SUBCHAPTER H. UTILIZATION REVIEW

Sec. 408B.351. UTILIZATION REVIEW AGENT. Requires an entity performing utilization review, including an insurance carrier or a certified provider network, to be certified under Article 21.58A (Health Care Utilization Review Agents), Insurance Code.

Sec. 408B.352. GENERAL STANDARDS FOR UTILIZATION REVIEW; UTILIZATION REVIEW PLAN; SCREENING CRITERIA. (a) Requires an entity performing utilization review to use a specific utilization review plan which has been approved by a physician and conducted in accordance with standards developed with input from appropriate providers.

(b) Requires the utilization review plan to include specific lists and written procedures.

(c) Requires each provider network to use written medically acceptable screening criteria and review procedures established and periodically evaluated and updated with appropriate involvement from providers. Requires utilization review decision to be made in accordance with currently accepted medical or health care practices, taking into account any special circumstances or health care practices

that may require deviation from the norm stated in the screening criteria. Requires the screening to be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from the norm when justified on a case-by-case basis, and to only be used to determine whether to approve the requested treatment.

(d) Requires the utilization review plan to provide that denials of care be referred to an appropriate doctor to determine whether health care is medically reasonable and necessary. Prohibits treatment from being denied solely on the basis that it is not specifically addressed by the treatment guideline used by the carrier.

(e) Requires the written screening criteria and review procedures to be available for review and inspection as determined necessary by the commissioner or designated representative. Provides that any information obtained or acquired under the authority of this subtitle related to the screening criteria and the utilization review plan is confidential and privileged, and is not subject to disclosure under Chapter 552, Government Code, or to subpoena except to the extent necessary for the commissioner to enforce this chapter.

Sec. 408B.353. GENERAL STANDARDS FOR RETROSPECTIVE REVIEW; SCREENING CRITERIA. Requires an entity performing retrospective review to use written screening criteria established and periodically updated with appropriate involvement from physicians, including practicing physicians, and other health care providers. Requires the insurance carrier or provider network's system for retrospective review to be under the direction of a physician, except as provided by this subtitle.

Sec. 408B.354. PERSONNEL. (a) Requires personnel employed by or under contract with a carrier or a certified provider network to perform utilization review or retrospective review to be appropriately trained and qualified and, if applicable, appropriately licensed in the State of Texas. Requires personnel who obtain information regarding an injured employee's specific medical condition, diagnosis, and treatment options or protocols directly from the treating doctor or other health care provider, either orally or in writing, and who are not doctors to be nurses, physician assistants, or other health care providers qualified to provide the service requested by the provider. Prohibits this subsection from being interpreted to require personnel who perform only clerical or administrative tasks to have the qualifications prescribed by this subsection.

(b) Prohibits a carrier or a provider network from permitting or providing compensation or any thing of value to an employee or agent of specific entities, or setting performance standards based on specific guidelines, in a manner inconsistent with the requirements of this subchapter.

(c) Requires a utilization review agent that uses doctors to perform reviews of health care services provided under this subtitle, notwithstanding Section 4(h), Article 21.58A, Insurance Code, to use doctors appropriately licensed in this state to perform those reviews. Authorizes the physician to be employed by or under contract to the carrier or provider network.

Sec. 408B.355. NOTICE OF ADVERSE DETERMINATIONS; PREAUTHORIZATION REQUIREMENTS. (a) Requires each carrier or provider network to notify the employee or appropriate representative and the requesting provider of a determination made in a utilization review or retrospective review.

(b) Requires the notification of an adverse determination by the provider network to include specific information.

(c) Requires the insurance carrier or provider network to specify which health care treatments or services provided require preauthorization or concurrent review. Requires those treatments to include the preauthorization requirements in Section 413.014. Provides that treatments and services for a medical emergency do not require preauthorization. Requires the appropriate entity to issue and



transmit a determination indicating approval or denial of the health care services. Requires the provider network to respond to the preauthorization requests within the periods prescribed by this section.

(d) Requires the determination under Subsection (c) to be issued and transmitted within three days of receiving the request for services not described by Subsection (e) or (f).

(e) Requires the carrier or provider network to respond to the request within 24 hours, if the proposed services are for concurrent hospitalization care.

(f) Requires the carrier or provider network to transmit a determination within the time appropriate to the circumstances relating to the delivery of services and the condition of the patient within one hour of receiving the request, if the health care services involve poststabilization treatment or a life-threatening condition. Requires the carrier or provider network to provide the notification required under Subsection (a) to the employee or appropriate representative, upon issuing an adverse determination in response to such request.

(g) Requires the notification of adverse determination to include notification of the availability of independent review in the form prescribed by the commissioner for life-threatening conditions.

Sec. 408B.356. RECONSIDERATION OF ADVERSE DETERMINATION. (a) Requires each carrier or provider network to maintain and make available a written description of the reconsideration procedures involving an adverse determination. Requires the reconsideration procedures to be reasonable and include specific provisions and notifications.

(b) Requires the reconsideration procedures, in addition to the written request for reconsideration, to include a method for expedited procedures for denials of proposed health care services involving poststabilization treatment, life-threatening conditions, and for continued stays for hospitalized employees. Requires the procedures to include a review by a provider who has not previously reviewed the case and is of the same or similar specialty as the provider who typically manages the condition, procedure, or treatment under review. Requires the reconsideration period to be based on medical or clinical immediacy of the condition, procedure, or treatment, yet prohibits the period from exceeding one calendar day, upon receiving all information necessary to complete the reconsideration.

(c) Provides that an employee with a life-threatening condition is entitled to an immediate review by an independent review organization and is not required to comply with the procedures for a reconsideration of an adverse determination, notwithstanding Subsection (a) or (b).

Sec. 408B.357. DISPUTE RESOLUTION. Provides that fee disputes are subject to the provider network complaint process under Subchapter I. Provides that disputes regarding medical necessity are subject to Subchapter C, Chapter 413.

[Reservation of Sections 408B.358-408B.400 is presumed.]

#### SUBCHAPTER I. COMPLAINT RESOLUTION.

Sec. 408B.401. COMPLAINT SYSTEM REQUIRED. (a) Requires each provider network to implement and maintain a complaint system that provides reasonable procedures to resolve an oral or written complaint.

(b) Authorizes the provider network to require a complainant to file the complaint not later than 90 days after the event or occurrence that is the basis for the complaint.

(c) Requires the complaint system to include a process for the notice and appeal of a complaint.

(d) Authorizes the commissioner to adopt rules as necessary to implement this section.

Sec. 408B.402. COMPLAINT INITIATION AND INITIAL RESPONSE; DEADLINES FOR RESPONSE AND RESOLUTION. Requires the provider network to respond to the complainant within five business days after receiving the complaint, acknowledging the date of receipt and providing a description of the complaint procedures and deadlines. Requires the provider network to investigate and resolve a complaint within 30 days after receiving the complaint.

Sec. 408B.403. RECORD OF COMPLAINTS. (a) Requires each provider network to maintain a complaint and appeal log regarding each complaint. Requires the commissioner to adopt rules designating the classification of provider network complaints under this section.

(b) Requires each provider network to maintain a record of and documentation on each complaint, complaint proceeding, and action taken on the complaint until the third anniversary of the date the complaint was received.

(c) Provides that a complainant is entitled to a copy of the provider network's record regarding the complaint and any proceeding relating to that complaint.

(d) Authorizes TDI to review documentation maintained under this subchapter, including original documentation, regarding a complaint and action taken on the complaint during any investigation or examination of a provider network.

Sec. 408B.404. RETALIATORY ACTION PROHIBITED. Prohibits a provider network from engaging in any retaliatory action against an employer or employee due to the filing of a complaint against the provider network.

Sec. 408B.405. POSTING OF INFORMATION ON COMPLAINT PROCESS REQUIRED. (a) Requires a contract between a provider network and a provider to require a notice be posted in the provider's office informing injured employees on the process of resolving complaints with the provider network.

(b) Requires the notice under Subsection (a) to include TDI's toll-free telephone number for filing a complaint.

[Reservation of Sections 408B.406-408B.450 is presumed.]

#### SUBCHAPTER J. PROHIBITED PRACTICES.

Sec. 408B.451. NO INDUCEMENT TO LIMIT SERVICES. Prohibits an insurance carrier from using any financial incentive or making a payment to a health care provider that acts directly or indirectly as an inducement to limit services.

Sec. 408B.452. INDEMNIFICATION; LIABILITY. Prohibits an insurance carrier from requiring participating providers, by contract or otherwise, to indemnify the carrier for any liability in tort resulting from an act or omission of the carrier. Prohibits a carrier-network contract or participating provider contract from transferring liability for acts of one or more parties to any other parties. Requires each entity to only be responsible for its own acts, omissions, and decisions relative to the providing of health care services to employees.

Sec. 408B.453. NO LIMITATION ON PROVIDER COMMUNICATION. Prohibits an insurance carrier, as a condition of contract with a participating provider, from prohibiting, attempting to prohibit, or discouraging a participating provider from

discussing or communicating to an employee under the participating provider's care, information, or opinions regarding that employee's medical condition or treatment options.

Sec. 408B.454. MISLEADING INFORMATION. Prohibits an employer, insurance carrier, health care provider, employee, agent or representative of an employer or carrier from causing or permitting the use or distribution to employees of information that is intentionally untrue or misleading.

[Reservation of Sections 408B.455-408B.500 is presumed.]

#### SUBCHAPTER K. DISCIPLINARY ACTIONS

Sec. 408B.501. DETERMINATION OF VIOLATION; NOTICE. (a) Authorizes the commissioner or designated representative to notify the provider network, insurance carrier, person, or third party of the alleged violation and to compel the production of any documents or other information as necessary to determine whether the violation occurred, upon determining that a specific entity is in violation of this chapter, rules adopted by the commissioner under this chapter, or applicable provisions of the Insurance Code or rules adopted under that code.

(b) Authorizes the commissioner's designated representative to initiate the proceedings under this section.

(c) Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

Sec. 408B.502. DISCIPLINARY ACTIONS. Authorizes the commissioner to take specific actions upon determining that a certain entity described under Section 408B.501 has violated or is in violation of this chapter, rules adopted by the commissioner under this chapter, or the Insurance Code or rules adopted under that code.

#### CHAPTER 408C. REQUIREMENTS FOR NON-NETWORK HEALTH CARE AND OUT-OF-NETWORK HEALTH CARE

Sec. 408C.001. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to medical benefits provided through an insurance carrier that does not use a provider network.

Sec. 408C.002. SELECTION OF DOCTOR. Redesignates existing text from Section 408.022. (a) Provides that an employee is entitled to an initial choice of doctor as provided by this sections, except as provided in Subsection (f). Requires the injured employee to notify the employer of the choice of treating doctor within a specific time period, and requires the employer to notify the insurance carrier.

(b)-(c) Makes conforming changes.

(d) Makes no changes to this subsection.

(e) Provides that for the purposes of this section, a change of doctors required because of a change of address, rather than residence, by the employee is not a valid selection of an alternate doctor.

(f) Prohibits direct or indirect provision of health care under the workers' compensation Act and rules or receipt of remuneration under the Act and rules by a specific doctor, notwithstanding the repeal by this Act of Sections 408.023 and 408.0231, Labor Code.

Sec. 408C.003. TREATING DOCTOR DUTIES. (a) Provides that the injured employee's treating doctor is responsible for the efficient management of medical care as required by Section 408C.004(c) and commissioner rules. Requires TDI to collect

information regarding return-to-work outcomes, patient satisfaction, and cost and utilization of health care provided or authorized by a treating doctor.

(b) Authorizes the commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor.

(c) Authorizes a doctor who provides health care services under this chapter to only perform those procedures that are within the scope of practice for which the doctor is licensed.

Sec. 408C.004. **REPORTS AND RECORDS REQUIRED FROM HEALTH CARE PROVIDERS.** Makes conforming changes.

Sec. 408C.005. **PREAUTHORIZATION; UTILIZATION REVIEW FOR OUT-OF-NETWORK CARE.** Provides that the preauthorization requirements of Section 413.014 apply to out-of-network care. Authorizes an insurance carrier, for out-of-network care, to perform utilization review itself if the carrier is a utilization review agent under Article 21.58A, Insurance Code, or contract for utilization review services with a certified utilization review agent.

Sec. 408C.006. **DISPUTE RESOLUTION FOR OUT-OF-NETWORK CARE.** Provides that the medical dispute resolution requirements of Subchapter C, Chapter 413, apply to a dispute regarding out-of-network care.

SECTION 1.203. Repealers: (1) Sections 408.0221 (Regional Health Care Delivery Networks; Advisory Committee), 408.0222 (Participation in Regional Network; Selection of Doctor Within Regional Network; Benefit Incentives), and 408.0223 (Insurance Carrier Networks), Labor Code;

(2) Section 408.023 (List of Approved Doctors; Duties of Treating Doctors), Labor Code;

(3) Section 408.0231 (Maintenance of List of Approved Doctors; Sanctions and Privileges Relating to Health Care), Labor Code; and

(4) Section 408.024 (Noncompliance with Selection Requirements), Labor Code.

#### PART 11. ADOPTION OF CHAPTERS 408D AND 408E, LABOR CODE

SECTION 1.251. Redesignates Subchapters E, F, G, H, and I, Chapter 408, Labor Code, as Chapter 408D, Labor Code, and amends them as follows:

#### CHAPTER 408D. WORKERS' COMPENSATION BENEFITS: INCOME BENEFITS

##### SUBCHAPTER A. INCOME BENEFITS: GENERAL PROVISIONS

Sec. 408D.001. **INCOME BENEFITS.** Redesignates existing text from Section 408.081. Requires income benefits to be paid as required under Section 409.021(a), except as provided by this section or subtitle. Makes nonsubstantive and conforming changes.

Sec. 408D.002. **ACCRUAL OF RIGHT TO INCOME BENEFITS.** Redesignates existing text from Section 408.082. Requires compensation to be computed from the date the disability begins, if it continues for 14 days, rather than four weeks, or longer after the date the disability begins. Provides that this section does not preclude the recovery of medical benefits as provided by this subtitle, rather than Subchapter B.

Sec. 408D.003. **TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS.** Redesignates existing text from Section 408.083.

Sec. 408D.004. **CONTRIBUTING INJURY.** Redesignates existing text from Section 408.084. Makes conforming changes.

Sec. 408D.005. ADVANCE OF BENEFITS FOR HARDSHIP. Redesignates existing text from Section 408.085. Makes conforming changes.

Sec. 408D.006. New heading: DEPARTMENT DETERMINATION OF EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. Redesignates existing text from Section 408.086. Makes conforming changes.

[Reservation of Sections 408D.007-408D.050 is presumed.]

#### SUBCHAPTER B. TEMPORARY INCOME BENEFITS

Sec. 408D.051. TEMPORARY INCOME BENEFITS. Redesignates existing text from Section 408.101.

Sec. 408D.052. DURATION OF TEMPORARY INCOME BENEFITS. Redesignates existing text from Section 408.102. Makes a conforming change.

Sec. 408D.053. AMOUNT OF TEMPORARY INCOME BENEFITS. Redesignates existing text from Section 408.103. Makes conforming changes.

Sec. 408D.054. MAXIMUM MEDICAL IMPROVEMENT AFTER SPINAL SURGERY. Redesignates existing text from Section 408.104. Makes conforming changes.

Sec. 408D.055. SALARY CONTINUATION IN LIEU OF TEMPORARY INCOME BENEFITS. Redesignates existing text from Section 408.105. Makes a conforming change.

[Reservation of Sections 408D.056-408D.100 is presumed.]

#### SUBCHAPTER C. IMPAIRMENT INCOME BENEFITS

Sec. 408D.101. IMPAIRMENT INCOME BENEFITS. Redesignates existing text from Section 408.121.

Sec. 408D.102. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS; DESIGNATED DOCTOR. Redesignates existing text from Section 408.122. Prohibits the designated doctor from being a health care practitioner under the certified provider network, if medical benefits are provided through the provider network. Makes conforming changes.

Sec. 408D.103. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. Redesignates existing text from Section 408.123. Makes conforming changes.

Sec. 408D.104. IMPAIRMENT RATING GUIDELINES. Redesignates existing text from Section 408.124. Requires an award of an impairment benefit to be based on an impairment rating determined using the guidelines described by this section. Authorizes the commissioner, by rule, to adopt the fourth edition of the "Guides to Evaluation of Permanent Impairment," published by the American Medical Association, or a subsequent edition of those guides, for determining the existence and degree of an employee's impairment. Makes conforming changes.

Sec. 408D.105. New heading: DISPUTE AS TO IMPAIRMENT RATING; ADMINISTRATIVE VIOLATION. Redesignates existing text from Section 408.125. Makes conforming changes.

Sec. 408D.106. AMOUNT OF IMPAIRMENT INCOME BENEFITS. Redesignates existing text from Section 408.126.

Sec. 408D.107. REDUCTION OF IMPAIRMENT INCOME BENEFITS. Redesignates existing text from Section 408.127. Makes a conforming change.

Sec. 408D.108. COMMUTATION OF IMPAIRMENT INCOME BENEFITS. Redesignates existing text from Section 408.128.

Sec. 408D.109. ACCELERATION OF IMPAIRMENT INCOME BENEFITS. Redesignates existing text from Section 408.129. Makes conforming changes.

[Reservation of Sections 408D.110-408D.150 is presumed.]

#### SUBCHAPTER D. SUPPLEMENTAL INCOME BENEFITS

Sec. 408D.151. AWARD OF SUPPLEMENTAL INCOME BENEFITS. Redesignates existing text from Section 408.141. Makes a conforming change.

Sec. 408D.152. SUPPLEMENTAL INCOME BENEFITS. Redesignates existing text from Section 408.142. Provides that an employee is entitled to supplemental income benefits, if on the expiration of the impairment income benefit period computed under Section 408D.101(a)(1), rather than 408.121(a)(1), the employee has complied with the requirements adopted under Section 408D.153. Deletes existing text regarding an employee's attempt to obtain employment commensurate with their ability to work. Makes conforming changes.

Sec. 408D.153. WORK SEARCH COMPLIANCE STANDARDS. Requires the commissioner, by rule, to adopt compliance standards for supplemental income benefit recipients that require each recipient to demonstrate an active effort to obtain employment and sets forth specific eligibility requirements for recipients. Sets forth requirements for the commissioner in adopting rules under this section and authorizes the commissioner to consult with TWC, the Department of Assistive and Rehabilitative Services, and other appropriate entities in adopting rules under this section.

Sec. 408D.154. RETURN-TO-WORK GOALS AND ASSISTANCE. (a) Requires TDI to assist recipients of income benefits to return to the workforce. Requires TDI to develop improved data sharing, with the standards of federal privacy requirements, with all appropriate state agencies and workforce programs to inform TDI of changes needed to assist income benefit recipients to successfully reenter the workforce.

(b) Requires TDI to train staff dealing with income benefits to respond to questions and assist injured employees in their effort to return to the workforce. Requires TDI to inform the employee of possible eligibility for other specific forms of benefits, upon determining that an injured employee is unable to ever return to the workforce.

(c) Requires TDI to perform specific functions as necessary to implement the requirements of this section.

Sec. 408D.155. EMPLOYEE STATEMENT. Redesignates existing text from Section 408.143. Makes conforming changes.

Sec. 408D.156. COMPUTATION OF SUPPLEMENTAL INCOME BENEFITS. Redesignates existing text from Section 408.144. Provides that, subject to Section 408.061, the amount of a supplemental income benefit for a week is equal to 80 percent of the amount computed by subtracting the weekly wage the employee earned during the reporting period provided by Section 408D.155(b) from 80 percent of the employee's average weekly wage determined under Section 408.041, 408.042, 408.043, 408.044, 408.0445, or 408.0446. Makes a conforming change.

Sec. 408D.157. PAYMENT OF SUPPLEMENTAL INCOME BENEFITS. Redesignates existing text from Section 408.145.

Sec. 408D.158. TERMINATION OF SUPPLEMENTAL INCOME BENEFITS; REINITIATION. Redesignates existing text from Section 408.146. Makes conforming changes.

Sec. 408D.159. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. Redesignates existing text from Section 408.147. Authorizes an insurance carrier to request a contested case hearing, rather than a benefit review conference, to contest an employee's entitlement to supplemental income benefits or the amount of supplemental income benefits. Makes conforming and nonsubstantive changes.

Sec. 408D.160. EMPLOYEE DISCHARGE AFTER TERMINATION. Redesignates existing text from Section 408.148. Makes conforming changes.

Sec. 408D.161. STATUS REVIEW; HEARING. Redesignates existing text from Section 408.149. Requires TDI to conduct a status review within 10 days of receiving the request for review. Makes conforming changes.

Sec. 408D.162. VOCATIONAL REHABILITATION. Redesignates existing text from Section 408.150. Requires TDI to refer an employee to the Department of Assistive and Rehabilitative Services, rather than the Texas Rehabilitation Commission, with a recommendation for appropriate services, upon determining that an employee could be materially assisted by vocational rehabilitation or training in returning to employment. Makes conforming changes.

Sec. 408D.163. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME BENEFITS. Redesignates existing text from Section 408.151. Makes conforming changes.

[Reservation of Sections 408D.164-408D.200 is presumed.]

#### SUBCHAPTER E. LIFETIME INCOME BENEFITS

Sec. 408D.201. LIFETIME INCOME BENEFITS. Redesignates existing text from Section 408.161. Makes a conforming and nonsubstantive change.

Sec. 408D.202. SUBSEQUENT INJURY FUND BENEFITS. Redesignates existing text from Section 408.162.

SECTION 1.252. Redesignates Subchapter J, Chapter 408, Labor Code, as Chapter 408E, Labor Code, and amends it as follows:

#### CHAPTER 408E. WORKERS' COMPENSATION BENEFITS: DEATH AND BURIAL BENEFITS

Sec. 408E.001. DEATH BENEFITS. Redesignates existing text from Section 408.181. Makes conforming changes.

Sec. 408E.002. DISTRIBUTION OF DEATH BENEFITS. Redesignates existing text from Section 408.182. Defines "eligible child," "eligible grandchild," and "eligible spouse," and redesignates subsequent subsections.

Sec. 408E.003. DURATION OF DEATH BENEFITS. Redesignates existing text from Section 408.183. Makes a conforming change.

Sec. 408E.004. REDISTRIBUTION OF DEATH BENEFITS. Redesignates existing text from Section 408.184. Makes conforming changes.

Sec. 408E.005. EFFECT OF BENEFICIARY DISPUTE; ATTORNEY'S FEES. Redesignates existing text from Section 408.185.

Sec. 408E.006. BURIAL BENEFITS. Redesignates existing text from Section 408.186.

Sec. 408E.007. AUTOPSY. Redesignates existing text from Section 408.187. Makes conforming changes.

#### PART 12. AMENDMENTS TO CHAPTER 409, LABOR CODE

SECTION 1.301. Amends Section 409.002, Labor Code, to make a conforming change.

SECTION 1.302. Amends Section 409.003, Labor Code, to make a conforming change.

SECTION 1.303. Amends Section 409.004, Labor Code, as follows:

Sec. 409.044. New heading: EFFECT OF FAILURE TO FILE CLAIM FOR COMPENSATION. Makes a conforming change.

SECTION 1.304. Amends Sections 409.005(d)-(f) and (h)-(k), Labor Code, to make conforming changes.

SECTION 1.305. Amends Sections 409.006(b) and (c), Labor Code, to make conforming changes.

SECTION 1.306. Amends Section 409.007(a), Labor Code, to make a conforming change.

SECTION 1.307. Amends Section 409.009, Labor Code, to make a conforming change.

SECTION 1.308. Amends Section 409.010, Labor Code, to make conforming changes.

SECTION 1.309. Amends Sections 409.011(a) and (c), Labor Code, to make conforming changes.

SECTION 1.310. Amends Section 409.012, Labor Code, as follows:

Sec. 409.012. New heading: SKILLED CASE MANAGEMENT; VOCATIONAL REHABILITATION. Requires TDI to require an insurance carrier to evaluate a compensable injury in which the injured employee sustains an injury that could result in lost time from employment, as early as practicable to determine if skilled case management is necessary for the injured employee's case and provide it in accordance with commissioner rules. Makes conforming changes.

SECTION 1.311. Amends Section 409.013, Labor Code, as follows:

Sec. 409.013. New heading: PLAIN LANGUAGE INFORMATION; NOTIFICATION OF INJURED EMPLOYEE. Makes conforming changes.

SECTION 1.312. Amends Section 409.021, Labor Code, as follows:

Sec. 409.021. New heading: INITIATION OF BENEFITS; DUTIES OF INSURANCE CARRIER; ADMINISTRATIVE VIOLATION. Requires an insurance carrier to establish a single point of contact in the carrier's office for an injured employee for whom the carrier receives a notice of injury and makes conforming changes. Makes conforming changes.

SECTION 1.313. Amends Section 409.023(a), Labor Code, to make a conforming change.

SECTION 1.314. Amends Section 409.0231(b), Labor Code, to make conforming changes.

SECTION 1.315. Amends Section 409.024, Labor Code, to make conforming changes.

#### PART 13. AMENDMENTS TO CHAPTER 410, LABOR CODE



SECTION 1.351. Amends Section 410.002, Labor Code, to make a conforming change.

SECTION 1.352. Amends Section 410.005(a), Labor Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Prohibits a prehearing conference or a contested case hearing from being conducted at a site more than 75 miles from the claimant's residence at the time of injury, unless TDI determines that good cause exists for the selection of a different location.

(c) Authorizes an injured employee who is a party to a prehearing conference to select the TDI field office at which the prehearing conference is required to be conducted, rather than requiring all appeals panel proceedings to be conducted in Travis County.

(d) Authorizes TDI, notwithstanding Subsections (a) and (c), if determined appropriate by the commissioner, to conduct a prehearing conference telephonically on agreement by the injured employee.

SECTION 1.353. Amends Section 410.006(a), Labor Code, to make a conforming change.

SECTION 1.354. Amends Subchapter A, Chapter 410, Labor Code, by adding Sections 410.007 and 410.008, as follows:

Sec. 410.007. INFORMATION LIST. (a) Requires TDI to determine the type of information that is most useful to parties to help resolve disputes regarding income benefits and sets forth specific information authorized to be included.

(b) Requires TDI to publish a list developed of the information under Subsection (a) in appropriate media to provide guidance to parties to a dispute on the type of information they should have available at a prehearing conference or contested case hearing.

(c) Requires TDI, at the time a prehearing conference is scheduled, to provide a copy of the list under Subsection (b) to each party to the dispute.

Sec. 410.008. PRECEDENT MANUAL. (a) Requires the commissioner, by rule, to adopt a precedent manual for workers' compensation disputes to establish better and more consistent decisions at each level of the dispute resolution process. Requires the commissioner to use the manual developed by the Texas Workforce Commission for appealed unemployment insurance cases as a model.

(b) Authorizes the commissioner to adopt key contested case decisions and court decisions as precedent decisions

(c) Requires TDI to publish decisions adopted under Subsection (b) in the precedent manual by subject area and make the precedent manual available on its Internet website.

(d) Requires TDI to instruct each employee involved in a dispute resolution under this subtitle in the use of the manual and ensure that decisions at each stage of the dispute resolution process are made based on the precedents, as appropriate.

SECTION 1.355. Amends the heading to Subchapter B, Chapter 410, Labor Code, to read as follows:

#### SUBCHAPTER B. INITIAL DISPUTE RESOLUTION

SECTION 1.356. Amends Subchapter B, Chapter 410, Labor Code, by adding Sections 410.051, 410.052, and 410.053, as follows:

Sec. 410.051. INFORMAL BENEFIT DISPUTE RESOLUTION. (a) Requires the parties to the dispute, including the claimant, employer, and insurance carrier, to

demonstrate a good faith effort to resolve the dispute among themselves, before filing a dispute with TDI under this chapter.

(b) Requires the commissioner to adopt rules specifying certain requirements and standards.

(c) Requires the carrier to notify the claimant, upon notification of an issue requiring dispute resolution under this subchapter, acknowledging receipt of the request for reconsideration by the fifth business day.

(d) Requires an insurance carrier to acknowledge, investigate, and resolve a request for reconsideration under this section not later than 15 calendar days from receiving the notice of the request for reconsideration from the claimant.

(e) Authorizes a claimant to request a contested case hearing under this subchapter if dissatisfied with the carrier's proposed resolution after reconsideration or awaiting the carrier's response after the allotted 15 days.

(f) Provides that failure to comply with the requirements of this section and rules adopted by the commissioner may result, after notice and hearing, in an administrative violation and imposition of sanctions and administrative penalties as provided by Chapter 82 (Sanctions) and 84 (Administrative Penalties), Insurance Code.

Sec. 410.052. REQUEST FOR ARBITRATION OR CONTESTED CASE HEARING. Authorizes the claimant, if the parties are unable to timely resolve a dispute through the informal dispute resolution process required under Section 410.051, to file with the department a request for arbitration under Subchapter C, or a contested case hearing under Subchapter D.

Sec. 410.053. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. Authorizes the commissioner to issue an interlocutory order for the payment of all or part of medical benefits or income benefits while the dispute is pending, if the parties have filed a request with TDI under Section 410.052.

SECTION 1.357. Amends Section 410.102, Labor Code, by deleting existing text requiring an arbitrator to be approved by an affirmative vote of certain commission members. Makes conforming changes.

SECTION 1.358. Amends Section 410.103, Labor Code, to make a conforming change.

SECTION 1.359. Amends Section 410.104, Labor Code, as follows:

Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. (a) Authorizes the parties, by agreement, to elect to engage in arbitration in the manner provided by this subchapter, if issues remain unresolved after the informal dispute resolution process required under Section 410.051. Deletes existing text providing that a contested case hearing scheduled under Section 410.025(b) is canceled by an election under this subchapter.

(b) Requires the parties, to elect arbitration, to file the election with TDI on a form prescribed by the commissioner, within 20 days after the date the insurance carrier is required to resolve the complaint under Section 410.051(d), rather than with the commission on the last day of the benefit review conference and requiring the commission to prescribe a form for that purpose.

(c) Provides that an election to engage in arbitration under this subchapter is irrevocable and binding on all parties for the resolution of all disputes under this chapter arising out of the claims that are under the jurisdiction of the department, rather than for the resolution of all disputes arising out of the claims that are under the jurisdiction of TDI.

(d) Provides that an agreement to elect arbitration binds the parties to the provisions of Chapters 408-408E, rather than Chapter 408, relating to benefits, rather than benefits, and any award, agreement, or settlement, after arbitration is elected must comply with those chapters, rather than that chapter.

SECTION 1.360. Amends Section 410.105, Labor Code, as follows:

Sec. 410.105. LISTS OF ARBITRATORS. Requires a commissioner, after reviewing the lists of arbitrators annually, to remove an arbitrator if, after the review, the commissioner determines that the arbitrator is not fair and impartial or does not make awards consistent with this subtitle and the commissioner's rules, rather than requiring the commission to remove an arbitrator if, after review, the arbitrator does not receive an affirmative vote from specific commission members. Makes conforming changes.

SECTION 1.361. Amends Section 410.106, Labor Code, to make conforming changes.

SECTION 1.362. Amends Section 410.107(a), Labor Code, to make conforming changes.

SECTION 1.363. Amends Section 410.108(a), Labor Code, to make a conforming change.

SECTION 1.364. Amends Section 410.109, Labor Code, to make conforming changes.

SECTION 1.365. Amends Section 410.110, Labor Code, to make conforming changes.

SECTION 1.366. Amends Section 410.111, Labor Code, to make a conforming change.

SECTION 1.367. Amends Section 410.114(b), Labor Code, to make a conforming change.

SECTION 1.368. Amends Section 410.118(d), Labor Code, to make a conforming change.

SECTION 1.369. Amends Section 410.119(b), Labor Code, to make a conforming change.

SECTION 1.370. Amends Sections 410.121(a) and (b), Labor Code, to make conforming changes.

SECTION 1.371. Amends Section 410.151, Labor Code, as follows:

Sec. 410.151. New heading: CONTESTED CASE HEARING; PREHEARING CONFERENCE REQUIRED. (a) Provides that if arbitration is not elected under Section 410.104, a party to a claim is entitled to obtain a contested case hearing by filing a request with TDI in the manner prescribed by the commissioner, by rule, not later than the 90th day after the insurance carrier is required to resolve the dispute under Section 410.051(d). Deletes existing text relating to eligibility for a contested case hearing.

(b) Requires TDI, on receipt of a request for a contested case hearing, to direct the parties to meet in a prehearing conference to establish the disputed issues involved in the claim, schedule the prehearing conference and a contested case hearing within a specific time period, and notify the office of injured employee counsel that a request for administrative resolution of the dispute has been filed.

(c) Requires TDI to send written notice of the prehearing conference and the contested case hearing to the parties to the claim.

(d) Prohibits an issue that was not raised at a prehearing conference from being considered at a contested case hearing under this subchapter unless the parties consent or TDI determines that good cause existed for not raising the issue at the conference.

(e) Authorizes TDI, notwithstanding Subsection (a), to extend the 90-day period for filing a request for a contested case hearing if the party to the claim applies for an extension in the manner prescribed by the commissioner and presents evidence

satisfactory to TDI of good cause for the failure to comply with the 90-day requirement.

SECTION 1.372. Amends Section 410.153, Labor Code, to make conforming changes.

SECTION 1.373. Amends Section 410.154, Labor Code, as follows:

Sec. 410.154. SCHEDULING OF HEARING. Requires TDI to schedule a contested case hearing in accordance with Section 410.151, rather than 410.024 or 410.025(b). Makes conforming changes.

SECTION 1.374. Amends Section 410.155, Labor Code, to make conforming changes.

SECTION 1.375. Amends Section 410.157, Labor Code, to make a conforming change.

SECTION 1.376. Amends Section 410.158(a), Labor Code, to make a conforming change.

SECTION 1.377. Amends Section 410.159, Labor Code, to make conforming changes.

SECTION 1.378. Amends Section 410.160, Labor Code, to make a conforming change.

SECTION 1.379. Amends Section 410.161, Labor Code, to make a conforming change.

SECTION 1.380. Amends Sections 410.168(c)-(f), Labor Code, as follows:

(c) Provides that the order is binding during the pendency of a judicial review as provided by this chapter.

(d) Makes a conforming change.

(e) Requires the commissioner, by rule, to prescribe the times within which the hearing officer to file the decisions with TDI after the date the contested case hearing is concluded. Authorizes the commissioner to issue an order for payment of benefits on receipt of the decision.

(f) Makes a conforming change.

SECTION 1.381. Amends Section 410.169, Labor Code, as follows:

Sec. 410.169. EFFECT OF DECISION. Provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party and is binding during the pendency of a judicial review as provided by this chapter.

SECTION 1.382. Amends Subchapter D, Chapter 410, Labor Code, by adding Sections 410.170-410.173, as follows:

Sec. 410.170. CLERICAL ERROR. Authorizes the commissioner to revise a decision in a contested case hearing on a finding of clerical error.

Sec. 410.171. CONTINUATION OF DEPARTMENT JURISDICTION. Provides that, during judicial review of a hearing officer's decision on any disputed issue relating to a workers' compensation claim, TDI retains jurisdiction of all other issues related to the claim.

Sec. 410.172. JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION. (a) Authorizes TDI to bring suit in Travis County to enforce the order or decision, if a person refuses or fails to comply with an interlocutory order, final order, or decision under this subtitle.

(b) Authorizes the claimant to bring suit in the county of the claimant's residence at the time of injury or death, if the employee is deceased, or in the case of an

occupational disease, the county where the employee resided on the date disability began or any county agreed to by the parties, if an insurance carrier refuses or fails to comply with an interlocutory order, final order, or decision of TDI under this subtitle.

(c) Provides that TDI, upon bringing suit to enforce an interlocutory order, final order, or decision, is entitled to reasonable attorney's fees and costs for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision and any other remedy provided by law.

(d) Provides that a claimant who brings suit to enforce an interlocutory order, final order, or decision of TDI under this subtitle is entitled to a penalty equal to 12 percent of the amount of benefits recovered in the judgment, interest, and reasonable attorney's fees for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision.

(e) Provides that a person commits a Class A administrative violation upon failure to comply with an interlocutory order, final order, or TDI decision before the 21st day after the order or decision becomes final.

Sec. 410.173. REIMBURSEMENT FOR CERTAIN OVERPAYMENTS. Requires the subsequent injury fund to reimburse an insurance carrier for any overpayment of benefits made under an interlocutory order or decision if that order or decision is reversed or modified by final arbitration, order, or decision of the commissioner or a court.

SECTION 1.383. Amends Section 410.251, Labor Code, to make nonsubstantive and conforming changes.

SECTION 1.384. Amends Section 410.252, Labor Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Authorizes a party to seek judicial review by filing suit not later than the 40th day after the decision of the hearings officer, rather than the appeals panel, was filed with TDI.

(b) Requires the party bringing suit to appeal the decision to file a petition in district court in the case of an occupational disease, in the county where the employee lived, rather than resided, on the date the disability began or any county agreed to by the parties.

(e) Provides that a district court described by Subsection (b) has exclusive jurisdiction of a suit described by this section.

SECTION 1.385. Amends Section 410.253, Labor Code, to make conforming changes.

SECTION 1.386. Amends Section 410.254, Labor Code, as follows:

Sec. 410.254. New heading: DEPARTMENT INTERVENTION. Authorizes, rather than requires, TDI to intervene in any judicial proceeding under this subchapter or Subchapter G, on timely motion initiated by the commissioner.

SECTION 1.387. Amends Sections 410.256(a), (c), (d), and (f), Labor Code, to prohibit a claim or issue from being settled contrary to the provisions of the contested case hearing, rather than an appeals panel, decision issued on the claim or issue unless a party to the proceeding has filed for judicial review under this subchapter or Subchapter G. Makes conforming changes.

SECTION 1.388. Amends Sections 410.257(a), (b), (c), and (e), Labor Code, to make conforming changes.

SECTION 1.389. Amends the heading to Section 410.258, Labor Code, to read as follows:

Sec. 410.258. NOTIFICATION OF DEPARTMENT OF PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

SECTION 1.390. Amends Sections 410.258(a)-(e), Labor Code, to make conforming changes.

SECTION 1.3905. Amends Section 410.301(a), Labor Code, to require that judicial review, rather than judicial review of a final decisions of a commission appeals panel, regarding compensability or eligibility for or the amount of income or death benefits be conducted as provided by this subchapter.

SECTION 1.391. Amends Section 410.302, Labor Code, as follows:

Sec. 410.302. New heading: ADMISSIBILITY OF RECORDS; LIMITATION OF ISSUES. Provides that the records of a prehearing conference or contested case hearing conducted under this chapter are admissible in a trial under this subchapter in accordance with the Texas Rules of Evidence. Makes conforming changes.

SECTION 1.392. Amends Section 410.304, Labor Code, as follows:

Sec. 410.304. New heading: CONSIDERATION OF DECISION. Makes conforming changes.

SECTION 1.393. Amends Sections 410.306(b) and (c), Labor Code, to make conforming changes.

SECTION 1.394. Amends Sections 410.307(a) and (d), Labor Code, to make conforming changes.

SECTION 1.395. Amends Section 410.308(a), Labor Code, to make conforming changes.

SECTION 1.396. Repealers: (1) Sections 410.001 (Definitions), Labor Code;

(2) Section 410.004 (Division of Hearings), Labor Code;

(3) Section 410.021 (Purpose), 410.022 (Benefit Review Officers; Qualifications), 410.023 (Request for Benefit Review Conference), 410.024 (Benefit Review Conference as Prerequisite to Further Proceedings on Certain Claims), 410.025 (Scheduling of Benefit Review Conference; Notice), 410.026 (Powers and Duties of Benefit Review Officer), 410.027 (Rules), 410.028 (Failure to Attend; Administrative Violation), 410.029 (Resolution at Benefit Review Conference; Written Agreement), 410.030 (Binding Effect of Agreement), 410.031 (Incomplete Resolution; Report), 410.032 (Payment of Benefits Under Interlocutory Order), 410.033 (Multiple Carriers), 410.034 (Filing of Agreement and Report), Labor Code; and

(4) Subchapter E, Chapter 410 (Appeals Panel), Labor Code.

PART 14. AMENDMENTS TO CHAPTER 411, LABOR CODE

SECTION 1.401. Amends Section 411.003(a), Labor Code, to make conforming changes.

SECTION 1.402. Amends Section 411.011, Labor Code, to make a conforming change.

SECTION 1.403. Amends Section 411.012, Labor Code, to make conforming changes.

SECTION 1.404. Amends Section 411.013, Labor Code, to make a conforming change.

SECTION 1.405. Amends Section 411.014, Labor Code, to make conforming changes.

SECTION 1.406. Amends Sections 411.015(a), (d), and (e), Labor Code, to make conforming changes.

SECTION 1.407. Amends Section 411.016, Labor Code, to make a conforming change.

SECTION 1.408. Amends Section 411.017, Labor Code, to make conforming changes.

SECTION 1.409. Amends section 411.018, Labor Code, to make a conforming change.

SECTION 1.410. Amends Section 411.031, Labor Code, to make conforming changes.

SECTION 1.411. Amends Section 411.035, Labor Code, to make a conforming change.

SECTION 1.412. Amends Section 411.064, Labor Code, as follows:

Sec. 411.064. INSPECTIONS. Authorizes TDI, in conjunction with the audits conducted under Section 402.166(g), to conduct inspections to determine the adequacy of the accident prevention services required by Section 411.061. Deletes existing text requiring the division to conduct an inspection at least every two years. Makes conforming changes.

SECTION 1.413. Amends Section 411.065, Labor Code, as follows:

Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE COMPANY. Deletes existing subsection which includes the number and qualifications of field safety representatives employed by an insurance company amongst the required information to be submitted annually to TDI. Makes conforming changes and redesignates existing subsections.

SECTION 1.414. Amends Section 411.067, Labor Code, as follows:

Sec. 411.067. New heading: DEPARTMENT PERSONNEL. Deletes existing text requiring a safety inspector to have the qualification required for a field safety representative by Section 411.062. Makes a conforming change.

SECTION 1.415. Amends the heading to Subchapter F, Chapter 411, Labor Code, to read as follows:

SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS;  
EDUCATIONAL MATERIALS

SECTION 1.416. Amends Section 411.081, Labor Code, as follows:

Sec. 411.081. TELEPHONE HOTLINE. Requires TDI to maintain a 24-hour toll-free telephone service for reports of violations of occupational health or safety law in English and Spanish. Requires each employer to notify its employees of this service in a manner prescribed by the commissioner. Requires the commissioner to adopt rules requiring the notice to be posed in a specific manner.

SECTION 1.417. Amends Subchapter F, Chapter 411, Labor Code, by adding Section 411.084, as follows:

Sec. 411.084. EDUCATIONAL MATERIALS. Requires TDI to provide specific educational informational materials, in English and Spanish, to employers and employees. Requires TDI to adopt specific minimum content requirements for the educational material required under this section.

SECTION 1.418. Amends Section 411.104, Labor Code, as follows:

Sec. 411.104. New heading: ADMINISTRATION BY DEPARTMENT. Deletes existing text requiring the division, in addition to the duties specified in this chapter, to perform other duties as required by the commission. Makes a conforming change.

SECTION 1.419. Repealers: (1) Section 411.001(1) (relating to the definition of "division"), Labor Code;

(2) Subchapter D, Chapter 411 (Hazardous Employer Program), Subchapter G, Chapter 411 (Policy for Elimination of Drugs in the Workplace), Labor Code;

(3) Section 411.062 (Field Safety Representative; Qualifications), Labor Code;

(4) Section 411.063(b) (relating to qualifications of a field safety representative), Labor Code; and

(5) Section 411.102(1) (relating to the definition of "employee"), Labor Code.

#### PART 15. AMENDMENTS TO CHAPTER 412, LABOR CODE

SECTION 1.451. Amends Sections 412.041(g), (i), and (l), Labor Code, to make conforming changes.

#### PART 16. AMENDMENTS TO CHAPTER 413, LABOR CODE

SECTION 1.501. Amends the heading to Subchapter A, Chapter 413, Labor Code, to read as follows:

##### SUBCHAPTER A. GENERAL PROVISIONS

SECTION 1.502. Amends Section 413.001, Labor Code, as follows:

Sec. 413.001. **APPLICABILITY.** Provides that this chapter applies to the provision of health care services by insurance carriers who use provider networks and to insurance carriers who do not use provider networks. Deletes existing definition of "division."

SECTION 1.503. Amends Section 413.002, Labor Code, as follows:

Sec. 413.002. New heading: **MEDICAL REVIEW.** (a) Deletes existing text requiring the commission to maintain a division of medical review. Makes conforming changes.

(b) Makes conforming changes.

(c) Authorizes TDI to monitor independent review organization to ensure the compliance of those organizations with rules adopted by the commissioner. Requires TDI to evaluate organizational compliance and quality and timeliness of decisions made under specific sections, in monitoring independent review organizations who provide services described by this chapter.

SECTION 1.504. Amends Section 413.003, Labor Code, to make conforming changes.

SECTION 1.505. Amends Section 413.004, Labor Code, to make conforming changes.

SECTION 1.506. Amends Section 413.007, Labor Code, as follows:

Sec. 413.007. New heading: **INFORMATION MAINTAINED BY DEPARTMENT.** Makes conforming changes.

SECTION 1.507. Amends Sections 413.008(a) and (b), Labor Code, to require TDI to maintain the confidentiality of information received under this section. Makes conforming and nonsubstantive changes.

SECTION 1.508. Amends Section 413.011, Labor Code, as follows:

Sec. 413.011. New heading: **REIMBURSEMENT POLICIES FOR NON-NETWORK AND OUT-OF-NETWORK HEALTH CARE; FEE GUIDELINES; MEDICAL**



POLICIES; TREATMENT GUIDELINES AND PROTOCOLS. (a) Provides that this section applies to non-network health care and out-of-network health care which the insurance carrier is obligated to provide.

(a-1) Requires the commissioner to adopt specific health care reimbursement policies and fee guidelines for health care that is not provided through a provider network under Chapter 408B.004(b).

(b) Requires the commissioner to adopt the most current of those policies and guidelines used by the federal Centers for Medicare and Medicaid Services, rather than the federal Health Care Financing Administration. Makes conforming changes.

(c) Requires the commissioner, in determining the appropriate fees, to develop multiple conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (e). Makes conforming changes.

(d) Prohibits this section from being interpreted in a manner that would discriminate in the amount or method of payment or reimbursement for services in a manner prohibited by Section 1451.104 (Nondiscriminatory Payment or Reimbursement; Exception), rather than 3(d), Article 21.52, Insurance Code. Makes a conforming change.

(e) Requires fee guidelines to be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Prohibits the guidelines from providing for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard on living and paid by that individual or by someone acting on that individual's behalf. Provides that agreements between a provider and the insurance carrier or provider network that are above are the guidelines that are permitted. Makes a conforming change.

(f) Requires the rules adopted by TDI to authorize pharmacies to utilize agents or assignees to process claims and act on their behalf pursuant to terms and conditions as agreed upon by pharmacies for the reimbursement of prescription medications and services.

(g) Redesignates existing text from Subsection (e). Requires the commissioner, by rule, to adopt one or more sets of treatment guidelines, including return-to-work guidelines, and individual treatment protocols, including protocols for pharmacy benefits. Makes conforming changes.

(h) Redesignates existing text from Subsection (f). Makes a conforming change.

(i) Redesignates existing text from Subsection (g). Makes a conforming change.

SECTION 1.509. Amends Sections 413.013, Labor Code, to require the commissioner, by rule, to establish specific programs for health care that is not provided through a provider network under Chapter 408B.

SECTION 1.510. Amends Sections 413.014, Labor Code, by amending Subsections (b)-(e) and adding Subsection (f), as follows:

(b) Requires the commissioner, by rule, for preauthorized surgeries under this section, to require access to surgically implanted, inserted, or otherwise applied devices or tissues by ensuring reimbursement of reasonable, necessary, and actual costs. Makes a conforming change.

(c) Requires the commissioner rules adopted under this section to provide that preauthorization and concurrent review are required at a minimum for spinal surgery, as

provided by Section 408A.010, rather than 408.026, and physical or occupational therapy.

(d) Makes a conforming change.

(e) Provides that if a specified health care treatment or service is preauthorized as provided by this section, that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service.

(f) Makes a conforming change.

SECTION 1.511. Amends Section 413.0141, Labor Code, as follows:

Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. Requires the commissioner, by rule, to provide that an insurance carrier, including a carrier who provides health care services through a provider network, to provide for payment of specified pharmaceutical services. Makes conforming changes.

SECTION 1.512. Amends Sections 413.015(a) and (b), Labor Code, to require insurance carriers who do not provide health care services through a provider network under Chapter 408B to make appropriate payment of charges for medical services provided under this subtitle. Provides that an insurance carrier who provides health care services through a provider network under Chapter 408B is subject to the provisions of that chapter. Makes conforming changes.

SECTION 1.513. Amends Section 413.017, Labor Code, to make conforming changes.

SECTION 1.514. Amends Section 413.018, Labor Code, as follows:

Sec. 413.018. New heading: REVIEW OF MEDICAL CARE; RETURN TO WORK PROGRAMS. Requires the commissioner to adopt rules to recognize exemplary return-to-work programs. Requires the commissioner to adopt rules that allow insurance carriers to offer incentives to employers who offer exemplary return-to-work programs. Makes conforming changes.

SECTION 1.515. Amends Section 413.020, Labor Code, as follows:

Sec. 413.020. New heading: DEPARTMENT CHARGES. Makes conforming changes.

SECTION 1.516. Amends Subchapter C, Chapter 413, Labor Code, as follows:

New heading: SUBCHAPTER C. DISPUTE RESOLUTION REGARDING MEDICAL BENEFITS

Sec. 413.031. New heading: MEDICAL DISPUTE: RIGHT TO REVIEW. Provides that a claimant is entitled to a review of a request for a change of treating doctor under Section 408B.303. Makes conforming changes.

Sec. 413.032. INFORMAL DISPUTE RESOLUTION AT CARRIER. (a) Requires the parties to a dispute regarding medical benefits, to try to resolve the dispute among themselves through an informal process conducted by the insurance carrier before bringing the dispute to TDI.

(b) Requires the carrier to send a letter acknowledging receipt of the notice, not later than the fifth business day after receiving the notice, upon notification of an issue requiring dispute resolution under this subchapter.

(c) Requires an insurance carrier to acknowledge, investigate, and resolve an issue under this section not later than the 30th calendar day after the date the carrier receives a written notice of the issue from the party.

(d) Requires the commissioner to adopt rules that specify the requirements for documentation of the initial attempt under Subsection (a) to resolve the dispute, including documentation of telephone calls or written correspondence.

Sec. 413.033. FEE DISPUTES. Makes conforming changes.

Sec. 413.034. REVIEW BY INDEPENDENT REVIEW ORGANIZATION. (a) Authorizes either party to file a request for review by an independent review organization (organization) certified under Article 21.58C, Insurance Code, to TDI, if the parties are unable to resolve a dispute regarding medical benefits through the informal dispute resolution process required under Section 413.032.

(b) Requires an organization to conduct a review of the medical necessity of a health care service requiring preauthorization under Section 413.014 or commissioner rules under that section or provided under this chapter or Chapter 408 or 408A.

(c) Requires an organization to conduct a review under this section, rather than Article 21.58C, Insurance Code, in the same manner as reviews of utilization review decisions, rather than utilization review decisions.

(d) Requires the organization, in performing a review of medical necessity, to consider TDI's health care reimbursement policies adopted under Section 413.011 if those policies are raised by one of the parties to the dispute. Requires the organization to indicate the specific basis for its divergence in the review of medical necessity in the review of medical necessity, if the decision is contrary to TDI's policies adopted under Section 413.011. Provides that this subsection does not prohibit an independent review organization from considering the payment policies adopted under Section 413.011 in any dispute, regardless of whether those policies are raised by a party to the dispute.

(e) Authorizes an organization to request that TDI order an examination by a designated doctor, in performing a review of medical necessity.

Sec. 413.035. INDEPENDENT REVIEW ORGANIZATION DECISION; APPEAL. (a) Requires an organization that conducts a review under this subchapter to specify the elements of which its decision is based. Sets forth minimum requirements for criteria which must be included in the decision.

(b) Requires the organization to certify that each physician or other health care provider who reviews the decision certifies that no known conflicts of interest exist between that provider and the injured employee, the injured employee's employer, and any of the treating doctors or insurance carrier health care providers who have reviewed the case for decision before referral to the independent review organization.

(c) Authorizes either party to appeal the decision to district court for judicial review. Requires judicial review under this section to be conducted in the manner provided for judicial review of contested cases under Subchapter G, Chapter 2001, Government Code.

Sec. 413.036. ALTERNATIVE PROCESS. Authorizes the commissioner, by rule, to prescribe an alternative dispute resolution process for disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization. Deletes existing text from Subsection (e) and (e-1).

Sec. 413.037. PAYMENT OF COSTS. (a) Redesignates existing text from Subsection (h). Requires the insurance carrier to pay the cost of review by an independent review organization if the dispute arises in connection with a request for health care services provided through a provider network. Deletes existing text of Subsection (g), relating to a review of medical necessity by an independent review organization and requires the

cost of a review under an alternative dispute resolution process under Section 413.036 to be paid by the nonprevailing party.

(b) Redesignates existing text from Subsection (i).

(c) Redesignates existing text from Subsection (j).

(d) Requires the cost of a review under an alternative dispute resolution process under Section 413.036, except as otherwise provided by this subsection, to be paid by the nonprevailing party. Prohibits an employee whose weekly income benefit is less than 75 percent of the average weekly wage from being required to pay more than half of the cost of such a review.

Deletes existing text of Subsections (k), (l), and (m), relating to administrative remedies and alternate dispute resolution processes for resolving disputes under this subtitle.

SECTION 1.517. Amends Sections 413.041(a), (b), and (d), Labor Code, to delete existing text relating to a condition of registration for the approved doctor list under Section 408.023. Makes conforming changes.

SECTION 1.518. Amends Section 413.042(a), Labor Code, to make a conforming change.

SECTION 1.519. Amends Section 413.044, Labor Code, as follows:

Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. Authorizes TDI to impose sanctions, in addition to or in lieu of an administrative penalty under Section 415.021 or a sanction imposed under Section 415.023, against a person who serves as a designated doctor under this subtitle, including a designated doctor who serves under a provider network, rather than Chapter 408, who after an evaluation conducted under Section 413.002(b), rather than 413.002(c), is determined to be out of compliance with this subtitle or with rules adopted by the commissioner relating to medical policies, fee guidelines, and impairment ratings.

SECTION 1.520. Amends the heading to Subchapter E, Chapter 413, Labor Code, to read as follows:

SUBCHAPTER E. IMPLEMENTATION OF DEPARTMENT  
POWERS AND DUTIES.

SECTION 1.521. Amends Section 413.051, Labor Code, as follows:

Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS. (a) Defines "health care provider professional review organization."

(b) Makes a conforming change.

(c) Redesignates existing text from Subsection (b). Authorizes TDI to contract with specific entities that include licensed health care practitioners in the category under review, for the purposes of review or resolution of a dispute with an insurance carrier that does not use a provider network under Chapter 408B.

(d)-(e) Redesignates existing text from Subsections (c) and (d). Makes conforming changes.

Deletes Subsection (e) to define "health care provider professional review organization."

SECTION 1.522. Amends Section 413.0511, Labor Code, as follows:

Sec. 413.0511. MEDICAL ADVISOR. Requires a medical advisor under this section to be a physician, rather than a doctor as defined by Section 401.011. Deletes existing text relating to the list of approved doctors under Section 408.023 and the recommendation that rules be adopted to impose conditions or restrictions as authorized by Section 408.0231(f). Makes conforming changes.

SECTION 1.523. Amends Sections 413.0512(a), (c), and (d), Labor Code, as follows:

(a) Requires the commissioner, with the advice of the medical advisor, to establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under Section 413.0511. Provides that the panel is not subject to Chapter 2110 (State Agency Advisory Committees), Government Code. Deletes existing text regarding the panel being independent of the medical advisory committee.

(c) Requires the medical quality review panel to recommend appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, independent review organizations, and provider networks to the medical advisor. Makes a conforming change.

(d) Provides that in the event of a civil action brought against a member of the panel that arises from the person's participation on the panel, the person is entitled to the same protections afforded the commissioner or a TDI employee under Section 34.001 (Personal Immunity), rather than 402.010, Insurance Code. Makes a conforming change.

SECTION 1.524. Amends Section 413.0513, Labor Code, to make conforming changes.

SECTION 1.525. Amends Section 413.0514, Labor Code, to make conforming and nonsubstantive changes.

SECTION 1.526. Amends Section 413.0515, Labor Code, to make conforming changes.

SECTION 1.527. Amends Section 413.052, Labor Code, as follows:

Sec. 413.052. New heading: PRODUCTION OF DOCUMENTS; SUBPOENA. Requires the commissioner, by rule, to establish procedures to enable TDI to complete the production of documents under this subtitle. Requires the commissioner to exercise subpoena powers under this section in the manner provided by Subchapter C, Chapter 36, Insurance Code.

SECTION 1.528. Amends Section 413.053, Labor Code, to make a conforming change.

SECTION 1.529. Amends Section 413.054(a), Labor Code, to make conforming changes.

SECTION 1.530. Amends Sections 413.055(a) and (b), Labor Code, to make conforming changes.

SECTION 1.531. Repealers: (1) Section 413.005 (Medical Advisory Committee), Labor Code;

(2) Section 413.006 (Advisory Committees), Labor Code; and

(3) Section 413.016 (Payments in Violation of Medical Policies and Fee Guidelines), Labor Code.

#### PART 17. AMENDMENTS TO CHAPTER 414, LABOR CODE

SECTION 1.551. Amends the heading to Chapter 414, Labor Code, to read as follows:

#### CHAPTER 414. ENFORCEMENT OF COMPLIANCE AND PRACTICE REQUIREMENTS

SECTION 1.552. Amends Section 414.002, Labor Code, as follows:

Sec. 414.002. MONITORING DUTIES. (a) Provides that persons to be monitored under this chapter include health care providers, independent review organizations, and provider networks, in addition to those previously listed. Deletes existing exception to monitoring duties relating to persons monitored by the division of medical review.

(b) Makes a conforming and nonsubstantive change.

(c) Requires TDI to monitor payments made to health care providers on behalf of workers' compensation claimants who receive medical services to ensure that the payments are made on time as required by Section 408.027.

SECTION 1.553. Amends Section 414.003, Labor Code, to make conforming changes.

SECTION 1.554. Amends Section 414.004, Labor Code, as follows:

Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS. Requires the insurance carrier, other than a governmental entity, to pay the reasonable expenses, including travel expenses, of an auditor who audits an insurance carrier's workers' compensation records at the office of the insurance carrier for TDI. Makes conforming changes.

SECTION 1.555. Amends Section 414.005, Labor Code, as follows:

Sec. 414.005. New heading: WORKERS' COMPENSATION INVESTIGATION UNIT; FRAUD INVESTIGATIONS. (a) Creates this subsection from existing text. Deletes existing text requiring investigations under this section to be conducted with particular emphasis on violations of Chapters 415 and 416. Makes conforming changes.

(b) Requires TDI to conduct investigations of fraud involving participants in the workers' compensation system. Authorizes TDI, in conducting investigations under this subsection, to operate under the insurance fraud unit established under Chapter 701 (Insurance Fraud Investigations), Insurance Code.

(c) Provides that TDI's duties in conducting and prosecuting fraud investigations under this section are funded through the maintenance tax assessed under Section 403.002.

SECTION 1.5551. Amends Chapter 414, Labor Code, by adding Section 414.0055, as follows:

Sec. 414.0055. DUTY TO REPORT; ADMINISTRATIVE VIOLATION. (a) Provides that this section applies only to specific persons.

(b) Requires a person subject to this section, upon determining that a fraudulent act has been or is about to be committed by another in conjunction with a workers' compensation claim to report the information, in writing, to TDI, not later than 30 days after making the determination.

(c) Provides that a person subject to this section commits a Class B administrative violation for violating Subsection (b).

(d) Provides that the identity of a person who reports a fraudulent act under Subsection (b) to TDI, is confidential and is not public information under Chapter 552, Government Code.

SECTION 1.556. Amends Section 414.006, Labor Code, as follows:

Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. Authorizes TDI to refer the persons involved in a case subject to an investigation to other appropriate authorities for further investigation or the institution of appropriate proceedings. Deletes existing text referring persons to the division of hearings.

SECTION 1.557. Amends Section 414.007, Labor Code, as follows:

Sec. 414.007. New heading: **MEDICAL REVIEW**. Requires TDI to review information concerning alleged violations of this subtitle regarding the provision of medical benefits in addition to previously stated sections. Deletes existing text regarding referrals received from the division of medical review.

SECTION 1.558. Repealer: Section 414.001 (Definition), Labor Code.

#### PART 18. AMENDMENTS TO CHAPTER 415, LABOR CODE

SECTION 1.601. Amends Section 415.001, Labor Code, as follows:

Sec. 415.001. **ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY**. Provides that a person commits an administrative violation under this section if the person willfully or intentionally fails without good cause to attend a dispute resolution proceeding under this subtitle, rather than within the commission. Makes conforming changes.

SECTION 1.602. Amends Section 415.002, Labor Code, as follows:

Sec. 415.002. New heading: **ADMINISTRATIVE VIOLATION BY INSURANCE CARRIER**. Provides that an insurance carrier or its representative commits an administrative violation if that person willfully or intentionally adjusts a workers' compensation claim in a manner contrary to license requirements for an insurance adjuster, including the requirements of Chapter 4101, Insurance Code, or commissioner rules. Deletes existing reference to Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973. Makes conforming changes.

SECTION 1.603. Amends Section 415.003, Labor Code, to make conforming changes.

SECTION 1.604. Amends Sections 415.0035(a), (b), (e), and (f), Labor Code, as follows:

(a) Provides that an insurance carrier or its representative commits an administrative violation if that person denies preauthorization in a manner that is not in accordance with Chapter 408B, Section 413.014, or with commissioner rules adopted under that section.

(b)-(f) Makes conforming changes.

SECTION 1.605. Amends Section 415.007(a), Labor Code, to make a conforming change.

SECTION 1.606. Amends Section 415.008(e), Labor Code, to make a conforming change.

SECTION 1.607. Amends Sections 415.021(a)-(c), Labor Code, to make conforming changes.

SECTION 1.608. Amends Section 415.023(b), to make conforming changes.

SECTION 1.609. Amends Section 415.024, Labor Code, to make a conforming change.

SECTION 1.610. Amends Section 415.031, Labor Code, to make a conforming change.

SECTION 1.611. Amends Section 415.032, Labor Code, to make conforming changes.

SECTION 1.612. Amends Section 415.033, Labor Code, to make a conforming change.

SECTION 1.613. Amends Section 415.034(a), Labor Code, to require the hearing to be conducted in the manner provided for a contested case under Chapter 2001, Government Code, rather than the administrative procedure law. Makes conforming changes.

SECTION 1.614. Amends Sections 415.035(b) and (d), Labor Code, to make conforming changes.

#### PART 19. AMENDMENT TO CHAPTER 416, LABOR CODE

SECTION 1.651. Amends Section 416.001, Labor Code, as follows:

Section 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. Deletes existing text referring to TWCC or recommendations of a benefit review officer under specific sections. Makes a conforming change.

#### PART 20. AMENDMENTS TO CHAPTER 417, LABOR CODE

SECTION 1.701. Amends Sections 417.001(c) and (d), Labor Code, to make conforming changes.

SECTION 1.702. Amends Section 417.003(b), Labor Code, to make a conforming change.

#### PART 21. ADOPTION OF CHAPTER 419, LABOR CODE

SECTION 1.751. Amends Subtitle A, Title 5, Labor Code, by adding Chapter 419, as follows:

##### CHAPTER 419. MISUSE OF DEPARTMENT NAME

Sec. 419.001. DEFINITIONS. Defines "representation of the department's logo," "representation of the state seal," or "deceptively similar."

Sec. 419.002. MISUSE OF DEPARTMENT'S NAME OR SYMBOLS PROHIBITED IN RELATION TO WORKERS' COMPENSATION DUTIES OF DEPARTMENT. (a) Prohibits a person in connection with any specific entity or publication regarding worker's compensation coverage or benefits, from knowingly using or causing to be used specific words, terms, or initials relating to TDI or the Texas Workers' Compensation, except as authorized by law.

(b) Prohibits a person subject to Subsection (a) from knowingly using or causing to be used a word, term, or initials described by Subsection (a) alone or in conjunction with specific items relating to the state seal, picture, map, or logo.

Sec. 419.003. RULES. Authorizes the commissioner to adopt rules relating to the regulation of the use of TDI's name and other rules as necessary to implement this chapter.

Sec. 419.004. CIVIL PENALTY. Provides that a person who violates Section 419.002 or a rule adopted under this chapter is liable for a civil penalty not to exceed \$5,000 for each violation. Requires the attorney general, at TDI's request, to bring an action to collect a civil penalty under this section in a district court in Travis County.

Sec. 419.005. ADMINISTRATIVE PENALTY. Authorizes TDI to assess an administrative penalty against a person who violates Section 419.002 or a rule adopted under this chapter. Provides that an administrative penalty imposed under this section is prohibited from exceeding \$5,000 for each violation and is subject to the procedural requirements adopted for administrative penalties imposed under Section 415.021.

Sec. 419.006. INJUNCTIVE RELIEF. Authorizes the attorney general or district attorney, at the request of the commissioner, to bring an action in a Travis County district court to enjoin or restrain a violation or threatened violation of this chapter on showing that a violation has occurred or is likely to occur. Authorizes TDI to recover the costs of investigating an alleged violation of this chapter if an injunction is issued.



Sec. 419.007. REMEDIES NOT EXCLUSIVE. Provides that the remedies provided by this chapter are not exclusive and authorizes the remedies to be sought in any combination determined by TDI as necessary to enforce this chapter.

## ARTICLE 2. AMENDMENTS TO SUBTITLE C, TITLE 5, LABOR CODE

### PART 1. AMENDMENTS TO CHAPTER 501, LABOR CODE

SECTION 2.001. Amends Section 501.001(1), Labor Code, to define "department."

SECTION 2.002. Amends Section 501.002, Labor Code, by amending Subsections (a) and (c) and adding Subsection (a-1), as follows:

(a) Provides that the following provisions of Subtitles A and B apply to and are included in this chapter to the extent that they are inconsistent with this chapter, including Chapters 404 and 405 and Chapters 408A, 408C, 408D, and 408E, except as provided by Subsection (a-1).

(a-1) Requires the office to provide workers' compensation medical benefits for covered employees through a provider network under Chapter 408B, if the commissioner determines that provision of those benefits through a network is available to the employees and practical for the state. Provides that Chapter 408B applies to this chapter, to the extent mentioned.

(c) Makes a conforming change.

SECTION 2.003. Amends Section 501.026(d), Labor Code, to make a conforming change.

SECTION 2.004. Amends Sections 501.050(a), (b), and (d), Labor Code, to make conforming changes.

### PART 2. AMENDMENTS TO CHAPTER 502, LABOR CODE

SECTION 2.051. Amends Section 502.001(1), Labor Code, to make conforming changes.

SECTION 2.052. Amends Section 502.002, Labor Code, by amending Subsections (a) and (b) and adding Subsection (a-1), to make conforming changes.

SECTION 2.053. Amends Section 502.041, Labor Code, as follows:

Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) Authorizes an employee to elect to use accrued sick leave before receiving income benefits. Provides that if an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted accrued sick leave. Deletes existing text authorizing an institution to provide that an injured employee can remain on the payroll until the earned annual and sick leave is exhausted.

(b) Authorizes an employee to elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. Provides that if the employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted. Deletes existing text to provide that workers' compensation benefits do not accrue or become payable while an injured employee remains on the payroll.

SECTION 2.054. Amends the heading to Section 502.063, Labor Code, to read as follows:

#### Sec. 502.063. CERTIFIED COPIES OF DOCUMENTS.

SECTION 2.055. Amends Sections 502.063(a) and (c), Labor Code, to make conforming changes.

SECTION 2.056. Amends Section 502.065, Labor Code, to require the institution to file the supplemental report on a form prescribed by the commissioner. Makes a conforming change.

SECTION 2.057. Amends Sections 502.066(a) and (e), Labor Code, to make conforming changes.

SECTION 2.058. Amends Section 502.067(a), Labor Code, to make a conforming change.

SECTION 2.059. Amends Section 502.068, Labor Code, to make conforming changes.

SECTION 2.060. Amends Section 502.069, Labor Code, by deleting references to a county court. Makes conforming changes.

### PART 3. AMENDMENTS TO CHAPTER 503, LABOR CODE

SECTION 2.101. Amends Section 503.001(1), Labor Code, to make a conforming change.

SECTION 2.102. Amends Section 503.002, Labor Code, by amending Subsections (a) and (b) and adding Subsection (a-1), to make conforming changes.

SECTION 2.103. Amends Section 503.041, Labor Code, as follows:

Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) Authorizes an employee to elect to use accrued sick leave before receiving income benefits. Provides that if an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted accrued sick leave. Deletes existing text authorizing an institution to provide that an injured employee can remain on the payroll until the earned annual and sick leave is exhausted.

(b) Authorizes an employee to elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. Provides that if the employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted. Deletes existing text to provide that workers' compensation benefits do not accrue or become payable while an injured employee remains on the payroll.

SECTION 2.104. Amends the heading to Section 503.063, Labor Code, to read as follows:

Sec. 503.063. CERTIFIED COPIES OF DOCUMENTS.

SECTION 2.105. Amends Sections 503.063(a) and (c), Labor Code, to make conforming changes.

SECTION 2.106. Amends Section 503.065, Labor Code, to make conforming changes.

SECTION 2.107. Amends Sections 503.066(a) and (e), Labor Code, to make conforming changes.

SECTION 2.108. Amends Section 503.067(a), Labor Code to make a conforming change.

SECTION 2.109. Amends Section 503.068, Labor Code, to make conforming changes.

SECTION 2.110. Amends Section 503.069, Labor Code, to make conforming changes.

SECTION 2.111. Amends Section 503.070(a), Labor Code, to make conforming changes.

### PART 4. AMENDMENTS TO CHAPTER 504, LABOR CODE.

SECTION 2.151. Amends Section 504.001(1), Labor Code, by amending Subdivision (1) to redefine "department," and adding Subdivision (4), to define "pool."

SECTION 2.152. Amends Section 504.002, Labor Code, by amending Subsection (a) and (b) and adding Subsection (a-1), to make conforming changes.

SECTION 2.153. Amends Section 504.011, Labor Code, as follows:

Sec. 504.011. METHOD OF PROVIDING COVERAGE. (a) Requires a political subdivision to provide workers' compensation benefits to its employees by becoming a self-insurer, providing insurance under a workers' compensation insurance policy, or entering into an interlocal agreement with other political subdivisions providing for self-insurance.

(b) Requires a political subdivision to provide workers' compensation medical benefits for the employees through a provider network under Chapter 408B, if the governing body of that entity determines providing those benefits through a network is available and practical for the political subdivision. Authorizes a political subdivision to enter into interlocal agreements and other agreements with other political subdivisions to establish or contract with provider networks under this section.

(c) Authorizes the political subdivision or pool to provide medical benefits to its injured employees:

(1) in the manner provided by Chapter 408, other than Sections 408.001(b) and (c) and Section 408.002, and by Subchapters B and C, Chapter 413; or

(2) by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172 (Texas Political Subdivisions Uniform Group Benefits Program), Local Government Code.

(d) Provides that the provisions of Chapters 408 and 408A relating to medical benefits, Chapter 408B, and Chapter 413, do not apply if the political subdivision or pool provides medical benefits under Subsection (c)(2).

(e) Provides that if the political subdivision or pool provides medical benefits under Subsection (c)(2), specific standards apply.

(f) Prohibits the section from being construed as waiving sovereign immunity or creating a new cause of action.

SECTION 2.154. Amends Sections 504.016(d) and (e), Labor Code, to provide that except as provided by Subsection (d), a joint insurance fund created under this section is not considered insurance for purposes of any state statute and is not subject to rules adopted by the commissioner, rather than TDI. Make conforming changes.

SECTION 2.155. Amends Section 504.017, Labor Code, to make conforming changes.

SECTION 2.156. Amends the heading to Section 504.018, Labor Code, to read as follows:

Sec. 504.018. NOTICE TO DEPARTMENT AND EMPLOYEES; EFFECT ON COMMON-LAW STATUTORY LIABILITY.

SECTION 2.157. Amends Section 504.018(a), Labor Code, to make conforming changes.

PART 5. AMENDMENTS TO CHAPTER 505, LABOR CODE.

SECTION 2.201. Amends Section 505.002, Labor Code, by amending Subsections (a) and (b) and adding Subsection (a-1), to make conforming changes.

SECTION 2.202. Amends the heading to Section 505.053, Labor Code, to read as follows:

Sec. 505.053. CERTIFIED COPIES OF DOCUMENTS.

SECTION 2.203. Amends Sections 505.053(a) and (c), Labor Code, to make conforming changes.

SECTION 2.204. Amends Section 505.054(d), Labor Code, to make conforming changes.

SECTION 2.205. Amends Section 505.055, Labor Code, to make conforming changes.

SECTION 2.206. Amends Sections 505.056(a) and (d), Labor Code, to make conforming changes.

SECTION 2.207. Amends Section 505.057(a), Labor Code, to make a conforming change.

SECTION 2.208. Amends Section 505.058, Labor Code, to make conforming changes.

SECTION 2.209. Amends Section 505.059, Labor Code, to make conforming changes.

SECTION 2.210. Repealer: Section 505.001(a)(1) (relating to the definition of "commission"), Labor Code.

## ARTICLE 2A. ALTERNATIVE COMPENSATION PILOT PROGRAM

SECTION 2A.001. Amends Title 5, Labor Code, by adding Subtitle D, as follows:

### SUBTITLE D. ALTERNATIVE COMPENSATION PROGRAMS

#### CHAPTER 551. PILOT PROGRAM ON USE OF INSURANCE POLICY TO PROVIDE MEDICAL AND INCOME BENEFITS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. Defines "alternative benefit plan," "commissioner," "course and scope of employment," "department," "employer," "employee," "group health insurance policy," "program," and "qualified insurance policy."

Sec. 551.002. EXPIRATION. Provides that the program is abolished and this chapter expires effective September 1, 2009.

[Reserves Sections 551.003-551.050 for expansion.]

##### SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

Sec. 551.051. EFFECT OF EMPLOYER PARTICIPATION. Provides that an employer who elects to participate in the program under this chapter is considered a subscribing employer to the workers' compensation of this state for all purposes of Subtitle A.

Sec. 551.052. IMPLEMENTATION OF PROGRAM; POLICY APPROVAL PROCESS. (a) Requires the commissioner to develop and operate a pilot program under which an employer may offer an alternative benefit plan to the employees through a qualified insurance policy that provides specific health care benefits to the employees and qualifies as provision of medical benefits for purposes of workers' compensation insurance coverage as described by Subtitle A.

(b) Requires the employer to submit the policy to TDI for approval in the manner prescribed by the commissioner, before an employer may use a qualified insurance policy for employee health care benefits under this chapter, accompanied by any filing fee set by the commissioner, by rule.

(c) Requires the commissioner, by rule, to adopt guidelines for the approval of policies submitted to TDI under this section. Requires the guidelines to require that the policy include limits and coverages for health care services, including hospitalization, that are at least equivalent to the limits and coverages applicable to the medical benefits provided to an employee covered under Subtitle A.

(d) Requires the commissioner to review a policy submitted under Subsection (b) by the 30th day after the policy is submitted. Requires TDI to notify the employer who submitted the policy by the fifth day, upon disapproval by the commissioner.

(e) Requires TDI to notify the employer by the 10th day upon approval by the commissioner. Authorizes the employer to begin using the policy for benefits under this chapter as of the date of the final approval.

Sec. 551.053. **COVERAGE FOR INCOME BENEFITS; APPROVAL.** (a) Authorizes the employer, if a qualified insurance policy is approved under Section 551.052, to obtain an insurance policy from any insurer authorized to engage in the business of workers' compensation insurance in this state to provide coverage for each employee, or the legal beneficiary of a deceased employee, against a specific loss.

(b) Requires the employer to submit the indemnity policy to TDI for approval in the manner prescribed for approval of a policy under Section 551.052.

(c) Requires the commissioner, by rule, to adopt guidelines for the approval of a policy submitted to TDI under this section. Requires the guidelines to require that the policy provide coverage for specific benefits.

Sec. 551.054. **RULEMAKING.** Requires the commissioner to adopt rules as necessary to implement the duties of TDI under this chapter.

Sec. 551.055. **REPORT TO LEGISLATURE.** Requires the commissioner to submit a report by December 1 of each year to specific members of the legislature.

[Reserves Sections 551.056-551.100 for expansion.]

#### SUBCHAPTER C. OPERATION OF PROGRAM

Sec. 551.101. **EMPLOYER AUTHORIZATION TO OFFER ALTERNATIVE BENEFIT PLAN.** (a) Authorizes a subscribing employer who elects to participate in the program, notwithstanding Subtitle A, to offer an alternative benefit plan to provide benefits to an employee who sustains an injury in the course and scope of the employment.

(b) Authorizes an employer to offer an alternative benefit plan under this chapter only through specific coverages.

Sec. 551.102. **ELIGIBILITY TO PARTICIPATE IN PROGRAM.** Provides that an employer is only eligible to participate in the program if the employer elected to obtain workers' compensation insurance coverage under Subtitle A on or before January 1, 2005. Prohibits an employer who did not elect to obtain workers' compensation insurance coverage under Subtitle A on or before January 1, 2005, from participating in the program.

[Reserves Sections 551.103-551.150 for expansion.]

#### SUBCHAPTER D. PROVISION OF ALTERNATIVE BENEFIT PLAN

## THROUGH QUALIFIED INSURANCE POLICY AND ENDORSEMENTS

Sec. 551.151. RESPONSIBILITIES OF EMPLOYER. (a) Requires an employer who elects to participate in the program to pay any coinsurance or deductible otherwise imposed on the insured employee for any compensable work-related injury and continue the payment of wages to an insured employee until the employee begins to receive income benefits through the indemnity insurance policy under Section 551.053.

(b) Requires the employer to maintain a qualified insurance policy and indemnity insurance policy for the benefit of that employee until the benefits to which the employee is entitled have been paid, if an employee receives benefits under an alternative benefit plan. Requires a qualified insurance policy and indemnity insurance policy required to be maintained under this subsection to provide benefits adequate to pay all benefits to which the employee is entitled.

Sec. 551.152. SUBROGATION. (a) Provides that this section applies to an action to recover damages for personal injuries or death sustained by an employee in the course and scope of employment against an employer who has obtained a qualified insurance policy and indemnity insurance policy covering that employee or a third party.

(b) Requires a judgment against an employer to be reduced to the extent that the employee has been compensated or is entitled to be compensated under the employer's qualified insurance policy or indemnity insurance policy. Requires a judgment reduced under this subsection be reinstated to the extent that the qualified insurance policy and indemnity insurance policy is canceled or otherwise fails to fully compensate the employee or a legal beneficiary of the employee to the extent provided by the policy.

(c) Provides that an insurance carrier that is liable for the payment of benefits to the employee or a legal beneficiary of the employee is subrogated to the rights of the employee or legal beneficiary against a third party.

[Reserves Sections 551.153-551.200 for expansion.]

### SUBCHAPTER E. EFFECT OF ALTERNATIVE BENEFIT PLAN

Sec. 551.201. APPLICATION OF SUBTITLE A. Provides that Subtitle A applies to an employer who provides an alternative benefit plan in the manner prescribed by this chapter.

Sec. 551.202. CONTRACT REQUIREMENTS. Requires a person who requires an employer, as a prerequisite to entering into a contract with that employer, to present evidence of workers' compensation insurance coverage to accept a qualified insurance policy and indemnity insurance policy issued as provided by this chapter from an employer who obtains and maintains in effect a qualified policy.

SECTION 2A.002. (a) Requires the commissioner to adopt rules as required by this article not later than January 1, 2006.

(b) Makes application of Subchapter E, Chapter 551, Labor Code, as added by this Act, prospective to March 1, 2006.

SECTION 2A.003. Effective date of this article: September 1, 2005, except as provided by Section 2A.002(b).

## ARTICLE 3. CONFORMING AMENDMENTS

### PART 1. CONFORMING AMENDMENTS--GOVERNMENT CODE

SECTION 3.001. Amends Section 23.101(a), Government Code, to make conforming changes.

SECTION 3.002. Amends Section 25.0003(c), Government Code, by deleting existing text authorizing a specific court to have jurisdiction in appeals of final rulings and decisions of the Texas Workers' Compensation Commission, regardless of the amount in controversy.

SECTION 3.003. Amends Section 25.0222(a), Government Code, to make a conforming change.

SECTION 3.004. Amends Section 25.0862(i), Government Code, to make a conforming change.

SECTION 3.005. Amends Section 25.2222(b), Government Code, to make a conforming change.

SECTION 3.006. Amends Section 551.044(b), Government Code, to provide that Subsection (a) does not apply to the Texas Department of Insurance, as regards proceedings and activities of the department or commissioner of insurance under Title 5, Labor Code, rather than the Workers' Compensation Commission.

SECTION 3.007. Amends Section 2011.003(7), Government Code, to make a conforming change.

SECTION 3.008. Amends Section 2002.001(3), Government Code, to make a conforming change.

SECTION 3.009. Amends Section 2003.001(4), Government Code, to make a conforming change.

SECTION 3.010. Amends Section 2003.021(c), Government Code, to make conforming changes.

SECTION 3.011. Amends Section 2054.021(c), Government Code, to make conforming changes.

## PART 2. CONFORMING AMENDMENTS--INSURANCE CODE.

SECTION 3.051. Amends Section 31.002, Insurance Code, to require TDI to administer the workers' compensation system of this state as provided by Title 5, Labor Code, in addition to other duties.

SECTION 3.052. Amends Section 31.004, Insurance Code, as follows:

Sec. 31.004. SUNSET PROVISION. Requires the Sunset Advisory Commission, in conducting its review of the department as required by Subsection (a), to limit its review to the operations of that department under the Insurance Code. Provides that, unless continued as provided by Chapter 325 (Sunset Law), Government Code, the duties of the department under Title 5, Labor Code, expire September 1, 2019, or another date designated by the legislature.

SECTION 3.053. Amends Section 31.021(b), Insurance Code, to provide that the commissioner has the powers and duties vested in TDI by Title 5, Labor Code, and other workers' compensation insurance laws of this state.

SECTION 3.054. Amends Section 33.007(a), Insurance Code, to make a conforming change.

SECTION 3.055. Amends Section 36.104, Insurance Code, as follows:

Sec. 36.104. New heading: INFORMAL DISPOSITION OF CERTAIN CONTESTED CASES. Creates new subsection and provides that this section does not apply to a contested case under Title 5, Labor Code.

SECTION 3.056. Amends Subchapter D, Chapter 36, Insurance Code, by adding Section 36.2015, as follows:

Sec. 36.2015. ACTIONS UNDER TITLE 5, LABOR CODE. Provides that, notwithstanding Section 36.201, Insurance Code, a decision, order, rule, form, or administrative or other ruling of the commissioner under Title 5, Labor Code, is subject to judicial review as provided by Title 5, Labor Code.

SECTION 3.057. Amends Section 40.003(c), Insurance Code, to provide that this chapter does not apply to a proceeding under Chapter 201, rather than Article 1.04D, Insurance Code. Makes conforming changes.

SECTION 3.058. Amends Section 81.001(c), Insurance Code, to provide that this section does not apply to a violation of Subchapter A, Chapter 544, Insurance Code, rather than Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or Section 541.057, Insurance Code, rather than Section 4(7)(a), Article 21.21 of this code. Makes a conforming change.

SECTION 3.059. Amends Section 84.002, Insurance Code, by adding Subsection (c), to provide that this chapter applies to a monetary penalty the department or commissioner imposes under Title 5, Labor Code, only as provided by that title.

SECTION 3.060. Amends Section 843.101, Insurance Code, by adding Subsection (e), as follows:

(e) Authorizes a health maintenance organization to serve as a certified provider network, as defined by Section 401.011, Labor Code, in accordance with Chapter 408B, Labor Code.

SECTION 3.061. Amends Section 1301.056(b), Insurance Code, as effective April 1, 2005, to make conforming changes.

SECTION 3.062. Amends Subchapter D, Chapter 5, Insurance Code, by adding Articles 5.55A and 5.55D, as follows:

Art. 5.55A. WORKERS' COMPENSATION COVERAGE WRITTEN BY GROUP HEALTH INSURERS AUTHORIZED. (a) Authorizes a person who is authorized by TDI to engage in the business of insurance in this state under a certificate of authority that includes authorization to write group health insurance to also write workers' compensation insurance in this state.

(b) Provides that a person writing workers' compensation insurance under this article is, with respect to that insurance, subject to each duty imposed on a workers' compensation insurer under this code and under Title 5, Labor Code, including provisions relating to the payment of premium and maintenance taxes and maintenance of reserves and is a member insurer under Article 21.28-C (Property and Casualty Insurance Guaranty Act) of this code.

(c) Authorizes the commissioner, by rule, notwithstanding Subsection (b), to provide that a person writing workers' compensation insurance under this article may instead comply with specified regulatory provisions otherwise applicable to the person, if the commissioner finds that those provisions provide at least as much protection to insureds, insurers, creditors, and the public as the comparable provisions otherwise applicable to a workers' compensation insurer.

Art. 5.55D. DISCOUNTS FOR CERTAIN PROGRAMS.

Sec. 1. DEFINITION. Defines "insurer."

Sec. 2. REQUIRED FILING OF DISCOUNT INFORMATION. (a) Requires each insurer to file, with TDI, in the manner prescribed by the commissioner by rule, information regarding any premium discounts offered by the insurer to an



employer who is a policyholder under a policy of workers' compensation insurance for the use by the employer of specific programs.

(b) Requires the insurer to include in the filing, the percentage amount discounted from the premium for each program described under Subsection (a) of this section.

Sec. 3. DEPARTMENT ANALYSIS; RULES. Requires TDI to analyze the information contained in filings made under this article and to determine whether the mandatory use of the workers' compensation insurance premium discounts would improve the operation of the workers' compensation system of this state. Authorizes the commissioner, by rule, if TDI does make such a determination, to establish a mandatory premium discount program under this article.

SECTION 3.063. Amends Article 5.58(b), Insurance Code, to make conforming changes.

SECTION 3.064. Amends Article 5.60A, Insurance Code, as follows:

Art. 5.60A. RATE HEARINGS. (a) Requires the commissioner to conduct a public hearing to review rates to be charged for workers' compensation insurance written in this state, not later than December 1, 2008. Provides that a public hearing under this article is not a contested case as defined by Section 2001.003 (Definitions), Government Code. Deletes existing text requiring the hearing to be conducted under the contested case provisions.

(b) Requires each insurer subject to this subchapter to file the rates, supporting information, and supplementary rating information with the commissioner, not later than the 30th day before the date of the public hearing required under Subsection (a) of this article. Deletes existing text requiring the board to conduct a hearing six months prior to the annual hearing.

(c) Requires the commissioner to review the information submitted under Subsection (b) of this section to determine the positive or negative impact of the enactment of H.B. 7, Acts of the 79th Legislature, Regular Session, 2005, on workers' compensation rates and premiums. Authorizes the commissioner to consider other factors, including relativities under Article 5.60 (Rating) of this code, in determining whether a change in rates has impacted the premium charged to policyholders. Deletes existing text requiring specific individuals to testify regarding rates and additional information on certain trends.

(d) Requires the commissioner to implement rules as necessary to mandate rate reductions or to modify the use of individual risk variations, if the commissioner determines that the rates or premiums charged by insurers are excessive, as the term is defined in this code. Deletes existing text providing that the testimony of specific individuals are subject to cross-examining by any party to the hearing.

(e) Authorizes the commissioner to adopt rules as necessary to mandate rate or premium reductions by insurers for the use of cost-containment strategies that result in savings to the workers' compensation system, including use of a provider network health care delivery system, as described by Chapter 408B, Labor Code. Deletes existing text requiring the board to consider changes in workers' compensation laws when setting rates.

(f) Requires the commissioner to submit a report to specific legislative officials regarding the information collected from the insurer filings under this article, not later than January 1, 2009. Requires the commissioner to recommend proposed legislation that reflects the findings of the report and how that information may be used to lower the rates filed by insurers and the premium charged to policyholders.

(g) Requires the commissioner to schedule a public hearing to review rates and premiums to be charged for workers' compensation insurance each biennium under this article.

(h) Provides that this section expires September 1, 2019.

SECTION 3.065. Amends Article 5.65A(a), Insurance Code, to make a conforming change.

SECTION 3.066. Amends Sections 8(a), (e), (g)-(i), (k), and (l), Article 5.76-3, Insurance Code, to make conforming changes.

SECTION 3.067. Amends Section 9(a), (b), and (e), Article 5.76-3, to make conforming changes.

SECTION 3.068. Amends Section 10(a), Article 5.76-3, Insurance Code, to make a conforming change.

SECTION 3.069. Amends Section 12(e), Article 5.76-3, Insurance Code, to make a conforming change.

SECTION 3.070. Amends Section 16(b), Article 5.76-3, Insurance Code, to make a conforming change.

SECTION 3.071. Amends Sections 10(a) and (c), Article 5.76-5, to make conforming changes.

SECTION 3.072. Amends Section 3A, Article 21.28, Insurance Code, as follows:

Sec. 3A. New heading: WORKERS' COMPENSATION CARRIER: NOTIFICATION.  
Makes conforming changes.

SECTION 3.073. Amends Section 8(d), Article 21.28-C, Insurance Code, to make conforming changes.

SECTION 3.074. Amends Section 4(1), Article 21.58A, Insurance Code, to prohibit a health care provider's charges for providing medical information to a utilization review agent from exceeding the cost of copying set by rule of the commissioner for records and to include any costs that are otherwise recouped as part of the charge for health care.

SECTION 3.075. Amends Section 14(c), Article 21.58A, Insurance Code, to make conforming changes.

SECTION 3.076. Repealers: (1) Section 31.006 (Texas Workers' Compensation Commission Not Affected), Insurance Code; and

(2) Section 1(2), Article 5.76-3 (Texas Mutual Insurance Company), Insurance Code.

### PART 3. CONFORMING AMENDMENTS--OTHER CODES

SECTION 3.101. Amends Section 92.009, Health and Safety Code, as follows:

Sec. 92.009. New heading: COORDINATION WITH TEXAS DEPARTMENT OF INSURANCE. Makes conforming changes.

SECTION 3.102. Amends Section 91.003(b), Labor Code, to make a conforming change.

SECTION 3.103. Amends Section 160.006(a), Occupations Code, to make a conforming change.

### ARTICLE 4. TRANSITION; EFFECTIVE DATE

SECTION 4.001. ABOLITION OF TEXAS WORKERS' COMPENSATION COMMISSION; GENERAL TRANSFER OF AUTHORITY TO TEXAS DEPARTMENT OF INSURANCE. Provides that TWCC is abolished March 1, 2006 and, except as otherwise provided by this article, all powers, duties, obligations, rights, contracts, funds, unspent appropriations, records, real or personal property, and personnel of TWCC shall be transferred to the TDI not later than February 28, 2006.

SECTION 4.002. OFFICE OF INJURED EMPLOYEE COUNSEL. (a) Provides that the office of injured employee counsel created under Chapter 404, Labor Code, as added by this Act, is established September 1, 2005.

(b) Requires the governor to appoint the director of the office of injured employee counsel not later than October 1, 2005.

(c) Requires the director of the office of injured employee counsel to adopt initial rules for the office under Section 404.006, Labor Code, as added by this Act, not later than March 1, 2006.

(d) Requires TDI to provide, in Austin and in each regional office operated by TDI to administer Subtitle A, Title 5, Labor Code, as amended by this Act, suitable office space, personnel, computer support, and other administrative support, to the office of employee assistance as required by Chapter 404, Labor Code, as added by this Act and to do so not later than October 1, 2005.

(e) Requires all powers, duties, obligations, rights, contracts, funds, unspent appropriations, records, real or personal property, and personnel of TWCC relating to the operation of the workers' compensation ombudsman program under Subchapter C, Chapter 409, Labor Code, as that subchapter existed before amendment by this Act, to be transferred to the office of injured employee counsel not later than March 1, 2006. Requires an ombudsman transferred to the office of injured employee counsel under this section to begin providing services under Chapter 404, Labor Code, as added by this Act, not later than March 1, 2006.

SECTION 4.003. INITIAL REPORT OF WORKERS' COMPENSATION RESEARCH AND EVALUATION GROUP. Requires the workers' compensation research and evaluation group to submit the initial report required under Section 405.0025, Labor Code, as added by this Act, not later than September 1, 2008.

SECTION 4.004. CONTINUATION OF CERTAIN POLICIES, PROCEDURES, OR DECISIONS. (a) Provides that a policy, procedure, or decision of the commission relating to a duty of that commission that is transferred to the authority of the department under Subtitle A, Title 5, Labor Code, as amended by this Act, continues in effect as a policy, procedure, or decision of the commissioner until superseded by an act of the commissioner.

(b) Provides that a policy, procedure, or decision of the commission relating to a duty of that commission that is transferred to the authority of the office of injured employee counsel established under Chapter 404, Labor Code, as added by this Act, continues in effect as a policy, procedure, or decision of the office of employee assistance until superseded by an act of the injured employee public counsel.

(c) Provides that, except as otherwise provided by this article, the validity of a plan or procedure adopted, contract or acquisition made, proceeding begun, grant or loan awarded, obligation incurred, right accrued, or other action taken by or in connection with the authority of the commission before that commission is abolished under Section 4.001 of this article is not affected by the abolishment.

SECTION 4.005. RULES. (a) Requires the commissioner to adopt rules relating to the transfer of the programs assigned to the department under Subtitle A, Title 5, Labor Code, as amended by this Act, not later than December 1, 2005.

(b) Requires the injured employee public counsel of the office of injured employee counsel established under Chapter 404, Labor Code, as added by this Act, to adopt rules relating to the transfer of the programs assigned to the office of employee assistance under Subtitle A, Title 5, Labor Code, as amended by this Act, not later than March 1, 2006.

(c) Provides that a rule of TWCC relating to a duty that is transferred to TDI under Subtitle A, Title 5, Labor Code, as amended by this Act, continues in effect as a rule of the commissioner until the earlier of December 1, 2006, or the date on which the rule is superseded by a rule adopted by the commissioner.

(d) Provides that a rule of TWCC relating to a duty of that commission that is transferred to the authority of the office of injured employee counsel under Subtitle A, Title 5, Labor Code, as amended by this Act, continues in effect as a rule of the commissioner until the earlier of September 1, 2006, or the date on which the rule is superseded by a rule adopted by the commissioner.

**SECTION 4.006. EFFECT ON ACTION OR PROCEEDING.** (a) Provides that, except as otherwise provided by this section, any action or proceeding before the commission is or to which the commission is a party is transferred without change in status to the department.

(b) Provides that benefit review conferences, as established under Subchapter B, Chapter 410, Labor Code, as that subchapter existed before amendment by this Act, are abolished February 28, 2006. Requires a benefit review officer conducting a benefit review conference that is in progress on February 28, 2006, to terminate the conference and file with the commission the written agreement required under Section 410.034, Labor Code, as that section existed before repeal by this Act, not later than April 1, 2006. Provides that a claimant regarding workers' compensation benefits whose claim is not heard by a benefit review officer under Subchapter B, Chapter 410, Labor Code, as that subchapter existed before amendment by this Act, on or before February 27, 2006, is entitled to a contested case hearing or arbitration on the claim without compliance with the informal dispute resolution procedures established under Chapter 410, Labor Code, as amended by this Act. Authorizes the claimant, if the claimant elects to proceed to a contested case hearing, to elect to participate in a prehearing conference under Section 410.151, Labor Code, as amended by this Act, or to proceed directly to a contested case hearing. Provides that this subsection expires April 30, 2006.

(c) Provides that the workers' compensation appeals panels established under Subchapter E, Chapter 410, Government Code, as that subchapter existed before repeal by this Act, are abolished April 1, 2006, or on an earlier date specified by the commissioner. Prohibits an appeals panel from accepting a new appeal of the decision of a hearing officer under Chapter 410, Labor Code, as that chapter existed before amendment by this Act, on or after February 28, 2006. Authorizes a party to a dispute regarding the decision of a hearing officer that is filed with the commission or the department on or after February 28, 2006, to seek judicial review under Chapter 410, Labor Code, as amended by this Act.

**SECTION 4.007. APPEAL.** Makes application of Section 410.252(e), Labor Code, as added by this Act, and Sections 25.0003, 25.0002, and 25.0862, Government Code, as amended by this Act, prospective.

**SECTION 4.008. STATE OFFICE OF ADMINISTRATIVE HEARINGS REVIEW.** (a) Provides that this section applies to a hearing conducted by the State Office of Administrative (SOA) Hearings under Section 413.031(k), Labor Code, as that subsection existed prior to repeal by this Act.

(b) Requires SOA to conclude on or before February 28, 2006, any hearing pending regarding medical disputes that remain unresolved.

(c) Prohibits SOA from accepting a medical dispute that remains unresolved for hearing, effective September 1, 2005. Provides that a medical dispute that is not pending for

hearing by SOA on or before February 28, 2006, is subject to Section 413.033 and Section 413.035, Labor Code, as added by this Act, and is not subject to a hearing before SOA.

SECTION 4.009. CHANGE IN CRIMINAL PENALTY. Makes application of the changes in law made by this Act, relating to the punishment for an offense, prospective.

SECTION 4.010. ABOLITION OF HEALTH CARE NETWORK ADVISORY COMMITTEE. Provides that the Health Care Network Advisory Committee is abolished on the effective date of this Act and requires that, except as otherwise provided by this article, all powers, duties, obligations, rights, contracts, funds, records, and real or personal property of the Health Care Advisory Network Committee be transferred to the department not later than February 28, 2006.

SECTION 4.011. REFERENCE IN LAW. Provides that a reference in law to the Texas Workers' Compensation Commission means the Texas Department of Insurance, the Texas Workforce Commission, or the office of injured employee counsel as consistent with the respective duties of those state governmental entities under the Labor Code, the Insurance Code, and other laws of this state, as amended by this Act.

SECTION 4.012. BUDGET EXECUTION AUTHORITY. Authorizes the Legislative Budget Board (LBB), notwithstanding Section 317.005(e), Government Code, to adopt an order under Section 317.005, Government Code, affecting any portion of the total appropriation of the department or TWC if necessary to implement the provisions of this Act and provides that this section expires March 31, 2006.

SECTION 4.013. EFFECTIVE DATE. Effective date: September 1, 2005, except as otherwise provided by this article.