

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 7
By: Solomons (Staples)
State Affairs
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, 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 (TDI). However, numerous studies and analyses by both the state and other entities demonstrate that Texas has one of the most costly and least effective workers' compensation systems in the country.

The most significant change made by C.S.H.B. 7 is to the medical care delivery system. Under current law, an employee injured on the job receives care from a doctor on TWCC's approved doctor list. State law and TWCC closely define many aspects of the medical care delivery system, including provider fees, dispute processes, preauthorization of care requirements, and other areas. C.S.H.B. 7 allows for the formation of workers' compensation health care networks and requires the networks to be certified and regulated by TDI. If an employer offers a network, employees would receive treatment for on-the-job injuries from network providers. Networks and the parties with which they contract could negotiate many aspects of the medical care delivery process currently defined by TWCC.

C.S.H.B. 7 also abolishes TWCC and replaces it with the Texas Department of Workers' Compensation (TDWC), headed by a single commissioner. Further, C.S.H.B. 7 makes greater use of, and requires greater accountability in, the designated doctor process by which independent doctors consider disputed issues related to indemnity benefits. TDWC would be required to adopt evidence-based medical treatment guidelines, and could adopt more specific treatment protocols.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Workers' Compensation Commission is transferred to the newly created position of commissioner of the Texas Department of Workers' Compensation throughout this bill.

Rulemaking authority previously granted to the component institutions of The Texas A&M University System is transferred to The Texas A&M University System in SECTION 3.291 (Section 502.061, Labor Code) of this bill.

Rulemaking authority previously granted to the component institutions of The University of Texas System is transferred to The University of Texas System in SECTION 3.304 (Section 503.061, Labor Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of the Texas Department of Workers' Compensation in SECTION 3.076 (Section 408.0231, Labor Code), SECTION 3.079 (Section 408.0251, Labor Code), SECTION 3.082 (Section 408.028, Labor Code), SECTION 3.0841 (Section 408.032, Labor Code), SECTION 3.232 (Section 413.011, Labor Code), SECTION 3.242 (Section 413.022, Labor Code), and SECTION 4.02 (Section 1305.105, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 3.017 (Section 405.002, Labor Code), SECTION 4.02 (Sections 1305.005, 1305.007, 1305.106, 1305.401, 1305.403, and 1305.502, Insurance Code), of this bill.

Rulemaking authority is expressly granted to the injured employee public counsel in SECTION 3.0151 (Section 404.006, Labor Code) of this bill.

Rulemaking authority previously granted to the Texas Workers Compensation Commission is rescinded and transferred to the injured employee public counsel in SECTION 3.0152 (Section 404.151, Labor Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Workers Compensation in SECTION 3.104 (Section 408.123, Labor Code), SECTION 3.080 (Section 408.028, Labor Code), and SECTION 3.217 (Section 411.081, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. ORGANIZATION OF DEPARTMENT

SECTION 1.001. Amends Subchapter A, Chapter 402, Labor Code, as follows:

SUBCHAPTER A. ORGANIZATION

Sec. 402.001. New heading: DUTIES OF DEPARTMENT. Requires the Texas Department of Workers' Compensation (department) to regulate the business of workers' compensation and ensure that laws regarding workers' compensation are executed, in addition to the other duties required of the department.

Sec. 402.002. COMPOSITION OF DEPARTMENT. Provides that the department is composed of the commissioner of workers' compensation (commissioner) and other officers and employees as required to efficiently implement certain workers' compensation laws.

Sec. 402.003. CHIEF EXECUTIVE. (a) Provides that the commissioner is the department's chief executive and administrative officer. Requires the commissioner to administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the department or the commissioner.

(b) Provides that the commissioner has the powers and duties vested in the department by this title and other workers' compensation laws of this state.

Sec. 402.004. APPOINTMENT; TERM. Requires the governor, with the advice and consent of the senate, to appoint the commissioner, who serves a two-year term that expires on February 1 of each odd-numbered year. Requires the governor to appoint the commissioner in a nondiscriminatory manner.

Sec. 402.005. QUALIFICATIONS. Sets forth qualifications to be met by the commissioner.

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

Sec. 402.007. COMPENSATION. Provides that the commissioner is entitled to compensation as provided by the General Appropriations Act. Deletes existing text related to membership requirements for the Texas Workers' Compensation Commission (commission).

Deletes existing text of Sections 402.001 (Membership Requirements), 402.0015 (Training Program for Commission Members), and 402.002 (Terms; Vacancy).

Sec. 402.008. EFFECT OF LOBBYING ACTIVITY. Redesignated from Section 402.003. Prohibits a person from serving as commissioner, rather than as a member of the commission, or acting as the general counsel to the department, rather than the commission, if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code. Makes conforming changes.

Deletes existing text of Section 402.004 (Voting Requirements).

Sec. 402.009. New heading: GROUNDS FOR REMOVAL. Redesignated from Section 402.005 (Removal of Commission Members). (a) Provides that it is a ground for removal from office if the commissioner, rather than the commission member, commits certain offenses. Makes conforming changes.

(b) Provides that the validity of an action of the commissioner or the department is not affected by the fact that it is taken when a ground for removal of the commissioner exists. Makes conforming changes. Deletes existing text of Subsection (c) related to notification of a potential ground for removal.

Sec. 402.010. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION. Redesignated from Section 402.006. Provides that a violation of this section is an administrative violation and constitutes a ground for removal from office or termination of employment. Makes conforming changes.

Deletes existing text of Sections 402.007 (Meetings), 402.008 (Chairman), and 402.009 (Leave of Absence).

Sec. 402.011. New heading: CIVIL LIABILITY OF THE COMMISSIONER. Redesignated from Section 402.010. Makes conforming changes.

Deletes existing text of Section 402.011 (Reimbursement).

Sec. 402.012. CONFLICT OF INTEREST. Makes conforming changes.

Sec. 402.0125. PROHIBITION ON EMPLOYMENT OR REPRESENTATION. (a) Prohibits the commissioner or an employee of the department involved in hearing department cases from:

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

(2) representing a person before the department or a court in certain enumerated matters.

(b) Sets forth the dates for which the prohibition of Subsection (a)(1) applies.

(c) Sets forth the dates for which the prohibition of Subsection (a)(2) applies.

Sec. 402.013. TRAINING PROGRAM FOR COMMISSIONER. Requires the commissioner, not later than the 90th day after the date on which the commissioner takes office, to complete a training program that complies with this section. Requires the training program to provide the commissioner with certain information.

Sec. 402.014. GENERAL POWERS AND DUTIES OF COMMISSIONER. Requires the commissioner to conduct the day-to-day operations of the department and otherwise implement department policy. Authorizes the commissioner to perform certain administrative duties. Provides that the commissioner is the agent for service of process on out-of-state employers.

SECTION 1.002. Amends Subchapter C, Chapter 402, Labor Code, as follows:

SUBCHAPTER C. New heading: DEPARTMENT PERSONNEL

Sec. 402.041. New heading: APPOINTMENTS. (a) Requires the commissioner, subject to the General Appropriations Act, to appoint certain personnel as necessary to carry out the powers and duties of the commissioner and the department under this title and other workers' compensation laws.

(b) Requires a person appointed under this section to have certain experience and qualifications necessary to perform job duties.

(c) Requires a person appointed as an associate or deputy commissioner or to hold an equivalent position to have five years of relevant experience, with at least two years of that experience in work related the position to be held.

Sec. 402.042. DIVISION OF RESPONSIBILITIES. Requires the commissioner to develop and implement policies that clearly define the responsibilities of the commissioner and the staff of the department. Deletes existing text related to the specific duties of the executive director.

Deletes existing text of Section 402.042 (General Powers and Duties of Executive Director) and Section 402.043 (Administrative Assistants).

Sec. 402.043. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. Redesignated from existing Section 402.044. Requires the commissioner or the commissioner's designee, rather than the executive director, to develop an intra-agency career ladder program and a system of annual performance evaluations. Makes conforming changes.

Sec. 402.044. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. Redesignated from Section 402.045. Requires that a policy statement prepared under this section be reviewed by the civil rights division of the Texas Workforce Commission, rather than the Commission on Human Rights and to be filed with the Texas Workforce Commission, rather than the governor's office. Makes conforming changes.

ARTICLE 2. CONFORMING AMENDMENTS WITHIN CHAPTER 402, LABOR CODE

SECTION 2.001. Amends the heading to Chapter 402, Labor Code, to read as follows:

CHAPTER 402. TEXAS DEPARTMENT OF WORKERS' COMPENSATION

SECTION 2.002. Amends Section 402.021, Labor Code, as follows:

Sec. 402.021. New heading: DEPARTMENT DIVISIONS. (a) Redesignated from existing Subsection (b). Authorizes the commissioner to establish divisions within the department for effective administration and performance of department functions. Authorizes the commissioner to allocate and reallocate functions. Deletes text describing certain divisions under the administration of the commission. Makes conforming changes.

(b) Redesignated from existing Subsection (c). Makes conforming changes.

(c) Provides that a reference in this title or any other law to the division of workers' health and safety, the division of medical review, the division of compliance and practices, the division of hearings, and the division of self-insurance regulation of the former Texas Workers' Compensation Commission means the department.

SECTION 2.003. Amends Section 402.022, Labor Code, to make conforming changes.

SECTION 2.004. Amends Section 402.023, Labor Code, to make conforming changes.

SECTION 2.005. Amends Section 402.024, Labor Code, to make conforming changes.

SECTION 2.006. Amends the heading to Subchapter D, Chapter 402, Labor Code, to read as follows:

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DEPARTMENT

SECTION 2.007. Amends Section 402.061, Labor Code, to make a conforming change.

SECTION 2.008. Amends Section 402.062(a), Labor Code, to make conforming changes.

SECTION 2.009. Amends Section 402.064, Labor Code, to make conforming changes.

SECTION 2.010. Amends Section 402.065, Labor Code, to make conforming changes.

SECTION 2.011. Amends Section 402.066, Labor Code, to make conforming changes.

SECTION 2.012. Amends Section 402.0665, Labor Code, to make conforming changes.

SECTION 2.013. Amends Section 402.067, Labor Code, to make conforming changes.

SECTION 2.014. Amends Section 402.068, Labor Code, to make a conforming change.

SECTION 2.015. Amends Section 402.069, Labor Code, to make conforming changes.

SECTION 2.016. Amends Section 402.071(a), Labor Code, to make a conforming change.

SECTION 2.017. Amends Section 402.072, Labor Code, to make conforming changes.

SECTION 2.018. Amends Sections 402.073(a) and (c), Labor Code, to make conforming changes.

SECTION 2.019. Amends Section 402.081, Labor Code, to require the fee for access to information under Chapter 552 (Public Information), 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. Makes conforming changes.

SECTION 2.020. Amends Section 402.082, Labor Code, as follows:

Sec. 402.082. New heading: INJURY INFORMATION MAINTAINED BY DEPARTMENT. Requires the department to maintain specific information on every compensable injury, including whether a claimant is receiving medical care through a workers' compensation health care network.

SECTION 2.021. Amends Section 402.083(a), Labor Code, to provide that information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the department except as provided by this subtitle or other law. Makes a conforming change.

SECTION 2.022. Amends Sections 402.084(a), (b), and (d), Labor Code, to authorize information on a claim to be released 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 Plans), rather than Article 3.97-3, Insurance Code. Makes conforming changes.

SECTION 2.023. Amends Section 402.085, Labor Code, as follows:

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) Requires the department to release information on a claim to the Texas Department of Insurance (TDI) for any statutory or regulatory purpose, including a research purpose under Chapter 405 (Workers' Compensation Research). Deletes existing Subdivision (4) related to the

Research and Oversight Council on Workers' Compensation and renumbers subsequent sections accordingly. Makes conforming changes.

(b) Authorizes the department to release information on a claim to a governmental agency, political subdivision, or regulatory body to use to assess financial resources in an action, including an administrative action, to cooperate with another state in an action authorized under Chapter 231 (Title IV-D Services), Family Code, rather than Chapter 76, Human Resources Code. Makes a conforming change.

SECTION 2.024. Amends Sections 402.088(a), (b), and (d), Labor Code, to make conforming changes.

SECTION 2.025. Amends Section 402.089, Labor Code, as follows:

Sec. 402.089. New heading: FAILURE TO FILE AUTHORIZATION. Provides that an employer who receives information by telephone from the department under Section 402.088 and who fails to file the necessary authorization in accordance with Section 402.087 commits an administrative violation, rather than a Class C administrative violation. Deletes text stating that each failure to file an authorization is a separate violation. Makes conforming changes.

SECTION 2.026. Amends Section 402.090, Labor Code, to authorize TDI, rather than the Texas Workers' Compensation Research Center (research center), to prepare and release statistical information if the identity of the employee is not explicitly or implicitly disclosed. Makes a conforming change.

SECTION 2.027. Amends Section 402.091(a), Labor Code, to make a conforming change.

SECTION 2.028. Amends Sections 402.092(a), (b), (d), (e), and (f), Labor Code, to make conforming changes.

ARTICLE 3. GENERAL OPERATION OF WORKERS' COMPENSATION SYSTEM; CONFORMING AMENDMENTS WITHIN LABOR CODE

SECTION 3.001. Amends Section 91.003(b), Labor Code, to include the Department of Assistive and Rehabilitative Services among the existing entities designated to assist in the implementation of this chapter and which are required to provide information to the department on request. Makes conforming changes.

SECTION 3.002. Amends Section 401.002, Labor Code, to provide that, unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the department is abolished September 1, 2017, rather than 2005. Makes conforming changes.

SECTION 3.003. Amends Section 401.003(a), Labor Code, to make conforming changes.

SECTION 3.004. Amends Section 401.011, Labor Code, to redefine "administrative violation," "designated doctor," "representative," "research center," and "sanction." Defines "commissioner," "evidence-based medicine," "health care reasonably required," "department," and "violation." Deletes existing definition of "commission."

SECTION 3.0041. Amends Section 401.013, Labor Code, by adding Subsection (c), as follows:

(c) Provides that upon the voluntary introduction into the body of any substance listed under Subsection (a)(2)(b), based upon a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and not having the normal use of mental or physical faculties.

SECTION 3.005. Amends Section 401.021, Labor Code, to provide that Chapter 552 (Public Information), Government Code, applies to a record of the department or a record of TDI regarding workers' compensation research. Makes conforming changes.

SECTION 3.006. Amends Section 401.023(b), Labor Code, to make a conforming change.

SECTION 3.007. Amends Sections 401.024(b), (c), and (d), Labor Code, to make conforming changes.

SECTION 3.008. Amends Subchapter C, Chapter 401, Labor Code, by adding Section 401.025, as follows:

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

(b) Provides that a reference in this code or other law to the executive director of the Texas Workers' Compensation Commission means the commissioner.

SECTION 3.009. Amends the heading to Chapter 403, Labor Code, to read as follows:

CHAPTER 403. DEPARTMENT FINANCING

SECTION 3.010. Amends Section 403.001, Labor Code, to authorize money deposited in the general revenue fund to be used to satisfy the requirements of Section 201.052 (Reimbursement), rather than Article 4.19, Insurance Code. Makes conforming changes.

SECTION 3.011. Amends Section 403.003, Labor Code, to make conforming changes.

SECTION 3.012. Amends Section 403.004, Labor Code, to make conforming changes.

SECTION 3.013. Amends Section 403.005, Labor Code, to make conforming changes.

SECTION 3.014. Reenacts and amends Section 403.006, Labor Code, as amended by Chapters 211 and 1296, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 403.006. SUBSEQUENT INJURY FUND. (a) Provides that the subsequent injury fund is a dedicated account, rather than an account, in the general revenue fund and that money in the account may be appropriated only for the purposes of this section or as provided by other law. Deletes existing text related to the applicability of Section 403.095, Government Code.

(b) Provides that the subsequent injury fund is liable for certain payments and reimbursements. Deletes existing text related to the payment of an assessment of feasibility and the development of regional networks. Makes conforming changes.

(c) and (d) Make conforming changes.

SECTION 3.015. Amends Section 403.007, Labor Code, to make conforming changes.

SECTION 3.0151. 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 TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (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 the department, but is independent of direction by the commissioner and the department.

(c) Requires the department to provide specific staff and facilities necessary to enable the office to perform the duties of the under this subtitle.

(d) Authorizes the injured employee public counsel (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 (Texas Sunset Act), Government Code, and unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2017.

Sec. 404.004. PUBLIC INTEREST INFORMATION. Requires the office to prepare information of public interest describing the functions of the office and make the 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 the office's programs. Requires the office 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. Provides that rulemaking under this section is subject to Chapter 2001 (Administrative Procedure), 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 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 the race, color, disability, sex, religion, age, or national origin of the appointee.

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

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

Sec. 404.052. QUALIFICATIONS. Sets forth eligibility requirements for a person to serve as public counsel.

Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. Sets forth circumstances for which a person is not eligible for appointment as public counsel, based on the person's activities or the activities of the person's spouse.

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

Sec. 404.055. GROUNDS FOR REMOVAL. Sets forth situations which qualify as grounds for removal of the public counsel from office. Provides that the validity of an

action of the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. (a) Prohibits a former public counsel from making any communication to or appearance before the department, TDI, the commissioner of workers' compensation, the commissioner of insurance, or an employee of the department or TDI before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made under specific circumstances.

(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 the department or TDI before the second anniversary of the date the person ceases to serve as public counsel.

(c) Provides that a person commits a Class A misdemeanor if the person violates this section.

(d) Prohibits a former employee of the office from being employed or representing specific entities.

(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. Sets forth circumstances for which a person is not eligible to serve as public counsel, based on the person's activities or the activities of the person's spouse with relation to a trade association.

[Reserves Sections 404.058-404.100 for expansion.]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

Sec. 404.101. GENERAL DUTIES. Requires the office to perform specific functions, as provided by this subtitle. Sets forth duties which the office is authorized and required to perform. Prohibits the office from appearing or intervening, as a party or otherwise, before the commissioner of workers' compensation, commissioner of insurance, department, or TDI on behalf of an individual injured employee.

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, approving specific expenditures, 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 with services provided by the Department of Assistive and Rehabilitative Services.

Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. Authorizes the public counsel to perform specific functions.

Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. Authorizes the office, through the ombudsman program, to appear before the commissioner or department on behalf of an individual injured employee during an administrative dispute resolution process.

Sec. 404.106. LEGISLATIVE REPORT. Requires the office to report to specific government officials not later than December 31 of each even-numbered year. Sets forth

requirements for the report. 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. 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. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. Entitles the public counsel to specific access, obtaining discovery under Chapter 2001, Government Code, and any relevant nonprivileged matter.

Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. Authorizes the public counsel to recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees.

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. Requires the public counsel to submit to the department and TDI a notice of injured employee rights and responsibilities to be distributed as provided by commissioner of workers' compensation and commissioner of insurance rules.

Sec. 404.110. 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 (Confidentiality of Certain Proceedings and Records), Article 21.28-A, Insurance Code, apply to the public counsel.

Sec. 404.111. ACCESS TO INFORMATION. (a) Entitles the office to information that is otherwise confidential under a law of this state, including specific information made confidential.

(b) Requires the department and TDI, 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) Prohibits the office from making public any confidential information provided to the office under this chapter, but authorizes the disclosure of 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 an individual or entity from gaining access to, any specific information.

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

(e) Provides that information on doctors and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies doctors 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.

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

SECTION 3.0152. Redesignates Subchapter C, Chapter 409, Labor Code, as Subchapter D, Chapter 404, Labor Code, and renumbers Sections 409.041 through 409.044, Labor Code, as Sections 404.151 through 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. Makes conforming changes.

Sec. 404.151. [sic] DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. Redesignates existing text from Section 409.042. (a) Requires at least one specifically qualified employee in each department office, rather than commission office, to be an ombudsman designated by the office of injured employee counsel, to perform the duties under this subchapter, rather than section, as the person's primary responsibility.

(b) Makes no changes to this subsection.

(c) Requires the public counsel, rather than the commission, by rule, to adopt training guidelines and continuing education requirements for ombudsmen. Sets forth requirements for training provided under this subsection.

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 3.016. Amends Section 405.001, Labor Code, to define "commissioner." Makes conforming changes.

SECTION 3.017. Amends Section 405.002, Labor Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Requires TDI to conduct professional studies and research related to the impact of workers' compensation health care networks certified under Chapter 1305 (Workers' Compensation Healthcare Networks), Insurance Code, on claims costs and injured employee outcomes. Makes conforming changes.

(d) Requires TDI to, in accordance with Subchapter K, Chapter 1305, Insurance Code, biennially evaluate the cost and quality of health care provided by workers' compensation health care networks and issue annual consumer report cards comparing certain workers' compensation health care networks certified by TDI under Chapter 1305, Insurance Code, with each other and with care provided outside of networks. Provides that the report cards should include comparisons on costs, medical outcomes, and return-to-work rates.

(e) Requires the commissioner of insurance to adopt rules as necessary to establish data reporting requirements to support the research duties of the department. Provides that nothing in this section shall be construed to require additional reporting requirements on nonsubscribing companies.

SECTION 3.018. Amends Chapter 405, Labor Code, by adding Section 405.0021, as follows:

Sec. 405.0021. RESEARCH AGENDA. (a) Requires TDI to prepare a proposed workers' compensation research agenda for commissioner of insurance review and approval to be published annually in the Texas Register.

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

SECTION 3.019. Amends Section 406.004, Labor Code, as follows:

Sec. 406.004. New heading: EMPLOYER NOTICE TO DEPARTMENT. Deletes text classifying a violation under this subsection as a Class D administrative violation. Makes conforming changes.

SECTION 3.020. Amends Sections 406.005(c) and (e), Labor Code, to make conforming changes.

SECTION 3.021. Amends Sections 406.006(a), (b), and (c), Labor Code, as follows:

(a) Includes a workers' compensation self-insurance group under Chapter 407A among entities required to file notice of the coverage and claim administration contact information with the department not later than the 10th day after the date on which the coverage or claim administration agreement takes effect, unless the commissioner adopts a rule establishing a later date for filing. Makes conforming changes.

(b) Makes a conforming change.

(c) Deletes text classifying a violation under this subsection as a Class C administrative violation. Makes conforming changes.

SECTION 3.022. Amends Section 406.007(a), (b), and (c), Labor Code, to make conforming changes.

SECTION 3.023. Amends Section 406.008, Labor Code, to make conforming changes.

SECTION 3.024. Amends Section 406.009, Labor Code, to make conforming changes.

SECTION 3.025. Amends Sections 406.010(c) and (d), Labor Code, to make conforming changes.

SECTION 3.026. Amends Section 406.011, Labor Code, to delete existing text providing that a violation under this subsection is a Class C administrative violation and to make conforming changes.

SECTION 3.0261. Amends Section 406.033, Labor Code, by adding Subsection (f), as follows:

(f) Prohibits a cause of action described by Subsection (a) from being waived by an employee after the employee's injury, unless the waiver meets specific requirements.

SECTION 3.027. Amends Section 406.051(c), Labor Code, to make a conforming change.

SECTION 3.028. Amends Sections 406.073(b) and (c), Labor Code, to delete existing text providing that a violation under this subsection is a Class D administrative violation and to make conforming changes.

SECTION 3.029. Amends Sections 406.074(a) and (b), Labor Code, to make conforming changes.

SECTION 3.030. Amends Section 406.093(b), Labor Code, to make a conforming change.

SECTION 3.031. Amends Section 406.095(b), Labor Code, to make a conforming change.

SECTION 3.032. Amends Section 406.123(g), Labor Code, to make a conforming change.

SECTION 3.033. Amends Sections 406.144(c) and (d), Labor Code, to make conforming changes.

SECTION 3.034. Amends Sections 406.145(a), (b), (c), (d), and (f), Labor Code, to make conforming changes.

SECTION 3.035. Amends Sections 406.162(b), Labor Code, to make conforming changes.

SECTION 3.036. Amends Section 407.001(3), Labor Code, to make a conforming change.

SECTION 3.037. Amends Section 407.021, Labor Code, to make a conforming change.

SECTION 3.038. Amends Section 407.022, Labor Code, to make conforming changes.

SECTION 3.039. Amends Section 407.023, Labor Code, to make conforming changes.

SECTION 3.040. Amends Sections 407.041(a), (b), and (c), Labor Code, to make conforming changes.

SECTION 3.041. Amends Section 407.042, Labor Code, to make conforming changes.

SECTION 3.042. Amends Section 407.043, Labor Code, to make conforming changes.

SECTION 3.043. Amends Section 407.044(a), Labor Code, to make a conforming change.

SECTION 3.044. Amends Section 407.045, Labor Code, to make conforming changes.

SECTION 3.045. Amends Sections 407.046(a), (b), and (d), Labor Code, to make conforming changes.

SECTION 3.046. Amends Section 407.047(b), Labor Code, to make conforming changes.

SECTION 3.047. Amends Sections 407.061(a), (c), (e), and (f), Labor Code, to make conforming changes.

SECTION 3.048. Amends Section 407.062, Labor Code, to make conforming changes.

SECTION 3.049. Amends Section 407.063(a), Labor Code, to make a conforming change.

SECTION 3.050. Amends Section 407.064(b), Labor Code, to make a conforming change.

SECTION 3.051. Amends Section 407.067(d), Labor Code, to delete existing text providing that a violation under this subsection is a Class B administrative violation and each day of noncompliance constitutes a separate violation.

SECTION 3.052. Amends Sections 407.081(a), (b), (c), (d), (f), and (g), Labor Code, to make conforming changes.

SECTION 3.053. Amends Sections 407.082(a), (c), (d), and (e), Labor Code, to delete existing text providing that each day of noncompliance constitutes a separate violation and to make conforming changes.

SECTION 3.054. Amends Section 407.101(b), Labor Code, to make a conforming change.

SECTION 3.055. Amends Section 407.102, Labor Code, to make a conforming change.

SECTION 3.056. Amends Sections 407.103(a) and (d), Labor Code, to make conforming changes.

SECTION 3.057. Amends Sections 407.104(b), (c), (d), and (e), Labor Code, to delete existing text providing that a violation under this subsection is a Class B administrative violation and to make conforming changes.

SECTION 3.058. Amends Sections 407.122(b) and (c), Labor Code, as follows:

(b) Provides that the board of directors of the Texas Certified Guaranty Association is composed of three certified self-insurers, one member designated by the commissioner, rather than one commission member representing wage earners and one commission member representing employers, and the public counsel of the office of public insurance counsel. Makes nonsubstantive changes.

(c) Deletes existing text relating to the executive director of the commission serving as a nonvoting member of the board of directors. Makes conforming changes.

SECTION 3.059. Amends Section 407.123(b), Labor Code, to make a conforming change.

SECTION 3.060. Amends Sections 407.124(a) and (c), Labor Code, to make conforming changes.

SECTION 3.061. Amends Section 407.126(d), Labor Code, to make a conforming change.

SECTION 3.062. Amends Section 407.127(a), Labor Code, to make a conforming change.

SECTION 3.063. Amends Section 407.133(a), Labor Code, to make a conforming change.

SECTION 3.064. Amends Section 407A.053(d), Labor Code, to make conforming changes.

SECTION 3.065. Amends Section 407A.201(c), Labor Code, to make conforming changes.

SECTION 3.066. Amends the heading to Section 407A.301, Labor Code, to read as follows:

Sec. 407A.301. MAINTENANCE TAX FOR DEPARTMENT OF WORKERS' COMPENSATION AND RESEARCH FUNCTIONS OF DEPARTMENT OF INSURANCE.

SECTION 3.067. Amends Section 407A.301(a), Labor Code, to make conforming changes.

SECTION 3.068. Amends Section 407A.303, Labor Code, to make conforming changes.

SECTION 3.069. Amends Section 407A.357(b), Labor Code, to provide that the guaranty association advisory committee is composed of certain voting members including one member designated by the commissioner of the Texas Department of Workers' Compensation, rather than one commission member who represents wage earners. Makes conforming changes.

SECTION 3.070. Amends Section 408.003(c), Labor Code, to make conforming changes.

SECTION 3.071. Amends Section 408.004, Labor Code, by amending Subsections (a), (b), (d), (e), (f), and (g), and adding Subsection (h), as follows:

(a) Authorizes the commissioner to require an employee to submit to medical examinations to resolve the appropriateness of the health care received by the employee. Deletes existing text related to examinations to resolve similar issues. Makes a conforming change.

(b) Deletes existing text related to certain medical examinations. Makes conforming changes.

(d) Makes conforming changes.

(e) Deletes existing text related to temporary income benefits. Makes conforming changes.

(f) Provides that this section does not apply to health care provided through a workers' compensation health care network established under Chapter 1305 (Workers' Compensation Healthcare Networks), Insurance Code. Deletes existing text related to benefit review conferences.

(g) Deletes existing text providing that a violation under this subsection is a Class B administrative violation.

(h) Provides that a person who makes a frivolous request for a medical examination under Subsection (b), as determined by the commissioner, commits a violation. Prohibits

an injured employee from being fined more than \$10,000 for a violation of this subsection.

SECTION 3.072. Amends Section 408.0041, Labor Code, as follows:

Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) Authorizes the commissioner, at the request of an insurance carrier or an employee, or on the commissioner's own order, to order a medical examination to resolve any question about the extent of the employee's compensable injury, whether the disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. Makes a conforming change.

(b) Requires a medical examination requested under this section to be performed by a specific doctor, as determined by commissioner rule. Deletes existing text relating to requirements for the designated doctor conducting the review. Makes conforming changes.

(c) Makes no changes to this subsection.

(d) Makes conforming changes.

(e) Provides that the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. Makes a conforming change.

(f) Requires the insurance carrier, unless otherwise ordered by the department, to pay benefits based on the opinion of the designated doctor during the pendency of any dispute. Deletes existing text related to allowing an insurance carrier reasonable time to decide on the merits of a case. Makes a conforming change.

(g) Provides that, except as otherwise provided by this subsection, an injured employee is entitled to have a doctor of the employee's choice present at an examination requested by an insurance carrier. Requires the carrier to pay a fee set by the commissioner to the doctor selected by the employee. Requires, if the injured employee is subject to a workers' compensation health care network under Chapter 1305, Insurance Code, that the doctor be the employee's treating doctor.

(h) Redesignated from existing Subsection (g).

(i) Provides that an employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (f) commits a Class D administrative violation. Prohibits an injured employee from being fined more than \$10,000 for violation of this subsection.

(j) Created from text of existing Subsection (h). Provides that an employee is not entitled to temporary income benefits during and for a period in which the employee fails to submit to an examination required by Subsection (a) or (f), rather than this chapter, unless the commissioner determines that the employee had good cause for the failure. Makes conforming changes.

(k) Redesignated from existing Subsection (i). Authorizes the insurance carrier to suspend or reduce the payment of temporary income benefits if the report of a designated doctor indicates that an employee has reached maximum medical improvement or is otherwise able to return to work immediately.

(l) Provides that a person who makes a frivolous request for a medical examination under Subsection (a) or (f), as determined by the commissioner, commits a violation.

SECTION 3.073. Amends Section 408.005(e), Labor Code, to make a conforming change.

SECTION 3.074. Amends Section 408.022, Labor Code, by amending Subsections (a), (b), and (c), and adding Subsection (f), as follows:

(a), (b), and (c) Makes conforming changes.

(f) Provides that this section does not apply to requirements regarding the selection of a doctor under a workers' compensation health care network established under Chapter 1305 (Workers' Compensation Healthcare Networks), Insurance Code, except as provided by that chapter.

SECTION 3.075. Amends Section 408.023, Labor Code, as follows:

(a)-(e) Makes conforming changes.

(f) Provides that a doctor who contracts with a workers' compensation health care network certified under Chapter 1305 (Workers' Compensation Healthcare Networks), Insurance Code, is not subject to the registration requirements of this section for the purpose of treating injured employees who are required to seek medical care from a network. Requires a doctor who contracts with a workers' compensation health care network to comply with certain requirements.

(g) Provides that a person required to comply with Subsection (f) who does not comply commits a violation.

(h) Prohibits an insurance carrier from using a certification of maximum medical improvement or an impairment rating assigned by a doctor who fails to comply with the commissioner rule for the purpose of suspending temporary income benefits or computing impairment income benefits.

(i) Makes conforming changes.

(j) Redesignates existing text from Subsection (f). Deletes existing text related to doctors who participate in regional networks. Makes conforming and nonsubstantive changes.

(k) Redesignates existing text from Subsection (h).

(l) Redesignates existing text from Subsection (i). Makes conforming changes.

(m) Redesignates existing text from Subsection (j). Makes conforming changes.

(n) Redesignates existing text from Subsection (k). Makes a conforming change.

SECTION 3.076. Amends Section 408.0231, Labor Code, to require the commissioner to adopt rules regarding doctors who perform peer review functions for insurance carriers. Sets forth guidelines for such rules. Makes conforming changes.

SECTION 3.077. Amends Section 408.024, Labor Code, to make conforming changes.

SECTION 3.078. Amends Sections 408.025(a), (b), and (d), Labor Code, to make conforming changes.

SECTION 3.079. Amends Subchapter B, Chapter 408, Labor Code, by adding Section 408.0251, as follows:

Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) Requires the commissioner, by rule, to establish requirements regarding the electronic submission and payment of medical bills.

(b) Requires insurance carriers to accept medical bills submitted electronically by health care providers.

(c) Requires the commissioner, by rule, to establish criteria for granting exceptions to insurance carriers who are not able to submit, accept, or pay medical bills electronically.

SECTION 3.080. Amends Section 408.026, Labor Code, to make a conforming change.

SECTION 3.081. Amends Section 408.027(d), Labor Code, to make a conforming change.

SECTION 3.082. Amends Section 408.028 by amending Subsections (b), (d), and (e), and adding Subsection (f), as follows:

(b) Require the commissioner, by rule, to require the use of certain generic medicines. Authorizes the department, by rule, to adopt a closed formulary under Section 413.011. Requires rules adopted by the department to allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury.

(d)-(e) Makes conforming changes.

(f) Requires the commissioner, notwithstanding any other provision of this title, to adopt a fee schedule for pharmacy and pharmaceutical services that will achieve certain goals.

SECTION 3.083. Amends Section 408.030, Labor Code, to make conforming changes.

SECTION 3.084. Amends Subchapter B, Chapter 408, Labor Code, by adding Section 408.031, as follows:

Sec. 408.031. **WORKERS' COMPENSATION HEALTH CARE NETWORKS.** (a) Authorizes an injured employee to receive benefits under a workers' compensation health care network established under Chapter 1305, Insurance Code, in the manner provided by that chapter, notwithstanding any other provision of this chapter.

(b) Provides that Chapter 1305, Insurance Code, prevails in a situation in which a conflict arises as to the operation and regulation of workers' compensation health care networks and other related topics.

SECTION 3.0841. Amends Subchapter B, Chapter 408, Labor Code, by adding Section 408.032, as follows:

Sec. 408.032. **INTERDISCIPLINARY REHABILITATION PROGRAMS AND FACILITIES; ACCREDITATION REQUIRED.** Requires the commissioner to adopt a rule that requires that an interdisciplinary rehabilitation program or facility that provides services to injured employees be appropriately accredited, after determining that adequate access to accredited rehabilitation care is available.

SECTION 3.085. Amends Section 408.041(c), Labor Code, to make conforming changes.

SECTION 3.086. Amends Sections 408.042(d), (f), and (g), Labor Code, to make conforming changes.

SECTION 3.087. Amends Section 408.043(c), Labor Code, to make conforming changes.

SECTION 3.088. Amends Section 408.0445(b), Labor Code, to make a conforming change.

SECTION 3.089. Amends Sections 408.0446(d) and (e), Labor Code, to make conforming changes.

SECTION 3.090. Amends Section 408.045, Labor Code, to make a conforming change.

SECTION 3.091. Amends Section 408.047, Labor Code, as follows:

Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) Provides that, on and after October 1, 2006, the state average weekly wage is equal to 85 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c) (Benefits for Total Unemployment), Labor Code.

(b) Provides that the state average weekly wage for the period, rather than fiscal year, beginning September 1, 2005, and ending September 30, 2006, is \$540. Provides that this subsection expires October 1, 2006. Deletes existing text related to former dates and weekly wages.

SECTION 3.092. Amends Section 408.061(f), Labor Code, to make conforming changes.

SECTION 3.093. Amends Section 408.062(b), Labor Code, to make a conforming change.

SECTION 3.094. Amends Sections 408.063(a) and (c), Labor Code, to delete the provision that a violation under Subsection (c) (failure of employer to file a wage statement) is a Class D administrative violation and to make a conforming change.

SECTION 3.095. Amends Sections 408.081(b) and (c), Labor Code, to make conforming changes.

SECTION 3.096. Amends Section 408.082(c), Labor Code, to require that compensation be computed from the date the disability begins if the disability continues for two, rather than four, weeks or longer after the date it begins.

SECTION 3.097. Amends Sections 408.084(a) and (b), Labor Code, to make conforming changes.

SECTION 3.098. Amends Section 408.085, Labor Code, to make conforming changes.

SECTION 3.099. Amends Section 408.086, Labor Code, to make conforming changes.

SECTION 3.100. Amends Section 408.102(b), Labor Code, to make a conforming change.

SECTION 3.101. Amends Section 408.103(b), Labor Code, to make conforming changes.

SECTION 3.102. Amends Sections 408.104(a) and (c), Labor Code, to make conforming changes.

SECTION 3.103. Amends Subchapter G, Chapter 408, Labor Code, by amending Section 408.122 and adding Section 408.1225, as follows:

Sec. 408.122. New heading: ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS. Deletes designation of subsection(s).

Sec. 408.1225. DESIGNATED DOCTOR. Creates this section from text of existing Sections 408.122(b) and (c). (a) Provides that, to be eligible to serve as a designated doctor, a doctor must meet specific qualifications, including demonstrated expertise in performing examinations and making evaluations as described by Section 408.0041 (Designated Doctor Examination). Makes conforming changes.

(b) Requires the commissioner to ensure the quality of designated doctor decisions and reviews through active monitoring of the decisions and reviews. Authorizes the commissioner to take action as necessary to restrict the participation of a designated doctor or remove a doctor from inclusion on the department's list of designated doctors. Deletes the requirement that the doctor doing the review be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the requirement

that the treatment and procedures performed be within the scope of practice of the designated doctor. Deletes the requirement that the designated doctor's credentials be appropriate for the issue in question and the injured employee's medical condition.

(c) Requires the department to base its determination of whether the employee has reached maximum medical improvement on the report of the designated doctor, unless the preponderance, rather than the great weight, of the other medical evidence is to the contrary. Makes conforming changes.

(d) Requires the commissioner to develop rules to insure that a designated doctor called on to conduct an examination under Section 408.0041 has no conflict of interest in serving as a designated doctor in performing any examination.

SECTION 3.104. Reenacts and amends Section 408.123, Labor Code, as follows:

Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) Makes no changes to this subsection.

(b) Makes conforming changes.

(c) Requires the department to adopt a rule that provides that, at the conclusion of any examination in which maximum medical improvement is certified and any impairment rating is assigned by the treating doctor, and requires a written notice to be given to the employee that the employee may dispute the certification of maximum medical improvement and assigned impairment rating. Requires the notice to the employee to state how to dispute the certification of maximum medical improvement and impairment rating.

(d) Redesignates existing text from Subsection (c). Makes a conforming change.

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

(f) Redesignates existing text from Subsection (e). Makes a conforming change.

(g) Redesignates existing text from Subsection (f). Makes a conforming change.

(h) Redesignates existing text from Subsection (g). Makes a conforming change.

SECTION 3.105. Amends Section 408.124, Labor Code, to make conforming changes.

SECTION 3.106. Amends Sections 408.125(a)-(d) and (f), Labor Code, to require the department to base the impairment rating on the report of the designated doctor unless the preponderance, rather than the great weight, of other medical evidence is to the contrary. Provides that a violation of Subsection (d) (authorizing only the employee and other certain persons to communicate with the designated doctor) is an administrative violation, rather than a Class C administrative violation. Makes conforming changes.

SECTION 3.107. Amends Section 408.127(c), Labor Code, to make a conforming change.

SECTION 3.108. Amends Sections 408.129(a), (b), and (d), Labor Code, to make conforming changes.

SECTION 3.109. Amends Section 408.141, Labor Code, to make a conforming change.

SECTION 3.110. Amends Sections 408.143(a) and (b), Labor Code, to make conforming changes.

SECTION 3.111. Amends Section 408.147(c), Labor Code, to make a conforming change.

SECTION 3.112. Amends Section 408.148, Labor Code, to make conforming changes.

SECTION 3.113. Amends Section 408.149, Labor Code, to make conforming changes.

SECTION 3.114. Amends Section 408.150, Labor Code, to require the department to refer an employee to the Department of Assistive and Rehabilitative Services, rather than the Texas Rehabilitation Commission, with a recommendation for appropriate services. Deletes the condition that in order to be referred, the employee must be entitled to supplemental income benefits. Makes conforming changes.

SECTION 3.115. Amends Section 408.151, Labor Code, to require the department to base its determination of the improvement of the employee's medical condition on the report of the designated doctor unless the preponderance, rather than great weight, of the other medical evidence is to the contrary. Deletes existing text related to medical examinations to determine compensable injuries. Makes conforming changes.

SECTION 3.116. Amends Section 408.161(d), Labor Code, to make a conforming change.

SECTION 3.117. Amends Sections 408.181(c) and (d), Labor Code, to make conforming changes.

SECTION 3.118. Amends Section 408.182(f), Labor Code, to make a conforming change.

SECTION 3.119. Amends Section 408.183(b), Labor Code, to make a conforming change.

SECTION 3.120. Amends Section 408.187(c), Labor Code, to make a conforming change.

SECTION 3.121. Amends Section 408.202, Labor Code, to make a conforming change.

SECTION 3.122. Amends Sections 408.221(a)-(g), Labor Code, to delete text related to a September 1, 2005, expiration date. Makes conforming changes.

SECTION 3.123. Amends Section 408.222, Labor Code, to make conforming changes.

SECTION 3.124. Amends Section 409.002, Labor Code, to make a conforming change.

SECTION 3.125. Amends Section 409.003, Labor Code, to make a conforming change.

SECTION 3.126. Amends Section 409.004, Labor Code, to make a conforming change.

SECTION 3.127. Amends Sections 409.005(d), (e), (f), (h), (i), (j), (k), and (l) to delete the provision that a violation under Subsection (l) (employer's failure to report an employee injury or occupational disease to employer's insurance carrier) is a Class D administrative violation. Makes conforming changes.

SECTION 3.128. Amends Sections 409.006(b), (c), and (e), Labor Code, to delete the provision that a violation under Subsection (e) (failure of employer to keep certain records of employee injuries) is a Class D administrative violation. Makes conforming changes.

SECTION 3.129. Amends Section 409.007(a), Labor Code, to make a conforming change.

SECTION 3.130. Amends Section 409.009, Labor Code, to make a conforming change.

SECTION 3.131. Amends Section 409.010, Labor Code, to make conforming changes.

SECTION 3.132. Amends Sections 409.011(a) and (c), Labor Code, to make conforming changes.

SECTION 3.133. Amends Section 409.012, Labor Code, to require the department and the Department of Assistive and Rehabilitative Services to report to the legislature not later than August 1, 2006, on their actions to improve access to and the effectiveness of vocational

rehabilitation programs for injured employees. Sets forth requirements for the report's content. Makes conforming changes.

SECTION 3.134. Amends Section 409.013, Labor Code, to make conforming changes.

SECTION 3.135. Amends Sections 409.021(a) and (b), Labor Code, to make conforming changes.

SECTION 3.136. Amends Section 409.022(c), Labor Code, to delete the provision that a violation under Subsection (c) (refusal of insurance carrier to pay benefits without reasonable grounds) is a Class B administrative violation. Makes a conforming change.

SECTION 3.137. Amends Sections 409.023(a), (c), and (d), Labor Code, to delete the provision that a violation under Subsection (c) (failure of insurance carrier to continue to pay benefits without a final decision of the commissioner) is a Class B administrative violation. Deletes the provision that each day of noncompliance constitutes a separate violation. Provides that an insurance carrier that commits multiple violations commits an additional administrative violation, rather than a Class A administrative violation. Makes a conforming change.

SECTION 3.138. Amends Section 409.0231(b), Labor Code, to make a conforming change.

SECTION 3.139. Amends Section 409.024, Labor Code, to delete existing text providing that a violation under this subsection is a Class B administrative violation. Makes conforming changes.

SECTION 3.140. Amends Section 409.041(a), Labor Code, to make a conforming change.

SECTION 3.141. Amends Sections 409.042(a) and (c), Labor Code, to make conforming changes.

SECTION 3.142. Amends Section 409.043, Labor Code, to make conforming changes.

SECTION 3.143. Amends Section 409.044, Labor Code, to make a conforming change.

SECTION 3.144. Amends Section 410.002, Labor Code, to make a conforming change.

SECTION 3.145. Amends Section 410.004, Labor Code, to make a conforming change.

SECTION 3.146. Amends Section 410.005(a), Labor Code, to make a conforming change.

SECTION 3.147. Amends Section 410.021, Labor Code, to make a conforming change.

SECTION 3.148. Amends Sections 410.022(b) and (c), Labor Code, to make conforming changes.

SECTION 3.149. Amends Section 410.023, Labor Code, to make a conforming change.

SECTION 3.150. Amends Section 410.024, Labor Code, to make conforming changes.

SECTION 3.151. Amends Section 410.025, Labor Code, to make conforming changes.

SECTION 3.152. Amends Section 410.026(a), Labor Code, to make a conforming change.

SECTION 3.153. Amends Section 410.027(a), Labor Code, to make a conforming change.

SECTION 3.154. Amends Section 410.028(b), Labor Code, to delete existing text providing that a violation under this subsection is a Class D administrative violation.

SECTION 3.155. Amends Section 410.030, Labor Code, to make conforming changes.

SECTION 3.156. Amends Section 410.034(b), Labor Code, to make a conforming change.

SECTION 3.157. Amends Section 410.102, Labor Code, to delete text related to an affirmative vote required to approve an arbitrator. Makes conforming changes.

SECTION 3.158. Amends Section 410.103, Labor Code, to make a conforming change.

SECTION 3.159. Amends Sections 410.104(b) and (c), Labor Code, to make conforming changes.

SECTION 3.160. Amends Section 410.105, Labor Code, to delete text related to the removal of an arbitrator who does not receive an affirmative vote. Makes conforming changes.

SECTION 3.161. Amends Section 410.106, Labor Code, to make conforming changes.

SECTION 3.162. Amends Section 410.107(a), Labor Code, to make conforming changes.

SECTION 3.163. Amends Section 410.108(a), Labor Code, to make a conforming change.

SECTION 3.164. Amends Section 410.109, Labor Code, to make conforming changes.

SECTION 3.165. Amends Section 410.111, Labor Code to make a conforming change.

SECTION 3.166. Amends Section 410.112(b), Labor Code, to make a conforming change.

SECTION 3.167. Amends Section 410.113(b), Labor Code, to make a conforming change.

SECTION 3.168. Amends Section 410.114(b), Labor Code, to make a conforming change.

SECTION 3.169. Amends Sections 410.118(d), Labor Code, to make a conforming change.

SECTION 3.170. Amends Section 410.119(b), Labor Code, to make a conforming change.

SECTION 3.171. Amends Sections 410.121(a) and (b), Labor Code, to make conforming changes.

SECTION 3.172. Amends Section 410.151(b), Labor Code, to make a conforming change.

SECTION 3.173. Amends Section 410.153, Labor Code, to make a conforming change.

SECTION 3.174. Amends Section 410.154, Labor Code, to make a conforming change.

SECTION 3.175. Amends Section 410.155, Labor Code, to make conforming changes.

SECTION 3.176. Amends Section 410.156(b), Labor Code, to make a conforming change.

SECTION 3.177. Amends Section 310.157, Labor Code, to make a conforming change.

SECTION 3.178. Amends Section 410.158(a), Labor Code, to make a conforming change.

SECTION 3.179. Amends Sections 410.159, Labor Code, to make conforming changes.

SECTION 3.180. Amends Section 410.160, Labor Code, to make a conforming change.

SECTION 3.181. Amends Section 410.161, Labor Code, to make a conforming change.

SECTION 3.182. Amends Sections 410.168(d) and (e), Labor Code, to make conforming changes.

SECTION 3.183. Amends Section 410.203(d), Labor Code, to make a conforming change.

SECTION 3.184. Amends Section 410.204(b), Labor Code, to make a conforming change.

SECTION 3.185. Amends Section 410.206, Labor Code, to make a conforming change.

SECTION 3.186. Amends Section 410.207, Labor Code, to make conforming changes.

SECTION 3.187. Amends Section 410.208, Labor Code, to delete existing text providing that a violation under this subsection is a Class A administrative violation. Makes conforming changes.

SECTION 3.188. Amends Section 410.209, Labor Code, to make conforming changes.

SECTION 3.189. Amends Sections 410.253, Labor Code, to make conforming changes.

SECTION 3.190. Amends Section 410.254, Labor Code, to make conforming changes.

SECTION 3.191. Amends the heading to Section 410.258, Labor Code, to make a conforming change.

SECTION 3.192. Amends Sections 410.258(a), (b), (c), (d), and (e), Labor Code, to make conforming changes.

SECTION 3.193. Amends Sections 410.301(a), Labor Code, to make a conforming change.

SECTION 3.194. Amends Sections 410.302, Labor Code, to make a conforming change.

SECTION 3.195. Amends Section 410.304, Labor Code, to make conforming changes.

SECTION 3.196. Amends Sections 410.306(b) and (c), Labor Code, to make conforming changes.

SECTION 3.197. Amends Sections 410.307(a) and (d), Labor Code, to make conforming changes.

SECTION 3.198. Amends Section 410.308(a), Labor Code, to make conforming changes.

SECTION 3.199. Amends Subdivision (1), Section 411.001, Labor Code, to make a conforming change.

SECTION 3.200. Amends Section 411.013, Labor Code, to make a conforming change.

SECTION 3.201. Amends Section 411.032, Labor Code, to delete existing text providing that a violation under this subsection is a Class D administrative violation. Makes conforming changes.

SECTION 3.202. Amends Section 411.035, Labor Code, to make a conforming change.

SECTION 3.203. Amends Section 411.0415, Labor Code, to make conforming changes.

SECTION 3.204. Amends Section 411.042(b), Labor Code, to make a conforming change.

SECTION 3.205. Amends Section 411.043(b), Labor Code, to make a conforming change.

SECTION 3.206. Amends Section 411.045(a), Labor Code, to make a conforming change.

SECTION 3.207. Amends Section 411.046(b), Labor Code, to delete existing text providing that each day of noncompliance constitutes a separate violation.

SECTION 3.208. Amends Section 411.048, Labor Code, to make conforming changes.

SECTION 3.209. Amends Section 411.049(a), Labor Code, to make a conforming change.

SECTION 3.210. Amends Section 411.050, Labor Code, to make a conforming change.

SECTION 3.211. Amends Section 411.062, Labor Code, to make conforming changes.

SECTION 3.212. Amends Section 411.064(c), Labor Code, to make conforming changes.

SECTION 3.213. Amends Section 411.065(b), Labor Code, to make a conforming change.

SECTION 3.214. Amends the heading of Section 411.067, Labor Code, to make a conforming change.

SECTION 3.215. Amends Section 411.067(a), Labor Code, to make conforming changes.

SECTION 3.216. Amends Section 411.068(b), Labor Code, to delete existing text providing that each day of noncompliance constitutes a separate violation.

SECTION 3.2161. Amends the heading to Subchapter F, Chapter 411, Labor Code, to read as follows:

SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL MATERIALS

SECTION 3.217. Amends Section 411.081(b), Labor Code, as follows:

Sec. 411.081. TELEPHONE HOTLINE. (a) Requires the division of workers' health and safety of the department (division) to maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law.

(b) Requires the department, by rule, to require the notice to be posted in English and Spanish, as appropriate. Makes a conforming change.

(c) Requires the department to adopt rules requiring that the notice required by Subsection (b) be posted in a specific location.

SECTION 3.2171. Amends Subchapter F, Chapter 411, Labor Code, by adding Section 411.084, as follows:

Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) Requires the division to provide educational material, including books, pamphlets, brochures, films, videotapes, or other informational material.

(b) Requires educational material to be provided to employees in English and Spanish.

(c) Requires the department to adopt minimum content requirements for the educational material required under this section, including other specific information.

SECTION 3.218. Amends Section 411.092, Labor Code, to make conforming changes.

SECTION 3.219. Amends Section 411.104(b), Labor Code, to make conforming changes.

SECTION 3.220. Amends Section 411.105, Labor Code, to make conforming changes.

SECTION 3.221. Amends Section 411.106, Labor Code, to make conforming changes.

SECTION 3.222. Amends Section 411.107, Labor Code, to make conforming changes.

SECTION 3.223. Amends Section 411.108, Labor Code, to make conforming changes.

SECTION 3.224. Amends Sections 412.041(g), (i), and (l), Labor Code, to make conforming changes.

SECTION 3.225. Amends Section 413.001, Labor Code, to make a conforming change.

SECTION 3.226. Amends Section 413.002, Labor Code, as follows:

Sec. 413.002. DIVISION OF MEDICAL REVIEW TEAM. (a) Makes conforming changes.

(b) Requires the division of medical review (division) to monitor independent review organizations to ensure compliance with rules adopted by the commissioner relating to health care. Makes conforming changes.

(c) Requires the division to evaluate compliance with this subtitle relating to treatment and return-to-work guidelines and the quality and timeliness of decisions made under Section 408.0041 (Designated Doctor Examination), 408.122 (Selection of Doctor), 408.151 (Medical Examinations for Supplemental Income Benefits), or 413.031 (Medical Dispute Resolution). Makes conforming changes.

(d) Requires the division to report the results of the monitoring of independent review organizations under Subsection (c) to TDI on at least a quarterly basis.

(e) Requires the commissioner, upon determining that an independent review organization is in violation of this chapter, rules adopted by the commissioner under this chapter, or applicable provisions of this code, or rules adopted under this code, or applicable provisions of the Insurance Code or rules adopted under that code, to notify the independent review organization of the alleged violation. Authorizes the commissioner to compel the production of any documents or other information as necessary to determine whether the violation occurred.

SECTION 3.227. Amends Section 413.003, Labor Code, to make a conforming change.

SECTION 3.228. Amends Section 413.004, Labor Code, to make a conforming change.

SECTION 3.229. Amends Section 413.006, Labor Code, to delete existing text relating to medical advisory committees and make conforming changes.

SECTION 3.230. Amends Sections 413.007(a) and (c), Labor Code, to make conforming changes.

SECTION 3.231. Amends Section 413.008, Labor Code, to delete existing text relating to a Class C administrative violation and make conforming changes.

SECTION 3.232. Amends Section 413.011, Labor Code, to require the department to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, rather than Health Care Financing Administration. Deletes existing text related to national treatment guidelines and the commissioner's authority to establish guidelines and policies. Authorizes the commissioner to adopt specific rules relating to disability management. Authorizes a dispute involving a treatment plan required under this section to be appealed to an independent review organization in the manner described by Section 413.031. Makes conforming and nonsubstantive changes.

SECTION 3.2321. Amends Subchapter B, Chapter 413, Labor Code, by adding Section 413.0111, as follows:

Sec. 413.0111. PROCESSING AGENTS. Requires the regulations adopted by the commissioner for the reimbursement of prescription medications and services 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.

SECTION 3.233. Amends Section 413.013, Labor Code, to make conforming changes.

SECTION 3.234. Amends Sections 413.014(b)-(e), Labor Code, as follows:

(b) Makes conforming changes.

(c) Requires the commissioner's rules adopted under this section to provide that preauthorization and concurrent review are required at a minimum, including physical therapy and occupational therapy services.

(d)-(e) Makes conforming changes.

SECTION 3.235. Amends Section 413.0141, Labor Code, to make conforming changes.

SECTION 3.236. Amends Section 413.015(b), Labor Code, to make conforming changes.

SECTION 3.237. Amends Section 413.016(b), Labor Code, to make a conforming change.

SECTION 3.238. Amends Section 413.017, Labor Code, to make conforming changes.

SECTION 3.239. Amends Sections 413.018(a), (c), (d), and (e), Labor Code, to make conforming changes.

SECTION 3.240. Amends Section 413.020, Labor Code, to make conforming changes.

SECTION 3.241. Amends Sections 413.021(a), (d), and (e), Labor Code, to make conforming and nonsubstantive changes.

SECTION 3.242. Amends Subchapter B, Chapter 413, Labor Code, by adding Section 413.022, as follows:

Sec. 413.022. RETURN-TO-WORK PILOT PROGRAM FOR SMALL EMPLOYERS; FUND. (a) Defines "account" and "eligible employer."

(b) Requires the commissioner, by rule, to establish a return-to-work pilot program (pilot program) designed to promote the early and sustained return to work of an injured employee who sustains a compensable injury.

(c) Requires the pilot program to reimburse an eligible employer from the workers' compensation return to work account (account) for expenses incurred by the employer to make workplace modifications necessary to accommodate an injured employee's return to modified or alternative work. Sets forth limitations for expenses and reimbursements.

(d) Sets forth guidelines for the appropriate management of the account.

(e) Provides that an employer who wilfully applies for or receives reimbursement from the account under this section knowing that the employer is not an eligible employer commits a violation.

(f) Authorizes this section to be implemented only to the extent funds are available, notwithstanding Subsections (a)-(e).

(g) Provides that this section expires September 1, 2009.

SECTION 3.243. Amends Section 413.031, Labor Code, by amending Subsections (a), (b), (c), (d), (e-1), (f)-(h), (k), and (m), and adding Subsection (n), to provide that a review of medical necessity under this section requires preauthorization under Section 413.014 or commissioner rules under Section 413.014 or Section 413.011(g) and to require that the insurance carrier pay the cost of the review if the dispute arises in connection with certain requests or plans. Deletes

some existing text regarding reviews of medical services and medical necessity, provides that the department is not considered to be a party to the medical dispute for purposes of this subsection, and that the decision of an independent review organization under this section is binding during the pendency of a dispute. Makes conforming changes.

SECTION 3.244. Amends Sections 413.041(a), (b), and (d), Labor Code, to make conforming changes.

SECTION 3.245. Amends Section 413.042(b), Labor Code, to delete existing text relating to a Class B administrative violation.

SECTION 3.246. Amends Section 413.044, Labor Code, to authorize the commissioner to impose sanctions against a person who commits certain violations or is out of compliance with rules adopted by the commissioner relating to the quality of decisions made under Section 408.0041 (Designated Doctor Examination) or Section 408.122 (Eligibility for Impairment Income Benefits; Designated Doctor). Provides that sanctions imposed under this section may include certain penalties. Makes conforming and nonsubstantive changes.

SECTION 3.247. Amends Sections 413.051(a)-(d), Labor Code, to make conforming changes.

SECTION 3.248. Amends Section 413.0511, Labor Code, to require the department-employed or department-contracted medical advisor to make recommendations regarding the adoption of rules and policies to monitor the quality and timeliness of decisions made by designated doctors and independent review organizations, and the imposition of sanctions regarding those decisions. Makes conforming and nonsubstantive changes.

SECTION 3.249. Amends Section 413.0512(c), Labor Code, to require the medical quality review panel to recommend to the medical advisor appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations, to provide that the list of designated doctors is a list established under Section 408.1225, rather than Section 408.122, and to make a nonsubstantive change.

SECTION 3.250. Amends Section 413.0513, Labor Code, to make conforming changes.

SECTION 3.251. Amends Section 413.0514, Labor Code, to make conforming changes.

SECTION 3.252. Amends Section 413.0515, Labor Code, to make conforming changes.

SECTION 3.253. Amends Section 413.052, Labor Code, to make conforming changes.

SECTION 3.254. Amends Section 413.053, Labor Code, to make a conforming change.

SECTION 3.255. Amends Section 413.054(a), Labor Code, to provide that certain persons who perform services for the department have the same immunity from liability as the commissioner under Section 402.011 (Civil Liability of the Commissioner), rather than Section 402.010. Makes conforming changes.

SECTION 3.256. Amends Sections 413.055(a) and (b), Labor Code, to make conforming changes.

SECTION 3.257. Amends Section 414.002(a), Labor Code, to make a conforming change.

SECTION 3.258. Amends Section 414.003, Labor Code, to make conforming changes.

SECTION 3.259. Amends Section 414.005, Labor Code, to make conforming changes.

SECTION 3.260. Amends Section 414.007, Labor Code, to make a conforming change.

SECTION 3.261. Amends Section 415.001, Labor Code, to provide that a representative of an employee or legal beneficiary commits an administrative violation if, the person performs certain

acts, regardless of that person's mental state, rather than wilfully or intentionally. Makes conforming changes.

SECTION 3.262. Amends Section 415.002, Labor Code, to provide that an insurance carrier or its representative commits an administrative violation if, regardless of the person's mental state, that person makes a statement denying all future medical care for a compensable injury. Makes conforming changes.

SECTION 3.263. Amends Section 415.003, Labor Code, to make conforming changes.

SECTION 3.264. Amends Sections 415.0035(a), (b), (e), and (f), Labor Code, to make conforming changes.

SECTION 3.265. Amends the heading to Section 415.005, Labor Code, to make a conforming change.

SECTION 3.266. Amends Section 415.005(b), Labor Code, to make a conforming change.

SECTION 3.267. Amends the heading to 415.006, Labor Code, to make a conforming change.

SECTION 3.268. Amends Section 415.006(c), Labor Code, to make a conforming change.

SECTION 3.269. Amends Section 415.007(a), Labor Code, to make a conforming change.

SECTION 3.270. Amends Section 415.008(e), Labor Code, to make a conforming change.

SECTION 3.271. Amends Section 415.009(a), Labor Code, to make conforming changes.

SECTION 3.272. Amends Section 415.010(a), Labor Code, to make conforming changes.

SECTION 3.273. Amends Section 415.021, Labor Code, as follows:

Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES. (a) Provides that, in addition to any other provisions in this subtitle relating to violations, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule, order, or decision of the department. Authorizes the commissioner, in addition to any sanctions, administrative penalty, or other remedy authorized by this subtitle, to assess an administrative penalty against a person who commits an administrative violation. Prohibits the administrative penalty from exceeding \$25,000 per day per occurrence. Provides that each day of noncompliance constitutes a separate violation. Provides that the commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law. Deletes text requiring the commission to adopt a schedule of specific monetary administrative penalties.

(b) Authorizes the commissioner to enter a cease and desist order against a person who commits certain violations.

(c) Requires the commissioner, in assessing the administrative penalty, to take certain facts into consideration.

(d) Makes no changes to this section.

SECTION 3.274. Amends Section 415.023(b), Labor Code, to make conforming changes.

SECTION 3.275. Amends Section 415.024, Labor Code, to make conforming changes.

SECTION 3.2751. Amends Subchapter B, Chapter 415, Labor Code, by adding Section 415.025, as follows:

Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY. Prohibits a reference in this code or other law, or in rules of the Texas Workers' Compensation Commission or the department, to a particular class of violation, administrative violation, or penalty from exceeding \$25,000 per day per occurrence and provides that each day of noncompliance constitutes a separate violation.

SECTION 3.276. Amends Section 415.032(b), Labor Code, to make conforming changes.

SECTION 3.277. Amends Section 415.033, Labor Code, to make a conforming change.

SECTION 3.278. Amends Section 415.034(a), Labor Code, to make a conforming change.

SECTION 3.279. Amends Sections 415.035(b) and (d), Labor Code, to make conforming changes.

SECTION 3.280. Amends Section 416.001, Labor Code, to make a conforming change.

SECTION 3.281. Amends Sections 417.001(c) and (d), Labor Code, to make conforming changes.

SECTION 3.282. Amends Section 417.003(b), Labor Code, to make a conforming change.

SECTION 3.283. Amends Subdivisions (1) and (5), Labor Code, to define "department" and redefine "employee."

SECTION 3.284. Amends Section 501.026(d), Labor Code, to make a conforming change.

SECTION 3.285. Amends Section 501.050(a), Labor Code, to make conforming changes.

SECTION 3.286. Amends the heading to Chapter 502, Labor Code, to read as follows:

CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR
EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM AND EMPLOYEES OF
INSTITUTIONS OF THE TEXAS A&M UNIVERSITY SYSTEM

SECTION 3.287. Amends Subdivision (1), Section 502.001, Labor Code, to make a conforming change.

SECTION 3.288. Amends Section 502.002(b), Labor Code, to define "system." Makes a conforming change.

SECTION 3.289. Amends Section 502.021(a), Labor Code, to require The Texas A&M University System (system), rather than the institution, to pay benefits as provided by this chapter to an employee with a compensable injury.

SECTION 3.290. Amends Sections 502.041, Labor Code, to provide 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 the employee's accrued sick leave. Provides that, if an 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. Makes conforming changes.

SECTION 3.291. Amends Sections 502.061(a) and (c), Labor Code, to make conforming changes.

SECTION 3.292. Amends Section 502.063, Labor Code, to make conforming changes.

SECTION 3.293. Amends Section 502.065(a), Labor Code, to make a conforming change.

SECTION 3.294. Amends Sections 502.066(a), (b), (d), and (e), Labor Code, to make conforming changes.

SECTION 3.295. Amends Section 502.067(a), Labor Code, to make conforming changes.

SECTION 3.296. Amends Section 502.068, Labor Code, to make conforming changes.

SECTION 3.297. Amends Section 502.069(a), Labor Code, to make conforming changes.

SECTION 3.298. Amends the heading to Chapter 503, Labor Code, to read as follows:

CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR
EMPLOYEES OF THE UNIVERSITY SYSTEM AND EMPLOYEES OF INSTITUTIONS OF
THE UNIVERSITY OF TEXAS SYSTEM

SECTION 3.299. Amends Sections 503.001, Labor Code, to make conforming changes.

SECTION 3.300. Amends Section 503.002(b), Labor Code, to define "system" and to make a conforming change.

SECTION 3.301. Amends Section 503.021(a), Labor Code, to make a conforming change.

SECTION 3.302. Amends Sections 503.022, Labor Code, to provide that a system may self-insure as part of a system insurance plan.

SECTION 3.303. Amends Section 503.041, Labor Code, to authorize an employee to use other accrued sick or annual leave before recovering 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 the employee's accrued sick leave. Provides that, if an 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 text providing that an institution may provide that an injured employee may remain on the payroll until the employee's earned annual and sick leave is exhausted and that while an injured employee remains on the payroll under Subsection (a), the employee is entitled to medical benefits but income benefits do not accrue. Makes conforming changes.

SECTION 3.304. Amends Sections 503.061(a) and (c), Labor Code, to make conforming changes.

SECTION 3.305. Amends Section 503.063, Labor Code, to make conforming changes.

SECTION 3.306. Amends Section 503.065(a), Labor Code, to make a conforming change.

SECTION 3.307. Amends Section 503.066(a), (b), (d), and (e), Labor Code, to make conforming changes.

SECTION 3.308. Amends Section 503.067(a), Labor Code, to make conforming changes.

SECTION 3.309. Amends Section 503.068, Labor Code, to make conforming changes.

SECTION 3.310. Amends Section 503.069(a), Labor Code, to make conforming changes.

SECTION 3.311. Amends Section 503.070(a), Labor Code, to make conforming changes.

SECTION 3.312. Amends Section 504.001, Labor Code, by amending Subdivision (1) and adding Subdivision (4), to define "pool." Makes a conforming change.

SECTION 3.313. Amends Section 504.002(a), Labor Code, to set forth certain provisions of Subtitles A and B that apply to and are included in this chapter except to the extent that they are inconsistent with this chapter.

SECTION 3.314. Amends the heading to Section 504.018, Labor Code, to make a conforming change.

SECTION 3.315. Amends Section 504.018(a), Labor Code, to make a conforming change.

SECTION 3.316. Amends Subchapter C, Chapter 504, Labor Code, by adding Section 504.053, as follows:

Sec. 504.053. ELECTION. (a) Requires a political subdivision that self-insures either individually or collectively to provide workers' compensation medical benefits to the injured employees of the political subdivision or the injured employees of the members of a certain pool.

(b) Sets forth the sections of the Labor Code that do not apply if the political subdivision or pool provides medical benefits in the manner authorized under Subsection (a)(3).

(c) Sets forth standards that apply if the political subdivision or pool provides medical benefits in the manner authorized under Subsection (a)(3).

(d) Provides that nothing in this chapter waives sovereign immunity or creates a new cause of action.

SECTION 3.317. Amends the heading to Section 505.053, Labor Code, to make a conforming change.

SECTION 3.318. Amends Sections 505.053(a) and (c), Labor Code, to make conforming changes.

SECTION 3.319. Amends Section 505.054(d), Labor Code, to make conforming changes.

SECTION 3.320. Amends Section 505.055, Labor Code, to make conforming changes.

SECTION 3.321. Amends Sections 505.056(a) and (d), Labor Code, to make conforming changes.

SECTION 3.322. Amends Section 505.057(a), Labor Code, to make a conforming change.

SECTION 3.323. Amends Section 505.058, Labor Code, to prohibit an appeal from being taken from an order of the commissioner of the Texas Department of Workers' Compensation under this section and makes conforming changes.

SECTION 3.324. Amends Section 505.059(a), Labor Code, to make conforming changes.

ARTICLE 4. PROVISION OF WORKERS' COMPENSATION MEDICAL BENEFITS THROUGH PROVIDER NETWORKS

SECTION 4.01. Amends the heading to Subtitle D, Title 8, Insurance Code, as effective April 1, 2005, to read as follows:

SUBTITLE D. PROVIDER PLANS

SECTION 4.02. Amends Subtitle D, Title 8, Insurance Code, as effective April 1, 2005, by adding Chapter 1305, as follows:

CHAPTER 1305. WORKERS' COMPENSATION HEALTH CARE NETWORKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1305.001. SHORT TITLE. Authorizes this chapter to be cited as the Workers' Compensation Health Care Network Act.

Sec. 1305.002. PURPOSE. Sets forth the purpose of this chapter.

Sec. 1305.003. LIMITATIONS ON APPLICABILITY. (a) Provides that this chapter does not affect the authority of the Texas Department of Workers' Compensation to exercise the powers granted to that agency under Title 5 (Workers' Compensation), Labor Code, that do not conflict with this chapter.

(b) Provides that, in the event of a conflict between Title 5, Labor Code, and this chapter, this chapter prevails.

Sec. 1305.004. DEFINITIONS. (a) Defines "adverse determination," "affiliate," "capitation," "complainant," "complaint," "credentialing," "emergency," "employee," "fee dispute," "independent review," "independent review organization," "life-threatening," "medical emergency," "medical records," "mental health emergency," "network," "workers' compensation health care network," "nurse," "person," "preauthorization," "quality improvement program," "retrospective review," "rural area," "screening criteria," "service area," "Texas Workers' Compensation Act," "transfer of risk," "utilization review," "utilization review agent," and "utilization review plan."

(b) Provides that certain terms have the meanings assigned by Section 401.011 (General Definitions), Labor Code.

Sec. 1305.005. PARTICIPATION IN NETWORK; NOTICE OF NETWORK REQUIREMENTS. (a) Authorizes an employer that elects to provide workers' compensation insurance coverage under the Texas Workers' Compensation Act to receive workers' compensation health care services for the employer's injured employees through a workers' compensation health care network.

(b) Authorizes an insurance carrier to establish or contract with networks certified under this chapter to provide health care services under the Texas Workers' Compensation Act. Sets forth requirements for obtaining medical treatment within the network.

(c) Requires the insurance carrier to provide to the employer, and the employer to provide to the employer's employees, notice of network requirements, including all information required by Section 1305.451 (Employee Information; Responsibilities of Employee). Requires the employer to require the employer to take certain steps to ensure the employees are knowledgeable of network requirements.

(d) Requires the employer to provide the notice and information required under Subsection (c) not later than the third day after the date of hire, to each employee hired after the notice is given under that Subsection.

(e) Provides that an injured employee who has received notice of network requirements but refuses to sign the acknowledgment form required under Subsection (c) remains subject to the network requirements established under this chapter.

(f) Requires the employer to notify an injured employee of the network requirements at the time the employer receives actual or constructive notice of an injury.

(g) Provides that an injured employee is not required to comply with the network requirements until the employee receives the notice under Subsection (c) or (d). Provides that an insurance carrier that establishes or contracts with a network is liable for the payment of medical care under the requirements of Title 5, Labor Code, for an injured employee who does not receive the notice of network requirements under this section.

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

Sec. 1305.006. INSURANCE CARRIER LIABILITY FOR OUT-OF-NETWORK HEALTH CARE. Provides that an insurance carrier that establishes or contracts with a network is liable for the cost of specific out-of-network health care that is provided to an injured employee and that 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, the accident or health insurance carrier or other person may recover the amounts paid for such services from the workers' compensation insurance carrier.

Sec. 1305.007. RULES. Authorizes the commissioner to adopt rules as necessary to implement this chapter.

[Reserves Sections 1305.008-1305.050 for expansion.]

SUBCHAPTER B. CERTIFICATION

Sec. 1305.051. CERTIFICATION REQUIRED. (a) Prohibits a person from operating a workers' compensation health care network in this state unless the person holds a certificate issued under this chapter and rules adopted by the commissioner.

(b) Prohibits a person from performing any act of a workers' compensation health care network except in accordance with the specific authorization of this chapter or rules adopted by the commissioner.

(c) Authorizes a health maintenance organization regulated under Chapter 843 (Health Maintenance Organizations) or an organization of physicians and providers that operates as a preferred provider benefit plan under Chapter 1301 (Preferred Provider Benefit Plans) to obtain certification as a workers' compensation health care network in the same manner as any other person if that entity meets the requirements of this chapter and rules adopted by the commissioner under this chapter.

Sec. 1305.052. CERTIFICATE APPLICATION. (a) Requires a person who seeks to operate as a workers' compensation health care network to apply to the department for a certificate to organize and operate as a network.

(b) Sets forth requirements for a certificate applicant.

Sec. 1305.053. CONTENTS OF APPLICATION. Sets forth certain elements that must be included in each certificate application.

Sec. 1305.054. ACTION ON APPLICATION; RENEWAL OF CERTIFICATION. (a) Requires the commissioner to approve or disapprove an application for certification as a network not later than the 60th day after the date the completed application is received by the department. Sets forth requirements for an application to be considered complete.

(b) Authorizes the commissioner to request additional information derived from an on-site quality-of-care examination.

(c) Requires the department to notify the applicant of any deficiencies in the application and authorizes the department to allow the applicant to request additional time to revise the application. Authorizes the commissioner to grant or deny requests for additional time.

(d) Sets forth procedures for disapproving an application and requesting a hearing to contest disapproval by the commissioner.

(e) Provides that a certificate issued under this subchapter is valid until revoked or suspended.

Sec. 1305.055. USE OF CERTAIN INSURANCE TERMS BY NETWORK PROHIBITED. Provides that a network is not an insurer and prohibits a network from using certain words in its name, contracts, or informational literature.

Sec. 1305.056. RESTRAINT OF TRADE; APPLICATION OF CERTAIN LAWS. (a) Provides that a 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 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.

(c) Provides that a network is subject to Articles 21.28 (Liquidation, Rehabilitation, Reorganization of Conservation of Insurers) and 21.28-A (Insurer Delinquencies and Prevention of Insurer Delinquencies; Supervision of Insurers and Proceedings, Conservatorships, Liquidations--Additional and Alternate Provisions) and is considered an insurer or insurance company, as applicable, for purposes of those laws.

[Reserves Sections 1305.057-1305.100 for expansion.]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION HEALTH CARE NETWORKS

Sec. 1305.101. PROVIDING OR ARRANGING FOR HEALTH CARE. (a) Requires a network to provide or arrange for health care services only through providers or provider groups that are under contract with or are employed by the network, except for emergencies and out-of-network referrals.

(b) Prohibits a network doctor from serving as a designated doctor or performing a required medical exam, as those terms are used under the Texas Workers' Compensation Act, for an employee receiving medical care through a network with which the doctor contracts or is employed.

(c) Prohibits prescription medication or services, as defined by Section 401.011(19)(E), Labor Code, 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 the commissioner of the Texas Department of Workers' Compensation.

Sec. 1305.102. MANAGEMENT CONTRACTS. (a) Prohibits a network from entering into a contract with another entity for management services unless the proposed contract is first filed with the department and approved by the commissioner.

(b) Requires the commissioner to approve or disapprove the contract within a certain time period.

(c) Sets forth requirements for contract content.

(d) Requires the management contractor proposing to contract to provide to the commissioner information sufficient to allow the commissioner to determine the competence, fitness, or reputation of each of the contractor's officers and directors.

(e) Requires the commissioner to disapprove the proposed contract if the commissioner determines that the contract authorizes a person who is not sufficiently trustworthy, competent, experience, and free from conflict of interest to manage the network.

(f) Prohibits the commissioner from approving a proposed management contract unless the management contractor has in force in the management contractor's own name a fidelity bond on the contractor's officers and employees in the amount of at least \$250,000, as prescribed by the commissioner.

(g) Provides that the fidelity bond must be issued by an insurer authorized to engage in business in this state and must be filed with the department. Authorizes a management contractor to obtain a fidelity bond procured by a surplus lines agent under Chapter 981 (Surplus Lines Insurance), if the commissioner determines that a fidelity bond is not available from an insurer authorized to engage in business in the state.

(h) Provides that the fidelity bond must obligate the surety to pay any loss of money or other property damage that the network sustains because of an act of fraud or dishonesty by an employee or officer of the management contractor during the period that the management contract is in effect.

(i) Sets forth requirements for depositing with the comptroller cash or readily marketable liquid securities in lieu of a fidelity bond.

(j) Prohibits a management contract approved by the commissioner from being assigned to any other entity.

(k) Provides that a management contract filed with the department is confidential and is not subject to disclosure as public information under Chapter 552 (Public Information), Government Code.

Sec. 1305.103. TREATING DOCTOR; REFERRALS. (a) Requires a network to determine the specialty or specialties of doctors who are authorized to serve as treating doctors.

(b) Requires an employee, for each injury, to select a treating doctor from the list of all treating doctors.

(c) Sets forth guidelines for an employee being treated by a non-network provider for an injury that occurred before the employer's insurance carrier contracted with the network.

(d) Requires each network, by contract, to require treating doctors to provide, at a minimum, the functions and services for injured employees described by this section.

(e) Requires a treating doctor to provide health care to the employee for the employee's compensable injury and to make referrals to other network providers, or request referrals to out-of-network providers if medically necessary services are not available within the network. Sets forth requirements for out-of-network referrals. Provides that if the network denies the referral request, the employee may appeal the decision through the network's complaint process under Subchapter I.

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

Sec. 1305.104. SELECTION OF TREATING DOCTOR. Sets forth guidelines for an employee's initial choice of a treating doctor and subsequent choices for alternate treating doctors in the event that an employee is dissatisfied with the initial choice.

Sec. 1305.105. TREATMENT BY A PRIMARY CARE PHYSICIAN OR PROVIDER UNDER CHAPTER 843. (a) Authorizes an injured employee required to receive health care services within a network, notwithstanding any other provision of this chapter, to select as the employee's treating doctor a doctor who the employee selected, prior to injury, as the employee's primary care provider under Chapter 843, as the terms "physician" and "provider" are defined in that chapter.

(b) Requires a doctor serving as an employee's treating doctor under Subsection (a) to agree to abide by the terms of the network's contract and comply with the provisions of this subchapter and Subchapters D and G. Provides that services provided by such a doctor are considered to be network services and are subject to Subchapters H and I.

(c) Requires any change of doctor requested by an employee being treated by a doctor under Subsection (a) to be to a network doctor and is subject to the requirements of this chapter.

Sec. 1305.106. PAYMENT OF HEALTH CARE PROVIDER. (a) Requires the commissioner to adopt rules regarding the payment of claims by health care providers in workers' compensation health care networks.

(b) Requires rules adopted under this section to, as closely as possible, follow those adopted for payment of claims by Health Maintenance Organizations pursuant to Subchapter J, Chapter 843. Authorizes rules adopted under this section to vary from those adopted under Subchapter J, Chapter 843, to consider factors specific to the payment of claims in the workers' compensation system.

Sec. 1305.107. TELEPHONE ACCESS. (a) Requires each network to have appropriate personnel reasonably available through a toll-free telephone service to discuss an employee's care and to allow response to requests for information.

(b) Requires a network to have a telephone system capable of responding to incoming calls during other than normal business hours. Requires the network to respond to those calls not later than two business days after the date the call was received or the details necessary to respond were received by the network from the caller.

[Reserves Sections 1305.108-1305.150 for expansion.]

SUBCHAPTER D. CONTRACTING PROVISIONS

Sec. 1305.151. TRANSFER OF RISK. Prohibits a contract under this subchapter from involving a transfer of risk.

Sec. 1305.152. NETWORK CONTRACTS WITH PROVIDERS. (a) Requires a network to enter into a written contract with each provider or group of providers that participates in the network and provides that the contract is not public information under Chapter 552, Government Code.

(b) Provides that, if a network determines it has contracted with a sufficient number of qualified health care providers, it is not required to accept other applications for participation in the network.

(c) Provides that provider contracts and subcontracts must include, at minimum, certain provisions.

(d) Provides that continued care must be requested by a provider and that a dispute involving continuity of care is subject to the dispute resolution process under Subchapter I.

(e) Prohibits an insurance carrier and a network from using any financial incentive or making a payment to a health care provider that acts directly or indirectly as an inducement to limit medically necessary services.

Sec. 1305.153. PROVIDER REIMBURSEMENT. Provides guidelines and requirements for reimbursement for in-network and out-of-network providers.

Sec. 1305.154. NETWORK-CARRIER CONTRACTS. (a) Authorizes a network to provide health care services to employees only through a confidential, written contract with an insurance carrier, except for emergencies and out-of-network referrals. Provides that a network-carrier contract under this section is confidential and is not subject to disclosure.

(b) Authorizes a carrier and a network to negotiate the functions to be provided by the network, except that the network is required meet the requirements set forth by this chapter.

(c) Provides that a network's contract with a carrier must include certain provisions.

(d) Prohibits an insurance carrier, a network, and any management contractor or third party to which the network delegates a function from using any financial incentive or making payments to a health care provider that acts directly or indirectly as an inducement to limit medically necessary services.

Sec. 1305.155. COMPLIANCE REQUIREMENTS. (a) Requires an insurance carrier that becomes aware of any information that indicates that a network, any management contractor, or any third party to which the network delegates a function is not operating in accordance with the contract to take certain actions to rectify the situation.

(b) Requires a network 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.

(c) Requires the carrier to cooperate with the network to correct any failure by the network to comply with any regulatory requirement of the department.

(d) Requires the commissioner to examine the matters contained in a notice or complaint as well as any other matter relating to the financial solvency of the network or the network's ability to meet its responsibilities in connection with any function performed by the network or delegated to the network by the carrier.

(e) Requires the department to report to the network and the carrier the results of the examination and any action the department deems necessary to ensure that the carrier meets its responsibilities. Prohibits the department from reporting to the carrier any information not relevant to the monitoring plan.

(f) Requires the network and the carrier to respond to the department's report and submit a corrective plan to the department not later than the 30th day after the date of receipt of the report.

(g) Authorizes the commissioner to order a carrier to take any action the commissioner determines is necessary to ensure that the carrier can provide all health care services under the Texas Workers' Compensation Act.

(h) Provides that the carrier retains ultimate responsibility for ensuring that certain functions are performed in accordance with certain statutes and rules. Provides

that nothing in this section may be construed to limit the carrier's responsibility to comply with all statutory and regulatory requirements.

[Reserves Sections 1305.156-1305.200 for expansion.]

SUBCHAPTER E. FINANCIAL REQUIREMENTS

Sec. 1305.201. NETWORK FINANCIAL REQUIREMENTS. (a) Requires each network to prepare financial statements in a certain way which must include certain provisions for liabilities.

(b) Requires each network to file the financial statement under Subsection (a) with the department in the manner prescribed by commissioner rule.

[Reserves Sections 1305.202-1305.250 for expansion.]

SUBCHAPTER F. EXAMINATIONS

Sec. 1305.251. EXAMINATION OF NETWORK. (a) Authorizes the commissioner or the commissioner's designated representative to review the operations of a network as often as the commissioner considers necessary. Authorizes the review to include on-site visits to the network's premises.

(b) Requires the network to make available to the department all records relating to the network's operations during on-site visits.

Sec. 1305.252. EXAMINATION OF PROVIDER OR THIRD PARTY. Requires each provider, provider group, or third party with which the network has contracted to provide health care services or any other services delegated to the network by an insurance carrier to make available for examination by the department that portion of the books and records of the provider, provider group, or third party that is relevant to the relationship with the network.

[Reserves Sections 1305.253-1305.300 for expansion.]

SUBCHAPTER G. PROVISION OF SERVICES BY NETWORK; QUALITY IMPROVEMENT PROGRAM

Sec. 1305.301. NETWORK ORGANIZATION; SERVICE AREAS. (a) and (b) Provides that the chief executive officer, operations officer, or governing body of a network is responsible for certain management duties.

(c) Requires each network to have a medical director, who must be an occupational medicine specialist or employ or contract with an occupational medicine specialist, and who must be licensed to practice medicine in the United States. Requires the medical director to meet certain standards.

(d) Requires the network to establish one or more service areas within this state. Provides that the network must fulfill certain criteria for each defined service area.

Sec. 1305.302. ACCESSIBILITY AND AVAILABILITY REQUIREMENTS. (a) Provides that all services specified by this section must be provided by a provider who holds an appropriate license, unless the provider is exempt from license requirements.

(b) Requires the network to ensure that the network's provider panel includes an adequate number of treating doctors and specialists who are available and accessible to employees 24 hours a day, seven days a week, within the network's service area. Provides that an adequate number of the treating doctors and specialists must have admitting privileges at one or more network

hospitals located within the network's service area to ensure that any necessary hospital admissions are made.

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

(d) Requires physical and occupational therapy services and chiropractic services to be available and accessible within the network's service area.

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

(f) Requires a network to arrange for services to be accessible to employees on a timely basis on request, except for emergencies.

(g) Requires each network to provide that network services are sufficiently accessible and available to both rural and nonrural areas. Provides that, for portions of the service area in which the network identifies noncompliance with this subsection, the network must file an access plan with the department.

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

(i) Authorizes the network to make arrangements with providers outside the service area to enable employees to receive a skill or specialty not available within the network service area.

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

Sec. 1305.303. QUALITY OF CARE REQUIREMENTS. (a) Requires a network to develop and maintain an ongoing quality improvement program (program). Provides that the program must include return-to-work and medical case management programs.

(b) Provides that the network's governing body is ultimately responsible for the program. Requires the governing body to perform certain management duties related to the program.

(c) Requires the quality improvement committee(s) to evaluate the overall effectiveness of the program as determined by commissioner rules.

(d) Provides that the program must be continuous and comprehensive and must address both the quality of clinical care and the quality of services. Requires the network to dedicate adequate resources to the program.

(e) Requires the network to develop a written description of the program that outlines the organizational structure and functional responsibilities of the program and the frequency of committee meetings.

(f) Requires the network to develop an annual quality improvement work plan designed to reflect the type of services and the populations served by the network.

(g) Requires the network to prepare an annual written report to the department on the program that includes certain features.

(h) Requires each network to implement a documented process for the selection and retention of contracted providers, in accordance with rules adopted by the commissioner.

(i) Provides that the program must provide for a peer review action procedure for providers, as described by Section 151.002 (Definitions), Occupations Code.

(j) Requires the network to have a medical case management program with certified case managers that are required to work with treating doctors, referral providers, and employers to facilitate cost-effective care and employee return-to-work.

Sec. 1305.304. GUIDELINES AND PROTOCOLS. Requires each network to adopt certain treatment guidelines, return-to-work guidelines, and individual treatment protocols.

[Reserves Sections 1305.305-1305.350 for expansion.]

SUBCHAPTER H. UTILIZATION REVIEW; RETROSPECTIVE REVIEW

Sec. 1305.351. UTILIZATION REVIEW AND RETROSPECTIVE REVIEW IN NETWORK. (a) Provides that the requirements of Article 21.58A apply to utilization review conducted in relation to claims in a workers' compensation health care network. Provides that this chapter controls in the event of a conflict between it and Article 21.58A.

(b) Requires any screening criteria used for utilization review or retrospective review related to a workers' compensation health care network to be consistent with the network's treatment guidelines.

Sec. 1305.352. GENERAL STANDARDS FOR RETROSPECTIVE REVIEW. (a) Requires retrospective review of a health care service to be based on certain criteria.

(b) Requires retrospective review to be performed under the direction of a physician.

Sec. 1305.353. NOTICE OF CERTAIN UTILIZATION REVIEW DETERMINATIONS; PREAUTHORIZATION REQUIREMENTS. (a) Requires the entity performing utilization review or retrospective review to notify the employee and certain other persons or entities of a determination made.

(b) Sets forth the information required to be included in a notification of an adverse determination.

(c) Requires the utilization review agent, upon receipt of a preauthorization request, to issue and transmit a determination of whether the proposed health care services are preauthorized. Requires the utilization review agent to respond to requests for preauthorization within the periods prescribed by this section.

(d) Sets forth a certain timeframe in which the determination must be issued and transmitted for certain services.

(e) Requires the utilization review agent to transmit a determination of preauthorization within 24 hours of a request for concurrent hospitalization.

(f) Requires the utilization review agent to transmit a determination of preauthorization within an appropriate timeframe, not to exceed one hour from receipt, for requests regarding poststabilization treatment or a life-threatening

condition. Requires the utilization review agent to provide notification in the case of an adverse determination.

(g) Requires the notification of adverse determination, for life-threatening conditions, to include certain information regarding the availability of independent review.

(h) Provides that treatments and services for an emergency do not require preauthorization.

Sec. 1305.354. RECONSIDERATION OF ADVERSE DETERMINATION. Requires a utilization review agent to maintain and make available a written description of the reconsideration procedures involving an adverse determination. Provides that the reconsideration procedures must be reasonable and must include certain provisions. Provides that the reconsideration procedures must include a method for expedited reconsideration and that an employee with a life-threatening situation is entitled to an immediate review of an adverse determination.

Sec. 1305.355. INDEPENDENT REVIEW OF ADVERSE DETERMINATION. Sets forth guidelines and procedures for reconsideration of an adverse determination by an independent review organization. Requires the insurance carrier to pay for the independent review. Requires the department to assign the review request to an independent review organization. Authorizes a party to a medical dispute that remains unresolved after a review under this section to seek judicial review of the decision. Provides that the department is not considered a party to the medical dispute and that a determination of an independent review organization related to a request for preauthorization or concurrent review is binding during the pendency of any appeal. Requires the carrier and network to comply with the determination and, if judicial review is not sought under this section, to comply with the independent review organization's determination.

[Reserves Sections 1305.356-1305.400 for expansion.]

SUBCHAPTER I. COMPLAINT RESOLUTION

Sec. 1305.401. COMPLAINT SYSTEM REQUIRED. (a) Requires each network to implement and maintain a complaint system that provides reasonable procedures to resolve an oral or written complaint.

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

(c) Provides that the complaint system must 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. 1305.402. COMPLAINT INITIATION AND INITIAL RESPONSE; DEADLINES FOR RESPONSE AND RESOLUTION. Sets forth a timeline for the appropriate investigation and resolution of a complaint.

Sec. 1305.403. RECORD OF COMPLAINTS. (a) Requires each network to maintain a complaint and appeal log regarding each complaint and requires the commissioner to adopt rules designating the classification of network complaints under this section.

(b) Requires each 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 network's record regarding the complaint and any proceeding relating to that complaint.

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

Sec. 1305.404. RETALIATORY ACTION PROHIBITED. Prohibits a network from engaging in any retaliatory action against an employer or employee because the employer or employee or a person acting on their behalf has filed a complaint against the network.

Sec. 1305.405. POSTING OF INFORMATION ON COMPLAINT PROCESS REQUIRED. (a) Provides that a contract between a network and a provider must require the provider to post, in the provider's office, a notice to injured employees on the process for resolving complaints with the network.

(b) Requires the department's toll-free telephone number for filing a complaint be included on the notice required under Subsection (a).

[Reserves Sections 1305.406-1305.450 for expansion.]

SUBCHAPTER J. EMPLOYEE INFORMATION AND RESPONSIBILITIES

Sec. 1305.451. EMPLOYEE INFORMATION; RESPONSIBILITIES OF EMPLOYEE.

(a) Requires an insurance carrier that establishes or contracts with a network to provide to employers, and requires the employer to provide to its employees, an accurate written description of the terms and conditions for obtaining health care within the network's service area.

(b) Requires that the written description of network services be in English, Spanish, and any additional language common to an employer's employees, and include certain information.

(c) Prohibits the network and the network's representatives and agents from causing or knowingly permitting the use or distribution to employees of information that is untrue or misleading.

(d) Requires a network that contracts with an insurance carrier to provide all the information necessary to allow the carrier to comply with this section.

[Reserves Sections 1305.452-1305.500 for expansion.]

SUBCHAPTER K. EVALUATION OF NETWORKS; CONSUMER REPORT CARD

Sec. 1305.501. EVALUATION OF NETWORKS. (a) Requires the department, in accordance with the research duties assigned to the department under Chapter 405 (Workers' Compensation Research), Labor Code, to objectively evaluate all networks under this chapter and report its findings to certain officials not later than September 1 of each even-numbered year. Sets forth evaluation requirements for information to be included in the report.

Sec. 1305.502. CONSUMER REPORT CARDS. (a) Requires the department to issue annual consumer report cards that identify and compare the networks certified by the department.

(b) Requires the department to ensure that consumer report cards issued by the department are accessible to the public on the department's Internet website and available to any person on request. Authorizes the commissioner, by rule, to set a reasonable fee to obtain a paper copy of consumer report cards.

Sec. 1305.503. CONFIDENTIALITY REQUIREMENTS. (a) Provides that, as necessary to implement this subchapter, the department is entitled to information that is otherwise confidential under any law of this state, including the Texas Workers' Compensation Act.

(b) Provides that confidential information provided to or obtained by the department under this section remains confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code. Prohibits the department from releasing certain information.

(c) Provides that information that is in the possession of the department and that relates to an individual injured employee or doctor, and any compilation, report, or analysis produced from the information that identifies an individual injured employee or doctor, is not subject to discovery, subpoena, or other means of legal compulsion for release to any person or admissible in any civil, administrative, or criminal proceeding.

[Reserves Sections 1305.504-1305.550 for expansion.]

SUBCHAPTER L. DISCIPLINARY ACTIONS

Sec. 1305.551. DETERMINATION OF VIOLATION; NOTICE. (a) Requires the commissioner or a designated representative to notify a network, insurance carrier, person, or third party that is in violation of this chapter of the alleged violation and authorizes the commissioner to compel the production of any documents or other information as necessary to determine whether the violation occurred.

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

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

Sec. 1305.552. DISCIPLINARY ACTIONS. Authorizes the commissioner to take certain disciplinary actions if the commissioner determines that a network, insurance carrier, or other person or third party has violated or is in violation of this chapter or commissioner rule.

ARTICLE 5. RATES AND UNDERWRITING REQUIREMENTS

SECTION 5.01. Amends Section 1, Article 5.55, Insurance Code, by amending Subdivision (2) and adding Subdivision (2-a) to redefine "insurer" and define "premium."

SECTION 5.02. Amends Sections 2(b) and (d), Article 5.55, Insurance Code, to require an insurer to consider the effect of individual risk variations based on loss or experience considerations in setting rates. Prohibits rates and premiums established under this article from being excessive, inadequate, or unfairly discriminatory. Makes nonsubstantive changes.

SECTION 5.03. Amends Section 3, Article 5.55, Insurance Code, by adding Subsections (e)-(h), as follows:

(e) Requires the commissioner, not later than December 1 of each even-numbered year, to report to certain officials regarding the impact that legislation enacted during the regular session of the 79th Legislature reforming the workers' compensation system of this state has had on the affordability and availability of workers' compensation insurance for the employers of this state. Provides that the report must include certain information.

(f) Sets forth guidelines for commissioner recommendations if the commissioner determines that the workers' compensation rate filings or premium levels analyzed by the department do not appropriately reflect the savings associated with the reforms described by Subsection (e).

(g) Requires each insurer to submit, at the request of the department, all data and other information considered necessary by the commissioner to generate the report required under Subsection (e). Provides that failure by an insurer to submit the data and information in a timely fashion, as determined by commissioner rule, constitutes grounds for sanctions under Chapter 82 of this code.

(h) Requires the commissioner, in reviewing rates under this article, to consider any state or federal legislation that has been enacted and that may impact rates and premiums for workers' compensation coverage in this state.

SECTION 5.04. Amends Section 6(b), Article 5.55, Insurance Code, to delete existing text relating to the affect of a disapproval order on a policy.

SECTION 5.05. Amends Section 7, Article 5.55, Insurance Code, to authorize the commissioner, after notice and the opportunity for a hearing, to take certain actions if a policy is issued and the commissioner subsequently disapproves of the rate or filing on which the premium is based. Deletes existing text relating to an insurer that consistently overcharges or undercharges. Makes a conforming change.

SECTION 5.055. Amends Article 5.55, Insurance Code, by adding Section 8, as follows:

Sec. 8. EXCLUSIVE JURISDICTION. Provides that the department has exclusive jurisdiction over all rates and premiums subject to this article.

SECTION 5.06. Amends Subchapter D, Chapter 5, Insurance Code, by adding Article 5.55A, as follows:

Art. 5.55A. UNDERWRITING GUIDELINES

Sec. 1. DEFINITIONS. Defines "insurer" and "underwriting guideline."

Sec. 2. UNDERWRITING GUIDELINES. Requires each underwriting guideline used by an insurer in writing workers' compensation insurance to be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk. Prohibits an underwriting guideline from being unfairly discriminatory.

Sec. 3. ENFORCEMENT. Authorizes this article to be enforced in the manner provided by Section 38.003(g) (Underwriting Guidelines for Other Lines; Confidentiality).

Sec. 4. FILING REQUIREMENTS. Requires each insurer to file with the department a copy of the insurer's underwriting guidelines and to update its filing each time those guidelines are changed. Requires a group of insurers, if filing one set of guidelines for the group, to identify which guidelines apply to each insurer in the group.

Sec. 5. APPLICABILITY OF SECTION 38.003. Provides that Section 38.003 (Underwriting Guidelines for Other Lines; Confidentiality) applies to this article to the extent consistent with this article.

SECTION 5.07. Amends Subsection (b), Article 5.58, Insurance Code, to make a conforming change.

ARTICLE 6. REPEALER

SECTION 6.001. Repealers:

(1) Sections 402.025 (Audit), Labor Code.

- (2) Section 402.062(b) (Acceptance of Gifts, Grants, and Donations), Labor Code.
- (3) Sections 402.063 (Appointment of Executive Director) and 402.070 (Annual Report), Labor Code.
- (4) Section 406.012 (Enforcement of Subchapter), Labor Code.
- (5) Section 408.004(g) (Required Medical Examinations; Administrative Violation), Labor Code.
- (6) Sections 408.0221 (Regional Healthcare 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.
- (7) Section 413.005 (Medical Advisory Committee), Labor Code.
- (8) Sections 415.0035(c) and (d) (Additional Violations by Insurance Carrier or Health Care Providers), Labor Code.
- (9) Section 415.004 (Penalty Specified in Other Law), Labor Code.
- (10) Section 415.008(b) (Fraudulently Obtaining or Denying Benefits; Administrative Violation), Labor Code.
- (11) Section 415.009(b) (Frivolous Actions; Administrative Violation), Labor Code.
- (12) Section 415.010(b) (Breach of Agreement; Administrative Violation), Labor Code.
- (13) Section 415.022 (Classification of Administrative Violations), Labor Code.
- (14) Section 505.001(1) (Definition of Commissioner), Labor Code.

ARTICLE 7. TRANSITION; EFFECTIVE DATE

SECTION 7.001. EFFECT OF CHANGE IN DESIGNATION. Provides that the change in designation of the Texas Workers' Compensation Commission to the Texas Department of Worker's Compensation does not affect anything done by the Texas Workers' Compensation Commission before the change in designation by this Act.

SECTION 7.002. ABOLITION OF TEXAS WORKERS' COMPENSATION COMMISSION.
 (a) Provides that the Texas Workers' Compensation Commission is abolished on the effective date of this Act and that the term of a person serving on the commission will expire on the date the commissioner of workers' compensation is appointed.

(b) Provides that all appropriations made by the legislature for the use and benefit of the Texas Workers' Compensation Commission are available for the use and benefit of the Texas Department of Workers' Compensation.

(c) Provides that the divisions of the Texas Workers' Compensation Commission established under Section 402.021, Labor Code, as that section existed prior to amendment by this Act, are abolished on the effective date of this Act.

SECTION 7.003. COMMISSIONER. Requires the governor to appoint the commissioner of workers' compensation not later than September 30, 2005.

SECTION 7.0031. OFFICE OF INJURED EMPLOYEE COUNSEL. (a) Establishes the office created under Chapter 404, Labor Code, as added by this Act, September 1, 2005.

(b) Requires the governor to appoint the public counsel of the office not later than October 1, 2005.

(c) Requires the public 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 the department to provide to provide specific resources to support regional offices and an Austin office by October 1, 2005.

(e) Requires all powers, duties, obligations, rights, contracts, funds, unspent appropriations, records, real or personal property, and personnel of the Texas Workers' Compensation Commission 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 not later than March 1, 2006. Requires an ombudsman transferred to the office under this section to begin providing services under Chapter 404, Labor Code, as added by this Act, not later than March 1, 2006.

SECTION 7.0032. BUDGET EXECUTION AUTHORITY. Authorizes the Legislative Budget Board, notwithstanding Section 317.005(e), Government Code, to adopt an order under Section 317.005 (Action on Proposal), Government Code, affecting any portion of the total appropriation of the department or office, if necessary to implement the provisions of this Act. Provides that this section expires March 31, 2006.

SECTION 7.004. RULES REGARDING MEDICAL EXAMINATIONS. Requires the commissioner of workers' compensation to adopt rules to implement the changes in law made to Sections 408.004 and 408.0041, Labor Code, as amended by this Act, on or before February 1, 2006. Provides that the changes in law made to Sections 408.004 and 408.0041, Labor Code, are effective on the date provided by commissioner rule.

SECTION 7.005. ELECTRONIC BILLING RULES. Requires the commissioner of workers' compensation to adopt rules under Section 408.0251 (Electronic Billing Requirements), Labor Code, not later than January 1, 2006.

SECTION 7.006. ACCRUAL OF RIGHT TO INCOME BENEFITS. Makes application of Section 408.082(c), Labor Code, as amended by this Act, prospective.

SECTION 7.007. ELIGIBILITY FOR PILOT PROGRAM. Makes application the pilot program established by Section 413.022, Labor Code, as added by this Act, prospective to January 1, 2006.

SECTION 7.008. REPORTS. (a) Requires the commissioner of workers' compensation, not later than October 1, 2006, to report to certain officials regarding the implementation of Section 408.1225, Labor Code, as added by this Act.

(b) Requires the commissioner of workers' compensation, not later than October 1, 2008, to report to certain officials regarding the implementation of the pilot program established by Section 413.022, Labor Code, as added by this Act, and the results of the pilot program. Requires the report to include any recommendations regarding the continuation of the pilot program.

(c) Requires the commissioner of insurance to submit the initial report required under Section 3(e), Article 5.55, Insurance Code, as added by this Act, not later than December 1, 2006.

(d) Requires the commissioner of insurance to submit to certain officials the first report under Section 1305.501(a), Insurance Code, as added by this Act, not later than September 1, 2008.

SECTION 7.009. ABOLITION OF MEDICAL ADVISORY COMMITTEE. Provides that the medical advisory committee established under Section 413.005, Labor Code, as that section existed prior to repeal by this Act, is abolished on the effective date of this Act.

SECTION 7.010. STATE OFFICE OF ADMINISTRATIVE HEARINGS REVIEW. (a) Provides that this section applies to a hearing conducted by the State Office of Administrative Hearings under Section 413.031(k), Labor Code, as that subsection existed prior to amendment by this Act.

(b) Prohibits the State Office of Administrative Hearings, effective September 1, 2005, from accepting a medical dispute that remains unresolved pursuant to Section 413.031, Labor Code, for hearing. Provides that a medical dispute that is not pending for a hearing by the State Office of Administrative Hearings on or before August 31, 2005, is subject to Section 413.031(k), Labor Code, as amended by this Act, and is not subject to a hearing before the State Office of Administrative Hearings.

SECTION 7.011. IMPLEMENTATION OF PROVIDER NETWORKS. (a) Requires the commissioner of insurance and the commissioner of workers' compensation, except as provided by Subsection (c) of this section, to adopt rules as necessary to implement Chapter 1305, Insurance Code, as added by this Act, not later than December 1, 2005. Requires the Texas Department of Insurance to accept applications from a network seeking certification under Chapter 1305, Insurance Code, as added by this Act, beginning December 1, 2005.

(b) Authorizes an insurance carrier to begin to offer workers' compensation medical benefits through a network under Chapter 1305, Insurance Code, on certification of the network by the commissioner of insurance.

(c) Requires the commissioner of insurance to adopt rules to implement Section 1305.106, Insurance Code, as added by this Act, on or before January 1, 2007.

SECTION 7.012. CONSUMER REPORT CARD. Requires the Texas Department of Insurance to issue the first annual workers' compensation report card not later than 18 months after the date on which that department certifies the first workers' compensation health care network.

SECTION 7.013. APPLICATION TO MEDICAL BENEFITS. (a) Provides that Article 4 of this Act applies to a claim for workers' compensation medical benefits based on a compensable injury incurred by an employee whose employer elects to provide workers' compensation insurance coverage if the insurance carrier of the employer enters into a contract to provide workers' compensation medical benefits through a network certified under Chapter 1305 (Workers' Compensation Healthcare Networks), Insurance Code, as added by this Act.

(b) Provides that a claim for workers' compensation medical benefits based on a compensable injury that occurs on or after the effective date of a contract described by Subsection (a) of this section is subject to the provisions of Chapter 1305, Insurance Code, as added by this Act.

(c) Provides that, notwithstanding Subsection (a), an injured employee who receives workers' compensation medical benefits based on a compensable injury that occurs before the effective date of this Act is subject to the provisions of Chapter 1305, Insurance Code, and must receive treatment through a network health care provider if the insurer liable for the payment of the benefits on that claim elects to use a workers' compensation health care network to provide medical benefits and the claimant resides in a network service area. Requires the insurer to notify affected injured employees in writing of the election.

SECTION 7.014. APPLICATION TO SANCTIONS AND VIOLATIONS. (a) Makes application of the changes in law made by this Act to a penalty or sanction for an offense or violation committed, prospective.

SECTION 7.015. EFFECT OF UPDATE ACT. Provides that, to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes (the General Code Update bill).

SECTION 7.016. EFFECTIVE DATE. Effective date: September 1, 2005.