(e) The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

SECTION 2. This Act takes effect September 1, 2013.
Passed the Senate on April 4, 2013: Yeas 30, Nays 0; passed the House on May 22, 2013: Yeas 148, Nays 0, two present not voting.
Approved June 14, 2013.
Effective September 1, 2013.

CHAPTER 1202
S.B. No. 1322
AN ACT
relating to the provision of durable medical equipment and home health care services through informal and voluntary networks in the workers’ compensation system; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (f), Section 408.027, Labor Code, is amended to read as follows:

(f) Except as provided by Section 408.0281 or 408.0284, any payment made by an insurance carrier under this section shall be in accordance with the fee guidelines authorized under this subtitle if the health care service is not provided through a workers’ compensation health care network under Chapter 1305, Insurance Code, or at a contracted rate for that health care service if the health care service is provided through a workers’ compensation health care network under Chapter 1305, Insurance Code.

SECTION 2. Subsection (a), Section 408.0282, Labor Code, is amended to read as follows:

(a) Each informal or voluntary network described by Section 408.0281 or 408.0284 shall, not later than the 30th day after the date the network is established, report the following information to the division:

(1) the name of the informal or voluntary network and federal employer identification number;
(2) an executive contact for official correspondence for the informal or voluntary network;
(3) a toll-free telephone number by which a health care provider may contact the informal or voluntary network;
(4) a list of each insurance carrier with whom the informal or voluntary network contracts, including the carrier’s federal employer identification number; and
(5) a list of, and contact information for, each entity with which the informal or voluntary network has a contract or other business relationship that benefits or is entered into on behalf of an insurance carrier, including an insurance carrier’s authorized agent or a subsidiary or other affiliate of the network.

SECTION 3. Subchapter B, Chapter 408, Labor Code, is amended by adding Section 408.0284 to read as follows:

Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. (a) In this section:

(1) “Durable medical equipment” includes prosthetics and orthotic devices and related medical equipment and supplies. The term does not include:

(A) an object or device that is surgically implanted, embedded, inserted, or otherwise applied;
(B) related equipment necessary to operate, program, or recharge the object or device described by Paragraph (A); or

(C) an intrathecal pump.

(2) “Informal network” means a network that:

(A) is established under a contract between an insurance carrier or an insurance carrier’s authorized agent and a health care provider for the provision of durable medical equipment or home health care services; and

(B) includes a specific fee schedule.

(3) “Voluntary network” means a voluntary workers’ compensation health care delivery network established under former Section 408.0223, as that section existed before repeal by Chapter 265 (House Bill No. 7), Acts of the 79th Legislature, Regular Session, 2005, by an insurance carrier for the provision of durable medical equipment or home health care services.

(b) Notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 of this code, durable medical equipment and home health care services may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a voluntarily negotiated contract rate in accordance with this section.

(c) Notwithstanding any other provision of this title or any provision of Chapter 1305, Insurance Code, an insurance carrier may pay a health care provider fees for durable medical equipment or home health care services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier or the carrier’s authorized agent has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier’s authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for durable medical equipment or home health care services. If a carrier or the carrier’s authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

(1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers for durable medical equipment or home health care services on the carrier’s behalf; and

(2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.

(d) An informal or voluntary network, or the carrier or the carrier’s authorized agent shall, at least quarterly, notify each health care provider of any person, other than an injured employee, to which the network’s contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed. Notice to each health care provider:

(1) must include:

(A) the contact information for the network, including the name, physical address, and toll-free telephone number at which a health care provider with which the network has a contract may contact the network; and

(B) in the body of the notice:

(i) the name, physical address, and telephone number of any person, other than an injured employee, to which the network’s contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(ii) the start date and any end date of the period during which the network’s contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(2) may be provided:

(A) in an electronic format, if a paper version is available on request by the division; and

(B) through an Internet website link, but only if the website:

(i) contains the information described by Subdivision (1); and
(ii) is updated at least monthly with current and correct information.

(a) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall document the delivery of the notice required under Subsection (d), including the method of delivery, to whom the notice was delivered, and the date of delivery. For purposes of Subsection (d), a notice is considered to be delivered on, as applicable:

(1) the fifth day after the date the notice is mailed via United States Postal Service; or

(2) the date the notice is faxed or electronically delivered.

(f) An insurance carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, shall provide copies of each contract described by Subsection (c) to the division on the request of the division. Information included in a contract under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. Notwithstanding Subsection (c), the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if:

(1) the contract:

   (A) is not provided to the division on the division's request;

   (B) does not include a specific fee schedule consistent with Subsection (c); or

   (C) does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the carrier's authorized agent; or

   (2) the carrier or the carrier's authorized agent does not comply with the notice requirements under Subsection (d).

(g) Failure to provide documentation described by Subsection (e) to the division on the request of the division or failure to provide notice as required under Subsection (d) creates a rebuttable presumption in an enforcement action under this subtitle and in a medical fee dispute under Chapter 13 that a health care provider did not receive the notice.

(h) An insurance carrier or the carrier's authorized agent commits an administrative violation if the carrier or agent violates any provision of this section. Any administrative penalty assessed under this subsection shall be assessed against the carrier, regardless of whether the carrier or agent committed the violation.

(i) Notwithstanding Section 1305.003(b), Insurance Code, in the event of a conflict between this section and Section 413.016 or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

SECTION 4. Each informal or voluntary network described by Section 408.0284, Labor Code, as added by this Act, that has a contract between an insurance carrier or an insurance carrier's authorized agent and a health care provider that is in effect on the effective date of this Act shall file the report described by Subsection (a), Section 408.0282, Labor Code, as amended by this Act, not later than the 30th day after the effective date of this Act.

SECTION 5. With respect to a contractual agreement that provides for fees for durable medical equipment or home health care services that are different from the fees authorized under the fee guidelines adopted by the commissioner of workers' compensation under Title 5, Labor Code, and that is entered into after the effective date of this Act, the notice required under Subsection (d), Section 408.0284, Labor Code, as added by this Act, shall be sent not later than the 30th day after the effective date of the contract, and subsequent notices required under that section shall be sent on a quarterly basis.

SECTION 6. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act takes effect September 1, 2013.

Passed the Senate on May 3, 2013: Yeas 30, Nays 0; passed the House on May 22, 2013: Yeas 145, Nays 3, two present not voting.

Approved June 14, 2013.

Effective September 1, 2013.