

## **BILL ANALYSIS**

Senate Research Center

H.B. 2605  
By: Taylor, Larry (Huffman)  
Government Organization  
4/29/2011  
Engrossed

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

H.B. 2605 is the Sunset bill for the Division of Workers' Compensation (division) within the Texas Department of Insurance (TDI).

The 79th Legislature made sweeping changes to the workers' compensation system including abolishing the standing regulatory agency and creating the division within TDI to regulate and administer the workers' compensation system in Texas. The division's regulation of the workers' compensation system aims to accomplish four basic goals established by the legislature, including insuring that each employee: is treated with dignity and respect when injured on the job; has access to fair and accessible dispute resolution process; has access to prompt, high-quality medical care; and returns to employment as soon as considered safe and appropriate.

The division regulates the workers' compensation system in Texas primarily by administering a dispute resolution process for income benefits, medical care, and payment for medical treatment; establishing fee and treatment guidelines for medical services; providing safety resources, education services, and training for system participants; certifying employers who choose to self-insure; and enforcing compliance with statutes and rules.

The division has a separate Sunset date from TDI, and will be abolished September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found Texas has a continuing need for the division's functions. However, the division is still in transition and several operational areas of the division showed flaws that need statutory repair to fairly and equitably treat injured workers and other system participants.

H.B. 2605 amends current law relating to certain workers' compensation benefits and to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance and provides an administrative violation.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of workers' compensation (commissioner) and the chief administrative law judge of the State Office of Administrative Hearings is rescinded in SECTION 8 (Section 402.073, Labor Code) of this bill.

Rulemaking authority previously granted to the commissioner is rescinded in SECTION 13 (Section 408.1225, Labor Code) of this bill.

Rulemaking authority is expressly granted to the commissioner in SECTION 13 (Section 408.1225, Labor Code), SECTION 16 (Section 410.028, Labor Code), SECTION 22 (Section 413.0312, Labor Code), SECTION 25 (Section 413.05122, Labor Code), and SECTION 27 (Section 414.005, Labor Code) of this bill

Rulemaking authority previously granted to the commissioner is modified in SECTION 11 (Section 408.0041, Labor Code) and SECTION 15 (Section 410.023, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 31.004(b), Insurance Code, to provide that unless continued as provided by Chapter 325 (Sunset Law), Government Code, the duties of the division of workers'

compensation of the Texas Department of Insurance (division; TDI) under Title 5 (Workers' Compensation), Labor Code, expire September 1, 2017, rather than September 1, 2011, or another date designated by the legislature.

SECTION 2. Amends Sections 1305.355(e), (f), and (g), Insurance Code, as follows:

(e) Entitles a party to a medical dispute that remains unresolved after a review under this section to a hearing and judicial review of the decision in accordance with Section 1305.356, rather than authorizes a party to a medical dispute that remains unresolved after review under this section to seek judicial review of the decision.

(f) Provides that a determination of an independent review organization related to a request for preauthorization or concurrent review is binding during the pendency of a dispute, rather than any appeal, and the carrier and network are required to comply with the determination.

(g) Requires the carrier and network, if a contested case hearing or judicial review is not sought under Section 1305.356, rather than this section, to comply with the independent review organization's determination.

SECTION 3. Amends Subchapter H, Chapter 1305, Insurance Code, by adding Section 1305.356, as follows:

Sec. 1305.356. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) Entitles a party to a medical dispute that remains unresolved after a review under Section 1305.355 (Independent Review of Adverse Determination) to a contested case hearing. Requires that a hearing under this subsection be conducted by the division in the same manner as a hearing conducted under Section 413.0311, Labor Code.

(b) Requires the hearing officer conducting the hearing, at a contested case hearing held under Subsection (a), to consider evidence-based treatment guidelines adopted by the network under Section 1305.304 (Guidelines and Protocols).

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

(d) Requires that judicial review under Subsection (c), except as otherwise provided by this subsection, be conducted in the manner provided by Section 413.031(k-1), Labor Code. Requires that for judicial review of an independent review organization decision to which an injured employee is a party, venue be as provided by Section 410.252 (Time for Filing Petition; Venue), Labor Code, and service and notice be as provided by Section 410.253 (Service; Notice), Labor Code.

SECTION 4. Amends Section 2051.151(e), Insurance Code, to provide that an insurance company that fails to comply with this section commits an administrative violation, rather than a Class D administrative violation, under Subtitle A (Texas Workers' Compensation Act), Title 5, Labor Code.

SECTION 5. Amends Section 2053.206(a), Insurance Code, to provide that a person commits an administrative violation, rather than a Class A administrative violation, under Subtitle A, Title 5, Labor Code, if the person engages in conduct that violates this subchapter.

SECTION 6. Amends Section 402.023, Labor Code, by adding Subsection (c-1), to require the division to adopt a policy outlining the division's complaint process from receipt of the initial complaint to the complaint's disposition.

SECTION 7. Amends Subchapter B, Chapter 402, Labor Code by adding Section 402.0231, as follows:

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

(b) Requires the division to compile detailed statistics on all complaints received and analyze complaint information trends, including the number of complaints, the source of each complaint, the types of complaints, the length of time from the receipt of the complaint to its disposition, and the disposition of complaints.

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

(d) Requires the division to report the information compiled and analyzed under Subsections (b) and (c) to the commissioner of workers' compensation (commissioner) at regular intervals.

SECTION 8. Amends Section 402.073, Labor Code, as follows:

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

(b) Requires the administrative law judge who conducts the hearing for SOAH, in a case in which a hearing is conducted by SOAH under Section 413.031 (Medical Dispute Resolution) or 413.055 (Interlocutory Orders; Reimbursement), rather than under Section 413.031, 413.055, or 415.034 (Hearing Procedures), to enter the final decision in the case after completion of the hearing. Makes a nonsubstantive change.

(c) Requires the administrative law judge who conducts the hearing for SOAH, in a case in which a hearing is conducted in conjunction with Section 402.072 (Sanctions), 407.046 (Revocation of Certificate of Authority), 408.023 (List of Approved Doctors; Duties of Treating Doctors), or 415.034, and in other cases under this subtitle that are not subject to Subsection (b), to propose a decision to the commissioner for final consideration and decision by the commissioner. Makes a nonsubstantive change.

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

(e) Requires the commissioner, in issuing an order under this section, to comply with the requirements applicable to a state agency under Section 2001.058 (Hearings Conducted by the State Office of Administrative Hearings), Government Code.

SECTION 9. Amends Section 403.001(a), Labor Code, to require that money collected under this subtitle, including advance deposits, rather than including administrative penalties and advance deposits, for purchase of services, except as provided by Sections 403.006 (Subsequent Inquiry Fund), 403.007 (Funding of Subsequent Inquiry Fund), and 403.008, or as otherwise provided by law, to be deposited in the general revenue fund of the state treasury to the credit of the TDI operating account. Makes a nonsubstantive change.

SECTION 10. Amends Chapter 403, Labor Code, by adding Section 403.008, as follows:

Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES. Requires that administrative penalties collected under this subtitle to be deposited in the general revenue fund.

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

(b) Requires that a medical examination requested under Subsection (a) (relating to authorizing the commissioner to order a medical examination to resolve any question about the injury), except as provided by Section 408.1225(f), be performed by the next available doctor on the division's list of certified designated doctors whose credentials are appropriate for the area of the body affected by the injury and the injured employee's diagnosis as determined by commissioner rule, rather than are appropriate for the issue in question and the injured employee's medical condition as determined by commissioner rule. Deletes existing text relating to providing that a designated doctor, other than a chiropractor, is subject to Section 408.0043 (Professional Specialty Certification Required for Certain Review); and providing that a designated doctor who is a chiropractor is subject to Section 408.0045 (Review of Chiropractic Services).

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

SECTION 12. Amends Section 408.023(r), Labor Code, as follows:

(r) Provides that, notwithstanding the waiver or expiration of certain subsections, there may be no direct or indirect provision of health care under this subtitle and rules adopted under this subtitle, and any direct or indirect receipt of remuneration under this subtitle and rules adopted under this subtitle by a doctor who meets certain requirements, including by a doctor who was not reinstated or restored by the Texas Workers' Compensation Commission (TWCC) or the division to the list of approved doctors, or to the workers' compensation system, rather than by a doctor who was not reinstated or restored by TWCC or the division to the list of approved doctors before September 1, 2007.

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

(a) Requires a doctor, to be eligible to serve as a designated doctor, to maintain an active certification by the division, rather than to meet specific qualifications, including training in the determination of impairment ratings and demonstrated expertise in performing examinations and making evaluations as described by Section 408.0041 (Designated Doctor Examination). Deletes existing text requiring the commissioner to develop qualification standards and administrative policies to implement this subsection and authorizing the commissioner to adopt rules as necessary.

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

(a-2) Requires that the rules adopted by the commissioner under Subsection (a-1):

(1) require the division to evaluate the qualification of designated doctors for certification using eligibility requirements, including educational experience, previous training, and demonstrated ability to perform the specific designated doctor duties described by Section 408.0041; and

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

(a-3) Requires the division to develop guidelines for certification training programs for certification of a designated doctor under Subsection (a-1) to ensure a designated doctor's competency and continued competency in providing assessments, including a standard curriculum, standard course materials, and testing criteria.

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

(a-5) Authorizes the division to authorize an independent training and testing provider to conduct the certification program for the division under the guidelines developed under Subsection (a-3). Requires the division to solicit proposals or applications from independent training and testing providers and to make public on its website a complete list of providers that are authorized to conduct the certification training program developed under Subsection (a-3).

(b) Requires the commissioner to ensure the quality of designated doctor decisions and reviews through active monitoring of the decisions and reviews, and authorizes the commissioner to take action as necessary to restrict the participation of a designated doctor, deny renewal of a designated doctor's certification, or revoke a designated doctor's certification under Section 413.044 (Sanctions on Designated Doctor), rather than take action as necessary to restrict the participation of a designated doctor, or remove a doctor from inclusion on TDI's list of designated doctors.

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

(f) Requires a designated doctor to continue providing services related to a case assigned to the designated doctor, including performing subsequent examinations or acting as a resource for division disputes, unless the division authorizes the designated doctor to discontinue providing services. Requires the commissioner by rule to prescribe the circumstances under which a designated doctor is permitted to discontinue providing services, including the doctor decides to stop practicing in the workers' compensation system, or the doctor relocates the doctor's residence or practice.

**SECTION 14.** Amends Section 409.021(e), Labor Code, as follows:

(e) Provides that an insurance carrier commits an administrative violation if the insurance carrier does not initiate payments or file a notice of refusal as required by this section. Deletes existing text requiring that a violation under this subsection be assessed at \$500 if the carrier initiates compensation or files a notice of refusal within five working days of the date required by Subsection (a) (relating to requiring an insurance carrier to initiate compensation under this subtitle promptly), \$1,500 if the carrier initiates compensation or files a notice of refusal more than five and less than 16 working days of the date required by Subsection (a), \$2,500 if the carrier initiates compensation or files a notice of refusal more than 15 and less than 31 working days of the date required by Subsection (a), or \$5,000 if the carrier initiates compensation or files a notice of refusal more than 30 days after the date required by Subsection (a); and provides that the administrative penalties are not cumulative.

**SECTION 15.** Amends Section 410.023, Labor Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Makes no changes to this subsection.

(c) Creates this subsection from existing text. Requires the commissioner by rule to adopt guidelines regarding the type of information necessary to satisfy the requirements of Subsection (b) (relating to requiring the division to require the party requesting the benefit review conference to provide documentation of efforts made), rather than to satisfy this requirement; and establish a process through which the division evaluates the sufficiency of the documentation provided under Subsection (b).

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

SECTION 16. Amends Section 410.028, Labor Code, as follows:

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

(b) Requires the party, if a party to a benefit review conference under Section 410.023 (Request for Benefit Review Conference) requests that the benefit review conference be rescheduled under this section, to submit a request in the same manner as an initial request under Section 410.023. Requires the division to evaluate a request for a rescheduled benefit review conference received under this section in the same manner as an initial request received under Section 410.023.

(c) Creates this subsection from existing text. Provides that if a party fails to request that a benefit review conference be rescheduled in the time required by commissioner rule or fails to attend a benefit review conference without good cause as defined by commissioner rule, the party forfeits the party's entitlement to attend a benefit review conference on the issue in dispute, unless a benefit review officer is authorized to schedule an additional benefit review conference under Section 410.026(b) (relating to authorizing a benefit review officer to schedule an additional benefit review conference under certain conditions), rather than provides that a party commits an administrative violation if the party fails to attend a benefit review conference without good cause as determined by the benefit review officer.

(d) Requires the commissioner to adopt rules necessary to implement and enforce this section, including rules that define good cause, and establish deadlines for requesting that a benefit review conference be rescheduled under Subsection (b).

SECTION 17. Amends Section 410.203(b), Labor Code, to authorize the appeals panel to alter certain decisions, including affirming the decision of the hearings officer in a case described by Section 410.204(a-1).

SECTION 18. Amends Section 410.204, Labor Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the appeals panel to review each request and issue a written decision on each reversed or remanded case. Authorizes the appeals panel to issue a written decision on an affirmed case as described by Subsection (a-1).

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

- (1) is a case of first impression;
- (2) involves a recent change in law; or

(3) involves errors at the contested case hearing that require correction but do not affect the outcome of the hearing, including findings of fact for which insufficient evidence exists, incorrect conclusions of law, findings of fact or conclusions of law regarding matters that were not properly before the hearings officer, and legal errors not otherwise described by this subdivision.

SECTION 19. Amends Sections 413.031(k) and (k-1), Labor Code, as follows:

(k) Entitles a party to a medical dispute that remains unresolved after a review of the medical service under this section to a hearing under Section 413.0311 or 413.0312, as applicable, rather than entitles a party to a medical dispute, other than a medical dispute regarding spinal surgery subject to Subsection (l) (relating to entitling a party to a medical dispute regarding spinal surgery that remains unresolved after a review by an independent review organization to dispute resolution) and a dispute subject to Section 413.0311, that remains unresolved after a review of the medical service under this section to a hearing under Section 413.0311 or 413.0321, as applicable. Deletes existing text relating to requiring that a hearing under this subsection be conducted by SOAH not later than the 60th day after the date on which the party notifies the division of the request for a hearing; and requiring that the hearing be conducted in the manner provided for a contested case under Chapter 2001, Government Code.

(k-1) Authorizes a party who has exhausted all administrative remedies described by Subsection (k), rather than under Subsection (k), and who is aggrieved by a final decision of the division or SOAH to seek judicial review of the decision. Requires that judicial review under this subsection, except as otherwise provided by this subsection, Section 413.0311(d) of this code, or Section 1305.356(d), Insurance Code, be conducted in the manner provided for judicial review of a contested case under Subchapter G (Contested Cases: Judicial Review), Chapter 2001, Government Code. Requires that the standard of review be as provided by Section 2001.174 (Review Under Substantial Evidence Rule or Undefined Scope of Review), Government Code. Requires the court to conduct the review without a jury as provided by Section 2001.175(e) (relating to requiring a court to conduct the review sitting without a jury and is confined to the agency record), Government Code. Requires that the time to file a petition be as provided by Section 410.252.

SECTION 20. Amends the heading to Section 413.0311, Labor Code, to read as follows:

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

SECTION 21. Amends Sections 413.0311(a) and (d), Labor Code, as follows:

(a) Provides that this section applies only to an appeal of an independent review organization decision regarding determination of the medical necessity for a health care service, rather than provides that this section applies only to medical disputes that remain unresolved after any applicable review under Sections 413.031(b) (relating to entitling a health care provider who submits a charge in excess of the fee guidelines or treatment policies to a review of the medical service to determine if reasonable medical justification exists for the deviation.) through (i) (relating to requiring that the cost of the review be paid by the nonprevailing party), which include a medical fee dispute in which the amount of reimbursement sought by the requestor in its request for medical dispute resolution does not exceed \$2,000, an appeal of an independent review organization decision regarding determination of the retrospective medical necessity for a health care service for which the amount billed does not exceed \$3,000; and an appeal of an independent review organization decision regarding determination of the concurrent or prospective medical necessity for a health care service. Makes nonsubstantive changes.

(d) Authorizes a party who has exhausted all administrative remedies under Section 413.031 and this section and who is aggrieved by a final decision of the hearings officer under Subsection (c) (relating to providing that the role of the division, in resolving

disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, is to adjudicate the payment given the relevant statutory provisions and commissioner rules) to seek judicial review of the decision. Requires that judicial review under this subsection, except as otherwise provided by this subsection, be conducted in the manner provided by Section 413.031(k-1). Provides that for judicial review of an independent review organization decision to which an injured employee is a party, venue is required to be as provided by Section 410.252, and service and notice are required to be as provided by Section 410.253. Deletes existing text requiring judicial review under this subsection to be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code. Makes nonsubstantive changes.

SECTION 22. Amends Subchapter C, Chapter 413, Labor Code, by adding Section 413.0312, as follows:

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

(b) Requires a party to a medical fee dispute described by Subsection (a), subject to Subsection (e), to adjudicate the dispute in the manner required by Subchapter B (Benefit Review Conference), Chapter 410 (Adjudication of Disputes).

(c) Prohibits the parties to the dispute, at a benefit review conference conducted under this section, from resolving the dispute by negotiating fees that are inconsistent with any applicable fee guidelines adopted by the commissioner.

(d) Authorizes the parties, if issues remain unresolved after a benefit review conference, to elect to engage in arbitration as provided by Section 410.104 (Election of Arbitration; Effect).

(e) Entitles a party to a medical fee dispute described by Subsection (a), if arbitration is not elected as described by Subsection (d), to a contested case hearing. Requires that a hearing under this subsection be conducted by SOAH in the manner provided for a contested case under Chapter 2001, Government Code.

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

(g) Requires the nonprevailing party, except as otherwise provided by this subsection, to reimburse the division for the costs for services provided by SOAH under this section. Requires the insurance carrier, if the injured employee is the nonprevailing party, to reimburse the division for the costs for services provided by SOAH under this section. Requires the party required to reimburse the division under this subsection to remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(h) Requires SOAH to timely notify the division if a dispute is dismissed before issuance of a decision under this section. Requires the party requesting the hearing, in the event of a dismissal, other than the injured employee, to reimburse the division for the costs for services provided by SOAH unless otherwise agreed by the parties. Requires the insurance carrier, if the injured employee requested the hearing, to reimburse the division for the costs for services provided by SOAH unless otherwise agreed by the parties. Requires the responsible party to remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(i) Requires SOAH to identify the nonprevailing party and any costs for services provided by SOAH under this section in its final decision. Requires that money collected by the division under this section be deposited in the general revenue fund to the credit of the TDI operating account.

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

(k) Requires the commissioner by rule to establish procedures to enable the division to charge a party to a medical fee dispute, other than an injured employee, for the costs of services provided by SOAH.

SECTION 23. Amends Section 413.044(b), Labor Code, to authorize sanctions imposed under Subsection (a) to include revocation of certification for a designated doctor on the division list of designated doctors, rather than removal or suspension from the division list of designated doctors, or restrictions on the reviews made by the person as a designated doctor.

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

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

(c) Requires the medical quality review panel to recommend to the medical advisor certain actions, including the certification, revocation of certification, or denial of renewal of certification of a designated doctor under Section 408.1225, rather than the addition or deletion of doctors from the list of approved doctors under Section 408.023, or the list of designated doctors established under Section 408.1225. Makes a nonsubstantive change.

(d) Entitles the person, in the event of a civil action brought against a member of the panel that arises from the person's participation on the panel, to the same protections afforded the commissioner under Section 402.00123 (Civil Liability of Commissioner), rather than a commission member under Section 402.010.

(e) Provides that the actions of a person serving on the medical quality review panel do not constitute utilization review and are not subject to Chapter 4201 (Utilization Review Agents), rather than Article 21.58A, Insurance Code.

(f) Provides that a member of the medical quality review panel who reviews a specific workers' compensation case is subject to Section 408.0043, 408.0044 (Review of Dental Services), or 408.0045, as applicable, rather than provides that a member of the medical quality review panel, other than a chiropractor, who reviews a specific workers' compensation case is subject to Section 408.0043 or 408.0045, as applicable. Deletes

existing text providing that a chiropractor who reviews a specific workers' compensation case is subject to Section 408.045.

(g) Requires the medical advisor to notify the division if the medical advisor determines that:

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

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

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

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

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

(b) Requires that the criteria developed and adopted under this section establish a clear process or processes for handling complaint-based medical case reviews, and through which the division selects health care providers or other entities for a compliance audit or review.

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

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

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

(2) assist the medical advisor in performing the advisor's duties under Section 413.0511(b)(6) (requiring the medical advisor to make recommendations regarding the adoption of rules and policies to receive and share with the medical quality review panel) and the medical quality review panel in performing that panel's duties under Section 413.0512 (Medical Quality Review Panel).

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

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

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

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

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

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

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

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

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

(b) Requires the commissioner, in addition to the rules required under Subsection (a), to adopt rules concerning the training requirements for members of the medical quality review panel. Requires that the rules adopted under this subsection ensure that panel members are fully aware of any requirements imposed by this subtitle concerning the medical quality review process and the division's goals concerning the process. Authorizes the rules adopted under this subsection to require members to receive training on any topic determined by the division or the commissioner to be relevant to the operations of the panel and to require members of the panel to receive training concerning:

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

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

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

SECTION 26. Amends Section 413.054(a), Labor Code, to provide that a person who performs services for the division as a designated doctor, an independent medical examiner, a doctor performing a medical case review, or a member of a peer review panel has the same immunity from liability as the commissioner under Section 402.00123, rather than under Section 402.0024.

SECTION 27. Amends Section 414.005, Labor Code, as follows:

Sec. 414.005. INVESTIGATION UNIT. (a) Creates this subsection from existing text. Requires the division to maintain an investigation unit to conduct investigations relating to alleged violations of this subtitle, commissioner rules, or a commissioner order or decision, with particular emphasis on violations of Chapters 415 (Administrative Violations) and 416 (Actions Against Insurance Carrier for Breach of Duty).

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

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

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

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

SECTION 28. Amends Section 415.0035(e), Labor Code, to provide that a person regulated by the division under this title commits an administrative violation if the person violates this subtitle or a rule, order, or decision of the commissioner, rather than provides that an insurance carrier or health care provider commits an administrative violation if that person violates this subtitle or rule, order or decision of the commissioner.

SECTION 29. Amends Section 415.008(a), Labor Code, to provide that a person commits an administrative violation, rather than a violation, if the person, to obtain or deny a payment of a workers' compensation benefit or the provision of a benefit for the person or another, knowingly or intentionally commits certain acts as set forth.

SECTION 30. Amends Sections 415.009 and 415.010, Labor Code, as follows:

Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. Provides that a person commits an administrative violation, rather than a violation, if the person brings, prosecutes, or defends an action for benefits under this subtitle or requests initiation of an administrative violation proceeding that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Deletes existing Subsection (a) designation. Deletes existing Subsection (b) providing that a violation under Subsection (a) is a Class B administrative violation.

Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. Provides that a party to an agreement approved by the division commits an administrative violation, rather than a violation, if the person breaches a provision of the agreement. Deletes existing Subsection (a) designation. Deletes existing Subsection (b) providing that a violation under Subsection (a) is a Class B administrative violation.

SECTION 31. Amends the heading to Subchapter B, Chapter 415, Labor Code, to read as follows:

#### SUBCHAPTER B. SANCTIONS

SECTION 32. Amends Section 415.021(a), Labor Code, to provide 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 commissioner, including an emergency cease and desist order issued under Section 415.0211.

SECTION 33. Amends Subchapter B, Chapter 415, Labor Code, by adding Section 415.0211, as follows:

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

- (1) the commissioner believes a person regulated by the division under this title is engaging in conduct violating a law, rule, or order; and
- (2) the commissioner believes that the alleged conduct under Subdivision (1) will result in harm to the health, safety, or welfare of another person.

(b) Requires the commissioner, on issuance of an order under Subsection (a), to serve on the affected person an order that contains a statement of the charges and requires the person immediately to cease and desist from the acts, methods, or practices stated in the order. Requires the commissioner to serve the order by registered or certified mail, return receipt requested, to the affected person's last known address. Provides that the order is final on the 31st day after the date the affected person receives the order, unless the affected person requests a hearing under Subsection (c).

(c) Entitles a person affected by an order to request a hearing to contest the order. Requires the affected person to request the hearing not later than the 30th day after the date the person receives the order required by Subsection (b). Requires that a request to contest an order be in writing, be directed to the commissioner, and state the grounds for the request to set aside or modify the order.

(d) Requires the commissioner, on receiving a request for a hearing, to serve notice of the time and place of the hearing. Provides that the hearing is subject to the procedures for a contested case under Chapter 2001, Government Code. Requires that the hearing be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date. Entitles the person requesting the hearing, at the hearing to show cause why the order should not be affirmed. Requires the commissioner, following receipt of the proposal for decision from SOAH regarding the hearing, to wholly or partly affirm, modify, or set aside the order.

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

SECTION 34. Transfers Section 402.072, Labor Code to Subchapter B, Chapter 415, Labor Code, and redesignates it as Section 415.0215, Labor Code, as follows:

Sec. 415.0215. SANCTIONS. Redesignates existing Section 402.072 as Section 415.0215. Makes no further changes.

SECTION 35. Amends Sections 415.025, 415.032, 415.033, and 415.034, Labor Code, as follows:

Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY. Requires that a reference in this code or other law, or in rules of the former TWCC or the commissioner, to a particular class of violation, administrative violation, or penalty be construed as a reference to an administrative penalty. Prohibits an administrative penalty from exceeding \$25,000 per day per occurrence, rather than prohibits, except as otherwise provided by this subtitle, an administrative penalty from exceeding \$25,000 per day per occurrence.

Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) Requires the division, if investigation by the division indicates that an administrative violation has occurred, to notify the person alleged to have committed the violation in writing of the charge, the proposed sanction, rather than penalty, the right to consent to the charge and the sanction, rather than penalty, and the right to request a hearing.

(b) Requires the charged party, not later than the 20th day after the date on which notice is received, to remit the amount of the sanction, rather than penalty, to the division or otherwise consent to the imposed sanction, or submit to the division a written request for a hearing.

Sec. 415.033. FAILURE TO RESPOND. Requires the division, if, without good cause, a charged party fails to respond as required under Section 415.032, to initiate enforcement proceedings, rather than provides that, if, without good cause, a charged

party fails to respond as required under Section 415.032, the penalty is due and the division is required to initiate enforcement proceedings.

Sec. 415.034. HEARING PROCEDURES. Deletes existing Subsection (a) designation. Requires SOAH, on the request of the charged party or the commissioner, to set a hearing. Requires that the hearing be conducted in the manner provided for a contested case under Chapter 2001, Government Code. Deletes existing Subsection (b) requiring the hearing officer conducting the hearing, at the close of the hearing, to make findings of fact and conclusions of law and to issue a written decision; and requiring the hearing officer, if the hearing officer determines that an administrative violation has occurred, to include in the decision the amount of the administrative penalty assessed and to order payment of the penalty. Deletes existing Subsection (c) requiring that the findings of fact, the decision, and the order be sent immediately to the charged party.

SECTION 36. Amends Subchapter C, Chapter 415, Labor Code, by adding Section 415.036, as follows:

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

SECTION 37. Amends Section 419.001, Labor Code, by adding Subsection (c), to define, for purposes of this chapter, "deceptive manner."

SECTION 38. Amends Section 419.002, Labor Code, as follows:

Sec. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS PROHIBITED. (a) Prohibits a person, except as authorized by law, in connection with any impersonation, advertisement, solicitation, business name, business activity, document, product, or service made or offered by the person regarding workers' compensation coverage or benefits, from knowingly using or causing to be used in a deceptive manner:

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

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

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

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

(b) Prohibits a person subject to Subsection (a) from knowingly using or causing to be used in a deceptive manner a word, term, or initials described by Subsection (a) alone or in conjunction with the state seal or a representation of the state seal, a picture or map of this state, or the official logo of TDI or the division or a representation of TDI's or division's logo.

SECTION 39. Amends Subchapter C, Chapter 504, Labor Code, by adding Sections 504.054 and 504.055, as follows:

Sec. 504.054. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR INJURY SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT. (a) Defines, in this section, "first responder."

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

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

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

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

Sec. 504.055. FIRST RESPONDER MEDICAL DISPUTES; CONTESTED CASE HEARING AND JUDICIAL REVIEW. (a) Defines, in this section, "first responder."

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

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

SECTION 40. Repealers: Sections 413.031(l) (relating to entitling a party to a medical dispute regarding spinal surgery that remains unresolved after a review by an independent review organization to dispute resolution), 415.0035(c) (relating to providing that a violation under Subsection (a) is a Class C administrative violation), 415.0035(d) (relating to providing that a violation under Subsection (b) is a Class D administrative violation), 415.0035 (f) (relating to providing that a subsequent administrative violation under this section is subject to penalties as provided by Section 415.021), 415.0036(c) (relating to providing that a violation under this section is a Class A administrative violation), 415.004 (Penalty Specified in Other Law), 415.008(b) (relating to providing that a violation under this section is a Class B administrative violation), and 415.022 (Classification of Administrative Violations; Penalties), Labor Code.

SECTION 41. Makes application of Sections 1305.355(e), (f), and (g), Insurance Code, as amended by this Act, and Section 1305.356, Insurance Code, as added by this Act, prospective to June 1, 2012.

SECTION 42. (a) Makes application of Section 402.073, Labor Code, as amended by this Act, prospective.

(b) Requires SOAH and the division to adopt an updated memorandum of understanding required by Section 402.073, Labor Code, as amended by this Act, not later than June 1, 2012.

SECTION 43. Makes application of Section 403.001, Labor Code, as amended by this Act, and Section 403.008, Labor Code, as added by this Act, prospective.

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

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

(c) Makes application of Sections 408.1225(b), 413.044(b), and 413.0512(c), Labor Code, as amended by this Act, prospective to January 1, 2013.

(d) Makes application of Section 408.0041, Labor Code, as amended by this Act, prospective to January 1, 2013.

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

SECTION 46. Makes application of Sections 410.023 and 410.028, Labor Code, as amended by this Act, prospective.

SECTION 47. Makes application of Sections 413.031(k) and (k-1) and 413.0311(a), Labor Code, as amended by this Act, and Section 413.0312, Labor Code, as added by this Act, prospective to June 1, 2012.

SECTION 48. Makes application of Section 414.005, Labor Code, as amended by this Act, prospective.

SECTION 49. Makes application of Section 415.036, Labor Code, as added by this Act, prospective.

SECTION 50. Makes application of Sections 504.054 and 504.055, Labor Code, as added by this Act, prospective.

SECTION 51. Effective date: September 1, 2011.