Texas Workers' Compensation Act

(83rd Legislature, 2013)

Texas Department of Insurance, Division of Workers' Compensation has prepared this document to reflect changes to the Texas Workers' Compensation Act through the 83rd Legislature, 2013.

Efforts have been made to ensure the accuracy of this document; however, the text of the legislative bills controls if there is a discrepancy.

83rd Texas Legislative Bills relating to Workers' Compensation related statutes within the Workers' Compensation Act (Act):

Bill	Bill Link
SB 59	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB59
SB 381	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB381
SB 1286	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB1286
SB 1322	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB1322
SB 1536	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB1536
OIEC	The Office of Injured Employee Counsel: http://www.oiec.state.tx.us/
HB 1675	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=HB1675
SORM	State Office of Risk Management: http://www.sorm.state.tx.us/Index.htm
SB 59	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB59
SB 1536	http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB1536

For comments and/or questions please contact the Office of Workers' Compensation Council (OWCC) at 512-804-4703 or by e-mail at rulecomments@tdi.texas.gov.

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Table of Contents

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT 23

LABOR CODE CHAPTER 401. GENERAL PROVISIONS 23

SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT 23
Sec. 401.001. SHORT TITLE. 23
Sec. 401.003. ACTIVITIES OF THE STATE AUDITOR. 23
SUBCHAPTER B. DEFINITIONS 24
Sec. 401.011. GENERAL DEFINITIONS. 24
Sec. 401.012. DEFINITION OF EMPLOYEE. 31
Sec. 401.013. DEFINITION OF INTOXICATION. 32
SUBCHAPTER C. MISCELLANEOUS PROVISIONS 35
Sec. 401.021. APPLICATION OF OTHER ACTS. 35
Sec. 401.022. DISCRIMINATION PROHIBITED. 36
Sec. 401.023. INTEREST OR DISCOUNT RATE. 36
Sec. 401.024. TRANSMISSION OF INFORMATION. 36
Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE DIRECTOR. 37

LABOR CODE CHAPTER 402. OPERATION AND ADMINISTRATION OF WORKERS' COMPENSATION SYSTEM 39

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM; WORKERS' COMPENSATION DIVISION 39
Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF INSURANCE; WORKERS' COMPENSATION DIVISION. 39
Sec. 402.00111. RELATIONSHIP BETWEEN COMMISSIONER OF INSURANCE AND COMMISSIONER OF WORKERS' COMPENSATION; SEPARATION OF AUTHORITY; RULEMAKING. 39
Sec. 402.00112. INVESTIGATION OF DIVISION. 40
Sec. 402.00113. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT. 40
Sec. 402.00114. DUTIES OF DIVISION; SINGLE POINT OF CONTACT. 40
Sec. 402.00115. COMPOSITION OF DIVISION. 41
Sec. 402.00116. CHIEF EXECUTIVE. 41
Sec. 402.00117. APPOINTMENT; TERM. 41
Sec. 402.00118. QUALIFICATIONS. 42
Sec. 402.00119. INELIGIBILITY FOR PUBLIC OFFICE. 42
Sec. 402.00120. COMPENSATION. 42
Sec. 402.00121. GROUNDS FOR REMOVAL. 42
Sec. 402.00122. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION. 43
Sec. 402.00123. CIVIL LIABILITY OF COMMISSIONER. 43
Sec. 402.00124. CONFLICT OF INTEREST. 43
Sec. 402.00125. PROHIBITION ON CERTAIN EMPLOYMENT OR REPRESENTATION. 44
Sec. 402.00126. LOBBYING ACTIVITIES. 45
Sec. 402.00127. TRAINING PROGRAM FOR COMMISSIONER. 45
Sec. 402.00128. GENERAL POWERS AND DUTIES OF COMMISSIONER. 46
Sec. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED EMPLOYEE COUNSEL. 46
SUBCHAPTER B. SYSTEM GOALS; GENERAL ADMINISTRATION OF SYSTEM 48
Sec. 402.021. GOALS; LEGISLATIVE INTENT; GENERAL WORKERS' COMPENSATION MISSION OF DEPARTMENT. 48
Sec. 402.0215. REFERENCE TO COMMISSION DIVISIONS. 49

Sec. 402.022. PUBLIC INTEREST INFORMATION. 50
Sec. 402.023. COMPLAINT INFORMATION. 50
Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS. 52
Sec. 402.0235. PRIORITIES FOR COMPLAINT INVESTIGATIONS. 52
Sec. 402.024. PUBLIC PARTICIPATION. 53
SUBCHAPTER C. PERSONNEL 54
Sec. 402.041. APPOINTMENTS. 54
Sec. 402.042. DIVISION OF RESPONSIBILITIES. 54
Sec. 402.043. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. 54
Sec. 402.044. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. 55
SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND COMMISSIONER 57
Sec. 402.061. ADOPTION OF RULES. 57
Sec. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS. 57
Sec. 402.064. FEES. 57
Sec. 402.065. EMPLOYMENT OF COUNSEL. 57
Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. 58
Sec. 402.0665. LEGISLATIVE OVERSIGHT. 58
Sec. 402.067. ADVISORY COMMITTEES. 58
Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. 58
Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. 59
Sec. 402.071. REPRESENTATIVES. 59
Sec. 402.073. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. 59
Sec. 402.074. STRATEGIC MANAGEMENT; EVALUATION. 60
Sec. 402.075. INCENTIVES; PERFORMANCE-BASED OVERSIGHT. 61
Sec. 402.076. GENERAL DUTIES; FUNDING. 62
Sec. 402.077. EDUCATIONAL PROGRAMS. 62
Sec. 402.078. REGIONAL OFFICES. 63
SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION 64
Sec. 402.081. DIVISION RECORDS. 64
Sec. 402.082. INJURY INFORMATION MAINTAINED BY DIVISION. 64
Sec. 402.083. CONFIDENTIALITY OF INJURY INFORMATION. 65
Sec. 402.084. RECORD CHECK; RELEASE OF INFORMATION. 65
Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. 69
Sec. 402.086. TRANSFER OF CONFIDENTIALITY. 71
Sec. 402.087. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. 71
Sec. 402.088. REPORT OF PRIOR INJURY. 72
Sec. 402.089. FAILURE TO FILE AUTHORIZATION. 72
Sec. 402.090. STATISTICAL INFORMATION. 73
Sec. 402.091. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY. 73
Sec. 402.092. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE OF CERTAIN INFORMATION. 73
SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL 76
Sec. 402.251. COOPERATION; FACILITIES. 76

LABOR CODE CHAPTER 403. DIVISION FINANCING 77

Sec. 403.001. FUNDS. 77
Sec. 403.002. MAINTENANCE TAXES. 77
Sec. 403.003. RATE OF ASSESSMENT. 78
Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS. 79
Sec. 403.005. TAX RATE. 79
Sec. 403.006. SUBSEQUENT INJURY FUND. 79

Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. 80
Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES. 81

LABOR CODE CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL 83

SUBCHAPTER A. OFFICE; GENERAL PROVISIONS 83
Sec. 404.001. DEFINITIONS. 83
Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. 83
Sec. 404.003. SUNSET PROVISION. 83
Sec. 404.004. PUBLIC INTEREST INFORMATION. 84
Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. 84
Sec. 404.006. RULEMAKING. 84
Sec. 404.007. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. 84
Sec. 404.008. COMPLAINTS. 85
SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL 86
Sec. 404.051. APPOINTMENT; TERM. 86
Sec. 404.052. QUALIFICATIONS. 86
Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. 86
Sec. 404.054. LOBBYING ACTIVITIES. 87
Sec. 404.055. GROUNDS FOR REMOVAL. 87
Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. 88
Sec. 404.057. TRADE ASSOCIATIONS. 89
SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE 90
Sec. 404.101. GENERAL DUTIES. 90
Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES. 91
Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL. 91
Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. 92
Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. 92
Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. 93
Sec. 404.106. LEGISLATIVE REPORT. 93
Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. 94
Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. 94
Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. 94
Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS. 95
Sec. 404.111. ACCESS TO INFORMATION. 95
SUBCHAPTER D. OMBUDSMAN PROGRAM 98
Sec. 404.151. OMBUDSMAN PROGRAM. 98
Sec. 404.152. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. 98
Sec. 404.153. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION. 99
Sec. 404.154. PUBLIC INFORMATION 100
Sec. 404.155. COST FOR CERTAIN COPIES OF MEDICAL RECORDS; ADMINISTRATIVE VIOLATION. 100

LABOR CODE CHAPTER 405. WORKERS' COMPENSATION RESEARCH 103

Sec. 405.001. DEFINITION. 103
Sec. 405.002. WORKERS' COMPENSATION RESEARCH DUTIES OF DEPARTMENT. 103
Sec. 405.0025. RESEARCH DUTIES OF GROUP. 103
Sec. 405.0026. RESEARCH AGENDA. 104
Sec. 405.003. FUNDING; MAINTENANCE TAX. 105

Sec. 405.004. COORDINATION WITH OTHER STATE AGENCIES; CONFIDENTIALITY. 106

LABOR CODE CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE.....109

SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES.....109
Sec. 406.001. DEFINITION. 109
Sec. 406.002. COVERAGE GENERALLY ELECTIVE. 109
Sec. 406.003. METHODS OF OBTAINING COVERAGE.....109
Sec. 406.004. EMPLOYER NOTICE TO DIVISION. 109
Sec. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION. 110
Sec. 406.006. INSURANCE COVERAGE AND CLAIM ADMINISTRATION REPORTING REQUIREMENTS; ADMINISTRATIVE VIOLATION. 111
Sec. 406.007. TERMINATION OF COVERAGE BY EMPLOYER; NOTICE. 111
Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY INSURANCE COMPANY; NOTICE. 112
Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION; MONITORING AND ENFORCING COMPLIANCE. 113
Sec. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION. 114
Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION. 114
Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. 115
SUBCHAPTER B. COVERAGE REQUIREMENTS 116
Sec. 406.031. LIABILITY FOR COMPENSATION.....116
Sec. 406.032. EXCEPTIONS. 116
Sec. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF.....117
Sec. 406.034. EMPLOYEE ELECTION. 118
Sec. 406.035. WAIVER OF COMPENSATION PROHIBITED. 119
SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE.....120
Sec. 406.051. SECURITY BY COMMERCIAL INSURANCE. 120
Sec. 406.052. EFFECT OF OTHER INSURANCE COVERAGE.....120
Sec. 406.053. ALL STATES COVERAGE. 121
SUBCHAPTER D. EXTRATERRITORIAL COVERAGE 122
Sec. 406.071. EXTRATERRITORIAL COVERAGE.....122
Sec. 406.072. PRINCIPAL LOCATION. 122
Sec. 406.073. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION. 122
Sec. 406.074. INTERJURISDICTIONAL AGREEMENTS. 123
Sec. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION. 123
SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES.....125
Sec. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE. 125
Sec. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES. 125
Sec. 406.093. LEGALLY INCOMPETENT EMPLOYEES. 126
Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION. 126
Sec. 406.095. CERTAIN PROFESSIONAL ATHLETES. 126
Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. 127
Sec. 406.097. EXECUTIVE EMPLOYEES OF CERTAIN BUSINESS ENTITIES. 128
Sec. 406.098. VOLUNTEER EMERGENCY SERVICE MEMBERS AND PERSONNEL. 129
SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS 131
Sec. 406.121. DEFINITIONS. 131
Sec. 406.122. STATUS AS EMPLOYEE. 132
Sec. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE VIOLATION.

.....132
Sec. 406.124. CAUSE OF ACTION. 134
Sec. 406.125. RESTRICTION OF UNSAFE WORK PRACTICES UNAFFECTED. 134
Sec. 406.126. EXEMPTION. 134
Sec. 406.127. EFFECT OF CERTAIN CONTRACTS OF HIRE. 134
SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS 136
Sec. 406.141. DEFINITIONS. 136
Sec. 406.142. APPLICATION. 136
Sec. 406.143. PROVISION OF WORKERS' COMPENSATION INSURANCE; INDEPENDENT CONTRACTOR WITHOUT EMPLOYEES. 136
Sec. 406.144. ELECTION TO PROVIDE COVERAGE; AGREEMENT. 137
Sec. 406.145. JOINT AGREEMENT. 138
Sec. 406.146. WRONGFUL INDUCEMENT PROHIBITED. 139
SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES. 141
Sec. 406.161. DEFINITIONS. 141
Sec. 406.162. SCOPE. 142
Sec. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY. 143
Sec. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS. 144
Sec. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS. 144

LABOR CODE CHAPTER 407. SELF-INSURANCE REGULATION 147

SUBCHAPTER A. GENERAL PROVISIONS 147
Sec. 407.001. DEFINITIONS. 147
SUBCHAPTER B. DIVISION OF SELF-INSURANCE REGULATION 148
Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER. 148
Sec. 407.024. CLAIM OR SUIT. 148
SUBCHAPTER C. CERTIFICATE OF AUTHORITY TO SELF-INSURE. 149
Sec. 407.041. APPLICATION. 149
Sec. 407.042. ISSUANCE OF CERTIFICATE. 149
Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. 149
Sec. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL. 150
Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. 150
Sec. 407.046. REVOCATION OF CERTIFICATE OF AUTHORITY. 150
Sec. 407.047. EFFECT OF REVOCATION. 151
SUBCHAPTER D. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY 152
Sec. 407.061. GENERAL REQUIREMENTS. 152
Sec. 407.062. FINANCIAL STRENGTH AND LIQUIDITY REQUIREMENTS. 153
Sec. 407.063. PREMIUM REQUIREMENTS. 153
Sec. 407.064. GENERAL SECURITY REQUIREMENTS. 154
Sec. 407.065. SPECIFIC SECURITY REQUIREMENTS. 155
Sec. 407.066. EFFECT OF DISPUTE. 156
Sec. 407.067. EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE VIOLATION. 157
Sec. 407.068. GUARANTEE BY PARENT ORGANIZATION. 157
SUBCHAPTER E. POWERS AND DUTIES OF CERTIFIED SELF-INSURER 158
Sec. 407.081. ANNUAL REPORT. 158
Sec. 407.082. EXAMINATION OF RECORDS; ADMINISTRATIVE VIOLATION. 159
Sec. 407.083. PAYMENT OF INSURANCE AGENT'S COMMISSION. 159
SUBCHAPTER F. FINANCING OF SELF-INSURANCE PROGRAM 160
Sec. 407.101. FUND. 160
Sec. 407.102. REGULATORY FEE. 160
Sec. 407.103. SELF-INSURER MAINTENANCE TAX; EFFECT ON GENERAL

MAINTENANCE TAX. 160
Sec. 407.104. COLLECTION OF TAXES AND FEES; ADMINISTRATIVE VIOLATION. .161
SUBCHAPTER G. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. 163
Sec. 407.121. GUARANTY ASSOCIATION. 163
Sec. 407.122. BOARD OF DIRECTORS. 163
Sec. 407.123. BOARD RULES. 163
Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. 164
Sec. 407.125. PAYMENT OF ASSESSMENTS. 164
Sec. 407.126. TRUST FUND; FEE; SCHEDULE. 165
Sec. 407.127. PAYMENT OF BENEFITS THROUGH ASSOCIATION. 165
Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. 166
Sec. 407.129. RELEASE OF CLAIM INFORMATION TO ASSOCIATION. 166
Sec. 407.130. ASSOCIATION AS PARTY IN INTEREST. 166
Sec. 407.131. PREFERENCE. 167
Sec. 407.132. SPECIAL FUND. 167
Sec. 407.133. SUSPENSION OR REVOCATION OF CERTIFICATE FOR FAILURE TO PAY ASSESSMENT. 167

LABOR CODE CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE 169

SUBCHAPTER A. GENERAL PROVISIONS 169
Sec. 407A.001. DEFINITIONS. 169
Sec. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF PRIVATE GROUP. 170
Sec. 407A.003. MERGER OF GROUPS. 171
Sec. 407A.004. GROUP NOT INSURER. 171
Sec. 407A.005. CERTIFICATE OF APPROVAL REQUIRED. 171
Sec. 407A.006. SERVICE OF PROCESS. 171
Sec. 407A.007. HEARINGS. 172
Sec. 407A.008. RULES. 172
Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN ADMINISTRATORS AND SERVICE COMPANIES. 172
SUBCHAPTER B. APPLICATION REQUIREMENTS FOR CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP 173
Sec. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF APPROVAL; APPROVAL REQUIREMENTS. 173
Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL; REFUSAL. 175
Sec. 407A.053. FINANCIAL REQUIREMENTS. 176
Sec. 407A.054. EXCESS INSURANCE REQUIREMENTS. 178
Sec. 407A.055. PREMIUM REQUIREMENTS. 178
Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. 178
Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS. 178
SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL 180
Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. 180
SUBCHAPTER D. BOARD OF TRUSTEES 181
Sec. 407A.151. BOARD MEMBERSHIP. 181
Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. 181
Sec. 407A.153. PROHIBITED ACTIVITIES. 181
Sec. 407A.154. GROUP FUNDS. 182
SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY 183
Sec. 407A.201. ADMISSION OF EMPLOYER AS MEMBER. 183
SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER REPORTS 185
Sec. 407A.251. FINANCIAL STATEMENT. 185

Sec. 407A.252. EXAMINATION. 185
SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS....187
Sec. 407A.301. MAINTENANCE TAX FOR DIVISION AND RESEARCH FUNCTIONS OF DEPARTMENT....187
Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT....187
Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES....188
Sec. 407A.304. PREMIUM TAX. 188
SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES; DEFICITS.189
Sec. 407A.351. RATES. 189
Sec. 407A.352. AUDITS. 189
Sec. 407A.353. REFUNDS. 189
Sec. 407A.354. PREMIUM PAYMENT PLAN; RESERVES. 190
Sec. 407A.355. DEFICITS; INSOLVENCIES. 190
Sec. 407A.357. TEXAS GROUP SELF-INSURANCE GUARANTY ASSOCIATION; ADVISORY COMMITTEE. 192
SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES 193
Sec. 407A.401. PROHIBITED SOLICITATION. 193
Sec. 407A.402. FINES....193
Sec. 407A.403. CEASE AND DESIST ORDERS. 193
Sec. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL....194
SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND 195
Sec. 407A.451. DEFINITIONS. 195
Sec. 407A.452. GUARANTY FUND. 195
Sec. 407A.453. BOARD OF DIRECTORS. 195
Sec. 407A.454. IMMUNITY. 196
Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES....196
Sec. 407A.456. PLAN OF OPERATION....197
Sec. 407A.457. TRUST FUND; SCHEDULE....197
Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. 198
Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. 199
Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND. 200
Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. 200
Sec. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY FUND....201
Sec. 407A.463. GUARANTY FUND AS PARTY IN INTEREST. 201
Sec. 407A.464. PREFERENCES. 201
Sec. 407A.465. SPECIAL FUND. 201

LABOR CODE CHAPTER 408. WORKERS' COMPENSATION BENEFITS....203

SUBCHAPTER A. GENERAL PROVISIONS 203
Sec. 408.001. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. 203
Sec. 408.002. SURVIVAL OF CAUSE OF ACTION. 203
Sec. 408.003. REIMBURSABLE EMPLOYER PAYMENTS; SALARY CONTINUATION; OFFSET AGAINST INCOME BENEFITS; LIMITS. 203
Sec. 408.004. REQUIRED MEDICAL EXAMINATIONS; ADMINISTRATIVE VIOLATION. 205
Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. 206
Sec. 408.0042. MEDICAL EXAMINATION BY TREATING DOCTOR TO DEFINE COMPENSABLE INJURY. 210
Sec. 408.0043. PROFESSIONAL SPECIALTY CERTIFICATION REQUIRED FOR CERTAIN REVIEW....211
Sec. 408.0044. REVIEW OF DENTAL SERVICES. 212
Sec. 408.0045. REVIEW OF CHIROPRACTIC SERVICES. 212

Sec. 408.0046. RULES. 213
Sec. 408.005. SETTLEMENTS AND AGREEMENTS. 213
Sec. 408.006. MENTAL TRAUMA INJURIES. 214
Sec. 408.007. DATE OF INJURY FOR OCCUPATIONAL DISEASE. 214
Sec. 408.008. COMPENSABILITY OF HEART ATTACKS. 215
SUBCHAPTER B. MEDICAL BENEFITS 216
Sec. 408.021. ENTITLEMENT TO MEDICAL BENEFITS. 216
Sec. 408.022. SELECTION OF DOCTOR. 216
Sec. 408.0221. REQUEST FOR DESCRIPTION OF EMPLOYMENT. 218
Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING DOCTORS. ..219
Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS; SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. 223
Sec. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS. 227
Sec. 408.025. REPORTS AND RECORDS REQUIRED FROM HEALTH CARE PROVIDERS. 227
Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. 228
Sec. 408.0252. UNDERSERVED AREAS. 228
Sec. 408.026. SPINAL SURGERY. 228
Sec. 408.027. PAYMENT OF HEALTH CARE PROVIDER. 229
Sec. 408.0271. REIMBURSEMENT BY HEALTH CARE PROVIDER. 231
Sec. 408.0272. CERTAIN EXCEPTIONS FOR UNTIMELY SUBMISSION OF CLAIM. ..232
Sec. 408.028. PHARMACEUTICAL SERVICES. 233
Sec. 408.0281. REIMBURSEMENT FOR PHARMACEUTICAL SERVICES; ADMINISTRATIVE VIOLATION. 235
Sec. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR VOLUNTARY NETWORKS. 238
Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. 239
Sec. 408.029. NURSE FIRST ASSISTANT SERVICES. 243
Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. 243
Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS. 243
Sec. 408.032. STUDY ON INTERDISCIPLINARY PAIN REHABILITATION PROGRAM AND FACILITY ACCREDITATION REQUIREMENT. 244
SUBCHAPTER C. COMPUTATION OF AVERAGE WEEKLY WAGE 245
Sec. 408.041. AVERAGE WEEKLY WAGE. 245
Sec. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE OR EMPLOYEE WITH MULTIPLE EMPLOYMENT. 245
Sec. 408.043. AVERAGE WEEKLY WAGE FOR SEASONAL EMPLOYEE. 248
Sec. 408.044. AVERAGE WEEKLY WAGE FOR MINOR, APPRENTICE, TRAINEE, OR STUDENT. 249
Sec. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF STATE MILITARY FORCES AND TEXAS TASK FORCE 1. 249
Sec. 408.0446. AVERAGE WEEKLY WAGE; SCHOOL DISTRICT EMPLOYEE. 250
Sec. 408.045. NONPECUNIARY WAGES. 251
Sec. 408.046. SIMILAR EMPLOYEES, SERVICES, OR EMPLOYMENT. 251
Sec. 408.047. STATE AVERAGE WEEKLY WAGE. 252
SUBCHAPTER D. COMPUTATION OF BENEFITS 253
Sec. 408.061. MAXIMUM WEEKLY BENEFIT. 253
Sec. 408.062. MINIMUM WEEKLY INCOME BENEFIT. 253
Sec. 408.063. WAGE PRESUMPTIONS; ADMINISTRATIVE VIOLATION. 254
Sec. 408.064. INTEREST ON ACCRUED BENEFITS. 254
SUBCHAPTER E. INCOME BENEFITS IN GENERAL 255
Sec. 408.081. INCOME BENEFITS. 255
Sec. 408.0815. RESOLUTION OF OVERPAYMENT OR UNDERPAYMENT OF INCOME

BENEFITS. 255
Sec. 408.082. ACCRUAL OF RIGHT TO INCOME BENEFITS. 256
Sec. 408.083. TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. 257
Sec. 408.084. CONTRIBUTING INJURY. 257
Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. 257
Sec. 408.086. DIVISION DETERMINATION OF EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. 258
SUBCHAPTER F. TEMPORARY INCOME BENEFITS 259
Sec. 408.101. TEMPORARY INCOME BENEFITS. 259
Sec. 408.102. DURATION OF TEMPORARY INCOME BENEFITS. 259
Sec. 408.103. AMOUNT OF TEMPORARY INCOME BENEFITS. 259
Sec. 408.104. MAXIMUM MEDICAL IMPROVEMENT AFTER SPINAL SURGERY. 260
Sec. 408.105. SALARY CONTINUATION IN LIEU OF TEMPORARY INCOME BENEFITS. 261
SUBCHAPTER G. IMPAIRMENT INCOME BENEFITS 262
Sec. 408.121. IMPAIRMENT INCOME BENEFITS. 262
Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS. 262
Sec. 408.1225. DESIGNATED DOCTOR. 263
Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. 264
Sec. 408.124. IMPAIRMENT RATING GUIDELINES. 267
Sec. 408.125. DISPUTE AS TO IMPAIRMENT RATING. 267
Sec. 408.126. AMOUNT OF IMPAIRMENT INCOME BENEFITS. 268
Sec. 408.127. REDUCTION OF IMPAIRMENT INCOME BENEFITS. 268
Sec. 408.128. COMMUTATION OF IMPAIRMENT INCOME BENEFITS. 269
Sec. 408.129. ACCELERATION OF IMPAIRMENT INCOME BENEFITS. 269
SUBCHAPTER H. SUPPLEMENTAL INCOME BENEFITS 271
Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. 271
Sec. 408.1415. WORK SEARCH COMPLIANCE STANDARDS. 271
Sec. 408.142. SUPPLEMENTAL INCOME BENEFITS. 272
Sec. 408.143. EMPLOYEE STATEMENT. 273
Sec. 408.144. COMPUTATION OF SUPPLEMENTAL INCOME BENEFITS. 273
Sec. 408.145. PAYMENT OF SUPPLEMENTAL INCOME BENEFITS. 274
Sec. 408.146. TERMINATION OF SUPPLEMENTAL INCOME BENEFITS; REINITIATION. 274
Sec. 408.147. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. 274
Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. 275
Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE. 275
Sec. 408.150. VOCATIONAL REHABILITATION. 276
Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME BENEFITS. 276
SUBCHAPTER I. LIFETIME INCOME BENEFITS 278
Sec. 408.161. LIFETIME INCOME BENEFITS. 278
Sec. 408.162. SUBSEQUENT INJURY FUND BENEFITS. 279
SUBCHAPTER J. DEATH AND BURIAL BENEFITS 280
Sec. 408.181. DEATH BENEFITS. 280
Sec. 408.182. DISTRIBUTION OF DEATH BENEFITS. 280
Sec. 408.183. DURATION OF DEATH BENEFITS. 282
Sec. 408.184. REDISTRIBUTION OF DEATH BENEFITS. 284
Sec. 408.185. EFFECT OF BENEFICIARY DISPUTE; ATTORNEY'S FEES. 284
Sec. 408.186. BURIAL BENEFITS. 285
Sec. 408.187. AUTOPSY. 285

SUBCHAPTER K. PROTECTION OF RIGHTS TO BENEFITS 286
Sec. 408.201. BENEFITS EXEMPT FROM LEGAL PROCESS. 286
Sec. 408.202. ASSIGNABILITY OF BENEFITS. 286
Sec. 408.203. ALLOWABLE LIENS. 286
SUBCHAPTER L. ATTORNEY'S FEES IN WORKERS' COMPENSATION BENEFIT MATTERS 287
Sec. 408.221. ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL. 287
Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. 288

LABOR CODE CHAPTER 409. COMPENSATION PROCEDURES 291

SUBCHAPTER A. INJURY REPORTS, CLAIMS, AND RECORDS 291
Sec. 409.001. NOTICE OF INJURY TO EMPLOYER. 291
Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. 291
Sec. 409.003. CLAIM FOR COMPENSATION. 292
Sec. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR COMPENSATION. 292
Sec. 409.005. REPORT OF INJURY; MODIFIED DUTY PROGRAM NOTICE; ADMINISTRATIVE VIOLATION. 292
Sec. 409.006. RECORD OF INJURIES; ADMINISTRATIVE VIOLATION. 294
Sec. 409.007. DEATH BENEFIT CLAIMS. 295
Sec. 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED. 295
Sec. 409.009. SUBCLAIMS. 295
Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES. 296
Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL BENEFICIARY. 300
Sec. 409.011. INFORMATION PROVIDED TO EMPLOYER; EMPLOYER'S RIGHTS. ..301
Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION. 302
Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF INJURED EMPLOYEE. 303
SUBCHAPTER B. PAYMENT OF BENEFITS 304
Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. 304
Sec. 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. 306
Sec. 409.023. PAYMENT OF BENEFITS; ADMINISTRATIVE VIOLATION. 306
Sec. 409.0231. PAYMENT BY ELECTRONIC FUNDS TRANSFER. 307
Sec. 409.0232. TIMELINESS OF PAYMENTS. 307
Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. 307

LABOR CODE CHAPTER 410. ADJUDICATION OF DISPUTES 309

SUBCHAPTER A. GENERAL PROVISIONS 309
Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. 309
Sec. 410.003. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. 309
Sec. 410.005. VENUE FOR ADMINISTRATIVE PROCEEDINGS. 309
Sec. 410.006. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS. 310
Sec. 410.007. INFORMATION LIST. 310
SUBCHAPTER B. BENEFIT REVIEW CONFERENCE 311
Sec. 410.021. PURPOSE. 311
Sec. 410.022. BENEFIT REVIEW OFFICERS; QUALIFICATIONS. 311
Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. 312
Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO FURTHER

PROCEEDINGS ON CERTAIN CLAIMS. 312
Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE; NOTICE. 313
Sec. 410.026. POWERS AND DUTIES OF BENEFIT REVIEW OFFICER. 313
Sec. 410.027. RULES. 314
Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION. 314
Sec. 410.029. RESOLUTION AT BENEFIT REVIEW CONFERENCE; WRITTEN AGREEMENT. 315
Sec. 410.030. BINDING EFFECT OF AGREEMENT. 315
Sec. 410.031. INCOMPLETE RESOLUTION; REPORT. 316
*Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. 317
*Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. 317
Sec. 410.033. MULTIPLE CARRIERS. 318
Sec. 410.034. FILING OF AGREEMENT AND REPORT. 318
SUBCHAPTER C. ARBITRATION 319
Sec. 410.101. PURPOSE. 319
Sec. 410.102. ARBITRATORS; QUALIFICATIONS. 319
Sec. 410.103. DUTIES OF ARBITRATOR. 319
Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. 320
Sec. 410.105. LISTS OF ARBITRATORS. 320
Sec. 410.106. SELECTION OF ARBITRATOR. 321
Sec. 410.107. ASSIGNMENT OF ARBITRATOR. 321
Sec. 410.108. REJECTION OF ARBITRATOR. 322
Sec. 410.109. SCHEDULING OF ARBITRATION. 322
Sec. 410.110. CONTINUANCE. 322
Sec. 410.111. RULES. 323
Sec. 410.112. EXCHANGE AND FILING OF INFORMATION; ADMINISTRATIVE VIOLATION. 323
Sec. 410.113. DUTIES OF PARTIES AT ARBITRATION; ATTENDANCE; ADMINISTRATIVE VIOLATION. 323
Sec. 410.114. TESTIMONY; RECORD. 324
Sec. 410.115. EVIDENCE. 324
Sec. 410.116. CLOSING STATEMENTS; BRIEFS. 324
Sec. 410.117. EX PARTE CONTACTS PROHIBITED. 324
Sec. 410.118. AWARD. 325
Sec. 410.119. EFFECT OF AWARD. 325
Sec. 410.120. CLERICAL ERROR. 325
Sec. 410.121. COURT VACATING AWARD. 326
SUBCHAPTER D. CONTESTED CASE HEARING 327
Sec. 410.151. CONTESTED CASE HEARING; SCOPE. 327
Sec. 410.152. HEARING OFFICERS; QUALIFICATIONS. 327
Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. 327
Sec. 410.154. SCHEDULING OF HEARING. 328
Sec. 410.155. CONTINUANCE. 328
Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION. 328
Sec. 410.157. RULES. 328
Sec. 410.158. DISCOVERY. 328
Sec. 410.159. STANDARD INTERROGATORIES. 329
Sec. 410.160. EXCHANGE OF INFORMATION. 329
Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. 330
Sec. 410.162. ADDITIONAL DISCOVERY. 330
Sec. 410.163. POWERS AND DUTIES OF HEARING OFFICER. 330
Sec. 410.164. RECORD. 331
Sec. 410.165. EVIDENCE. 331
Sec. 410.166. STIPULATIONS. 331

Sec. 410.167. EX PARTE CONTACTS PROHIBITED. 332
Sec. 410.168. DECISION. 332
Sec. 410.169. EFFECT OF DECISION. 333
SUBCHAPTER E. APPEALS PANEL....334
Sec. 410.201. APPEALS JUDGES; QUALIFICATIONS.....334
Sec. 410.202. REQUEST FOR APPEAL; RESPONSE.....334
Sec. 410.203. POWERS AND DUTIES OF APPEALS PANEL; PRIORITY OF HEARING ON REMAND.....335
Sec. 410.204. DECISION. 335
Sec. 410.205. EFFECT OF DECISION. 336
Sec. 410.206. CLERICAL ERROR. 337
Sec. 410.207. CONTINUATION OF DIVISION JURISDICTION. 337
Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION. 337
Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. 338
SUBCHAPTER F. JUDICIAL REVIEW--GENERAL PROVISIONS....339
Sec. 410.251. EXHAUSTION OF REMEDIES.....339
Sec. 410.252. TIME FOR FILING PETITION; VENUE. 339
Sec. 410.253. SERVICE; NOTICE. 340
Sec. 410.254. INTERVENTION. 340
Sec. 410.255. JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS. 340
Sec. 410.256. COURT APPROVAL OF SETTLEMENT. 341
Sec. 410.257. JUDGMENT AFTER JUDICIAL REVIEW. 342
Sec. 410.258. NOTIFICATION OF DIVISION OF PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE. 342
SUBCHAPTER G. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS 344
Sec. 410.301. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS. 344
Sec. 410.302. ADMISSIBILITY OF RECORDS; LIMITATION OF ISSUES.....344
Sec. 410.303. BURDEN OF PROOF. 344
Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION. 344
Sec. 410.305. CONFLICT WITH RULES OF CIVIL PROCEDURE.....345
Sec. 410.306. EVIDENCE. 345
Sec. 410.307. SUBSTANTIAL CHANGE OF CONDITION.....345
Sec. 410.308. CERTIFIED COPY OF NOTICE SECURING COMPENSATION. 346

LABOR CODE CHAPTER 411. WORKERS' HEALTH AND SAFETY 349

SUBCHAPTER A. GENERAL PROVISIONS 349
Sec. 411.001. DEFINITIONS. 349
Sec. 411.002. APPLICATION. 349
Sec. 411.003. IMMUNITY FROM CERTAIN LIABILITY. 349
Sec. 411.004. EXCLUSIVE REMEDY. 350
SUBCHAPTER B. GENERAL POWERS AND DUTIES OF DIVISION 351
Sec. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS AND RULES. 351
Sec. 411.012. COLLECTION AND ANALYSIS OF INFORMATION. 351
Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. 351
Sec. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER ENTITIES. 351
Sec. 411.015. EDUCATIONAL PUBLICATIONS. 352
Sec. 411.016. PEER REVIEW SAFETY PROGRAM. 353

Sec. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS.....353
Sec. 411.018. FEDERAL OSHA COMPLIANCE. 353
SUBCHAPTER C. JOB SAFETY INFORMATION SYSTEM.....354
Sec. 411.031. JOB SAFETY INFORMATION SYSTEM; COOPERATION WITH OTHER AGENCIES. 354
Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE REPORT; ADMINISTRATIVE VIOLATION. 354
Sec. 411.033. JOB SAFETY DATA BASE.....355
Sec. 411.034. CONFIDENTIALITY REQUIREMENT; OFFENSE; PENALTY.....355
Sec. 411.035. USE OF INJURY REPORT. 356
SUBCHAPTER E. ACCIDENT PREVENTION SERVICES.....357
Sec. 411.061. ACCIDENT PREVENTION SERVICES; PREREQUISITE FOR LICENSE. 357
Sec. 411.063. ACCIDENT PREVENTION PERSONNEL.....357
Sec. 411.064. INSPECTIONS. 358
Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE COMPANY. 358
Sec. 411.066. NOTICE TO POLICYHOLDERS.....359
Sec. 411.067. DIVISION PERSONNEL.....359
Sec. 411.068. ADMINISTRATIVE VIOLATION. 359
SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL MATERIALS 360
Sec. 411.081. TELEPHONE HOTLINE. 360
Sec. 411.082. EMPLOYER RETALIATION PROHIBITED. 360
Sec. 411.083. JUDICIAL RELIEF FOR EMPLOYER RETALIATION. 360
Sec. 411.084. EDUCATIONAL PUBLICATIONS.....361
SUBCHAPTER H. GENERAL REQUIREMENTS RELATING TO OCCUPATIONAL HEALTH AND SAFETY 362
Sec. 411.101. LEGISLATIVE POLICY; PURPOSE. 362
Sec. 411.102. DEFINITIONS. 362
Sec. 411.103. DUTY OF EMPLOYER TO PROVIDE SAFE WORKPLACE. 363
Sec. 411.104. DIVISION DUTIES. 363
Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. 364
Sec. 411.106. SAFETY CLASSIFICATION. 364
Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. 365
Sec. 411.108. ACCIDENT REPORTS. 365
Sec. 411.109. EFFECT ON OTHER LAW. 365
Sec. 411.110. LABOR DISPUTES. 365

LABOR CODE CHAPTER 412. STATE OFFICE OF RISK MANAGEMENT 367

SUBCHAPTER A. GENERAL PROVISIONS 367
Sec. 412.001. DEFINITIONS. 367
SUBCHAPTER B. OFFICE.....368
Sec. 412.011. POWERS AND DUTIES OF OFFICE. 368
Sec. 412.0111. AFFILIATION WITH OFFICE OF ATTORNEY GENERAL. 370
*Sec. 412.012. FUNDING. 370
*Sec. 412.012. FUNDING. 371
*Sec. 412.0121. INTERAGENCY CONTRACTS. 371
*Sec. 412.0121. INTERAGENCY CONTRACTS. 372
*Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. 373
*Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. 373
*Sec. 412.0123. ALLOCATION OF WORKERS' COMPENSATION AND RISK MANAGEMENT COSTS; RISK REWARD PROGRAM.....373
*Sec. 412.0123. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION

RECOVERIES. 374
*Sec. 412.0124. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. 374
Sec. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE MANAGEMENT. 375
Sec. 412.0126. ANALYSIS. 375
Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER. 376
Sec. 412.0128. CONFIDENTIALITY OF INJURY INFORMATION. 376
SUBCHAPTER C. BOARD 378
Sec. 412.021. RISK MANAGEMENT BOARD. 378
Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. 379
Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. 380
Sec. 412.024. GROUNDS FOR REMOVAL FROM BOARD. 380
Sec. 412.027. USE OF TECHNOLOGY. 381
SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD 382
Sec. 412.031. RULEMAKING AUTHORITY. 382
Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. 382
Sec. 412.033. HIRING DIRECTOR. 383
Sec. 412.034. PUBLIC HEARING. 383
Sec. 412.035. DISPUTE RESOLUTION. 383
SUBCHAPTER E. DIRECTOR 385
Sec. 412.041. DIRECTOR DUTIES. 385
Sec. 412.042. REPORTS TO THE LEGISLATURE. 387
SUBCHAPTER F. STATE AGENCIES 389
Sec. 412.051. DUTIES OF STATE AGENCIES; INSURANCE REPORTING REQUIREMENTS. 389
Sec. 412.052. EXEMPTION OF CERTAIN STATE AGENCIES. 389
Sec. 412.053. ANNUAL REPORT BY STATE AGENCY. 389
Sec. 412.054. BUSINESS CONTINUITY PLAN. 390

LABOR CODE CHAPTER 413. MEDICAL REVIEW 393

SUBCHAPTER A. GENERAL PROVISIONS 393
Sec. 413.002. MEDICAL REVIEW. 393
Sec. 413.003. AUTHORITY TO CONTRACT. 394
Sec. 413.004. COORDINATION WITH PROVIDERS. 394
Sec. 413.006. ADVISORY COMMITTEES. 394
Sec. 413.007. INFORMATION MAINTAINED BY DIVISION. 394
Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS; ADMINISTRATIVE VIOLATION. 395
SUBCHAPTER B. MEDICAL SERVICES AND FEES 397
Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES; TREATMENT GUIDELINES AND PROTOCOLS. 397
Sec. 413.0111. PROCESSING AGENTS. 399
Sec. 413.0115. REQUIREMENTS FOR CERTAIN VOLUNTARY OR INFORMAL NETWORKS. 400
Sec. 413.012. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED. 401
Sec. 413.013. PROGRAMS. 401
Sec. 413.014. PREAUTHORIZATION REQUIREMENTS; CONCURRENT REVIEW AND CERTIFICATION OF HEALTH CARE. 401
Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. 403
Sec. 413.015. PAYMENT BY INSURANCE CARRIERS; AUDIT AND REVIEW. 403
Sec. 413.016. PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND FEE GUIDELINES. 404

Sec. 413.017. PRESUMPTION OF REASONABLENESS. 404
Sec. 413.018. REVIEW OF MEDICAL CARE IF GUIDELINES EXCEEDED. 405
Sec. 413.019. INTEREST EARNED FOR DELAYED PAYMENT, REFUND, OR OVERPAYMENT. 405
Sec. 413.020. DIVISION CHARGES. 406
Sec. 413.021. RETURN-TO-WORK COORDINATION SERVICES. 406
Sec. 413.022. RETURN-TO-WORK REIMBURSEMENT PROGRAM FOR EMPLOYERS; FUND. 408
Sec. 413.023. INFORMATION TO EMPLOYERS. 410
Sec. 413.024. INFORMATION TO EMPLOYEES. 410
Sec. 413.025. RETURN-TO-WORK GOALS AND ASSISTANCE. 410
SUBCHAPTER C. DISPUTE RESOLUTION 412
Sec. 413.031. MEDICAL DISPUTE RESOLUTION. 412
Sec. 413.0311. REVIEW OF MEDICAL NECESSITY DISPUTES; CONTESTED CASE HEARING. 415
Sec. 413.0312. REVIEW OF MEDICAL FEE DISPUTES; BENEFIT REVIEW CONFERENCE. 416
Sec. 413.032. INDEPENDENT REVIEW ORGANIZATION DECISION; APPEAL. 418
SUBCHAPTER D. HEALTH CARE PROVIDERS 420
Sec. 413.041. DISCLOSURE. 420
Sec. 413.042. PRIVATE CLAIMS; ADMINISTRATIVE VIOLATION. 420
Sec. 413.043. OVERCHARGING PROHIBITED; OFFENSE. 421
Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. 421
SUBCHAPTER E. IMPLEMENTATION OF COMMISSION POWERS AND DUTIES 422
Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS. 422
Sec. 413.0511. MEDICAL ADVISOR. 422
Sec. 413.05115. MEDICAL QUALITY REVIEW PROCESS. 424
Sec. 413.0512. MEDICAL QUALITY REVIEW PANEL. 424
Sec. 413.05121. QUALITY ASSURANCE PANEL. 426
Sec. 413.05122. MEDICAL QUALITY REVIEW PANEL: RULES; TRAINING. 426
Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. 428
Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL LICENSING BOARDS. 428
Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR VIOLATIONS. 430
Sec. 413.052. PRODUCTION OF DOCUMENTS. 430
Sec. 413.053. STANDARDS OF REPORTING AND BILLING. 430
Sec. 413.054. IMMUNITY FROM LIABILITY. 431
Sec. 413.055. INTERLOCUTORY ORDERS; REIMBURSEMENT. 431

LABOR CODE CHAPTER 414. ENFORCEMENT OF COMPLIANCE AND PRACTICE REQUIREMENTS 433

Sec. 414.002. MONITORING DUTIES. 433
Sec. 414.003. COMPILATION AND USE OF INFORMATION. 433
Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS. 434
Sec. 414.005. INVESTIGATION UNIT 434
Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. 435
Sec. 414.007. MEDICAL REVIEW. 435

LABOR CODE CHAPTER 415. ADMINISTRATIVE VIOLATIONS 437

SUBCHAPTER A. PROHIBITED ACTS 437
Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY. 437

Sec. 415.002. ADMINISTRATIVE VIOLATION BY INSURANCE CARRIER. 438
Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE PROVIDER.....440
Sec. 415.0035. ADDITIONAL VIOLATIONS BY INSURANCE CARRIER OR HEALTH CARE PROVIDER. 440
Sec. 415.0036. ADMINISTRATIVE VIOLATION BY PERSON PERFORMING CERTAIN CLAIM SERVICES. 441
Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; ADMINISTRATIVE VIOLATION. 442
Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED; ADMINISTRATIVE VIOLATION. 442
Sec. 415.007. LOANS BY ATTORNEYS PROHIBITED. 442
Sec. 415.008. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION. 443
Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. 444
Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. 444
Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION WORKERS' COMPENSATION CLAIM AND PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION. ..444
SUBCHAPTER B. SANCTIONS 446
Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES. 446
Sec. 415.0211. EMERGENCY CEASE AND DESIST ORDER. 447
Sec. 415.0215. SANCTIONS. 448
Sec. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION. 448
Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT; ADMINISTRATIVE VIOLATION. 449
Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY. 449
SUBCHAPTER C. PROCEDURES 451
Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. 451
Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. ..451
Sec. 415.033. FAILURE TO RESPOND. 451
Sec. 415.034. HEARING PROCEDURES. 452
Sec. 415.035. JUDICIAL REVIEW. 452
Sec. 415.036. STANDARD OF JUDICIAL REVIEW OF COMMISSIONER'S ORDER. ...453

LABOR CODE CHAPTER 416. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY 455

Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. 455
Sec. 416.002. EXEMPLARY DAMAGES. 455

LABOR CODE CHAPTER 417. THIRD-PARTY LIABILITY 457

Sec. 417.001. THIRD-PARTY LIABILITY. 457
Sec. 417.002. RECOVERY IN THIRD-PARTY ACTION. 458
Sec. 417.003. ATTORNEY'S FEE FOR REPRESENTATION OF INSURANCE CARRIER'S INTEREST 458
Sec. 417.004. EMPLOYER LIABILITY TO THIRD PARTY. 459

LABOR CODE CHAPTER 418. CRIMINAL PENALTIES 461

Sec. 418.001. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. 461
Sec. 418.002. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE. 461
Sec. 418.003. ELECTION OF PROSECUTION. 462

LABOR CODE CHAPTER 419. MISUSE OF DIVISION NAME 463

Sec. 419.001. DEFINITIONS. 463
Sec. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS PROHIBITED. 463
Sec. 419.003. RULES. 464
Sec. 419.004. CIVIL PENALTY. 464
Sec. 419.005. ADMINISTRATIVE PENALTY. 465
Sec. 419.006. INJUNCTIVE RELIEF. 465
Sec. 419.007. REMEDIES NOT EXCLUSIVE. 465

SUBTITLE B. DISCRIMINATION ISSUES 467

LABOR CODE CHAPTER 451. DISCRIMINATION PROHIBITED 467

Sec. 451.001. DISCRIMINATION AGAINST EMPLOYEES PROHIBITED. 467
Sec. 451.002. REMEDIES; BURDEN OF PROOF. 467
Sec. 451.003. INJUNCTION. 467

SUBTITLE C. WORKERS' COMPENSATION INSURANCE COVERAGE FOR CERTAIN GOVERNMENT EMPLOYEES 469

LABOR CODE CHAPTER 501. WORKERS' COMPENSATION INSURANCE COVERAGE FOR STATE EMPLOYEES, INCLUDING EMPLOYEES UNDER THE DIRECTION OR CONTROL OF THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY 469

SUBCHAPTER A. GENERAL PROVISIONS 469
Sec. 501.001. DEFINITIONS. 469
Sec. 501.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. 470
Sec. 501.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. 471
SUBCHAPTER B. COVERAGE 472
Sec. 501.021. WORKERS' COMPENSATION COVERAGE FOR EMPLOYEES. 472
Sec. 501.022. EMPLOYEES OF COMPONENT INSTITUTIONS OF TEXAS TECH UNIVERSITY SYSTEM. 472
Sec. 501.024. EXCLUSIONS FROM COVERAGE. 472
Sec. 501.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. 473
Sec. 501.026. COVERAGE FOR CERTAIN SERVICES PROVIDED BY VOLUNTEERS. 473
SUBCHAPTER C. ADMINISTRATION 475
Sec. 501.0431. COMPILATION OF STATISTICS RELATING TO FRAUD. 475
Sec. 501.044. EFFECT OF SICK LEAVE; ANNUAL LEAVE. 475
Sec. 501.045. EFFECT OF EMERGENCY LEAVE. 475
Sec. 501.046. REPORTS OF TERMINATION OR CONTINUATION OF INJURIES. 476
Sec. 501.048. STATE AGENCY SUMMARY IN BUDGET REQUESTS. 476
Sec. 501.050. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. 476
Sec. 501.051. PAYMENT OF MEDICAL AND INDEMNITY BENEFITS. 477

LABOR CODE 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 479

SUBCHAPTER A. GENERAL PROVISIONS 479

Sec. 502.001. DEFINITIONS. 479
Sec. 502.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. 479
Sec. 502.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. 480
SUBCHAPTER B. COVERAGE 481
Sec. 502.021. WORKERS' COMPENSATION COVERAGE FOR INSTITUTION EMPLOYEES. 481
Sec. 502.022. AUTHORITY TO SELF-INSURE. 481
Sec. 502.023. INSURANCE REQUIREMENT. 481
Sec. 502.024. PREEXISTING DISQUALIFYING CONDITION. 481
Sec. 502.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. 482
SUBCHAPTER C. OFFSETS 483
Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. 483
SUBCHAPTER D. ADMINISTRATION 484
Sec. 502.061. ADMINISTRATION AND RULES. 484
Sec. 502.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. 484
Sec. 502.063. CERTIFIED COPIES OF DIVISION DOCUMENTS. 484
Sec. 502.064. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS; INSTITUTION RECORDS. 485
Sec. 502.065. REPORTS OF INJURIES. 485
Sec. 502.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. 486
Sec. 502.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. 487
Sec. 502.068. POSTPONEMENT OF HEARING. 487
Sec. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. 488
Sec. 502.070. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. 488

LABOR CODE CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND EMPLOYEES OF INSTITUTIONS OF THE UNIVERSITY OF TEXAS SYSTEM 489

SUBCHAPTER A. GENERAL PROVISIONS 489
Sec. 503.001. DEFINITIONS. 489
Sec. 503.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. 489
Sec. 503.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. 490
SUBCHAPTER B. COVERAGE 491
Sec. 503.021. WORKERS' COMPENSATION COVERAGE FOR SYSTEM AND INSTITUTION EMPLOYEES. 491
Sec. 503.022. AUTHORITY TO SELF-INSURE. 491
Sec. 503.023. INSURANCE REQUIREMENT. 491
Sec. 503.024. WAIVER OF RIGHTS. 491
Sec. 503.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. 492
SUBCHAPTER C. OFFSETS 493
Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. 493
SUBCHAPTER D. ADMINISTRATION 494
Sec. 503.061. ADMINISTRATION AND RULES. 494
Sec. 503.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. 494
Sec. 503.063. CERTIFIED COPIES OF DIVISION DOCUMENTS. 494
Sec. 503.064. EXAMINING PHYSICIANS. 495
Sec. 503.065. REPORTS OF INJURIES. 495

Sec. 503.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. 496
Sec. 503.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. 497
Sec. 503.068. POSTPONEMENT OF HEARING. 497
Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. 497
Sec. 503.070. VENUE FOR JUDICIAL REVIEW. 498
Sec. 503.071. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. 498

LABOR CODE CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS 501

SUBCHAPTER A. GENERAL PROVISIONS 501
Sec. 504.001. DEFINITIONS. 501
Sec. 504.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. 501
Sec. 504.003. ELECTION OF REMEDIES. 502
SUBCHAPTER B. COVERAGE 504
Sec. 504.011. METHOD OF PROVIDING COVERAGE. 504
Sec. 504.012. OPTIONAL COVERAGES. 504
Sec. 504.013. COVERAGE FOR TRUSTEES AND STAFF OF SELF-INSURANCE FUND. 505
Sec. 504.014. EXCLUSIONS. 505
Sec. 504.015. MUNICIPAL UTILITIES. 506
Sec. 504.016. JOINT INSURANCE FUND. 506
Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES. 507
Sec. 504.018. NOTICE TO DIVISION AND EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY. 508
SUBCHAPTER C. BENEFITS AND OFFSETS 509
Sec. 504.051. OFFSET AGAINST PAYMENTS FOR INCAPACITY. 509
Sec. 504.052. SICK LEAVE BENEFITS. 509
Sec. 504.053. ELECTION. 510
Sec. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. 512
Sec. 504.055. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT. 512
Sec. 504.056. INTENT OF EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT. 514
SUBCHAPTER D. ADMINISTRATION 515
Sec. 504.071. RULES; FORMS. 515
Sec. 504.072. APPROPRIATIONS FOR DISBURSEMENTS; ACCOUNT; REPORT. 515
Sec. 504.073. REPRESENTATION IN LEGAL PROCEEDINGS. 515

LABOR CODE CHAPTER 505. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF TEXAS DEPARTMENT OF TRANSPORTATION 517

SUBCHAPTER A. GENERAL PROVISIONS 517
Sec. 505.001. DEFINITIONS. 517
Sec. 505.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. 517
SUBCHAPTER B. COVERAGE 519
Sec. 505.011. WORKERS' COMPENSATION COVERAGE FOR DEPARTMENT EMPLOYEES. 519

Sec. 505.012. AUTHORITY TO SELF-INSURE. 519
Sec. 505.013. INDIVIDUALS EMPLOYED BY SUBCONTRACTORS. 519
SUBCHAPTER C. ADMINISTRATION....521
Sec. 505.051. ADMINISTRATION; RULES; FORMS. 521
Sec. 505.052. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. 521
Sec. 505.053. CERTIFIED COPIES OF DIVISION DOCUMENTS. 521
Sec. 505.054. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS. 522
Sec. 505.055. REPORTS OF INJURIES. 523
Sec. 505.056. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. 523
Sec. 505.057. REFUSAL TO SUBMIT TO MEDICAL TREATMENT....524
Sec. 505.058. POSTPONEMENT OF HEARING. 525
Sec. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE....525
Sec. 505.060. EFFECT OF SICK LEAVE; ANNUAL LEAVE....526

LABOR CODE CHAPTER 506. MISCELLANEOUS PROVISIONS APPLICABLE TO GOVERNMENT EMPLOYEES....527

Sec. 506.001. LATE PAYMENT OF JUDGMENT BY THE STATE. 527
Sec. 506.002. REIMBURSEMENT FROM NON-TREASURY FUNDS. 527

*Statues listed twice are due to more than one piece of legislation being enacted on the statute in the same legislative session. For additional information about this circumstance please see Government Code §311.025 at http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.311.htm#311.028 or visit the TLC website at http://www.statutes.legis.state.tx.us/. 529

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TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

LABOR CODE CHAPTER 401. GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

SEC. 401.001. SHORT TITLE.

This subtitle may be cited as the Texas Workers' Compensation Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 401.003. ACTIVITIES OF THE STATE AUDITOR.

(a) The division is subject to audit by the state auditor in accordance with Chapter 321, Government Code. The state auditor may audit:

(1) the structure and internal controls of the division;

(2) the level and quality of service provided by the division to employers, injured employees, insurance carriers, self-insured governmental entities, and other participants;

(3) the implementation of statutory mandates by the division;

(4) employee turnover;

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

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

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

(b) Nothing in this section limits the authority of the state auditor under Chapter 321, Government Code.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 7.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.002, eff. September 1, 2005.

SUBCHAPTER B. DEFINITIONS

SEC. 401.011. GENERAL DEFINITIONS.

In this subtitle:

(1) "Adjuster" means a person licensed under Chapter 4101, Insurance Code.

(2) "Administrative violation" means a violation of this subtitle, a rule adopted under this subtitle, or an order or decision of the commissioner that is subject to penalties and sanctions as provided by this subtitle.

(3) "Agreement" means the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States.

(5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.

(5-a) "Case management" means a collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes.

(6) "Certified self-insurer" means a private employer granted a certificate of authority to self-insure, as authorized by this subtitle, for the payment of compensation.

(7) "Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.

(8) "Commissioner" means the commissioner of workers' compensation.

(9) "Commute" means to pay in a lump sum.

(10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

(11) "Compensation" means payment of a benefit.

(12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of the transportation are under the control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(12-a) "Credentialing" has the meaning assigned by Chapter 1305, Insurance Code.

(13) "Death benefit" means a payment made under this subtitle to a legal beneficiary because of the death of an employee.

(13-a) "Department" means the Texas Department of Insurance.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is

eligible for distribution of benefits under Chapter 408.

(15) "Designated doctor" means a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

(16-a) "Division" means the division of workers' compensation of the department.

(17) "Doctor" means a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(18-a) "Evidence-based medicine" means the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

(19) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device.

(20) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(21) "Health care practitioner" means:

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(22) "Health care provider" means a health care facility or health care practitioner.

(22-a) "Health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with:

(A) evidence-based medicine; or

(B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

(23) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(25) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include a medical benefit, death benefit, or burial benefit.

(25-a) "Independent review organization" has the same meaning as in Section 1305.004(a)(11), Insurance Code.

(26) "Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

(27) "Insurance carrier" means:

(A) an insurance company;

(B) a certified self-insurer for workers' compensation insurance;

(C) a certified self-insurance group under Chapter 407A; or

(D) a governmental entity that self-insures, either individually or collectively.

(28) "Insurance company" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(29) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle.

(30) "Maximum medical improvement" means the earlier of:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

(C) the date determined as provided by Section 408.104.

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

(A) cure or relieve the effects naturally resulting from the compensable injury,

including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(31-a) "Network" or "workers' compensation health care network" means an organization that is:

(A) formed as a health care provider network to provide health care services to injured employees;

(B) certified in accordance with Chapter 1305, Insurance Code, and rules of the commissioner of insurance; and

(C) established by, or operates under contract with, an insurance carrier.

(32) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

(33) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(34) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

(34-a) "Orthotic device" means a custom-fitted or custom-fabricated medical device

that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms related to a compensable injury or occupational disease.

(35) "Penalty" means a fine established by this subtitle.

(35-a) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

(36) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

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

(38) "Research center" means the research functions of the Texas Department of Insurance required under Chapter 405.

(38-a) "Retrospective review" means the utilization review process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(39) "Sanction" means a penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule, order, or decision of the commissioner.

(40) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this subtitle.

(41) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(42) "Treating doctor" means the doctor who is primarily responsible for the

employee's health care for an injury.

(42-a) "Utilization review" has the meaning assigned by Chapter 4201, Insurance Code.

(42-b) "Utilization review agent" has the meaning assigned by Chapter 4201, Insurance Code.

(42-c) "Violation" means an administrative violation subject to penalties and sanctions as provided by this subtitle.

(43) "Wages" includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

(44) "Workers' compensation insurance coverage" means:

(A) an approved insurance policy to secure the payment of compensation;

(B) coverage to secure the payment of compensation through self-insurance as provided by this subtitle; or

(C) coverage provided by a governmental entity to secure the payment of compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 275, Sec. 2, eff. Sept. 1, 2003. Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.003, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 133, Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 134, Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 147, Sec. 1, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 13, eff. September 1, 2009.

SEC. 401.012. DEFINITION OF EMPLOYEE.

(a) In this subtitle, "employee" means each person in the service of another under a contract of hire, whether express or implied, or oral or written.

(b) The term "employee" includes:

(1) an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business;

(2) a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer; and

(3) a person who is a trainee under the Texans Work program established under Chapter 308.

(c) The term "employee" does not include:

(1) a master of or a seaman on a vessel engaged in interstate or foreign commerce; or

(2) a person whose employment is not in the usual course and scope of the employer's business.

(d) A person who is an employee for the purposes of this subtitle and engaged in work that otherwise may be legally performed is an employee despite:

(1) a license, permit, or certificate violation arising under state law or municipal ordinance; or

(2) a violation of a law regulating wages, hours, or work on Sunday.

(e) This section may not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing work or a service prohibited by a statute of this state or a municipal ordinance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 456, Sec. 6, eff. Sept. 1, 1997.

SEC. 401.013. DEFINITION OF INTOXICATION.

(a) In this subtitle, "intoxication" means the state of:

(1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is regulated under state law.

(b) The term "intoxication" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee's doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee's work.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.48, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.004, eff. September 1, 2005.

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SUBCHAPTER C. MISCELLANEOUS PROVISIONS

SEC. 401.021. APPLICATION OF OTHER ACTS.

Except as otherwise provided by this subtitle:

(1) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by the following subchapters and sections of Chapter 2001, Government Code:

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

(B) Sections 2001.051, 2001.052, and 2001.053;

(C) Sections 2001.056 through 2001.062; and

(D) Section 2001.141(c);

(2) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by Subchapters A and B, Chapter 2002, Government Code, excluding Sections 2002.001(3) and 2002.023;

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

(A) a benefit review conference;

(B) a contested case hearing;

(C) a proceeding of the appeals panel;

(D) arbitration; or

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

(4) Chapter 552, Government Code, applies to a workers' compensation record of the division, the department, or the office of injured employee counsel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.92, 5.95(82), (88), eff. Sept. 1, 1995.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.005, eff. September 1, 2005.

SEC. 401.022. DISCRIMINATION PROHIBITED.

(a) This subtitle may not be applied to discriminate because of race, sex, national origin, or religion.

(b) This section does not prohibit consideration of an anatomical difference in application of the impairment guidelines under Chapter 408 in rating an injury or a disease such as, but not limited to, breast cancer or an inguinal hernia. If an impairment rating assigns different values to the same injury for males and females, the higher value shall be applied.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 401.023. INTEREST OR DISCOUNT RATE.

(a) Interest or a discount under this subtitle shall be computed at the rate provided by this section.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 2, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 15.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.006, eff. September 1, 2005.

SEC. 401.024. TRANSMISSION OF INFORMATION.

(a) In this section, "electronic transmission" means the transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method.

(b) Notwithstanding another provision of this subtitle that specifies the form, manner, or

procedure for the transmission of specified information, the commissioner by rule may permit or require the use of an electronic transmission instead of the specified form, manner, or procedure. If the electronic transmission of information is not authorized or permitted by rule, the transmission of that information is governed by any applicable statute or rule that prescribes the form, manner, or procedure for the transmission, including standards adopted by the Department of Information Resources.

(c) The commissioner may designate and contract with one or more data collection agents to fulfill the data collection requirements of this subtitle. To qualify as a data collection agent, an organization must demonstrate at least five years of experience in data collection, data maintenance, data quality control, accounting, and related areas.

(d) The commissioner may prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability.

(e) A data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier.

(f) A reporting insurance carrier, other than a governmental entity, shall pay the fee to the data collection agent for the data collection services provided by the data collection agent.

(g) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.007, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 410, Sec. 1, eff. June 17, 2011.

SEC. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE DIRECTOR.

(a) A reference in this code or other law to the Texas Workers' Compensation Commission or the executive director of that commission means the division or the commissioner as consistent

with the respective duties of the commissioner and the division under this code and other workers' compensation laws of this state.

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

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.008, eff. September 1, 2005.

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LABOR CODE CHAPTER 402. OPERATION AND ADMINISTRATION OF WORKERS' COMPENSATION SYSTEM

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM; WORKERS' COMPENSATION DIVISION

SEC. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF INSURANCE; WORKERS' COMPENSATION DIVISION.

(a) Except as provided by Section 402.002, the Texas Department of Insurance is the state agency designated to oversee the workers' compensation system of this state.

(b) The division of workers' compensation is established as a division within the Texas Department of Insurance to administer and operate the workers' compensation system of this state as provided by this title.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.02, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.003, eff. September 1, 2005.

SEC. 402.00111. RELATIONSHIP BETWEEN COMMISSIONER OF INSURANCE AND COMMISSIONER OF WORKERS' COMPENSATION; SEPARATION OF AUTHORITY; RULEMAKING.

(a) The division is administered by the commissioner of workers' compensation as provided by this subchapter. Except as otherwise provided by this title, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under this title.

(b) The commissioner of insurance may delegate to the commissioner of workers' compensation or to that person's designee and may redact any delegation, and the commissioner of workers' compensation may delegate to the commissioner of insurance or to that person's designee, any power or duty regarding workers' compensation imposed on the commissioner of insurance or the commissioner of workers' compensation under this title, including the authority to make final orders or decisions. A delegation made under this subsection must be made in writing.

(c) The commissioner of insurance shall develop and implement policies that clearly separate the respective responsibilities of the department and the division.

(d) The commissioner of insurance may provide advice, research, and comment regarding the adoption of rules by the commissioner of workers' compensation under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00112. INVESTIGATION OF DIVISION.

The department shall investigate the conduct of the work of the division. For that purpose, the department shall have access at any time to all division books and records and may require an officer or employee of the division to furnish written or oral information.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00113. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT.

(a) The division of workers' compensation is administratively attached to the department.

(b) The department shall provide the staff and facilities necessary to enable the division to perform the duties of the division under this title, including:

(1) administrative assistance and services to the division, including budget planning and purchasing;

(2) personnel and financial services; and

(3) computer equipment and support.

(c) The commissioner of workers' compensation and the commissioner of insurance may enter into agreements as necessary to implement this title.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00114. DUTIES OF DIVISION; SINGLE POINT OF CONTACT.

(a) In addition to other duties required under this title, the division shall:

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

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

(b) To the extent determined feasible by the commissioner, the division shall establish a

single point of contact for injured employees receiving services from the division.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00115. COMPOSITION OF DIVISION.

The division is composed of the commissioner of workers' compensation and other officers and employees as required to efficiently implement:

(1) this title;

(2) other workers' compensation laws of this state; and

(3) other laws granting jurisdiction or applicable to the division or the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00116. CHIEF EXECUTIVE.

(a) The commissioner of workers' compensation is the division's chief executive and administrative officer. The commissioner shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner. Except as otherwise specifically provided by this title, a reference in this title to the "commissioner" means the commissioner of workers' compensation.

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

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00117. APPOINTMENT; TERM.

(a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a two-year term that expires on February 1 of each odd-numbered year.

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

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00118. QUALIFICATIONS.

The commissioner must:

(1) be a competent and experienced administrator;

(2) be well-informed and qualified in the field of workers' compensation; and

(3) have at least five years of experience as an executive in the administration of business or government or as a practicing attorney, physician, or certified public accountant.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00119. INELIGIBILITY FOR PUBLIC OFFICE.

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.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00120. COMPENSATION.

The commissioner is entitled to compensation as provided by the General Appropriations Act.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00121. GROUNDS FOR REMOVAL.

(a) It is a ground for removal from office that the commissioner:

(1) does not have at the time of appointment the qualifications required by Section 402.00118;

(2) does not maintain during service as commissioner the qualifications required by Section 402.00118;

(3) violates a prohibition established by Section 402.00122, 402.00124, 402.00125, or 402.00126; or

(4) cannot because of illness or incapacity discharge the commissioner's duties for a

substantial part of the commissioner's term.

(b) The validity of an action of the commissioner or the division is not affected by the fact that it is taken when a ground for removal of the commissioner exists.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00122. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION.

(a) The commissioner or an employee of the division may not accept a gift, a gratuity, or entertainment from a person having an interest in a matter or proceeding pending before the division.

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

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00123. CIVIL LIABILITY OF COMMISSIONER.

The commissioner is not liable in a civil action for an act performed in good faith in the execution of duties as commissioner.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00124. CONFLICT OF INTEREST.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be the commissioner and may not be a division employee employed in a "bona fide executive, administrative, or professional capacity" as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association

in the field of workers' compensation; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00125. PROHIBITION ON CERTAIN EMPLOYMENT OR REPRESENTATION.

(a) A former commissioner or former employee of the division involved in hearing cases under this title may not:

(1) be employed by an insurance carrier that was subject to the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the division; or

(2) represent a person before the division or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the division; or

(B) that was within the commissioner's or employee's official responsibilities while the commissioner or employee was associated with the division.

(b) The prohibition under Subsection (a)(1) applies until the:

(1) second anniversary of the date the commissioner ceases to serve as the commissioner; and

(2) first anniversary of the date the employee's employment with the division ceases.

(c) The prohibition under Subsection (a)(2) applies to a current commissioner or employee of the division while the commissioner or employee is involved in hearing cases under this title and at any time thereafter.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00126. LOBBYING ACTIVITIES.

A person may not serve as commissioner or act as general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the division.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00127. TRAINING PROGRAM FOR COMMISSIONER.

(a) Not later than the 90th day after the date on which the commissioner takes office, the commissioner shall complete a training program that complies with this section.

(b) The training program must provide the commissioner with information regarding:

(1) the legislation that created the division;

(2) the programs operated by the division;

(3) the role and functions of the division;

(4) the rules of the commissioner of insurance relating to the division, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the division;

(6) the results of the most recent formal audit of the division;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.00128. GENERAL POWERS AND DUTIES OF COMMISSIONER.

(a) The commissioner shall conduct the daily operations of the division and otherwise implement division policy.

(b) The commissioner or the commissioner's designee may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony directly or by deposition or interrogatory;

(6) assess and enforce penalties established under this title;

(7) enter appropriate orders as authorized by this title;

(8) institute an action in the division's name to enjoin the violation of this title;

(9) initiate an action under Section 410.254 to intervene in a judicial proceeding;

(10) prescribe the form, manner, and procedure for the transmission of information to the division;

(11) correct clerical errors in the entry of orders; and

(12) exercise other powers and perform other duties as necessary to implement and enforce this title.

(c) The commissioner is the agent for service of process on out-of-state employers.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 1.004, eff. September 1, 2005.

SEC. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED EMPLOYEE COUNSEL.

The office of injured employee counsel established under Chapter 404 shall perform the functions regarding the provision of workers' compensation benefits in this state designated by this subtitle as under the authority of that office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 47.01, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.005, eff. September 1, 2005.

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SUBCHAPTER B. SYSTEM GOALS; GENERAL ADMINISTRATION OF SYSTEM

SEC. 402.021. GOALS; LEGISLATIVE INTENT; GENERAL WORKERS' COMPENSATION MISSION OF DEPARTMENT.

(a) The basic goals of the workers' compensation system of this state are as follows:

(1) each employee shall be treated with dignity and respect when injured on the job;

(2) each injured employee shall have access to a fair and accessible dispute resolution process;

(3) each injured employee shall have access to prompt, high-quality medical care within the framework established by this subtitle; and

(4) each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

(b) It is the intent of the legislature that, in implementing the goals described by Subsection (a), the workers' compensation system of this state must:

(1) promote safe and healthy workplaces through appropriate incentives, education, and other actions;

(2) encourage the safe and timely return of injured employees to productive roles in the workplace;

(3) provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective;

(4) provide timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity;

(5) minimize the likelihood of disputes and resolve them promptly and fairly when identified;

(6) promote compliance with this subtitle and rules adopted under this subtitle

through performance-based incentives;

(7) promptly detect and appropriately address acts or practices of noncompliance with this subtitle and rules adopted under this subtitle;

(8) effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system; and

(9) take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

(c) This section may not be construed as:

(1) creating a cause of action; or

(2) establishing an entitlement to benefits to which a claimant is not otherwise entitled by this subtitle.

(d) As provided by this subtitle, the division shall work to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 7, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.0065, eff. September 1, 2005.

SEC. 402.0215. REFERENCE TO COMMISSION DIVISIONS.

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 division of workers' compensation of the Texas Department of Insurance.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.001, eff. September 1, 2005.

SEC. 402.022. PUBLIC INTEREST INFORMATION.

(a) The commissioner shall prepare information of public interest describing the functions of the division and the procedures by which complaints are filed with and resolved by the division.

(b) The commissioner shall make the information available to the public and appropriate state agencies.

(c) The commissioner by rule shall ensure that each division form, standard letter, and brochure under this subtitle:

(1) is written in plain language;

(2) is in a readable and understandable format; and

(3) complies with all applicable requirements relating to minimum readability requirements.

(d) The division shall make informational materials described by this section available in English and Spanish.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.002, eff. September 1, 2005.

SEC. 402.023. COMPLAINT INFORMATION.

(a) The commissioner shall:

(1) adopt rules regarding the filing of a complaint under this subtitle against an individual or entity subject to regulation under this subtitle; and

(2) ensure that information regarding the complaint process is available on the division's Internet website.

(b) The rules adopted under this section must, at a minimum:

(1) ensure that the division clearly defines in rule the method for filing a complaint; and

(2) define what constitutes a frivolous complaint under this subtitle.

(c) The division shall develop and post on the division's Internet website:

(1) a simple standardized form for filing complaints under this subtitle; and

(2) information regarding the complaint filing process.

(c-1) The division shall adopt a policy outlining the division's complaint process from receipt of the initial complaint to the complaint's disposition.

(d) The division shall keep an information file about each written complaint filed with the division under this subtitle that is unrelated to a specific workers' compensation claim, including a complaint regarding the administration of the workers' compensation system. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the division took no action, an explanation of the reason the complaint was closed without action.

(e) For each written complaint that is unrelated to a specific workers' compensation claim that the division has authority to resolve, the division shall provide to the person filing the complaint and the person about whom the complaint is made information about the division's policies and procedures under this subtitle relating to complaint investigation and resolution. The division, at least quarterly and until final disposition of the complaint, shall notify those persons about the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.08, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.003, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 6, eff. September 1, 2011.

SEC. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS.

(a) The division shall develop procedures to formally document and analyze complaints received by the division.

(b) The division shall compile detailed statistics on all complaints received and analyze complaint information trends, including:

(1) the number of complaints;

(2) the source of each complaint;

(3) the types of complaints;

(4) the length of time from the receipt of the complaint to its disposition; and

(5) the disposition of complaints.

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

(d) The division shall report the information compiled and analyzed under Subsections (b) and (c) to the commissioner at regular intervals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 7, eff. September 1, 2011.

SEC. 402.0235. PRIORITIES FOR COMPLAINT INVESTIGATIONS.

(a) The division shall assign priorities to complaint investigations under this subtitle based on risk. In developing priorities under this section, the division shall develop a formal, risk-based complaint investigation system that considers:

(1) the severity of the alleged violation;

(2) whether the alleged violator showed continued or wilful noncompliance; and

(3) whether a commissioner order has been violated.

(b) The commissioner may develop additional risk-based criteria as determined necessary.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.003, eff. September 1, 2005.

SEC. 402.024. PUBLIC PARTICIPATION.

(a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the division and to speak on issues under the general jurisdiction of the division.

(b) The division shall comply with federal and state laws related to program and facility accessibility.

(c) In addition to compliance with Subsection (a), the commissioner shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the division's programs and services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.09, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.004, eff. September 1, 2005.

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SUBCHAPTER C. PERSONNEL

SEC. 402.041. APPOINTMENTS.

(a) Subject to the General Appropriations Act or other law, the commissioner shall appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the commissioner and the division under this title, other workers' compensation laws of this state, and other laws granting jurisdiction or applicable to the division or the commissioner.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.10, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.007, eff. September 1, 2005.

SEC. 402.042. DIVISION OF RESPONSIBILITIES.

The commissioner shall develop and implement policies that clearly define the respective responsibilities of the commissioner and the staff of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.007, eff. September 1, 2005.

SEC. 402.043. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS.

(a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the division. The program shall require intra-agency postings of all positions concurrently with any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for division employees must be based on the system established under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.007, eff. September 1, 2005.

SEC. 402.044. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT.

(a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

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

(2) a comprehensive analysis of the division work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the division work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

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

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

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the civil rights division of the Texas Workforce Commission for compliance with Subsection (a)(1); and

(4) be filed with the Texas Workforce Commission.

(c) The Texas Workforce Commission shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.11, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 1.007, eff. September 1, 2005.

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SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND COMMISSIONER

SEC. 402.061. ADOPTION OF RULES.

The commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.006, eff. September 1, 2005.

SEC. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS.

(a) The division may accept gifts, grants, or donations as provided by rules adopted by the commissioner.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(15), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1195, Sec. 2.08, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.007, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(15), eff. September 1, 2005.

SEC. 402.064. FEES.

In addition to fees established by this subtitle, the commissioner shall set reasonable fees for services provided to persons requesting services from the division, including services provided under Subchapter E.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.008, eff. September 1, 2005.

SEC. 402.065. EMPLOYMENT OF COUNSEL.

Notwithstanding Article 1.09-1, Insurance Code, or any other law, the commissioner may employ counsel to represent the division in any legal action the division is authorized to initiate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.009, eff. September 1, 2005.

SEC. 402.066. RECOMMENDATIONS TO LEGISLATURE.

(a) The commissioner shall consider and recommend to the legislature changes to this subtitle, including any statutory changes required by an evaluation conducted under Section 402.074.

(b) The commissioner shall forward the recommended changes to the legislature not later than December 1 of each even-numbered year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.010, eff. September 1, 2005.

SEC. 402.0665. LEGISLATIVE OVERSIGHT.

The legislature may adopt requirements relating to legislative oversight of the division and the workers' compensation system of this state. The division shall comply with any requirements adopted by the legislature under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.13, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.011, eff. September 1, 2005.

SEC. 402.067. ADVISORY COMMITTEES.

The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.012, eff. September 1, 2005.

SEC. 402.068. DELEGATION OF RIGHTS AND DUTIES.

Except as expressly provided by this subtitle, the division may not delegate rights and duties imposed on it by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.14, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.013, eff. September 1, 2005.

SEC. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

The commissioner or the commissioner's designee shall provide to division employees, as often as necessary, information regarding their:

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

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.15, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.014, eff. September 1, 2005.

SEC. 402.071. REPRESENTATIVES.

(a) The commissioner shall establish qualifications for a representative and shall adopt rules establishing procedures for authorization of representatives.

(b) A representative may receive a fee for providing representation under this subtitle only if the representative is:

(1) an adjuster representing an insurance carrier; or

(2) licensed to practice law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.015, eff. September 1, 2005.

SEC. 402.073. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS.

(a) The commissioner and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding governing administrative procedure law hearings under this subtitle conducted by the State Office of Administrative Hearings in the manner provided for a contested case hearing under Chapter 2001, Government Code. The memorandum of understanding must address the payment of costs by parties to a medical fee dispute under Section 413.0312.

(b) In a case in which a hearing is conducted by the State Office of Administrative Hearings under Section 413.031 or 413.055, the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall enter the final decision in the case after completion of the hearing.

(c) In a case in which a hearing is conducted in conjunction with Section 402.072, 407.046, 408.023, or 415.034, and in other cases under this subtitle that are not subject to Subsection (b), the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall propose a decision to the commissioner for final consideration and decision by the commissioner.

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

(e) In issuing an order under this section, the commissioner shall comply with the requirements applicable to a state agency under Section 2001.058, Government Code.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.17, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.017, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 3, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 8, eff. September 1, 2011.

SEC. 402.074. STRATEGIC MANAGEMENT; EVALUATION.

The commissioner shall implement a strategic management plan that:

(1) requires the division to evaluate and analyze the effectiveness of the division in implementing:

(A) the statutory goals adopted under Section 402.021, particularly goals established to encourage the safe and timely return of injured employees to productive work roles; and

(B) the other standards and requirements adopted under this code, the

Insurance Code, and other applicable laws of this state; and

(2) modifies the organizational structure and programs of the division as necessary to address shortfalls in the performance of the workers' compensation system of this state.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.018, eff. September 1, 2005.

SEC. 402.075. INCENTIVES; PERFORMANCE-BASED OVERSIGHT.

(a) The commissioner by rule shall adopt requirements that:

(1) provide incentives for overall compliance in the workers' compensation system of this state; and

(2) emphasize performance-based oversight linked to regulatory outcomes.

(b) The commissioner shall develop key regulatory goals to be used in assessing the performance of insurance carriers and health care providers. The goals adopted under this subsection must align with the general regulatory goals of the division under this subtitle, such as improving workplace safety and return-to-work outcomes, in addition to goals that support timely payment of benefits and increased communication.

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

(d) Based on the performance assessment, the division shall develop regulatory tiers that distinguish among insurance carriers and health care providers who are poor performers, who generally are average performers, and who are consistently high performers. The division shall focus its regulatory oversight on insurance carriers and health care providers identified as poor

performers.

(e) The commissioner by rule shall develop incentives within each tier under Subsection (d) that promote greater overall compliance and performance. The regulatory incentives may include modified penalties, self-audits, or flexibility based on performance.

(f) The division shall:

(1) ensure that high-performing entities are publicly recognized; and

(2) allow those entities to use that designation as a marketing tool.

(g) In conjunction with the division's accident prevention services under Subchapter E, Chapter 411, the division shall conduct audits of accident prevention services offered by insurance carriers based on the comprehensive risk assessment. The division shall periodically review those services, but may provide incentives for less regulation of carriers based on performance.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.018, eff. September 1, 2005.

SEC. 402.076. GENERAL DUTIES; FUNDING.

(a) The division shall perform the workforce education and safety functions of the workers' compensation system of this state.

(b) The operations of the division under this section are funded through the maintenance tax assessed under Section 403.002.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.018, eff. September 1, 2005.

SEC. 402.077. EDUCATIONAL PROGRAMS.

(a) The division shall provide education on best practices for return-to-work programs and workplace safety.

(b) The division shall evaluate and develop the most efficient, cost-effective procedures for implementing this section.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.018, eff. September 1, 2005.

SEC. 402.078. REGIONAL OFFICES.

The department shall operate regional offices throughout this state as necessary to implement the duties of the division and the department under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.018, eff. September 1, 2005.

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SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION

SEC. 402.081. DIVISION RECORDS.

(a) The commissioner is the custodian of the division's records and shall perform the duties of a custodian required by law, including providing copies and the certification of records.

(b) The division shall comply with records retention schedules as provided by Chapter 441.185, Government Code.

(c) A record maintained by the division may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library and Archives Commission under that chapter.

(d) The division may charge a reasonable fee for making available for inspection any of its information that contains confidential information that must be redacted before the information is made available. However, when a request for information is for the inspection of 10 or fewer pages, and a copy of the information is not requested, the division may charge only the cost of making a copy of the page from which confidential information must be redacted. The fee for access to information under Chapter 552, Government Code, shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1270, Sec. 1 eff. June 20, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.019, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 329, Sec. 13, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 716, Sec. 11, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 10.003, eff. September 1, 2007.

SEC. 402.082. INJURY INFORMATION MAINTAINED BY DIVISION.

(a) The division shall maintain information on every compensable injury as to the:

(1) race, ethnicity, and sex of the claimant;

(2) classification of the injury;

(3) identification of whether the claimant is receiving medical care through a workers' compensation health care network certified under Chapter 1305, Insurance Code;

(4) amount of wages earned by the claimant before the injury; and

(5) amount of compensation received by the claimant.

(b) On request from the office of injured employee counsel, the division shall provide to the office the identity, claim number, and contact information of claimants receiving assistance from the office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.020, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 5, eff. September 1, 2011.

SEC. 402.083. CONFIDENTIALITY OF INJURY INFORMATION.

(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as provided by this subtitle or other law.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.42, 14.49, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.021, eff. September 1, 2005.

SEC. 402.084. RECORD CHECK; RELEASE OF INFORMATION.

(a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

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

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

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

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

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

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

(3) the employer at the time of injury;

(4) the insurance carrier;

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

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company;

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

(8) with regard to information described by Subsection (c-3), an insurance carrier that has adopted an antifraud plan under Subchapter B, Chapter 704, Insurance Code, or the authorized representative of such an insurance carrier.

(c) The requirements of Subsection (a)(1) do not apply to a request from a third-party litigant described by Subsection (b)(7).

(c-1) For purposes of this section only, "insurance carrier" means:

(1) a certified self-insurer; or

(2) an entity authorized under the Insurance Code or another insurance law of this state that provides health insurance coverage or health benefits in this state, including:

(A) an insurance company, including an insurance company that holds a certificate of authority issued by the commissioner of insurance to engage in the business of

workers' compensation insurance in this state;

(B) a group hospital service corporation under Chapter 842, Insurance Code;

(C) a health maintenance organization under Chapter 843, Insurance Code;

(D) a stipulated premium company under Chapter 884, Insurance Code;

(E) a fully self-insured plan, as described by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(F) a governmental plan, as defined by Section 3(32), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(32));

(G) an employee welfare benefit plan, as defined by Section 3(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)); and

(H) an insurer authorized by the Texas Department of Insurance to offer disability insurance in this state.

(c-2) An insurance carrier is not required to demonstrate that a subclaim exists in order to obtain information under Subsection (b)(8).

(c-3) An insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may submit to the commission on a monthly basis a written request for claims information. The request must contain a list of the names of persons about whom claims information is requested. The insurance carrier must certify in the carrier's request that each person listed is, or has been, an insured under the carrier's insurance program. The commission shall examine the commission's records to identify all claims related to the listed persons. If a claims record exists for a listed person, the commission promptly shall provide information on each workers' compensation claim filed by that person to the carrier or the carrier's representative in an electronic format. The information provided under this subsection must include, if available:

(1) the full name of the workers' compensation claimant;

(2) the social security number of the workers' compensation claimant;

(3) the date of birth of the workers' compensation claimant;

(4) the name of the employer of the workers' compensation claimant;

(5) the date of the injury;

(6) a description of the type of injury or the body part affected, including the workers' compensation claimant's description of how the injury occurred;

(7) the name of the treating doctor;

(8) the name, address, and claim number of the insurance carrier handling the claim;

(9) the name of the insurance adjustor handling the claim; and

(10) the identifying number assigned to the claim by the commission and the commission field office handling the claim.

(c-4) A potential subclaim identified by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may form the basis for the identification and filing of a subclaim against an insurance carrier under this subtitle.

(c-5) Information received under this section by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier remains subject to confidentiality requirements of this subtitle while in the possession of the insurance carrier or representative. However, the following laws do not prohibit the commission from disclosing full information regarding a claim as necessary to determine if a valid subclaim exists:

(1) Chapter 552, Government Code;

(2) Chapter 159, Occupations Code; or

(3) any other analogous law restricting disclosure of health care information.

(c-6) The commission may not redact claims records produced in an electronic data format under a request made under this section.

(c-7) An insurance carrier and its authorized representative may request full claims data under Subsection (b)(8), and the records shall be produced once each month. For purposes of this

subsection, "full claims data" means an electronic download or tape in an electronic data format of the information listed in Subsection (c-3) on all cases relating to the workers' compensation claimants listed as insureds of the requesting insurance carrier.

(d) The commissioner by rule may establish a reasonable fee, not to exceed five cents for each claimant listed in an information request, for all information requested by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier in an electronic data format. The commissioner shall adopt rules under Section 401.024(d) to establish:

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

(2) requirements regarding the maintenance of electronic data in the possession of an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier.

(e) The insurance carrier or the carrier's authorized representative must execute a written agreement with the commission before submitting the carrier's first request under Subsection (c-3). The agreement must contain a provision by which the carrier and the representative agree to comply with the commission's rules governing security parameters applicable to the transfer of information under Subsection (d)(1) and the maintenance of electronic data under Subsection (d)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1033, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.022, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 728, Sec. 11.132, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1190, Sec. 1, eff. June 18, 2005.

SEC. 402.085. EXCEPTIONS TO CONFIDENTIALITY.

(a) The division shall release information on a claim to:

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

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the division;

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

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

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office as provided by Section 404.111(a).

(b) The division may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

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

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an administrative action, to:

(A) establish, modify, or enforce a child support or medical support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.43(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.023, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 6, eff. September 1, 2011.

SEC. 402.086. TRANSFER OF CONFIDENTIALITY.

(a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

(b) This section does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 402.087. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS.

(a) A prospective employer who has workers' compensation insurance coverage and who complies with this subchapter is entitled to obtain information on the prior injuries of an applicant for employment if the employer obtains written authorization from the applicant before making the request.

(b) The employer must make the request by telephone or file the request in writing not later than the 14th day after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) If the request is made in writing, the authorization must be filed simultaneously. If the

request is made by telephone, the employer must file the authorization not later than the 10th day after the date on which the request is made.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 402.088. REPORT OF PRIOR INJURY.

(a) On receipt of a valid request made under and complying with Section 402.087, the division shall review its records.

(b) If the division finds that the applicant has made two or more general injury claims in the preceding five years, the division shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) If the employer requests information on three or more applicants at the same time, the division may refuse to release information until it receives the written authorization from each applicant.

(e) In this section, "general injury" means an injury other than an injury limited to one or more of the following:

(1) an injury to a digit, limb, or member;

(2) an inguinal hernia; or

(3) vision or hearing loss.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.024, eff. September 1, 2005.

SEC. 402.089. FAILURE TO FILE AUTHORIZATION.

An employer who receives information by telephone from the division under Section 402.088 and who fails to file the necessary authorization in accordance with Section 402.087 commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.025, eff. September 1, 2005.

SEC. 402.090. STATISTICAL INFORMATION.

The division, the Texas Department of Insurance, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.026, eff. September 1, 2005.

SEC. 402.091. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY.

(a) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the division.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this subchapter and that the person is not authorized to receive.

(c) An offense under this section is a Class A misdemeanor.

(d) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(e) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.18, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.027, eff. September 1, 2005.

SEC. 402.092. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE OF CERTAIN INFORMATION.

(a) In this section, "investigation file" means any information compiled or maintained by the

division with respect to a division investigation authorized under this subtitle or other workers' compensation law. The term does not include information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

(1) in a criminal proceeding;

(2) in a hearing conducted by the division;

(3) on a judicial determination of good cause;

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

(5) to an insurance carrier if the investigation file relates directly to a felony regarding workers' compensation or to a claim in which restitution is required to be paid to the insurance carrier.

(c) Division investigation files are not open records for purposes of Chapter 552, Government Code.

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

(e) The division, upon request, shall disclose the identity of a complainant under this section if the division finds:

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

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

(3) the complaint is frivolous; or

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

(f) Upon completion of an investigation in which the division determines a complaint is described by Subsection (e), the division shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.19, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 2.028, eff. September 1, 2005.

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SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

SEC. 402.251. COOPERATION; FACILITIES.

(a) The department and the division shall cooperate with the office of injured employee counsel in providing services to claimants under this subtitle.

(b) The department shall provide facilities to the office of injured employee counsel in each regional office operated to administer the duties of the division under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 2.029, eff. September 1, 2005.

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LABOR CODE CHAPTER 403. DIVISION FINANCING

SEC. 403.001. FUNDS.

(a) Except as provided by Sections 403.006, 403.007, and 403.008, or as otherwise provided by law, money collected under this subtitle, including advance deposits for purchase of services, shall be deposited in the general revenue fund of the state treasury to the credit of the Texas Department of Insurance operating account.

(b) The money may be spent as authorized by legislative appropriation on warrants issued by the comptroller under requisitions made by the commissioner of insurance.

(c) Money deposited in the general revenue fund under this section may be used to satisfy the requirements of Section 201.052, Insurance Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.44(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.010, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 9, eff. September 1, 2011.

SEC. 403.002. MAINTENANCE TAXES.

(a) Each insurance carrier, other than a governmental entity, shall pay an annual maintenance tax to pay the costs of administering this subtitle and to support the prosecution of workers' compensation insurance fraud in this state.

(b) The assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Article 5.55C, Insurance Code. The rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

(c) A workers' compensation insurance company is taxed at the rate established under Section 403.003. The tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Chapter 255,

Insurance Code.

(d) Each certified self-insurer shall pay a fee and maintenance taxes as provided by Subchapter F, Chapter 407.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1274, Sec. 21, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728, Sec. 11.134, eff. September 1, 2005.

SEC. 403.003. RATE OF ASSESSMENT.

(a) The commissioner of insurance shall set and certify to the comptroller the rate of maintenance tax assessment taking into account:

(1) any expenditure projected as necessary for the division and the office of injured employee counsel to:

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

(B) reimburse the general revenue fund as provided by Section 201.052, Insurance Code;

(2) projected employee benefits paid from general revenues;

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

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

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

(b) In setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to:

(1) the State Office of Risk Management;

(2) the workers' compensation research functions of the department under Chapter

405; or

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.45(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1098, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1443, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.011, eff. September 1, 2005.

SEC. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS.

The commissioner or the commissioner of insurance immediately shall proceed to collect taxes due under this chapter from an insurance carrier that withdraws from business in this state, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.012, eff. September 1, 2005.

SEC. 403.005. TAX RATE.

The commissioner of insurance shall annually adjust the rate of assessment of the maintenance tax imposed under Section 403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.013, eff. September 1, 2005.

SEC. 403.006. SUBSEQUENT INJURY FUND.

(a) The subsequent injury fund is a dedicated account in the general revenue fund. Money in the account may be appropriated only for the purposes of this section or as provided by other law. Section 403.095, Government Code, does not apply to the subsequent injury fund.

(b) The subsequent injury fund is liable for:

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

(2) reimbursement of insurance carrier claims of overpayment of benefits made under

an interlocutory order or decision of the commissioner as provided by this subtitle, consistent with the priorities established by rule by the commissioner;

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

(4) the reimbursement of an insurance carrier as provided by Section 408.0041(f-1).

(c) The commissioner shall appoint an administrator for the subsequent injury fund.

(d) Based on an actuarial assessment of the funding available under Section 403.007(e), the commissioner may make partial payment of insurance carrier claims under Subsection (b)(3).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.01, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 211, Sec. 2.01, eff. June 16, 2003; Acts 2003, 78th Leg., ch. 1296, Sec. 5(a), eff. June 20, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 265, Sec. 3.014, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1150, Sec. 3, eff. September 1, 2007.

SEC. 403.007. FUNDING OF SUBSEQUENT INJURY FUND.

(a) If a compensable death occurs and no legal beneficiary survives or a claim for death benefits is not timely made, the insurance carrier shall pay to the division for deposit to the credit of the subsequent injury fund an amount equal to 364 weeks of the death benefits otherwise payable.

(b) The insurance carrier may elect or the commissioner may order that death benefits payable to the fund be commuted on written approval of the commissioner. The commutation may be discounted for present payment at the rate established in Section 401.023, compounded annually.

(c) If a claim for death benefits is not filed with the division by a legal beneficiary on or before the first anniversary of the date of the death of the employee, it is presumed, for purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom a guardian has not been appointed.

(d) If the insurance carrier makes payment to the subsequent injury fund and it is later determined by a final award of the commissioner or the final judgment of a court of competent jurisdiction that a legal beneficiary is entitled to the death benefits, the commissioner shall order the fund to reimburse the insurance carrier for the amount overpaid to the fund.

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

(f) The commissioner's actuary or financial advisor shall report biannually to the department on the financial condition and projected assets and liabilities of the subsequent injury fund. The commissioner shall make the reports available to members of the legislature and the public. The division may purchase annuities to provide for payments due to claimants under this subtitle if the commissioner determines that the purchase of annuities is financially prudent for the administration of the fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.015, eff. September 1, 2005.

SEC. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES.

Administrative penalties collected under this subtitle shall be deposited in the general revenue fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 10, eff. September 1, 2011.

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LABOR CODE CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

SEC. 404.001. DEFINITIONS.

In this chapter:

(1) "Office" means the office of injured employee counsel.

(2) "Public counsel" means the injured employee public counsel.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION.

(a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.

(b) The office is administratively attached to the department but is independent of direction by the commissioner, the commissioner of insurance, and the department.

(c) The department shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:

(1) administrative assistance and services to the office, including budget planning and purchasing;

(2) personnel services; and

(3) computer equipment and support.

(d) The public counsel may enter into interagency contracts and other agreements with the commissioner of workers' compensation and the commissioner of insurance as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.003. SUNSET PROVISION.

The office of injured employee counsel is subject to Chapter 325, Government Code (Texas

Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.10, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 4.03, eff. June 14, 2013.

SEC. 404.004. PUBLIC INTEREST INFORMATION.

(a) The office shall prepare information of public interest describing the functions of the office.

(b) The office shall make the information available to the public and appropriate state agencies.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.005. ACCESS TO PROGRAMS AND FACILITIES.

(a) The office shall 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.

(b) The office shall comply with federal and state laws for program and facility accessibility.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.006. RULEMAKING.

(a) The public counsel shall adopt rules as necessary to implement this chapter.

(b) Rulemaking under this section is subject to Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.007. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION.

(a) The office shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009,

Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The office's alternative dispute resolution policy does not affect the manner in which the office participates in the division's administrative dispute resolution process or the department's alternative dispute resolution process through the office's administrative attachment to the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 2, eff. September 1, 2011.

SEC. 404.008. COMPLAINTS.

(a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

SEC. 404.051. APPOINTMENT; TERM.

(a) The governor, with the advice and consent of the senate, shall appoint the injured employee public counsel. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Section 401.011(16) does not apply to the use of the term "disability" in this subchapter.

(c) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term.

(d) In appointing the public counsel, the governor may consider recommendations made by groups that represent wage earners.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.052. QUALIFICATIONS.

To be eligible to serve as public counsel, a person must:

(1) be a resident of Texas;

(2) be licensed to practice law in this state;

(3) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the working public;

(4) have management experience;

(5) possess knowledge and experience with the workers' compensation system; and

(6) have experience with legislative procedures and administrative law.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL.

A person is not eligible for appointment as public counsel if the person or the person's

spouse:

(1) is employed by or participates in the management of a business entity or other organization that holds a license, certificate of authority, or other authorization from the department or division or that receives funds from the department or division;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the department, division, or the office; or

(3) uses or receives a substantial amount of tangible goods or funds from the department, division, or the office, other than compensation or reimbursement authorized by law.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.054. LOBBYING ACTIVITIES.

A person may not serve as public counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department, the division, or the office.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.055. GROUNDS FOR REMOVAL.

(a) It is a ground for removal from office that the public counsel:

(1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 404.052;

(2) violates a prohibition established by Section 404.053, 404.054, 404.056, or 404.057; or

(3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the public counsel or the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT.

(a) A former public counsel may not make any communication to or appearance before the division, the department, the commissioner, the commissioner of insurance, or an employee of the division or the department before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence a commissioner or commissioner of insurance decision or action, unless the person is acting on the person's own behalf and without remuneration.

(b) A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the division or the department before the second anniversary of the date the person ceases to serve as public counsel.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(d) A former employee of the office may not:

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

(2) represent a person before the division or the department or a court in a matter:

(A) in which the employee was personally involved while associated with the office; or

(B) that was within the employee's official responsibility while the employee was associated with the office.

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

(f) 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.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.057. TRADE ASSOCIATIONS.

(a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel if the person has been, within the previous two years:

(1) an officer, employee, or paid consultant of a trade association in the field of workers' compensation; or

(2) the spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

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SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

SEC. 404.101. GENERAL DUTIES.

(a) The office shall, as provided by this subtitle:

(1) provide assistance to workers' compensation claimants;

(2) advocate on behalf of injured employees as a class regarding rulemaking by the commissioner and commissioner of insurance relating to workers' compensation;

(3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and

(4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(b) The office:

(1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and

(2) shall, as provided by this subtitle:

(A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;

(B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the division or department;

(C) assist injured employees, through the ombudsman program, in the division's administrative dispute resolution system; and

(D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured employees.

(b-1) The office may seek and accept grant funding to enable the office to perform its duties under this subtitle. This subsection does not authorize the office to seek or accept payment from an

injured employee.

(c) The office may not appear or intervene, as a party or otherwise, before the commissioner, commissioner of insurance, division, or department on behalf of an individual injured employee, except through the ombudsman program.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 3, eff. September 1, 2011.

SEC. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES.

(a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:

(1) is abusive or violent to or who threatens any employee of the office;

(2) requests assistance in claiming benefits not provided by law; or

(3) commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.

(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.

(c) The office shall notify and cooperate with the appropriate law enforcement authority and the Department of Insurance, Fraud Unit, if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1261, Sec. 1, eff. September 1, 2009.

SEC. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL.

The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.103. OPERATION OF OMBUDSMAN PROGRAM.

(a) The office shall operate the ombudsman program under Subchapter D.

(b) The public counsel shall assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings.

(c) The office shall coordinate services provided by the ombudsman program with services provided by the Department of Assistive and Rehabilitative Services.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.104. AUTHORITY TO APPEAR OR INTERVENE.

The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner, commissioner of insurance, division, or department on behalf of injured employees as a class in matters involving rules, agency policies, and forms affecting the workers' compensation system that the commissioner or the commissioner of insurance adopts or approves;

(2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner, commissioner of insurance, division, or department, as a party or otherwise, on behalf of injured employees as a class in a

matter involving rates, rules, agency policies, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES.

(a) The office, through the ombudsman program, may appear before the commissioner, division, or State Office of Administrative Hearings to provide assistance to an individual injured employee during:

(1) a workers' compensation administrative dispute resolution process; or

(2) an enforcement action by the department or division against an employee for a violation of the Texas Workers' Compensation Act.

(b) This chapter may not be construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261, Sec. 2, eff. September 1, 2009.

SEC. 404.106. LEGISLATIVE REPORT.

(a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than January 1 of each odd-numbered year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide

adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

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

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

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 7, eff. September 1, 2011.

SEC. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL.

The public counsel:

(1) is entitled to the same access as a party, other than division staff or department staff, to division or department records available in a proceeding before the commissioner, commissioner of insurance, division, or department under the authority granted to the public counsel by this chapter; and

(2) is entitled to obtain discovery under Chapter 2001, Government Code, of any nonprivileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner, commissioner of insurance, division, or department as authorized by this chapter.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.108. LEGISLATIVE RECOMMENDATIONS.

The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees as a class.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.

SEC. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE.

The public counsel shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, a notice of injured employee

rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules. A right or responsibility adopted under this section must be consistent with the requirements of this subtitle and division rules. This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261, Sec. 3, eff. September 1, 2009.

SEC. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS.

(a) Confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058, 401.105, 401.106, 441.201, and 501.158, Insurance Code, as applicable, and Section 404.111, apply to the public counsel.

(b) An employee of the office may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. This subsection does not prohibit or alter the office's duty to notify and cooperate with appropriate law enforcement authorities under Section 404.1015(c).

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261, Sec. 4, eff. September 1, 2009.

SEC. 404.111. ACCESS TO INFORMATION.

(a) When assisting an injured employee, the office is entitled to the same access to information related to the employee's injury and workers' compensation claim as the employee or any other party to the claim.

(b) The office may not access information under Subsection (a) that is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) In furtherance of assisting an employee under Section 404.105(a)(2), the office may not access information under Section 404.111(a) to which the employee is not otherwise entitled. If the office possesses any information made confidential by the Texas Workers' Compensation Act or any other laws of this state to which the employee is not otherwise entitled, that information may not be disclosed to the employee or any other party assisting an employee under Section 404.105(a)(2). Nothing in this subsection prohibits or alters the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 8, eff. September 1, 2011.

(e) The office may not make public any confidential information provided to the office under this chapter. Except as provided by Subsection (c), the office may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a health care provider or an injured employee;

(2) reveals the zip code of an injured employee's primary residence;

(3) discloses a health care provider discount or a differential between a payment and a billed charge; or

(4) relates to an actual payment made by a payer to an identified health care provider.

(f) Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091.

(g) Information on health care providers and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies providers and injured employees is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

(h) Notwithstanding Subsection (e)(2), the office may use zip code information to analyze information on a geographical basis.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261, Sec. 5, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 4, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 8, eff. September 1, 2011.

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SUBCHAPTER D. OMBUDSMAN PROGRAM

SEC. 404.151. OMBUDSMAN PROGRAM.

(a) The office shall maintain an ombudsman program as provided by this subchapter to assist injured employees and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

(1) meet with or otherwise provide information to injured employees;

(2) investigate complaints;

(3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees;

(4) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.041 and amended by Acts 2005, 79th Leg., Ch. 265, Sec. 3.017, eff. September 1, 2005.

SEC. 404.152. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS.

(a) At least one specially qualified employee in each division office shall be an ombudsman designated by the office of injured employee counsel, who shall perform the duties under this subchapter as the person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

(A) this subtitle and the provisions of Subtitle C that relate to claims management;

(B) other laws relating to workers' compensation; and

(C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);

(2) have demonstrated experience in handling and resolving problems for the general public;

(3) possess strong interpersonal skills; and

(4) have at least one year of demonstrated experience in the field of workers' compensation.

(c) The public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:

(1) include education regarding this subtitle, rules adopted under this subtitle, and decisions of the appeals panel, with emphasis on benefits and the dispute resolution process;

(2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter; and

(3) incorporate the requirements of Section 404.103(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Redesignated from Labor Code Sec. 409.041(c) and amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 8, eff. Sept. 1, 1997.
Redesignated from Labor Code, Section 409.042 and amended by Acts 2005, 79th Leg., Ch. 265, Sec. 3.017, eff. September 1, 2005.

SEC. 404.153. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION.

(a) Each employer shall notify its employees of the ombudsman program in the manner prescribed by the office.

(b) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Redesignated from Labor Code Sec. 409.041(d) and amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.043 and amended by Acts 2005, 79th Leg., Ch.

265, Sec. 3.017, eff. September 1, 2005.

SEC. 404.154. PUBLIC INFORMATION.

The office shall widely disseminate information about the ombudsman program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 409.042 by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.044 and amended by Acts 2005, 79th Leg., Ch. 265, Sec. 3.017, eff. September 1, 2005.

SEC. 404.155. COST FOR CERTAIN COPIES OF MEDICAL RECORDS; ADMINISTRATIVE VIOLATION.

(a) At the written request of an ombudsman designated under this subchapter who is assisting a specific injured employee, a health care provider shall provide copies of the injured employee's medical records to the ombudsman at no cost to the ombudsman or the office.

(b) The workers' compensation insurance carrier is liable to the health care provider for the cost of providing copies of the employee's medical records under this section. The insurance carrier may not deduct that cost from any benefit to which the employee is entitled.

(c) The amount charged for providing copies of an injured employee's medical records under this section is the amount prescribed by rules adopted by the commissioner for copying medical records.

(d) A health care provider may not require payment for the cost of providing copies of an injured employee's medical records under this section before providing the copies to the ombudsman.

(e) The public counsel may adopt rules regarding a time frame for the provision of copies of an injured employee's medical records under this section and any other matter relating to provision of those copies.

(f) A health care provider or insurance carrier that fails to comply with the requirements of this section or rules adopted under this section commits an administrative violation. The commissioner shall enforce a violation under this subsection in accordance with Chapter 415.

Added by Acts 2007, 80th Leg., R.S., Ch. 1009, Sec. 1, eff. June 15, 2007.

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LABOR CODE CHAPTER 405. WORKERS' COMPENSATION RESEARCH

SEC. 405.001. DEFINITION.

In this chapter, "group" means the workers' compensation research and evaluation group.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.018, eff. September 1, 2005.

SEC. 405.002. WORKERS' COMPENSATION RESEARCH DUTIES OF DEPARTMENT.

(a) The workers' compensation research and evaluation group is located within the department and serves as a resource for the commissioner of insurance on workers' compensation issues.

(b) The department may apply for and spend grant funds to implement this chapter.

(c) The department shall ensure that all research reports prepared under this chapter or by the former Research and Oversight Council on Workers' Compensation are accessible to the public through the Internet to the extent practicable.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.019, eff. September 1, 2005.

SEC. 405.0025. RESEARCH DUTIES OF GROUP.

(a) The group shall conduct professional studies and research related to:

(1) the delivery of benefits;

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

(3) insurance rates and ratemaking procedures;

(4) rehabilitation and reemployment of injured employees;

(5) the quality and cost of medical benefits;

(6) employer participation in the workers' compensation system;

(7) employment health and safety issues; and

(8) other matters relevant to the cost, quality, and operational effectiveness of the

workers' compensation system.

(b) The group shall:

(1) objectively evaluate the impact of the workers' compensation health care networks certified under Chapter 1305, Insurance Code, on the cost and the quality of medical care provided to injured employees; and

(2) report the group's findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature not later than December 1 of each even-numbered year.

(c) At a minimum, the report required under Subsection (b) must evaluate the impact of workers' compensation health care networks on:

(1) the average medical and indemnity cost per claim;

(2) access and utilization of health care;

(3) injured employee return-to-work outcomes;

(4) injured employee satisfaction;

(5) injured employee health-related functional outcomes;

(6) the frequency, duration, and outcome of complaints; and

(7) the frequency, duration, and outcome of disputes regarding medical benefits.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.020, eff. September 1, 2005.

SEC. 405.0026. RESEARCH AGENDA.

(a) The group shall prepare and publish annually in the Texas Register a proposed workers' compensation research agenda for the commissioner of insurance review and approval.

(b) The commissioner of insurance shall:

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

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

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.020, eff. September 1, 2005.

SEC. 405.003. FUNDING; MAINTENANCE TAX.

(a) The group's duties under this chapter are funded through the assessment of a maintenance tax collected annually from all insurance carriers, and self-insurance groups that hold certificates of approval under Chapter 407A, except governmental entities.

(b) The department shall set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations. The tax rate for insurance companies may not exceed one-tenth of one percent of the correctly reported gross workers' compensation insurance premiums. The tax rate for certified self-insurers may not exceed one-tenth of one percent of the total tax base of all certified self-insurers, as computed under Section 407.103(b). The tax rate for self-insurance groups described by Subsection (a) may not exceed one-tenth of one percent of the group's gross premium for the group's retention, excluding premium collected by the group for excess insurance.

(c) The tax imposed under Subsection (a) is in addition to all other taxes imposed on those insurance carriers for workers' compensation purposes.

(d) The tax on insurance companies and on self-insurance groups described by Subsection (a) shall be assessed, collected, and paid in the same manner and at the same time as the maintenance tax established for the support of the department under Chapter 255, Insurance Code. The tax on certified self-insurers shall be assessed, collected, and paid in the same manner and at the same time as the self-insurer maintenance tax collected under Section 407.104.

(e) Amounts received under this section shall be deposited in the general revenue fund in accordance with Section 251.004, Insurance Code, to be used:

(1) for the operation of the group's duties under this chapter; and

(2) to reimburse the general revenue fund in accordance with Section 201.052, Insurance Code.

(f) Section 403.095, Government Code, does not apply in relation to amounts received under this section or to any special account into which the amounts are deposited.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.021, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 728, Sec. 11.136, eff. September 1, 2005.

SEC. 405.004. COORDINATION WITH OTHER STATE AGENCIES; CONFIDENTIALITY.

(a) As required to fulfill the group's objectives under this chapter, the group is entitled to access to the files and records of:

(1) the division;

(2) the Texas Workforce Commission;

(3) the Department of Assistive and Rehabilitative Services;

(4) the office of injured employee counsel;

(5) the State Office of Risk Management; and

(6) other appropriate state agencies.

(b) A state agency shall assist and cooperate in providing information to the group.

(c) Information that is confidential under state law is accessible to the department under rules of confidentiality and remains confidential.

(d) Except as provided by this subsection, the identity of an individual or entity selected to participate in a survey conducted by the group or who participates in such a survey is confidential and is not subject to public disclosure under Chapter 552, Government Code. This subsection does not prohibit the identification of a workers' compensation health care network in a report card issued under Section 1305.502, Insurance Code, provided that the report card may not identify any injured employee or other individual.

(e) A working paper, including all documentary or other information, prepared or maintained by the group in performing the group's duties under this chapter or other law to conduct an

evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021, Government Code.

(f) A record held by another entity that is considered to be confidential by law and that the group receives in connection with the performance of the group's functions under this chapter or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021, Government Code.

(g) The commissioner of insurance shall adopt rules as necessary to establish data reporting requirements to support the research duties under this chapter. This section may not be construed as requiring additional reporting requirements on nonsubscribing employers.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.022, eff. September 1, 2005.

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LABOR CODE CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES

SEC. 406.001. DEFINITION.

In this subchapter, "employer" means a person who employs one or more employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.002. COVERAGE GENERALLY ELECTIVE.

(a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage.

(b) An employer who elects to obtain coverage is subject to this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.003. METHODS OF OBTAINING COVERAGE.

An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as provided by this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.004. EMPLOYER NOTICE TO DIVISION.

(a) An employer who does not obtain workers' compensation insurance coverage shall notify the division in writing, in the time and as prescribed by commissioner rule, that the employer elects not to obtain coverage.

(b) The commissioner shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the division about the employer's business.

(c) The division may contract with the Texas Workforce Commission or the comptroller for assistance in collecting the notification required under this section. Those agencies shall cooperate with the division in enforcing this section.

(d) The employer notification filing required under this section shall be filed with the division in accordance with Section 406.009.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.47(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.023, eff. September 1, 2005.

SEC. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION.

(a) An employer shall notify each employee as provided by this section whether or not the employer has workers' compensation insurance coverage.

(b) The employer shall notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired.

(c) Each employer shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. The commissioner may adopt rules relating to the form and content of the notice. The employer shall revise the notice when the information contained in the notice is changed.

(d) An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination or cancellation of the coverage, takes effect.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.024, eff. September 1, 2005.

SEC. 406.006. INSURANCE COVERAGE AND CLAIM ADMINISTRATION REPORTING REQUIREMENTS; ADMINISTRATIVE VIOLATION.

(a) An insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, and a political subdivision shall file notice of the coverage and claim administration contact information with the division 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. Coverage takes effect on the date on which a binder is issued, a later date and time agreed to by the parties, on the date provided by the certificate of self-insurance, or on the date provided in an interlocal agreement that provides for self-insurance. The commissioner may adopt rules that establish the coverage and claim administration contact information required under this subsection.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) An insurance company, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, or a political subdivision commits an administrative violation if the person fails to file notice with the division as provided by this section.

(d) In this section, "political subdivision" has the meaning assigned by Section 504.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.48(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 2.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.025, eff. September 1, 2005.

SEC. 406.007. TERMINATION OF COVERAGE BY EMPLOYER; NOTICE.

(a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the division by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. The notice must include a statement certifying the date that notice was provided or will be provided to

affected employees under Section 406.005.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

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

(1) the 30th day after the date of filing of notice with the division under Subsection (a); or

(2) the cancellation date of the policy.

(d) The coverage shall be extended until the date on which the termination of coverage takes effect, and the employer is obligated for premiums due for that period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.49(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.026, eff. September 1, 2005.

SEC. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY INSURANCE COMPANY; NOTICE.

(a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal by certified mail or in person to the employer and the division not later than:

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

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

(A) fraud in obtaining coverage;

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

(C) failure to pay a premium when due;

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

(i) reasonable recommendations for loss control; or

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

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

(b) The notice required under this section shall be filed with the division.

(c) Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.50(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.027, eff. September 1, 2005.

SEC. 406.009. COLLECTING AND MAINTAINING INFORMATION; MONITORING AND ENFORCING COMPLIANCE.

(a) The division shall collect and maintain the information required under this subchapter and shall monitor compliance with the requirements of this subchapter.

(b) The commissioner may adopt rules as necessary to enforce this subchapter.

(c) The commissioner may designate a data collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the data collection requirements of this subchapter. The commissioner may establish the form, manner, and procedure for the transmission of information to the division. A data collection agent designated under this subsection must be qualified and may collect fees in the manner described by Section 401.024.

(d) The division may require an employer or insurance carrier subject to this subtitle to identify or confirm an employer's coverage status and claim administration contact information as necessary to achieve the purposes of this subtitle.

(e) An employer or insurance carrier commits an administrative violation if that person fails to comply with Subsection (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.51(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.028, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 410, Sec. 2, eff. June 17, 2011.

SEC. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION.

(a) An insurance carrier shall provide claims service:

(1) through offices of the insurance carrier located in this state; or

(2) by other resident representatives with full power to act for the insurance carrier.

(b) Each insurance carrier shall designate persons to provide claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier. If an insurance carrier uses the services of a person required to hold a certificate of authority under Chapter 4151, Insurance Code, the carrier must comply with the requirements of that chapter.

(c) The commissioner by rule shall further specify the requirements of this section.

(d) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.029, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1176, Sec. 3.01, eff. September 1, 2007.

SEC. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION.

(a) The commissioner by rule may require an insurance carrier to designate a representative in Austin to act as the insurance carrier's agent before the division in Austin. Notice to the

designated agent constitutes notice to the insurance carrier.

(b) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.030, eff. September 1, 2005.

SEC. 406.012. ENFORCEMENT OF SUBCHAPTER.

The commission shall enforce the administrative penalties established under this subchapter in accordance with Chapter 415.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER B. COVERAGE REQUIREMENTS

SEC. 406.031. LIABILITY FOR COMPENSATION.

(a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this subtitle; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.032. EXCEPTIONS.

An insurance carrier is not liable for compensation if:

(1) the injury:

(A) occurred while the employee was in a state of intoxication;

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

(D) arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or

(E) arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public; or

(2) the employee's horseplay was a producing cause of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF.

(a) In an action against an employer by or on behalf of an employee who is not covered by workers' compensation insurance obtained in the manner authorized by Section 406.003 to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of defenses at common law, including the defenses described by Subsection (a).

(c) The employer may defend the action on the ground that the injury was caused:

(1) by an act of the employee intended to bring about the injury; or

(2) while the employee was in a state of intoxication.

(d) In an action described by Subsection (a), the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment.

(e) A cause of action described in Subsection (a) may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in Subsection (a) before the employee's injury or death is void and unenforceable.

(f) A cause of action described by Subsection (a) may not be waived by an employee after the employee's injury unless:

(1) the employee voluntarily enters into the waiver with knowledge of the waiver's effect;

(2) the waiver is entered into not earlier than the 10th business day after the date of

the initial report of injury;

(3) the employee, before signing the waiver, has received a medical evaluation from a nonemergency care doctor; and

(4) the waiver is in a writing under which the true intent of the parties is specifically stated in the document.

(g) The waiver provisions required under Subsection (f) must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in a type larger than the type contained in the body of the agreement or in contrasting colors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 16.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.031, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1108, Sec. 1, eff. September 1, 2011.

SEC. 406.034. EMPLOYEE ELECTION.

(a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b), an employee of an employer waives the employee's right of action at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee waives coverage under this subtitle and retains all rights of action under common law. The employee must notify the employer not later than the fifth day after the date on which the employee:

(1) begins the employment; or

(2) receives written notice from the employer that the employer has obtained workers' compensation insurance coverage if the employer is not a covered employer at the time of the employment but later obtains the coverage.

(c) An employer may not require an employee to retain common-law rights under this

section as a condition of employment.

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage in connection with an agreement with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1108, Sec. 2, eff. September 1, 2011.

SEC. 406.035. WAIVER OF COMPENSATION PROHIBITED.

Except as provided by this subtitle, an agreement by an employee to waive the employee's right to compensation is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE

SEC. 406.051. SECURITY BY COMMERCIAL INSURANCE.

(a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers' compensation insurance policy under this subchapter.

(b) The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance.

(c) The employer may not transfer:

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

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

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

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

(5) the obligation to comply with a commissioner order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 4, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.032, eff. September 1, 2005.

SEC. 406.052. EFFECT OF OTHER INSURANCE COVERAGE.

(a) A contract entered into to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this subtitle is void unless the contract also covers liability for payment of compensation under this subtitle.

(b) This section does not prohibit an employer who is not required to have workers' compensation insurance coverage and who has elected not to obtain workers' compensation insurance coverage from obtaining insurance coverage on the employer's employees if the insurance is not represented to any person as providing workers' compensation insurance coverage authorized under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.053. ALL STATES COVERAGE.

The Texas Department of Insurance shall coordinate with the appropriate agencies of other states to:

(1) share information regarding an employer who obtains all states coverage; and

(2) ensure that the department has knowledge of an employer who obtains all states coverage in another state but fails to file notice with the department.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER D. EXTRATERRITORIAL COVERAGE

SEC. 406.071. EXTRATERRITORIAL COVERAGE.

(a) An employee who is injured while working in another jurisdiction or the employee's legal beneficiary is entitled to all rights and remedies under this subtitle if:

(1) the injury would be compensable if it had occurred in this state; and

(2) the employee has significant contacts with this state or the employment is principally located in this state.

(b) An employee has significant contacts with this state if the employee was hired or recruited in this state and the employee:

(1) was injured not later than one year after the date of hire; or

(2) has worked in this state for at least 10 working days during the 12 months preceding the date of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.072. PRINCIPAL LOCATION.

The principal location of a person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.073. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION.

(a) An employee whose work requires regular travel between this state and at least one other jurisdiction may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the division on request.

(c) A person commits an administrative violation if the person violates Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.033, eff. September 1, 2005.

SEC. 406.074. INTERJURISDICTIONAL AGREEMENTS.

(a) The commissioner may enter into an agreement with an appropriate agency of another jurisdiction with respect to:

(1) conflicts of jurisdiction;

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

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

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

(b) An executed agreement that has been adopted as a rule by the commissioner binds all subject employers and employees.

(c) In this section, "appropriate agency" means an agency of another jurisdiction that administers the workers' compensation laws of that jurisdiction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.034, eff. September 1, 2005.

SEC. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION.

(a) An injured employee who elects to pursue the employee's remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the benefits that the employee would have

received had the claim been made under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES

SEC. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE.

(a) The following employees are not subject to this subtitle:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) except as provided by Subchapter H, a farm or ranch employee.

(b) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees exempted from coverage under Subsection (a)(1) or (a)(3). Obtaining that coverage constitutes acceptance by the employer of the rights and responsibilities imposed under this subtitle as of the effective date of the coverage for as long as the coverage remains in effect.

(c) An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses described by Section 406.033, but this section does not reinstate or otherwise affect the availability of those or other defenses at common law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES.

(a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this subtitle.

(b) A nonresident alien employee or legal beneficiary, at the election of the employee or legal beneficiary, may be represented officially by a consular officer of the country of which the employee or legal beneficiary is a citizen. That officer may receive benefit payments for distribution to the employee or legal beneficiary. The receipt of the payments constitutes full discharge of the insurance carrier's liability for those payments.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.093. LEGALLY INCOMPETENT EMPLOYEES.

(a) The guardian of an injured employee who is a minor or is otherwise legally incompetent may exercise on the employee's behalf the rights and privileges granted to the employee under this subtitle.

(b) The commissioner by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.035, eff. September 1, 2005.

SEC. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION.

(a) An employer who elects to provide workers' compensation insurance coverage may include in the coverage a real estate salesperson or broker who is:

(1) licensed under Chapter 1101, Occupations Code; and

(2) compensated solely by commissions.

(b) If coverage is elected by the employer, the insurance policy must specifically name the salesperson or broker. The coverage continues while the policy is in effect and the named salesperson or broker is endorsed on the policy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.788, eff. Sept. 1, 2003.

SEC. 406.095. CERTAIN PROFESSIONAL ATHLETES.

(a) A professional athlete employed under a contract for hire or a collective bargaining agreement who is entitled to benefits for medical care and weekly benefits that are equal to or greater than the benefits provided under this subtitle may not receive benefits under this subtitle and the equivalent benefits under the contract or collective bargaining agreement. An athlete covered by such a contract or agreement who sustains an injury in the course and scope of the

athlete's employment shall elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement.

(b) The commissioner by rule shall establish the procedures and requirements for an election under this section.

(c) In this section, "professional athlete" means a person employed as a professional athlete by a franchise of:

(1) the National Football League;

(2) the National Basketball Association;

(3) the American League of Professional Baseball Clubs;

(4) the National League of Professional Baseball Clubs;

(5) the International Hockey League;

(6) the National Hockey League; or

(7) the Central Hockey League.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.036, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 815, Sec. 1, eff. September 1, 2005.

SEC. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS.

(a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.

(c) A contractor who has a contract that requires workers' compensation insurance coverage

may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.097. EXECUTIVE EMPLOYEES OF CERTAIN BUSINESS ENTITIES.

(a) A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self-insure.

(b) The dual capacity doctrine does not apply to a corporate executive officer with an equity ownership in the covered business entity of at least 25 percent and will not invalidate the exclusion of such a corporate executive officer from coverage under Subsection (a).

(c) A sole proprietor or partner of a covered business entity or a corporate officer with an

equity ownership in a covered business entity of at least 25 percent may be excluded from coverage under this section notwithstanding Section 406.096.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.20, eff. Sept. 1, 1995.

SEC. 406.098. VOLUNTEER EMERGENCY SERVICE MEMBERS AND PERSONNEL.

(a) An emergency service organization which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal functions of the organization. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law.

(b) In this section, unless a different meaning is plainly required by law:

(1) "Emergency service organization" means any organization established to provide for the general public:

(A) fire prevention and suppression;

(B) hazardous materials response operations; or

(C) emergency medical services.

(2) "Volunteer members" means individuals who are carried on the membership list of the organization as active participants and who receive no remuneration for their services.

(3) "Normal functions" means any response to, participation in, or departure from an incident scene; training; meetings; performance of equipment maintenance; or organizational functions.

(4) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state.

(c) The commissioner of insurance shall adopt rules governing the method of calculating

premiums for workers' compensation insurance coverage for volunteer members who are covered pursuant to this section.

Added by Acts 1995, 74th Leg., ch. 849, Sec. 1, eff. Aug. 28, 1995. Renumbered from Labor Code Sec. 406.097 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(63), eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.037, eff. September 1, 2005.

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SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS

SEC. 406.121. DEFINITIONS.

In this subchapter:

(1) "General contractor" means a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner operator.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(3) "Motor carrier" means a person who operates a motor vehicle over a public highway in this state to provide a transportation service or who contracts to provide that service.

(4) "Owner operator" means a person who provides transportation services under contract for a motor carrier. An owner operator is an independent contractor.

(5) "Subcontractor" means a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle, with a driver under contract, to transport passengers or property.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.122. STATUS AS EMPLOYEE.

(a) For purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this subtitle is an employee of that general contractor or motor carrier, unless the person is:

(1) operating as an independent contractor; or

(2) hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(b) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(c) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this subtitle if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE VIOLATION.

(a) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.

(b) If a general contractor has workers' compensation insurance to protect the general contractor's employees and if, in the course and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this subtitle and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (d).

(c) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator.

(d) If a general contractor or a motor carrier elects to provide coverage under Subsection (a) or (c), then, notwithstanding Section 415.006, the actual premiums, based on payroll, that are paid or incurred by the general contractor or motor carrier for the coverage may be deducted from the contract price or other amount owed to the subcontractor or owner operator by the general contractor or motor carrier.

(e) An agreement under this section makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state.

(f) A general contractor shall file a copy of an agreement entered into under this section with the general contractor's workers' compensation insurance carrier not later than the 10th day after the date on which the contract is executed. If the general contractor is a certified self-insurer, the copy must be filed with the division.

(g) A general contractor who enters into an agreement with a subcontractor under this section commits an administrative violation if the contractor fails to file a copy of the agreement as required by Subsection (f).

(h) Notwithstanding Subsection (b), a person who performs work or provides a service for an

oil or gas well operator and who is an independent contractor that has no employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the general contractor's workers' compensation insurance policy unless the independent contractor and the general contractor enter into an agreement under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 88, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.038, eff. September 1, 2005.

SEC. 406.124. CAUSE OF ACTION.

If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the intent to avoid liability as an employer under this subtitle, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall have a separate right of action against the subcontractor. The right of action against the subcontractor does not affect the employee's right to compensation under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.125. RESTRICTION OF UNSAFE WORK PRACTICES UNAFFECTED.

This subchapter does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to stop or change an unsafe work practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.126. EXEMPTION.

This subchapter does not apply to farm or ranch employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.127. EFFECT OF CERTAIN CONTRACTS OF HIRE.

An insurance company may not demand an insurance premium from an employer for

coverage of an independent contractor or an employee of an independent contractor if the independent contractor is under a contract of hire with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS

SEC. 406.141. DEFINITIONS.

In this subchapter:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of regular business, subcontracts all or part of the work to be performed to other persons.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job and not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as desired and may determine the pay of each helper; and

(C) is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.142. APPLICATION.

This subchapter applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing:

(1) a residential structure;

(2) a commercial structure that does not exceed three stories in height or 20,000 square feet in area; or

(3) an appurtenance to a structure described by Subdivision (1) or (2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.143. PROVISION OF WORKERS' COMPENSATION INSURANCE; INDEPENDENT CONTRACTOR WITHOUT EMPLOYEES.

(a) Unless the independent contractor and hiring contractor enter into an agreement under Section 406.144, the independent contractor is responsible for any workers' compensation

insurance coverage provided to an employee of the independent contractor, and the independent contractor's employees are not entitled to workers' compensation insurance coverage from the hiring contractor.

(b) An independent contractor without employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the hiring contractor's workers' compensation insurance policy unless the independent contractor and hiring contractor enter into an agreement under Section 406.144.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.144. ELECTION TO PROVIDE COVERAGE; AGREEMENT.

(a) Except as provided by this section, a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor or the independent contractor's employee, helper, or subcontractor. An independent contractor and a hiring contractor may enter into a written agreement under which the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance coverage from the contract price and that, for the purpose of providing workers' compensation insurance coverage, the hiring contractor is the employer of the independent contractor and the independent contractor's employees.

(b) A hiring contractor and independent contractor may enter into an agreement under Subsection (a) even if the independent contractor does not have an employee.

(c) An agreement under this section shall be filed with the division either by personal delivery or by registered or certified mail and is considered filed on receipt by the division.

(d) The hiring contractor shall send a copy of an agreement under this section to the hiring contractor's workers' compensation insurance carrier on filing of the agreement with the division.

(e) An agreement under this section makes the hiring contractor the employer of the independent contractor and the independent contractor's employees only for the purposes of the

workers' compensation laws of this state.

(f) The deduction of the cost of the workers' compensation insurance coverage from the independent contractor's contract price is permitted notwithstanding Section 415.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.039, eff. September 1, 2005.

SEC. 406.145. JOINT AGREEMENT.

(a) A hiring contractor and an independent subcontractor may make a joint agreement declaring that the subcontractor is an independent contractor as defined in Section 406.141(2) and that the subcontractor is not the employee of the hiring contractor. If the joint agreement is signed by both the hiring contractor and the subcontractor and filed with the division, the subcontractor, as a matter of law, is an independent contractor and not an employee, and is not entitled to workers' compensation insurance coverage through the hiring contractor unless an agreement is entered into under Section 406.144 to provide workers' compensation insurance coverage. The commissioner shall prescribe forms for the joint agreement.

(b) A joint agreement shall be delivered to the division by personal delivery or registered or certified mail and is considered filed on receipt by the division.

(c) The hiring contractor shall send a copy of a joint agreement signed under this section to the hiring contractor's workers' compensation insurance carrier on filing of the joint agreement with the division.

(d) The division shall maintain a system for accepting and maintaining the joint agreements.

(e) A joint agreement signed under this section applies to each hiring agreement between the hiring contractor and the independent contractor until the first anniversary of its filing date, unless a subsequent hiring agreement expressly states that the joint agreement does not apply.

(f) If a subsequent hiring agreement is made to which the joint agreement does not apply, the hiring contractor and independent contractor shall notify the division and the hiring contractor's

workers' compensation insurance carrier in writing.

(g) If a hiring contractor and an independent contractor have filed a joint agreement under this section, an insurance company may not require the payment of an insurance premium by a hiring contractor for coverage of an independent contractor or an independent contractor's employee, helper, or subcontractor other than under an agreement entered into in compliance with Section 406.144.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.040, eff. September 1, 2005.

SEC. 406.146. WRONGFUL INDUCEMENT PROHIBITED.

(a) A hiring contractor may not:

(1) wrongfully induce an employee to enter into a joint agreement under Section 406.145 stating that the employee is an independent contractor; or

(2) exert controls over an independent contractor or an employee of an independent contractor sufficient to make that person an employee under common-law tests.

(b) A hiring contractor does not exert employer-like controls over an independent contractor or an independent contractor's employee solely because of:

(1) controlling the hours of labor, if that control is exercised only to:

(A) establish the deadline for the completion of the work called for by the contract;

(B) schedule work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(C) schedule work to avoid disturbing neighbors during night or early morning hours or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(2) stopping or directing work solely to prevent or correct an unsafe work practice or

condition or to control work to ensure that the end product is in compliance with the contracted for result.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES

SEC. 406.161. DEFINITIONS.

In this subchapter:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who work for the benefit of a third party.

(4) "Migrant worker" means an individual who is:

(A) employed in agricultural labor of a seasonal or temporary nature; and

(B) required to be absent overnight from the worker's permanent place of residence.

(5) "Seasonal worker" means an individual who is:

(A) employed in agricultural or ranch labor of a seasonal or temporary nature; and

(B) not required to be absent overnight from the worker's permanent place of residence.

(6) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.162. SCOPE.

(a) This subtitle applies to an action to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker:

(A) employed on a truck farm, orchard, or vineyard;

(B) employed by a person with a gross annual payroll for the preceding year in an amount not less than the greater of the required payroll for the year preceding that year, adjusted for inflation, or $25,000; or

(C) working for a farmer, ranch operator, or labor agent who employs a migrant worker and doing the same work at the same time and location as the migrant worker; or

(3) an employee, other than a migrant or seasonal worker:

(A) for years before 1991, employed by a person with a gross annual payroll for the preceding year of at least $50,000; and

(B) for 1991 and subsequent years, employed by a person:

(i) with a gross annual payroll in an amount required for coverage of seasonal workers under Subdivision (2)(B); or

(ii) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(b) The comptroller shall prepare a consumer price index for this state and shall certify the applicable index factor to the division before October 1 of each year. The division shall adjust the gross annual payroll requirement under Subsection (a)(2)(B) accordingly.

(c) For the purposes of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for the agent's services and for the services of migrant

or seasonal workers but does not include wages paid to:

(1) the person or a member of the person's family, if the person is a sole proprietor;

(2) a partner in a partnership or a member of the partner's family; or

(3) a shareholder of a corporation in which all shareholders are family members or a member of the shareholder's family.

(d) This subchapter does not affect the application or interpretation of this subtitle as it relates to persons engaged in activities determined before January 1, 1985, not to be farm or ranch labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.041, eff. September 1, 2005.

SEC. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY.

(a) A labor agent who furnishes a migrant or seasonal worker is liable under this subtitle as if the labor agent were the employer of the worker, without regard to the right of control or other factors used to determine an employer-employee relationship.

(b) If the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal worker is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by the migrant or seasonal worker as provided by this subtitle, and, for that purpose, the migrant or seasonal worker is considered the employee of the person with whom the labor agent contracts and that person may obtain workers' compensation insurance coverage for that worker as provided by this subtitle. If a migrant or seasonal worker is covered by workers' compensation insurance coverage, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this subtitle.

(c) A labor agent shall notify each person with whom the agent contracts of whether the agent has workers' compensation insurance coverage. If the agent does have workers'

compensation insurance coverage, the agent shall present evidence of the coverage to each person with whom the agent contracts.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS.

(a) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover the person, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered.

(b) The elective coverage continues while the policy is in effect and the named individual is endorsed on the policy.

(c) A member of an employer's family is exempt from coverage under the policy unless an election for that coverage is made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS.

(a) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this subchapter is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of an independent contractor.

(b) In this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of the employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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LABOR CODE CHAPTER 407. SELF-INSURANCE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 407.001. DEFINITIONS.

In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(17), eff. September 1, 2005.

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

(A) who has suspended payment of compensation as determined by the division;

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

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

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

(4) "Incurred liabilities for compensation" means the amount equal to the sum of:

(A) the estimated amount of the liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported; and

(B) the estimated amount necessary to provide for the administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means a person who provides claims service for a certified self-insurer, who is a separate business entity from the affected certified self-insurer, and who holds a certificate of authority under Chapter 4151.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.042, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(17), eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 728, Sec. 11.137, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1176, Sec. 3.02, eff. September 1, 2007.

SUBCHAPTER B. DIVISION OF SELF-INSURANCE REGULATION

SEC. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER.

The commissioner shall:

(1) approve or deny the issuance or revocation of a certificate of authority to self-insure; and

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.0421, eff. September 1, 2005.

SEC. 407.024. CLAIM OR SUIT.

(a) A claim or suit brought by a claimant or a certified self-insurer shall be styled "in re: [name of employee] and [name of certified self-insurer]."

(b) The commissioner is the agent for service of process for a claim or suit brought by a workers' compensation claimant against the qualified claims servicing contractor of a certified self-insurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.0422, eff. September 1, 2005.

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SUBCHAPTER C. CERTIFICATE OF AUTHORITY TO SELF-INSURE

SEC. 407.041. APPLICATION.

(a) An employer who desires to self-insure under this chapter must submit an application to the division for a certificate of authority to self-insure.

(b) The application must be:

(1) submitted on a form adopted by the commissioner; and

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

(c) Not later than the 60th day after the date on which the application is received, the commissioner shall approve or deny the application.

(d) During the pendency of the approval or denial of the application, the applicant may not operate as a self-insurer under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.043, eff. September 1, 2005.

SEC. 407.042. ISSUANCE OF CERTIFICATE.

With the approval of the Texas Certified Self-Insurer Guaranty Association, the commissioner shall issue a certificate of authority to self-insure to an applicant who meets the certification requirements under this chapter and pays the required fee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.044, eff. September 1, 2005.

SEC. 407.043. PROCEDURES ON DENIAL OF APPLICATION.

(a) If the commissioner determines that an applicant for a certificate of authority to self-insure does not meet the certification requirements, the division shall notify the applicant in writing of the commissioner's determination, stating the specific reasons for the denial and the conditions to be met before approval may be granted.

(b) The applicant is entitled to a reasonable period, as determined by the commissioner, to

meet the conditions for approval before the application is considered rejected for purposes of appeal.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.045, eff. September 1, 2005.

SEC. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL.

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

(b) The commissioner may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.046, eff. September 1, 2005.

SEC. 407.045. WITHDRAWAL FROM SELF-INSURANCE.

(a) A certified self-insurer may withdraw from self-insurance at any time with the approval of the commissioner. The commissioner shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commissioner that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer.

(b) A certified self-insurer who withdraws from self-insurance shall surrender to the division the certificate of authority to self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.047, eff. September 1, 2005.

SEC. 407.046. REVOCATION OF CERTIFICATE OF AUTHORITY.

(a) The commissioner may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with requirements or conditions established by this chapter or a rule

adopted by the commissioner under this chapter.

(b) If the commissioner believes that a ground exists to revoke a certificate of authority to self-insure, the commissioner shall refer the matter to the State Office of Administrative Hearings. That office shall hold a hearing to determine if the certificate should be revoked. The hearing shall be conducted in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date.

(d) If the certified self-insurer fails to show cause why the certificate should not be revoked, the commissioner immediately shall revoke the certificate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.21, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.048, eff. September 1, 2005.

SEC. 407.047. EFFECT OF REVOCATION.

(a) A certified self-insurer whose certificate of authority to self-insure is revoked is not relieved of the obligation for compensation to an employee for an accidental injury or occupational disease that occurred during the period of self-insurance.

(b) The security required under Sections 407.064 and 407.065 shall be maintained with the division or under the division's control until each claim for workers' compensation benefits is paid, is settled, or lapses under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.049, eff. September 1, 2005.

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SUBCHAPTER D. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

SEC. 407.061. GENERAL REQUIREMENTS.

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

(b) The applicant must:

(1) be a business entity, or one of the consolidated subsidiaries of the entity, that is required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and furnish financial information prepared in accordance with the requirements for those business entities; or

(2) annually furnish audited financial statements comparable in form and manner of preparation to those filed by a business entity required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(c) The applicant must present a plan for claims administration that:

(1) is acceptable to the commissioner;

(2) designates a qualified claims servicing contractor; and

(3) complies with Chapter 4151, Insurance Code.

(d) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(e) The applicant must provide to the commissioner a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant. The contract must be acceptable to the commissioner and must be submitted in a standard form adopted by the commissioner, if the commissioner adopts such a form.

(f) The commissioner shall adopt rules for the requirements for the financial statements required by Subsection (b)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.050, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1176, Sec. 3.03, eff. September 1, 2007.

SEC. 407.062. FINANCIAL STRENGTH AND LIQUIDITY REQUIREMENTS.

In assessing the financial strength and liquidity of an applicant, the commissioner shall consider:

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

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

(3) the applicant's compensation loss history;

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

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

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

(7) financial ratios, indexes, or other financial measures that the commissioner finds appropriate; and

(8) any other information considered appropriate by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.051, eff. September 1, 2005.

SEC. 407.063. PREMIUM REQUIREMENTS.

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

(b) Instead of the state premium required under this section, the applicant may present

evidence of a total unmodified national workers' compensation insurance premium of at least $10 million.

(c) Expired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.052, eff. September 1, 2005.

SEC. 407.064. GENERAL SECURITY REQUIREMENTS.

(a) Each applicant shall provide security for incurred liabilities for compensation through a deposit with the division, in a combination and from institutions approved by the commissioner, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the commissioner as payee; or

(3) an irrevocable letter of credit that names the commissioner as payee.

(b) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant shall notify the division in writing not later than the 60th day before the effective date of the cancellation of the original letter of credit.

(c) An estimate of the applicant's incurred liabilities for compensation must be signed and sworn to by an accredited casualty actuary and submitted with the application.

(d) The sum of the deposited securities must be at least equal to the greater of:

(1) $300,000; or

(2) 125 percent of the applicant's incurred liabilities for compensation.

(e) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under this section while the cash or securities are on deposit with the division shall be paid to the applicant quarterly.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.053, eff. September 1, 2005.

SEC. 407.065. SPECIFIC SECURITY REQUIREMENTS.

(a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or document indicating issuance of an irrevocable letter of credit must be in a form approved by the commissioner and must be issued by an institution acceptable to the commissioner. The instrument may be released only according to its terms but may not be released by the deposit of additional security.

(c) The certified self-insurer shall deposit the security with the comptroller on behalf of the division. The comptroller may accept securities for deposit or withdrawal only on the written order of the commissioner.

(d) On receipt by the division of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets in favor of the commissioner to the extent of any then unsecured portion of the self-insurer's incurred liabilities for compensation. That perfected security interest transfers to cash or securities deposited by the self-insurer with the division after the date of the request and may be released only on:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the division.

(e) The certified self-insurer loses all right to, title to, interest in, and control of the assets or obligations submitted or deposited as security. The commissioner may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) If the commissioner determines that a security deposit is not immediately available for the payment of compensation, the commissioner shall determine the appropriate method of payment and claims administration, which may include payment by the surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.12, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.054, eff. September 1, 2005.

SEC. 407.066. EFFECT OF DISPUTE.

(a) The commissioner, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) an issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) an issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(b) A party aggrieved by a decision of the commissioner is entitled to judicial review. Venue for an appeal is in Travis County.

(c) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination

staying the payment of claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.055, eff. September 1, 2005.

SEC. 407.067. EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE VIOLATION.

(a) Each applicant shall obtain excess insurance or reinsurance to cover liability for losses not paid by the self-insurer in an amount not less than the amount required by the commissioner.

(b) The commissioner shall require excess insurance or reinsurance in at least the amount of $5 million per occurrence.

(c) A certified self-insurer shall notify the division not later than the 10th day after the date on which the certified self-insurer has notice of the cancellation or termination of excess insurance or reinsurance coverage required under this section.

(d) A person commits an administrative violation if the person violates Subsection (c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.056, eff. September 1, 2005.

SEC. 407.068. GUARANTEE BY PARENT ORGANIZATION.

If an applicant for a certificate of authority to self-insure is a subsidiary, the parent organization of the applicant must guarantee the obligations imposed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER E. POWERS AND DUTIES OF CERTIFIED SELF-INSURER

SEC. 407.081. ANNUAL REPORT.

(a) Each certified self-insurer shall file an annual report with the division. The commissioner shall prescribe the form of the report and shall furnish blank forms for the preparation of the report to each certified self-insurer.

(b) The report must:

(1) include payroll information, in the form prescribed by this chapter and the commissioner;

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

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

(c) Each certified self-insurer shall file with the division as part of the annual report annual independent financial statements that reflect the financial condition of the self-insurer. The division shall make a financial statement filed under this subsection available for public review.

(d) The division may require that the report include additional financial and statistical information.

(e) The certified self-insurer shall present evidence in the report of sufficient financial ability to meet all obligations under this chapter.

(f) The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commissioner.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.057, eff. September 1, 2005.

SEC. 407.082. EXAMINATION OF RECORDS; ADMINISTRATIVE VIOLATION.

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

(b) The certified self-insurer may maintain the books, records, and payroll information in locations outside this state.

(c) The material maintained by the certified self-insurer shall be open to examination by an authorized agent or representative of the division at reasonable times to ascertain the correctness of the information.

(d) The examination may be conducted at any location, including the division's Austin offices, or, at the certified self-insurer's option, in the offices of the certified self-insurer. The certified self-insurer shall pay the reasonable expenses, including travel expenses, of an inspector who conducts an inspection at its offices.

(e) An unreasonable refusal on the part of a certified self-insurer to make available for inspection the books, records, payroll information, or other required information constitutes grounds for the revocation of the certificate of authority to self-insure and is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.058, eff. September 1, 2005.

SEC. 407.083. PAYMENT OF INSURANCE AGENT'S COMMISSION.

This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER F. FINANCING OF SELF-INSURANCE PROGRAM

SEC. 407.101. FUND.

(a) The workers' compensation self-insurance fund is a fund in the state treasury. The fund may be used only for the regulation of certified self-insurers.

(b) The department shall deposit the application fee for a certificate of authority to self-insure in the Texas Department of Insurance operating account to the credit of the division.

(c) Any amount remaining in the fund at the end of a fiscal year shall be used to reduce the regulatory fee assessed under Section 407.102 in the succeeding fiscal year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.059, eff. September 1, 2005.

SEC. 407.102. REGULATORY FEE.

(a) Each certified self-insurer shall pay an annual fee to cover the administrative costs incurred by the division in implementing this chapter.

(b) The division shall base the fee on the total amount of income benefit payments made in the preceding calendar year. The division shall assess each certified self-insurer a pro rata share based on the ratio that the total amount of income benefit payments made by that certified self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.060, eff. September 1, 2005.

SEC. 407.103. SELF-INSURER MAINTENANCE TAX; EFFECT ON GENERAL MAINTENANCE TAX.

(a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the division and the office of injured employee counsel and to support the prosecution of workers' compensation insurance fraud in this state. Not more than two percent of the total tax base of all certified self-insurers, as computed under Subsection (b), may be assessed for a maintenance tax under this section.

(b) To determine the tax base of a certified self-insurer for purposes of this chapter, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02.

(c) The tax liability of a certified self-insurer under this section is the tax base computed under Subsection (b) multiplied by the rate assessed workers' compensation insurance companies under Sections 403.002 and 403.003.

(d) In setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.22, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1443, Sec. 6, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.061, eff. September 1, 2005.

SEC. 407.104. COLLECTION OF TAXES AND FEES; ADMINISTRATIVE VIOLATION.

(a) The regulatory fee imposed by Section 407.102 and the taxes imposed by Section 407.103 are due on the 60th day after the issuance of a certificate of authority to self-insure and on the 60th day after each annual renewal date.

(b) The department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fees shall be remitted to the division.

(c) The regulatory fee imposed under Section 407.102 shall be deposited in the Texas Department of Insurance operating account to the credit of the division. The self-insurer maintenance tax shall be deposited in the Texas Department of Insurance operating account to the credit of the division.

(d) A certified self-insurer commits an administrative violation if the self-insurer does not pay

the taxes and fee imposed under Sections 407.102 and 407.103 in a timely manner.

(e) If the certificate of authority to self-insure of a certified self-insurer is terminated, the commissioner or the commissioner of insurance shall proceed immediately to collect taxes due under this subtitle, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.062, eff. September 1, 2005.

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SUBCHAPTER G. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

SEC. 407.121. GUARANTY ASSOCIATION.

(a) The Texas Certified Self-Insurer Guaranty Association provides for the payment of workers' compensation insurance benefits for the injured employees of an impaired employer.

(b) Each employer who desires to become a certified self-insurer must be a member of the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 407.122. BOARD OF DIRECTORS.

(a) The members of the association shall elect a board of directors.

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

(1) three certified self-insurers;

(2) one member designated by the commissioner; and

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

(c) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(19), eff. September 1, 2005.

(d) A member of the board of directors or a member of the staff of the board of directors is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.23, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.063, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(19), eff. September 1, 2005.

SEC. 407.123. BOARD RULES.

(a) The board of directors may adopt rules for the operation of the association.

(b) Rules adopted by the board are subject to the approval of the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.064, eff. September 1, 2005.

SEC. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS.

(a) On determination by the division that a certified self-insurer has become an impaired employer, the commissioner shall secure release of the security deposit required by this chapter and shall promptly estimate:

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

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

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

(b) The commissioner shall advise the board of directors of the association of the estimate of necessary additional funds, and the board shall promptly assess each certified self-insurer to collect the required funds. An assessment against a certified self-insurer shall be made in proportion to the ratio that the total paid income benefit payment for the preceding reported calendar year for that self-insurer bears to the total paid income benefit payment by all certified self-insurers, except impaired employers, in this state in that calendar year.

(c) A certified self-insurer designated as an impaired employer is exempt from assessments beginning on the date of the designation until the division determines that the employer is no longer impaired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.065, eff. September 1, 2005.

SEC. 407.125. PAYMENT OF ASSESSMENTS.

Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through suit. Venue is in

Travis County.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 407.126. TRUST FUND; FEE; SCHEDULE.

(a) Each member of the association shall be assessed a fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 1993, a Texas certified self-insurer guaranty trust fund of at least $1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million.

(b) The board of directors shall adopt a year-by-year schedule of assessments to meet the 10-year funding goal of the trust fund.

(c) The assessment for the first year after an employer is issued a certificate of authority to self-insure shall be based on the income benefit payments paid by the employer's insurance carrier on the employer's policy in the year before the certificate was issued.

(d) The board of directors shall administer the trust fund in accordance with rules adopted by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.24, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.066, eff. September 1, 2005.

SEC. 407.127. PAYMENT OF BENEFITS THROUGH ASSOCIATION.

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

(b) The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association.

(c) Notwithstanding Subsection (a), the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.067, eff. September 1, 2005.

SEC. 407.128. POSSESSION OF SECURITY BY ASSOCIATION.

On the assumption of obligations by the association under the commissioner's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of an irrevocable letter of credit shall deliver the security to the association with any accrued interest.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.068, eff. September 1, 2005.

SEC. 407.129. RELEASE OF CLAIM INFORMATION TO ASSOCIATION.

Information on a workers' compensation claim may be released to the association as provided by Section 402.084(a), if the association has assumed the obligations of an impaired employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 407.130. ASSOCIATION AS PARTY IN INTEREST.

(a) The association is a party in interest in a proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association.

(b) The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, or appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and

(3) investigate, handle, or deny a claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 407.131. PREFERENCE.

The benefit payments made by the association or the surety under this chapter are entitled to the same preference over other debts of the impaired employer or the impaired employer's estate as provided by law to benefit payments owed by the employer or employer's estate to the person entitled to the benefits.

Acts 1993, 73rd Leg., ch. 269 , Sec. 1, eff. Sept. 1, 1993.

SEC. 407.132. SPECIAL FUND.

Funds advanced by the association under this subchapter do not become assets of the impaired employer but are a special fund advanced to the commissioner, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the costs of claims administration and legal costs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.069, eff. September 1, 2005.

SEC. 407.133. SUSPENSION OR REVOCATION OF CERTIFICATE FOR FAILURE TO PAY ASSESSMENT.

(a) The commissioner may suspend or revoke the certificate of authority to self-insure of a certified self-insurer who fails to pay an assessment. The association promptly shall report such a failure to the director.

(b) A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.070, eff. September 1, 2005.

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LABOR CODE CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 407A.001. DEFINITIONS.

(a) In this chapter:

(1) "Administrator" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(2) "Commissioner" means the commissioner of insurance.

(3) "Department" means the Texas Department of Insurance.

(4) "Estimated premium subject to experience modifier" means the premium derived from applying the filed rates to estimated payrolls and before the adjustment of the premium by experience modifiers, schedule rating plan factors, deductible credits, minimum premiums, and premium discounts.

(5) "Group" means a workers' compensation self-insurance group that holds a certificate of approval under this chapter.

(5-a) "Managing company" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(6) "Modified schedule rating premium" means premium derived from applying filed rates to estimated payrolls and then adjusted by the experience modifier and any schedule rating plan factors.

(7) "Same or similar" means, with regard to members of a group, that:

(A) the governing classification code of the members of the group is the same; or

(B) the members of the group are engaged in similar operations.

(8) "Service company" means a person that provides services to the group other than services provided by the managing company, including:

(A) claims adjustment;

(B) safety engineering;

(C) compilation of statistics and the preparation of premium, loss, and tax reports;

(D) preparation of other required self-insurance reports;

(E) development of members' assessments and fees; and

(F) administration of a claim fund.

(b) For purposes of this chapter, when used as a modifier of "benefits," "liabilities," or "obligations," the term "workers' compensation" includes both workers' compensation and employers' liability.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1176, Sec. 3.04, eff. September 1, 2007.

SEC. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF PRIVATE GROUP.

(a) An unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under this chapter if the employers:

(1) are engaged in the same or a similar type of business;

(2) are members of a bona fide trade or professional association that has been in existence in this state for purposes other than insurance for at least five years before the establishment of the group; and

(3) enter into agreements to pool their liabilities for workers' compensation benefits

and employers' liability in this state.

(b) This chapter does not apply to public employees or governmental entities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.003. MERGER OF GROUPS.

(a) Subject to the approval of the commissioner, a group may merge with another group engaged in the same or a similar type of business if the resulting group assumes in full all obligations of the merging groups.

(b) The commissioner may conduct a hearing on a proposed merger and shall conduct a hearing if any party, including a member of either group, requests a hearing.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.004. GROUP NOT INSURER.

A group issued a certificate of approval by the commissioner under this chapter is not:

(1) an insurer based on that certificate; and

(2) subject to the insurance laws and rules of this state except as otherwise provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.005. CERTIFICATE OF APPROVAL REQUIRED.

An association of employers may not act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner under this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.006. SERVICE OF PROCESS.

(a) Each group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against the group in this state.

(b) The appointment of the commissioner is irrevocable, binds any successor in interest, and remains in effect as long as any obligation or liability of the group for workers' compensation

benefits exists in this state.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.007. HEARINGS.

A hearing required under this chapter shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.008. RULES.

The commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN ADMINISTRATORS AND SERVICE COMPANIES.

(a) An administrator or service company under this chapter that performs the acts of an administrator as defined in Chapter 4151, Insurance Code, must hold a certificate of authority under that chapter.

(b) An entity is required to hold only one certificate of authority under Chapter 4151, Insurance Code, if:

(1) the entity acts as an administrator and a service company as defined in this chapter; and

(2) performs the acts of an administrator as that term is defined in Chapter 4151, Insurance Code.

(c) Exemptions in Chapter 4151, Insurance Code, as provided in Sections 4151.002(18), (19), and (20), apply to an administrator or service company under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176, Sec. 3.05, eff. September 1, 2007.

SUBCHAPTER B. APPLICATION REQUIREMENTS FOR CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP

SEC. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF APPROVAL; APPROVAL REQUIREMENTS.

(a) An association of employers that proposes to organize as a workers' compensation self-insurance group shall file with the department an application for a certificate of approval.

(b) The application must be in the form prescribed by the commissioner and must include:

(1) the name of the group;

(2) the location of the group's principal office;

(3) the date of organization of the group;

(4) the name and address of each employer that is a member of the group;

(5) the name, mailing address, and telephone number of the trade or professional association to which each group member belongs as required by Section 407A.002(a)(2);

(6) the governing classification code of the group or a description of the operations of each member of the group showing that the members of the group are engaged in similar operations; and

(7) any other information reasonably required by the commissioner.

(c) The application must be accompanied by:

(1) a nonrefundable $1,000 filing fee;

(2) proof of compliance with the financial requirements under Section 407A.053;

(3) proof of compliance with the excess insurance requirements under Section 407A.054;

(4) a copy of the articles of association or declaration of trust of the group, if any;

(5) a copy of any agreements entered into with an administrator or a service company;

(6) a copy of the bylaws of the proposed group;

(7) a copy of the agreement between the group and each employer who is a member of the group that:

(A) secures the payment of workers' compensation benefits; and

(B) includes provisions for payment of assessments as provided by Section 407A.355;

(8) designation of the initial board of trustees and administrator of the group;

(9) the address in this state where the books and records of the group will be maintained at all times;

(10) a pro forma financial statement, in a form acceptable to the commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group;

(11) proof of one of the following:

(A) payment to the group, or a bona fide promise to pay on approval of the group, by each employer who is a member of the group of not less than 25 percent of that member's first year estimated modified schedule rating premium on a date prescribed by the commissioner, which shall be considered part of the first year premium payment of each member; or

(B) if the group is formed from a trust existing on September 1, 2003, that the assets of the trust are sufficient to cover the workers' compensation obligations of the trust;

(12) a $250,000 fidelity bond for the administrator in the form prescribed by the commissioner;

(13) a $250,000 fidelity bond for the service company in the form prescribed by the commissioner; and

(14) an indemnity agreement that meets the requirements of Section 407A.056.

(d) Not later than the 30th day after the effective date of the change, a group shall notify the

commissioner of any change in:

(1) the information required to be filed under Subsection (c); or

(2) the manner of the group's compliance with Subsection (c).

(e) The commissioner shall evaluate the financial information provided with the application as necessary to ensure that:

(1) the funding is sufficient to cover expected losses and expenses; and

(2) the funds necessary to pay workers' compensation benefits will be available on a timely basis.

(f) Except as otherwise provided by this subsection, the commissioner shall act on a complete application for a certificate of approval not later than the 90th day after the date on which the application is filed with the department. If, because of the number of applications, the commissioner is unable to act on an application in a timely manner, the commissioner may extend the period for an additional 30 days.

(g) Fees collected under this section shall be deposited in the department's operating account.

(h) In lieu of the bonds required under Subsections (c)(12) and (c)(13), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1055, Sec. 2, eff. September 1, 2005.

SEC. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL; REFUSAL.

(a) The commissioner shall issue a certificate of approval to a proposed group on finding that the group has met the requirements of this subchapter.

(b) If the commissioner determines that a proposed group has not satisfied the requirements under this subchapter for a certificate of approval, the commissioner shall issue an order refusing

the certificate. The order must set forth the reasons for the refusal.

(c) On issuance of the certificate of approval, the group is authorized to provide workers' compensation benefits.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.053. FINANCIAL REQUIREMENTS.

(a) To obtain a certificate of approval, each group shall comply with the financial requirements adopted under this section.

(b) The combined net worth of all employers who are members of the group must be at least $2 million. A member of the group may not be required to submit an audited financial statement to establish the $2 million combined net worth, but the group must file a report compiled by a certified public accountant and based on financial statements or tax returns to support the existence of a combined net worth of at least $2 million for the initial group. In the case of a group composed of a trust existing on September 1, 2003, the trust may satisfy the financial requirements of this section by showing that the trust has participant surplus, including accrued participant dividends of at least $2 million, in lieu of the requirement of the $2 million combined net worth of its members. Discounted reserves may not be considered in determining whether a trust existing on September 1, 2003, has a surplus of at least $2 million.

(c) The group must post security in the form and amount prescribed by the commissioner, equal to the greater of $300,000 or 25 percent of the group's total incurred liabilities for workers' compensation. The security may be provided by a surety bond, security deposit, or any combination of those securities. If a surety bond is used to meet the security requirement, the surety bond must be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, the following are acceptable securities:

(1) a bond or other evidences of indebtedness issued, assumed, or guaranteed by

the United States of America or by an agency or instrumentality of the United States of America;

(2) certificates of deposit in a federally insured bank;

(3) shares or savings deposits in a federally insured savings and loan association or credit union;

(4) a bond or security issued by a state and backed by the full faith and credit of that state;

(5) public securities described by Subsection (f); and

(6) commercial paper payable in United States currency that is rated in one of the two highest credit rating categories by each rating agency.

(d) Any securities posted must be deposited in the state treasury and must be assigned to and made negotiable by the commissioner of workers' compensation under a trust document acceptable to the commissioner of insurance. Interest accruing on a negotiable security deposited under this subsection shall be collected and transmitted to the depositor if the depositor is not in default.

(e) A bond or security deposit must be:

(1) made for the benefit of the state, to be used solely to pay claims and associated expenses; and

(2) payable on the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

(f) Public securities may be used as security under this section if the public securities bear interest or are sold at a discount and are issued by any corporation, denominated in United States dollars.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.071, eff. September 1, 2005.

SEC. 407A.054. EXCESS INSURANCE REQUIREMENTS.

(a) To obtain an initial certificate of approval and to be eligible to renew its certificate of approval, each group must comply with the excess insurance requirements adopted under this section.

(b) Each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the commissioner. The commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, years in existence, and other relevant factors.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.055. PREMIUM REQUIREMENTS.

Each group must have an estimated premium subject to experience modifier of at least $250,000 during the group's first year of operation. Thereafter, the annual standard premium must be at least $500,000.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS.

(a) An indemnity agreement filed under Section 407A.051 must jointly and severally bind the group and each employer who is a member of the group to meet the workers' compensation obligations of each member.

(b) The indemnity agreement must be in the form prescribed by the commissioner and must include minimum uniform substantive provisions as prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions necessary because of that group's particular circumstances.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS.

(a) In addition to the requirements under Section 407A.051, the commissioner may require a

service company providing claim services to furnish a performance bond of $250,000 in the form prescribed by the commissioner.

(b) In lieu of a performance bond under Subsection (a), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1055, Sec. 3, eff. September 1, 2005.

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SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

SEC. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION.

(a) A certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.

(b) The commissioner may not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. For purposes of this subsection, those obligations include:

(1) known claims and expenses associated with those claims; and

(2) incurred but not reported claims and expenses associated with those claims.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

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SUBCHAPTER D. BOARD OF TRUSTEES

SEC. 407A.151. BOARD MEMBERSHIP.

(a) Each group shall be operated by a board of trustees composed of at least five persons whom the members of the group elect for stated terms of office. The trustees must be employees, officers, or directors of employers who are members of the group. Each board member shall be a resident of this state or an officer of a corporation authorized to do business in this state.

(b) An administrator or service company of the group, or owner, officer, employee of, or any other person affiliated with the administrator or service company, may not serve on the board of trustees.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.152. BOARD GENERAL POWERS AND DUTIES.

The board of trustees shall:

(1) maintain minutes of its meetings and make the minutes available to the commissioner;

(2) designate an administrator and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and

(3) retain an independent certified public accountant to audit the financial statements required by Section 407A.251.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.153. PROHIBITED ACTIVITIES.

The board of trustees may not:

(1) extend credit to individual members for payment of a premium, except under payment plans approved by the commissioner; or

(2) without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner, borrow any money from the group or in the name

of the group except in the ordinary course of business.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.154. GROUP FUNDS.

The board of trustees shall maintain responsibility for all money collected or disbursed from the group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

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SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

SEC. 407A.201. ADMISSION OF EMPLOYER AS MEMBER.

(a) An employer who joins an approved workers' compensation self-insurance group shall:

(1) submit an application for membership to the board of trustees or its administrator; and

(2) enter into the indemnity agreement as required by Section 407A.056.

(b) The board of trustees shall maintain as a permanent record the employer's application for membership and the approval of the application.

(c) The membership of an individual member of a group is subject to cancellation by the group as provided by the bylaws of the group. An individual member may also elect to terminate participation in the group. The group shall notify the commissioner and the commissioner of workers' compensation of the cancellation or termination of a membership not later than the 10th day after the date on which the cancellation or termination takes effect and shall maintain coverage of each canceled or terminated member until the 30th day after the date of the notice, at the terminating member's expense, unless before that date the commissioner of workers' compensation notifies the group that the canceled or terminated member has:

(1) obtained workers' compensation insurance coverage;

(2) become a certified self-insurer; or

(3) become a member of another group.

(d) The group shall pay each workers' compensation claim for which a member of the group incurs liability during the period of membership. A member who elects to terminate membership or whose membership is canceled by the group remains jointly and severally liable for the workers' compensation obligations of the group and its members incurred during the canceled or terminated member's period of membership.

(e) A member of a group is not relieved of workers' compensation liabilities incurred during

its period of membership except through payment by the group or the member of required workers' compensation benefits.

(f) The insolvency or bankruptcy of a member does not relieve a group or any other member of the group of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.072, eff. September 1, 2005.

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SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER REPORTS

SEC. 407A.251. FINANCIAL STATEMENT.

(a) Each group shall submit to the commissioner financial statements audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year.

(b) The financial statement must include a balance sheet, income statement, and statement of cash flow and must be prepared on the basis of accounting principles generally accepted in the United States.

(c) Loss reserves may be discounted subject to generally accepted accounting principles. The discounting must be documented in the notes accompanying the financial statement. Notwithstanding this subsection, dividends paid to members of the group must be based on undiscounted loss reserves.

(d) The audited financial statements required by this section must be accompanied by an actuarial opinion on the adequacy of the group's loss reserves, including the reasonableness of any reserve discount. The actuarial opinion must be given by a member in good standing of the American Academy of Actuaries and the Casualty Actuarial Society.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.252. EXAMINATION.

(a) The commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under this subtitle. An examination under this section is subject to Article 1.15, Insurance Code, except that, to the extent of a conflict between this chapter and that article, this chapter prevails. The commissioner may examine a group annually for the first three years of the group's operation. Beginning with the fourth year of operation, the commissioner may not examine a group more frequently than once every three years unless the

commissioner determines that the group:

(1) is in an impaired financial condition; or

(2) otherwise may not be able to continue to meet the group's obligations under this subtitle.

(b) The commissioner has full access to the records, officers, agents, and employees of a group as necessary to complete an examination under this section. The commissioner may recover the expenses of the examination under Article 1.16, Insurance Code, to the extent the maintenance tax under Section 407A.302 does not cover those expenses.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

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SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

SEC. 407A.301. MAINTENANCE TAX FOR DIVISION AND RESEARCH FUNCTIONS OF DEPARTMENT.

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

(1) the administration of the division of workers' compensation of the department;

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

(3) the research functions of the department under Chapter 405; and

(4) the administration of the office of injured employee counsel under Chapter 404.

(b) The tax liability of a group under Subsections (a)(1) and (2) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Sections 403.002 and 403.003.

(c) The tax liability of a group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Section 405.003.

(d) The tax under this section does not apply to premium collected by the group for excess insurance.

(e) The tax under this section shall be collected by the comptroller as provided by Section 201.051 and Chapter 255, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.073, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 3.074, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 728, Sec. 11.138, eff. September 1, 2005.

SEC. 407A.302. MAINTENANCE TAX FOR DEPARTMENT.

(a) Subject to Subsection (b), each group shall pay the maintenance tax imposed under Chapter 255, Insurance Code, for the administrative costs incurred by the department in implementing this chapter.

(b) The tax liability of a group under this section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance.

(c) The maintenance tax assessed under this section is subject to Chapter 255, Insurance Code, and shall be collected by the comptroller in the manner provided by that chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728, Sec. 11.139, eff. September 1, 2005.

SEC. 407A.303. COLLECTION AND PAYMENT OF TAXES.

(a) The group shall remit the taxes for deposit in the Texas Department of Insurance operating account to the credit of the division.

(b) A group commits an administrative violation if the group does not pay the taxes imposed under Sections 407A.301 and 407A.302 in a timely manner.

(c) If the certificate of approval of a group is terminated, the commissioner or the commissioner of insurance shall immediately notify the comptroller to collect taxes as directed under Sections 407A.301 and 407A.302.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.075, eff. September 1, 2005.

SEC. 407A.304. PREMIUM TAX.

(a) Each group shall pay to the comptroller a premium tax on gross premiums for the group's retention. The premium tax assessed under this subsection does not apply to premium collected for excess insurance.

(b) The rate for the premium tax under this section is the rate assessed under Chapter 221, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728, Sec. 11.140, eff. September 1, 2005.

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SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES; DEFICITS

SEC. 407A.351. RATES.

(a) Except as provided by Subsection (b), each group shall use the uniform classification system, experience rating plan, and rate relativities of the department.

(b) A group may:

(1) use the relativities promulgated by the department modified to produce rates in accordance with the group's historical experience; or

(2) file its own rates with the department, including any reasonable and supporting information required by the commissioner.

(c) As approved by the commissioner, a group may use rating debits or credits and optional rating plans.

(d) Rates of the group may not be excessive, inadequate, or unfairly discriminatory.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.352. AUDITS.

Each member of a group shall be audited annually by the administrator or by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll, and rates. The group shall maintain a record of the audit as part of the group's records that are available to the commissioner during an examination conducted under Section 407A.252. The audit shall be performed at the expense of the group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.353. REFUNDS.

(a) The board of trustees may declare refundable any money for a fund year in excess of the amount necessary to fund all obligations.

(b) The board of trustees shall give each member a written description of the group's refund

plan at the time of application for membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.354. PREMIUM PAYMENT PLAN; RESERVES.

(a) Until the assets of a group reach a level sufficient to cover the group's liabilities, each group shall establish to the satisfaction of the commissioner a premium payment plan.

(b) As long as the assets of the group remain sufficient to cover the group's liabilities, the group may determine its own premium plan if the premium plan is disclosed to each member at the time of application and is filed with the commissioner.

(c) Each group shall establish and maintain actuarially appropriate loss reserves, which must include reserves for:

(1) known claims and expenses associated with those claims; and

(2) claims incurred but not reported and expenses associated with those claims.

(d) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or of other groups composed of similar employer members.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.355. DEFICITS; INSOLVENCIES.

(a) For purposes of this section, "insolvent" means:

(1) the inability of a group to pay the group's outstanding lawful obligations as they mature in the regular course of business; or

(2) that the group's liabilities exceed the group's assets, determined without reducing liabilities by any reserve discount.

(b) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required under this chapter, the group shall make up the deficiency or levy an assessment on its members for the amount needed to make up the deficiency.

(c) In the event of a deficiency in any fund year, the deficiency shall be made up immediately from:

(1) surplus from a fund year other than the current fund year;

(2) administrative funds;

(3) assessments of the membership, if ordered by the group; or

(4) any alternate method that the commissioner approves or directs.

(d) The commissioner shall be notified before any transfer of surplus funds from one fund year to another under Subsection (c).

(e) If the group fails to assess its members or to otherwise make up a deficit, the commissioner shall order the group to do so. If the commissioner determines that the group is in a hazardous financial condition, the commissioner may take action as provided by Article 21.28-A, Insurance Code, and may order the group to rectify the condition through an alternate method under Subsection (c)(4). The group is considered an insurer only for purposes of Article 21.28-A, Insurance Code. Otherwise, to the extent of a conflict between this chapter and that article, this chapter prevails.

(f) If the group fails to make the required assessment of its members after the commissioner's order under Subsection (e), or if the deficiency is not fully made up, the group shall be deemed to be insolvent.

(g) If a group is liquidated, the commissioner shall secure release of the security deposit and levy an assessment on the members of the group in an amount determined necessary by the commissioner to discharge all liabilities of the group, including the reasonable cost of liquidation.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Text of section as repealed by Acts 2005, 79th Leg., R.S., Ch. 1055, Sec. 4 effective September 1, 2005

SEC. 407A.357. TEXAS GROUP SELF-INSURANCE GUARANTY ASSOCIATION; ADVISORY COMMITTEE.

(a) Subject to Subsection (d), the Texas Group Self-Insurance Guaranty Association shall be established not later than January 1, 2006, based on recommendations from the guaranty association advisory committee established under Subsection (b). The guaranty association shall provide for the payment of workers' compensation insurance benefits and expenses related to payment of those benefits for the injured employees of an insolvent group.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 15.001, eff. September 1, 2011.

(c) If three groups under this chapter have not been established by July 1, 2004, the advisory committee shall include representatives of any certified groups, and the commissioner shall choose the remaining voting members under Subsection (b)(1):

(1) from members of a bona fide trade association in this state that is eligible for and has applied for a certificate of approval; or

(2) if an association described by Subdivision (1) does not exist as of July 1, 2004, from any association in this state representing employers in the same or a similar business that has been in existence for at least five years for purposes other than obtaining insurance coverage.

(d) If the advisory committee under this section recommends that a guaranty association not be created, the guaranty mechanism under Section 407A.356 continues in effect.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.076, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1055, Sec. 4, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 15.001, eff. September 1, 2011.

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SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

SEC. 407A.401. PROHIBITED SOLICITATION.

In connection with the solicitation of membership in a group, a person may not make an untrue statement of a material fact, or omit to state a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.402. FINES.

After notice and an opportunity for a hearing, the commissioner may impose a fine on any person or group found to be in violation of this chapter or a rule adopted under this chapter. A fine assessed under this section may not exceed $1,000 for each act or violation and may not exceed $10,000 in the aggregate. The amount of any fine assessed under this section shall be paid to the commissioner and deposited in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.403. CEASE AND DESIST ORDERS.

(a) After notice and an opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of this chapter or a rule adopted under this chapter.

(b) On a finding, after notice and opportunity for a hearing, that a person or group has violated a cease and desist order issued under this section, the commissioner may:

(1) impose a fine not to exceed $1,000 for each violation of the order, not to exceed an aggregate fine of $100,000;

(2) revoke the group's certificate of approval or any license held by the person issued under the Insurance Code; or

(3) impose the fine and revoke the certificate or license.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SEC. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL.

(a) After notice and an opportunity for a hearing, the commissioner may revoke a group's certificate of approval if the group:

(1) is found to be insolvent;

(2) fails to pay a tax, assessment, or special fund contribution imposed on the group; or

(3) fails to comply in a timely manner with this chapter, a rule adopted under this chapter, or an order of the commissioner.

(b) In addition, the commissioner may revoke a group's certificate of approval if, after notice and an opportunity for hearing, the commissioner determines that:

(1) a certificate of approval issued to the group was obtained by fraud;

(2) there was a material misrepresentation in the application for the certificate of approval; or

(3) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay on proper demand any money that belongs to a member, an employee of a member, or a person otherwise entitled to the money and that has been entrusted to the group or its administrator in their fiduciary capacities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

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SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

SEC. 407A.451. DEFINITIONS.

In this subchapter:

(1) "Board" means the board of directors of the guaranty fund.

(2) "Guaranty fund" means the Texas self-insurance group guaranty fund.

(3) "Trust fund" means the trust fund established under Section 407A.457.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.452. GUARANTY FUND.

(a) The Texas self-insurance group guaranty fund is a nonprofit association established to provide for the payment of workers' compensation insurance benefits for injured employees covered by a group declared insolvent under Section 407A.355.

(b) Each group that desires to be certified under this chapter must participate as a member of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.453. BOARD OF DIRECTORS.

(a) The guaranty fund is managed by a board of directors.

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

(1) three members elected as provided by Subsection (c), each of whom represents a different group certified under this chapter;

(2) one member to represent wage earners designated by the commission;

(3) one member designated by the commissioner; and

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

(c) Representatives of each group certified under this chapter may participate equally in the election of the three members of the board elected under Subsection (b)(1). A person elected under Subsection (b)(1) must be approved by the commissioner before the person may serve on

the board.

(d) Notwithstanding Subsection (c), the commissioner shall appoint the initial board members representing groups. A person appointed as an initial board member under this subsection is eligible to serve additional terms on election by the members of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.454. IMMUNITY.

A board member or a member of the staff of the board is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.455. BOARD GENERAL POWERS AND DUTIES.

(a) The board shall:

(1) create and maintain a trust fund for payment of the workers' compensation liabilities of an insolvent group;

(2) hire staff as necessary;

(3) provide recommendations to the commissioner regarding rules or guidelines applicable to groups;

(4) receive reports from the department on the financial condition of groups, including examination and audit reports;

(5) engage consulting experts as necessary to review information provided by or filed with the department to ensure financial solvency of groups under this chapter;

(6) provide advisory recommendations to the commissioner as necessary regarding an applicant's compliance with Subchapter B relating to application requirements for certification; and

(7) take action, in response to a finding by the commissioner that a group is insolvent, to use the trust fund's resources to ensure the payment of the group's valid workers' compensation

claims and related administrative expenses.

(b) The board shall control all amounts in the trust fund, including investment of those amounts.

(c) The guaranty fund may not disclose confidential information received from the department in a financial report under Subsection (a)(4), including an examination or audit report. Information received from the department remains confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The board may make recommendations under Subsection (a)(6) outside of regular board meetings.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.456. PLAN OF OPERATION.

(a) The board shall adopt a plan of operation governing the board's activities and the operation of the guaranty fund and the trust fund.

(b) The plan of operation adopted by the board is subject to approval by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.457. TRUST FUND; SCHEDULE.

(a) Each group shall contribute an amount, based on the total amount of income benefit payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 2006, a trust fund of at least $1 million for:

(1) the emergency payment of the compensation liabilities of an insolvent group; and

(2) the administrative expenses of the guaranty fund.

(b) The board may adopt provisions in the plan of operation that provide for the indexing of the amount of the trust fund to a risk analysis.

(c) At least annually, the board shall adopt a year-by-year schedule of assessments to meet the funding goal of the trust fund.

(d) The board may:

(1) defer assessments if the fund equals or exceeds $2 million; and

(2) allow the trust fund to accrete based on its investment earnings.

(e) The contribution required for the first year after a group is issued a certificate of approval under this chapter shall be based on the group's estimated income benefit payments for the group's first year of operation.

(f) Each group certified under this chapter shall make contributions under this section to the trust fund, and the board shall provide a mechanism in the plan of operation to ensure that all groups contribute equitably to the trust fund.

(g) The board shall administer the trust fund in accordance with the plan of operation adopted by the board and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.458. EFFECT OF INSOLVENCY OF GROUP.

(a) On determining that a group has become insolvent, the commissioner shall secure release of the surety bond or security deposit required under Section 407A.053 and shall promptly estimate:

(1) the amount of additional funds needed to supplement the bond or security deposit; and

(2) the assets of the insolvent group available to pay all incurred compensation liabilities.

(b) If the bond or security deposit and the available assets of the insolvent group are insufficient to cover all of the group's incurred compensation liabilities, the commissioner shall direct the insolvent group to immediately assess its members to cover all incurred liabilities under a schedule approved by the commissioner.

(c) If the assessments under Subsection (b) will be insufficient to cover the incurred

liabilities, the commissioner shall estimate the additional funds necessary to cover the incurred liabilities for benefit compensation and related administration expenses for the insolvent group. On receipt of the commissioner's estimate, the board shall provide from the trust fund the additional funds needed for benefit compensation and related administrative expenses for the insolvent group.

(d) Disbursements from the trust fund under Subsection (c) shall be replenished:

(1) if within the 10-year funding period of the trust fund, by adjusting the next year's schedule of assessments from groups; or

(2) if beyond the initial 10-year funding period, by assessment of all groups.

(e) If, after application of Subsections (b)-(d), the amount available in the trust fund is still insufficient, the board shall assess all groups for the remaining deficiency.

(f) The commissioner may exempt a group from assessment under this section on a determination that the payment of the assessment would render the group insolvent.

(g) The commissioner may, on a finding of insolvency, commence a delinquency proceeding for the purpose of liquidating, rehabilitating, reorganizing, or conserving a group. Such a group shall be considered an insurer for purposes of Article 21.28, Insurance Code, and an insurance company for purposes of 11 U.S.C. Section 109. The conservator, receiver, or other statutory successor of a group shall coordinate with the board in the furtherance of the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY.

(a) Each member of an insolvent group shall pay the amount of its assessment under this chapter to the commissioner not later than the 30th day after the date on which the commissioner notifies the member of the assessment. The commissioner shall collect assessments and costs

from the members of the insolvent group.

(b) The joint and several liability of the members of a group under Section 407A.056 continues and is not terminated by payment of benefits through the guaranty fund.

(c) If the guaranty fund assumes payment of benefits for compensation liabilities on behalf of an insolvent group, the guaranty fund may collect delinquent assessments and costs through suit. Venue for a suit under this subsection is in Travis County.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND.

(a) If the commissioner determines that the payment of benefits and claims administration shall be made through the guaranty fund, the guaranty fund assumes the workers' compensation obligations on behalf of the insolvent group and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the commissioner.

(b) The guaranty fund shall make payments to claimants whose entitlement to benefits can be ascertained by the guaranty fund.

(c) Notwithstanding Subsection (a), the guaranty fund is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND.

On the assumption of obligations on behalf of an insolvent group by the guaranty fund under the commissioner's determination, the guaranty fund is entitled to immediate possession of any assets of the insolvent group and any security deposited or the proceeds of any surety bond deposited by the insolvent group, along with all interest on the security. All assessments from members of the insolvent group shall be paid to the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY FUND.

If the guaranty fund has assumed compensation obligations on behalf of an insolvent group, information on a workers' compensation claim may be released to the guaranty fund as provided by Section 402.084(a).

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.463. GUARANTY FUND AS PARTY IN INTEREST.

(a) The guaranty fund is a party in interest in a proceeding involving a workers' compensation claim against an insolvent group whose compensation obligations have been paid or assumed by the guaranty fund.

(b) The guaranty fund has the same rights and defenses as the insolvent group, including the right to:

(1) appear, defend, or appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and

(3) investigate, handle, or deny a claim.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.464. PREFERENCES.

(a) Benefit payments made by the guaranty fund under this subchapter are entitled to the same preference over other debts of the insolvent group as provided by law to benefit payments owed by the insolvent group to the person entitled to the benefits.

(b) The guaranty fund has the priority status provided by Section 8, Article 21.28, Insurance Code.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

SEC. 407A.465. SPECIAL FUND.

Monies advanced by the association under this chapter do not become assets of the insolvent group but constitute a special fund advanced to the commissioner, receiver, or other

statutory successor only for the payment of compensation liabilities, including the costs of claim administration and legal costs.

Added by Acts 2005, 79th Leg., Ch. 1055, Sec. 1, eff. September 1, 2005.

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LABOR CODE CHAPTER 408. WORKERS' COMPENSATION BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 408.001. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES.

(a) Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence.

(c) In this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.077, eff. September 1, 2005.

SEC. 408.002. SURVIVAL OF CAUSE OF ACTION.

A right of action survives in a case based on a compensable injury that results in the employee's death.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1991.

SEC. 408.003. REIMBURSABLE EMPLOYER PAYMENTS; SALARY CONTINUATION; OFFSET AGAINST INCOME BENEFITS; LIMITS.

(a) After an injury, an employer may:

(1) initiate benefit payments, including medical benefits; or

(2) on the written request or agreement of the employee, supplement income benefits

paid by the insurance carrier by an amount that does not exceed the amount computed by subtracting the amount of the income benefit payments from the employee's net preinjury wages.

(b) If an injury is found to be compensable and an insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of benefits paid by the employer to which the employee was entitled under this subtitle. Payments that are not reimbursed or reimbursable under this section may be reimbursed under Section 408.127.

(c) The employer shall notify the division and the insurance carrier on forms prescribed by the commissioner of the initiation of and amount of payments made under this section.

(d) Employer payments made under this section:

(1) may not be construed as an admission of compensability; and

(2) do not affect the payment of benefits from another source.

(e) If an employer does not notify the insurance carrier of the injury in compliance with Section 409.005, the employer waives the right to reimbursement under this section.

(f) Salary continuation payments made by an employer for an employee's disability resulting from a compensable injury shall be considered payment of income benefits for the purpose of determining the accrual date of any subsequent income benefits under this subtitle.

(g) If an employer is subject to a contractual obligation with an employee or group of employees, such as a collective bargaining agreement or a written agreement or policy, under which the employer is required to make salary continuation payments, the employer is not eligible for reimbursement under this section for those payments.

(h) Payments made as salary continuation or salary supplementation do not affect the exclusive remedy provisions of Section 408.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1003, Sec. 1, 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.078, eff. September 1, 2005.

SEC. 408.004. REQUIRED MEDICAL EXAMINATIONS; ADMINISTRATIVE VIOLATION.

(a) The commissioner may require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee.

(a-1) A doctor, other than a chiropractor, who performs a required medical examination under this section is subject to Section 408.0043. A chiropractor who performs a required medical examination under this section is subject to Section 408.0045.

(b) The commissioner may require an employee to submit to a medical examination at the request of the insurance carrier, but only after the insurance carrier has attempted and failed to receive the permission and concurrence of the employee for the examination. Except as otherwise provided by this subsection, the insurance carrier is entitled to the examination only once in a 180-day period. The commissioner may adopt rules that require an employee to submit to not more than three medical examinations in a 180-day period under specified circumstances, including to determine whether there has been a change in the employee's condition and whether it is necessary to change the employee's diagnosis. The commissioner by rule shall adopt a system for monitoring requests made under this subsection by insurance carriers. That system must ensure that good cause exists for any additional medical examination allowed under this subsection that is not requested by the employee. A subsequent examination must be performed by the same doctor unless otherwise approved by the commissioner.

(c) The insurance carrier shall pay for:

(1) an examination required under Subsection (a) or (b); and

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

(d) An injured employee is entitled to have a doctor of the employee's choice present at an examination required by the division at the request of an insurance carrier. The insurance carrier

shall pay a fee set by the commissioner to the doctor selected by the employee.

(e) 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 (b) commits an administrative violation. The commissioner by rule shall ensure that an employee receives reasonable notice of an examination and that the employee is provided a reasonable opportunity to reschedule an examination missed by the employee for good cause.

(f) This section does not apply to health care provided through a workers' compensation health care network established under Chapter 1305, Insurance Code.

(g) An insurance carrier who makes a frivolous request for a medical examination under Subsection (b), as determined by the commissioner, commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1133, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1426, Sec. 8, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1456, Sec. 5.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.079, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 2, eff. September 1, 2007.

SEC. 408.0041. DESIGNATED DOCTOR EXAMINATION.

(a) At the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:

(1) the impairment caused by the compensable injury;

(2) the attainment of maximum medical improvement;

(3) the extent of the employee's compensable injury;

(4) whether the injured employee's disability is a direct result of the work-related injury;

(5) the ability of the employee to return to work; or

(6) issues similar to those described by Subdivisions (1)-(5).

(b) Except as provided by Section 408.1225(f), a medical examination requested under

Subsection (a) shall 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. The division shall assign a designated doctor not later than the 10th day after the date on which the request under Subsection (a) is approved, and the examination must be conducted not later than the 21st day after the date on which the commissioner issues the order under Subsection (a). An examination under this section may not be conducted more frequently than every 60 days, unless good cause for more frequent examinations exists, as defined by commissioner rules.

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

(c) The treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession. The treating doctor and insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(d) To avoid undue influence on a person selected as a designated doctor under this section, and except as provided by Subsection (c), only the injured employee or an appropriate member of the division's staff may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only

through appropriate division staff members. The designated doctor may initiate communication with any doctor or health care provider who has previously treated or examined the injured employee for the work-related injury or with peer reviewers identified by the insurance carrier.

(e) The designated doctor shall report to the division. The report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. An employer may make a bona fide offer of employment subject to Sections 408.103(e) and 408.144(c) based on the designated doctor's report.

(f) Unless otherwise ordered by the commissioner, the insurance carrier shall pay benefits based on the opinion of the designated doctor during the pendency of any dispute. If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the insurance carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

(f-1) The subsequent injury fund shall reimburse an insurance carrier for any overpayment of benefits made by the insurance carrier under Subsection (f) based on an opinion rendered by a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing reimbursement at least annually.

(f-2) An employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the employee's impairment rating from the treating doctor or from another doctor to whom the employee is referred by the treating doctor if:

(1) the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating; and

(2) the employee is not satisfied with the designated doctor's opinion.

(f-3) The commissioner shall provide the insurance carrier and the employee with

reasonable time to obtain and present the opinion of a doctor selected under Subsection (f) or (f-2) before the commissioner makes a decision on the merits of the issue.

(f-4) The commissioner by rule shall adopt guidelines prescribing the circumstances under which an examination by the employee's treating doctor or another doctor to whom the employee is referred by the treating doctor to determine any issue under Subsection (a), other than an examination under Subsection (f-2), may be appropriate.

(g) 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 under Subsection (f). The insurance carrier shall pay a fee set by the commissioner to the doctor selected by the employee. If the injured employee is subject to a workers' compensation health care network under Chapter 1305, Insurance Code, the doctor must be the employee's treating doctor.

(h) The insurance carrier shall pay for:

(1) an examination required under Subsection (a), (f), or (f-2), unless otherwise prohibited by this subtitle or by an order or rule of the commissioner; and

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

(i) 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 an administrative violation. An injured employee may not be fined more than $10,000 for a violation of this subsection.

(j) An employee is not entitled to temporary income benefits, and an insurance carrier is authorized to suspend the payment of temporary income benefits, during and for a period in which the employee fails to submit to an examination required by Subsection (a) or (f) unless the commissioner determines that the employee had good cause for the failure to submit to the

examination. The commissioner may order temporary income benefits to be paid for the period for which the commissioner determined that the employee had good cause. The commissioner by rule shall ensure that:

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

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

(k) 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, the insurance carrier may suspend or reduce the payment of temporary income benefits immediately.

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

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 5.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.080, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1150, Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 3, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 11, eff. September 1, 2011.

SEC. 408.0042. MEDICAL EXAMINATION BY TREATING DOCTOR TO DEFINE COMPENSABLE INJURY.

(a) The division shall require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier.

(b) A medical examination under this section shall be performed by the employee's treating doctor. The insurance carrier shall pay the costs of the examination.

(c) After the medical examination is performed, the treating doctor shall submit to the insurance carrier a report that details all injuries and diagnoses related to the compensable injury, on receipt of which the insurance carrier shall:

(1) accept all injuries and diagnoses as related to the compensable injury; or

(2) dispute the determination of specific injuries and diagnoses.

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

(e) Any treatment for an injury or diagnosis that is accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) may not be reviewed for compensability, but may be reviewed for medical necessity.

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

(g) This section does not limit an injured employee or insurance carrier's ability to request an examination under Section 408.004 or 408.0041, as provided by those sections.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.0805, eff. September 1, 2005.

SEC. 408.0043. PROFESSIONAL SPECIALTY CERTIFICATION REQUIRED FOR CERTAIN REVIEW.

(a) This section applies to a person, other than a chiropractor or a dentist, who performs health care services under this title as:

(1) a doctor performing peer review;

(2) a doctor performing a utilization review of a health care service provided to an injured employee;

(3) a doctor performing an independent review of a health care service provided to an injured employee;

(4) a designated doctor;

(5) a doctor performing a required medical examination; or

(6) a doctor serving as a member of the medical quality review panel.

(b) A person described by Subsection (a) who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 14, eff. September 1, 2009.

SEC. 408.0044. REVIEW OF DENTAL SERVICES.

(a) This section applies to a dentist who performs dental services under this title as:

(1) a doctor performing peer review of dental services;

(2) a doctor performing a utilization review of a dental service provided to an injured employee;

(3) a doctor performing an independent review of a dental service provided to an injured employee; or

(4) a doctor performing a required dental examination.

(b) A person described by Subsection (a) who reviews a dental service provided in conjunction with a specific workers' compensation case must be licensed to practice dentistry.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 15, eff. September 1, 2009.

SEC. 408.0045. REVIEW OF CHIROPRACTIC SERVICES.

(a) This section applies to a chiropractor who performs chiropractic services under this title as:

(1) a doctor performing peer review of chiropractic services;

(2) a doctor performing a utilization review of a chiropractic service provided to an injured employee;

(3) a doctor performing an independent review of a chiropractic service provided to

an injured employee;

(4) a designated doctor providing chiropractic services;

(5) a doctor performing a required medical examination; or

(6) a chiropractor serving as a member of the medical quality review panel.

(b) A person described by Subsection (a) who reviews a chiropractic service provided in conjunction with a specific workers' compensation case must be licensed to engage in the practice of chiropractic.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 16, eff. September 1, 2009.

SEC. 408.0046. RULES.

The commissioner may adopt rules as necessary to determine which professional health practitioner specialties are appropriate for treatment of certain compensable injuries. The rules adopted under this section must require an entity requesting a peer review to obtain and provide to the doctor providing peer review services all relevant and updated medical records.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 1, eff. September 1, 2007.

SEC. 408.005. SETTLEMENTS AND AGREEMENTS.

(a) A settlement may not provide for payment of benefits in a lump sum except as provided by Section 408.128.

(b) An employee's right to medical benefits as provided by Section 408.021 may not be limited or terminated.

(c) A settlement or agreement resolving an issue of impairment:

(1) may not be made before the employee reaches maximum medical improvement; and

(2) must adopt an impairment rating using the impairment rating guidelines described by Section 408.124.

(d) A settlement must be signed by the commissioner and all parties to the dispute.

(e) The commissioner shall approve a settlement if the commissioner is satisfied that:

(1) the settlement accurately reflects the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law and the policies of the division; and

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

(f) A settlement that is not approved or rejected before the 16th day after the date the settlement is submitted to the commissioner is considered to be approved by the commissioner on that date.

(g) A settlement takes effect on the date it is approved by the commissioner.

(h) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.081, eff. September 1, 2005.

SEC. 408.006. MENTAL TRAUMA INJURIES.

(a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.007. DATE OF INJURY FOR OCCUPATIONAL DISEASE.

For purposes of this subtitle, the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.008. COMPENSABILITY OF HEART ATTACKS.

A heart attack is a compensable injury under this subtitle only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of the employee's employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER B. MEDICAL BENEFITS

SEC. 408.021. ENTITLEMENT TO MEDICAL BENEFITS.

(a) An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

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

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) Medical benefits are payable from the date of the compensable injury.

(c) Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.

(d) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.022. SELECTION OF DOCTOR.

(a) Except in an emergency, the division shall require an employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commissioner. A doctor may perform only those procedures that are within the scope of the practice for which the doctor is licensed. The employee is entitled to the employee's initial choice of a doctor from the division's list.

(b) If an employee is dissatisfied with the initial choice of a doctor from the division's list, the employee may notify the division and request authority to select an alternate doctor. The notification must be in writing stating the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

(c) The commissioner shall prescribe criteria to be used by the division in granting the

employee authority to select an alternate doctor. The criteria may include:

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

(2) the professional reputation of the doctor;

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

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

(d) A change of doctor may not be made to secure a new impairment rating or medical report.

(e) For purposes of this section, the following is not a selection of an alternate doctor:

(1) a referral made by the doctor chosen by the employee if the referral is medically reasonable and necessary;

(2) the receipt of services ancillary to surgery;

(3) the obtaining of a second or subsequent opinion only on the appropriateness of the diagnosis or treatment;

(4) the selection of a doctor because the original doctor:

(A) dies;

(B) retires; or

(C) becomes unavailable or unable to provide medical care to the employee; or

(5) a change of doctors required because of a change of residence by the employee.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.082, eff. September 1, 2005.

SEC. 408.0221. REQUEST FOR DESCRIPTION OF EMPLOYMENT.

(a) This section applies only to an employee of an employer who has 10 or more employees.

(b) To facilitate an injured employee's return to employment as soon as it is considered safe and appropriate by the injured employee's treating doctor, the treating doctor may request that the injured employee's employer provide the treating doctor with the information described by Subsection (d) on the form adopted under that subsection.

(c) Information provided to a treating doctor under Subsection (b) does not constitute:

(1) a request by the employer that the injured employee return to the employment;

(2) an offer of employment by the employer for the injured employee to return to employment; or

(3) an admission of the compensability of the injury of the employee.

(d) The commissioner shall prescribe a form to provide information from an employer to a treating doctor concerning the functions and physical responsibilities of an injured employee's job. To the extent possible, the form prescribed under this subsection shall be one page, use a check box format as appropriate, and be compatible with electronic mail. The form must include:

(1) the name and address of the employer and the contact information and availability of the individual representing the employer who has knowledge of the injured employee's job;

(2) the scope of the injured employee's employment, including any specific tasks, job duties, or work activities that the injured employee was required to perform at the time the employee sustained the injury; and

(3) an area for additional comments or information by the employer or individual representing the employer concerning:

(A) the injured employee's job; or

(B) the availability, if any, of other jobs that the employer may have that the employer would like the treating doctor to consider in determining whether an injured employee is able to return to work.

(e) The commissioner may adopt rules as necessary to implement this section and to facilitate communication between the employer and the treating doctor regarding return-to-work opportunities.

Added by Acts 2009, 81st Leg., R.S., Ch. 456, Sec. 1, eff. September 1, 2009.

SEC. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING DOCTORS.

(a) The division shall develop a list of doctors licensed in this state who are approved to provide health care services under this subtitle. A doctor is eligible to be included on the division's list of approved doctors if the doctor:

(1) registers with the division in the manner prescribed by commissioner rules; and

(2) complies with the requirements adopted by the commissioner under this section.

(b) The commissioner by rule shall establish reasonable requirements for training for doctors as a prerequisite for inclusion on the list. Except as otherwise provided by this section, the requirements adopted under this subsection apply to doctors and other health care providers who:

(1) provide health care services as treating doctors;

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

(3) perform medical peer review under this subtitle;

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

(5) provide health care services on referral from a treating doctor, as provided by commissioner rule.

(c) The division shall issue to a doctor who is approved by the commissioner a certificate of registration. In determining whether to issue a certificate of registration, the commissioner may

consider and condition approval on any practice restrictions applicable to the applicant that are relevant to services provided under this subtitle. The commissioner may also consider the practice restrictions of an applicant when determining appropriate sanctions under Section 408.0231.

(d) A certificate of registration issued under this section is valid, unless revoked, suspended, or revised, for the period provided by commissioner rule and may be renewed on application to the division. The division shall provide notice to each doctor on the approved doctor list of the pending expiration of the doctor's certificate of registration not later than the 60th day before the date of expiration of the certificate.

(e) Notwithstanding other provisions of this section, a doctor not licensed in this state but licensed in another state or jurisdiction who treats employees or performs utilization review of health care for an insurance carrier may apply for a certificate of registration under this section to be included on the division's list of approved doctors.

(f) Except in an emergency or for immediate post-injury medical care as defined by commissioner rule, or as provided by Subsection (h), (i), or (j), each doctor who performs functions under this subtitle, including examinations under this chapter, must hold a certificate of registration and be on the division's list of approved doctors in order to perform services or receive payment for those services.

(g) The commissioner by rule shall modify registration and training requirements for doctors who infrequently provide health care or who perform utilization review or peer review functions for insurance carriers as necessary to ensure that those doctors are informed of the regulations that affect health care benefit delivery under this subtitle.

(h) Notwithstanding Section 4201.152, Insurance Code, a utilization review agent or an insurance carrier that uses doctors to perform reviews of health care services provided under this subtitle, including utilization review, may only use doctors licensed to practice in this state.

(i) The commissioner may grant exceptions to the requirement imposed under Subsection (f)

as necessary to ensure that:

(1) employees have access to health care; and

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

(j) A doctor who contracts with a workers' compensation health care network certified under Chapter 1305, Insurance Code, is not subject to the registration requirements of Subsections (a)-(i) for the purpose of providing health care services under that network contract. The doctor is subject to the requirements of Subsections (l)-(p), and Subsection (q) applies to health care services and functions provided by a doctor who contracts with a certified workers' compensation health care network.

(k) The requirements of Subsections (a)-(g) and Subsection (i) expire September 1, 2007. Before that date, the commissioner may waive the application of the provisions of Subsections (a)-(g) and Subsection (i) that require doctors to hold a certificate of registration and to be on the list of approved doctors if the commissioner determines that:

(1) injured employees have adequate access to health care providers who are willing to treat injured employees for compensable injuries through workers' compensation health care networks certified under Chapter 1305, Insurance Code; or

(2) injured employees who are not covered by a workers' compensation health care network certified under Chapter 1305, Insurance Code, do not have adequate access to health care providers who are willing to treat injured employees for compensable injuries.

(l) The injured employee's treating doctor is responsible for the efficient management of medical care as required by Section 408.025(c) and commissioner rules. The division shall collect information regarding:

(1) return-to-work outcomes;

(2) patient satisfaction; and

(3) cost and utilization of health care provided or authorized by a treating doctor on the list of approved doctors.

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

(n) The commissioner by rule shall establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, impairment rating testing, and disclosure of financial interests as required by Section 413.041, and for monitoring of those doctors and health care providers as provided by Sections 408.0231, 413.0511, and 413.0512.

(o) A doctor, including a doctor who contracts with a workers' compensation health care network, shall:

(1) comply with the requirements established by commissioner rule under Subsections (l) and (m) and with Section 413.041 regarding the disclosure of financial interests; and

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

(p) A person required to comply with Subsection (o), including a doctor who contracts with a workers' compensation health care network, who does not comply with that section commits an administrative violation.

(q) An insurance carrier may not use, for the purpose of suspending temporary income benefits or computing impairment income benefits, a certification of maximum medical improvement or an impairment rating assigned by a doctor, including a doctor who contracts with a workers' compensation health care network certified under Chapter 1305, Insurance Code, who fails to comply with Subsection (o)(2).

(r) Notwithstanding the waiver or expiration of Subsections (a)-(g) and (i), there may be no direct or indirect provision of health care under this subtitle and rules adopted under this subtitle, and no direct or indirect receipt of remuneration under this subtitle and rules adopted under this subtitle by a doctor who:

(1) before September 1, 2007:

(A) was removed or deleted from the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor;

(B) was not admitted to the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor;

(C) was suspended from the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor; or

(D) had the doctor's license to practice suspended by the appropriate licensing agency, including a suspension that was stayed, deferred, or probated, or voluntarily relinquished the license to practice; and

(2) was not reinstated or restored by the Texas Workers' Compensation Commission or the division to the list of approved doctors before September 1, 2007.

(s) The waiver or expiration of Subsections (a)-(g) and (i) do not limit the division's ability to impose sanctions as provided by this subtitle and commissioner rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.25, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 1.01, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.083, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 134, Sec. 2, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 17, eff. September 1, 2009.

SEC. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS; SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE.

(a) The commissioner shall delete from the list of approved doctors a doctor:

(1) who fails to register with the division as provided by this chapter and commissioner rules;

(2) who is deceased;

(3) whose license to practice in this state is revoked, suspended, or not renewed by the appropriate licensing authority; or

(4) who requests to be removed from the list.

(b) The commissioner by rule shall establish criteria for:

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

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

(3) monitoring of utilization review agents, as provided by a memorandum of understanding between the division and the Texas Department of Insurance; and

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

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

(1) a sanction of the doctor by the commissioner for a violation of Chapter 413 or Chapter 415;

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

(A) substandard medical care;

(B) overcharging;

(C) overutilization of medical services; or

(D) any other substantive noncompliance with requirements of those programs

regarding professional practice or billing;

(3) evidence from the division's medical records that the applicable insurance carrier's utilization review practices or the doctor's charges, fees, diagnoses, treatments, evaluations, or impairment ratings are substantially different from those the commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice;

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

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

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

(7) a criminal conviction.

(d) The commissioner by rule shall establish procedures under which a doctor may apply for:

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

(2) restoration of doctor practice privileges removed by the commissioner based on sanctions imposed under this section.

(e) The commissioner shall act on a recommendation by the medical advisor selected under Section 413.0511 and, after notice and the opportunity for a hearing, may impose sanctions under this section on a doctor or an insurance carrier or may recommend action regarding a utilization review agent. The commissioner and the commissioner of insurance shall enter into a memorandum of understanding to coordinate the regulation of insurance carriers and utilization review agents as necessary to ensure:

(1) compliance with applicable regulations; and

(2) that appropriate health care decisions are reached under this subtitle and under

Chapter 4201, Insurance Code.

(f) The sanctions the commissioner may recommend or impose under this section include:

(1) reduction of allowable reimbursement;

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

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

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

(5) restrictions on appointment under this chapter;

(6) conditions or restrictions on an insurance carrier regarding actions by insurance carriers under this subtitle in accordance with the memorandum of understanding adopted under Subsection (e); and

(7) mandatory participation in training classes or other courses as established or certified by the division.

(g) The commissioner shall adopt rules regarding doctors who perform peer review functions for insurance carriers. Those rules may include standards for peer review, imposition of sanctions on doctors performing peer review functions, including restriction, suspension, or removal of the doctor's ability to perform peer review on behalf of insurance carriers in the workers' compensation system, and other issues important to the quality of peer review, as determined by the commissioner. A doctor who performs peer review under this subtitle must hold the appropriate professional license issued by this state. A doctor, other than a chiropractor or a dentist, who performs peer review is subject to Section 408.0043. A dentist who performs a peer review of a dental service provided to an injured employee is subject to Section 408.0044. A chiropractor who performs a peer review of a chiropractic service provided to an injured employee is subject to Section 408.0045.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.01, eff. June 17, 2001.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.084, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 134, Sec. 3, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 4, eff. September 1, 2007.

SEC. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS.

Except as otherwise provided, and after notice and an opportunity for hearing, the commissioner may relieve an insurance carrier of liability for health care that is furnished by a health care provider or another person selected in a manner inconsistent with the requirements of this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.085, eff. September 1, 2005.

SEC. 408.025. REPORTS AND RECORDS REQUIRED FROM HEALTH CARE PROVIDERS.

(a) The commissioner by rule shall adopt requirements for reports and records that are required to be filed with the division or provided to the injured employee, the employee's attorney, or the insurance carrier by a health care provider.

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

(c) The treating doctor is responsible for maintaining efficient utilization of health care.

(d) On the request of an injured employee, the employee's attorney, or the insurance carrier, a health care provider shall furnish records relating to treatment or hospitalization for which compensation is being sought. The division may regulate the charge for furnishing a report or record, but the charge may not be less than the fair and reasonable charge for furnishing the report or record. A health care provider may disclose to the insurance carrier of an affected employer records relating to the diagnosis or treatment of the injured employee without the authorization of the injured employee to determine the amount of payment or the entitlement to payment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.086, eff. September 1, 2005.

SEC. 408.0251. ELECTRONIC BILLING REQUIREMENTS.

(a) The commissioner, by rule and in cooperation with the commissioner of insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers.

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

(c) The commissioner shall by rule establish criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically.

(d) On or after January 1, 2008, the commissioner may adopt rules regarding the electronic payment of medical bills by insurance carriers to health care providers.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.087, eff. September 1, 2005.

SEC. 408.0252. UNDERSERVED AREAS.

The commissioner by rule may identify areas of this state in which access to health care providers is less available and may adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.087, eff. September 1, 2005.

SEC. 408.026. SPINAL SURGERY.

Except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only as provided by Section 413.014 and commissioner rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 4.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.088, eff. September 1, 2005.

SEC. 408.027. PAYMENT OF HEALTH CARE PROVIDER.

(a) A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment.

(b) The insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the carrier of the provider's claim. The carrier may request additional documentation necessary to clarify the provider's charges at any time during the 45-day period. If the insurance carrier requests additional documentation under this subsection, the health care provider must provide the requested documentation not later than the 15th day after the date of receipt of the carrier's request. If the insurance carrier elects to audit the claim, the carrier must complete the audit not later than the 160th day after the date of receipt by the carrier of the health care provider's claim, and, not later than the 160th day after the receipt of the claim, must make a determination regarding the relationship of the health care services provided to the compensable injury, the extent of the injury, and the medical necessity of the services provided. If the insurance carrier chooses to audit the claim, the insurance carrier must pay to the health care provider not later than the 45th day after the date of receipt by the carrier of the provider's claim 85 percent of:

(1) the amount for the health care service established under 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

(2) the amount of the 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.

(c) If the health care services provided are determined to be appropriate, the insurance

carrier shall pay the health care provider the remaining 15 percent of the claim not later than the 160th day after the date of receipt by the carrier of the health care provider's documentation of the claim. An insurance carrier commits an administrative violation if the carrier, in violation of Subsection (b), fails to:

(1) pay, reduce, deny, or notify the health care provider of the intent to audit the claim by the 45th day after the date of receipt by the carrier of the health care provider's claim; or

(2) pay, reduce, or deny an audited claim by the 160th day after the date of receipt of the claim.

(d) If an insurance carrier contests the compensability of an injury and the injury is determined not to be compensable, the carrier may recover the amounts paid for health care services from the employee's accident or health benefit plan, or any other person who may be obligated for the cost of the health care services. 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. 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 the workers' compensation insurance carrier or the employer has not disputed compensability, the accident or health insurance carrier or other person may recover reimbursement from the insurance carrier in the manner described by Section 409.009 or 409.0091, as applicable.

(e) If an insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, the insurance carrier shall send to the division, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial

of payment for health care services provided to the employee. The insurance carrier is entitled to a hearing as provided by Section 413.031(d).

(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.

(g) Notwithstanding any other provision in this subtitle or Chapter 1305, Insurance Code, this section and Section 408.0271 apply to health care provided through a workers' compensation health care network established under Chapter 1305, Insurance Code. The commissioner shall adopt rules as necessary to implement the provisions of this section and Section 408.0271.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 10, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.089, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 4, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 1, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 1, eff. September 1, 2013.

SEC. 408.0271. REIMBURSEMENT BY HEALTH CARE PROVIDER.

(a) If the health care services provided to an injured employee are determined by the insurance carrier to be inappropriate, the insurance carrier shall:

(1) notify the health care provider in writing of the carrier's decision; and

(2) demand a refund by the health care provider of the portion of payment on the claim that was received by the health care provider for the inappropriate services.

(b) The health care provider may appeal the insurance carrier's determination under Subsection (a). The health care provider must file an appeal under this subsection with the insurance carrier not later than the 45th day after the date of the insurance carrier's request for the

refund. The insurance carrier must act on the appeal not later than the 45th day after the date on which the provider files the appeal.

(c) A health care provider shall reimburse the insurance carrier for payments received by the provider for inappropriate charges not later than the 45th day after the date of the carrier's notice. The failure by the health care provider to timely remit payment to the carrier constitutes an administrative violation.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.0895, eff. September 1, 2005.

SEC. 408.0272. CERTAIN EXCEPTIONS FOR UNTIMELY SUBMISSION OF CLAIM.

(a) In this section:

(1) "Group accident and health insurance" has the meaning assigned by Chapter 1251, Insurance Code.

(2) "Health maintenance organization" has the meaning assigned by Chapter 843, Insurance Code.

(b) Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if:

(1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027(a), erroneously filed for reimbursement with:

(A) an insurer that issues a policy of group accident and health insurance under which the injured employee is a covered insured;

(B) a health maintenance organization that issues an evidence of coverage under which the injured employee is a covered enrollee; or

(C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title; or

(2) the commissioner determines that the failure resulted from a catastrophic event

that substantially interfered with the normal business operations of the provider.

(c) Notwithstanding Subsection (b), a health care provider who erroneously submits a claim for payment to an entity described by Subdivision (1) of that subsection forfeits the provider's right to reimbursement for that claim if the provider fails to submit the claim to the correct workers' compensation insurance carrier within 95 days after the date the provider is notified of the provider's erroneous submission of the claim.

(d) Notwithstanding any other provision of this section or Section 408.027, the period for submitting a claim for payment may be extended by agreement of the parties.

Added by Acts 2007, 80th Leg., R.S., Ch. 459, Sec. 1, eff. September 1, 2007.

SEC. 408.028. PHARMACEUTICAL SERVICES.

(a) A physician providing care to an employee under this subchapter shall prescribe for the employee any necessary prescription drugs, and order over-the-counter alternatives to prescription medications as clinically appropriate and applicable, in accordance with applicable state law and as provided by Subsection (b). A doctor providing care may order over-the-counter alternatives to prescription medications, when clinically appropriate, in accordance with applicable state law and as provided by Subsection (b).

(b) The commissioner by rule shall require the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law. The commissioner by rule shall adopt a closed formulary under Section 413.011. Rules adopted by the commissioner shall 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.

(c) Except as otherwise provided by this subtitle, an insurance carrier may not require an employee to use pharmaceutical services designated by the carrier.

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

(e) Notwithstanding Subsection (b), the commissioner by rule shall allow an employee to purchase a brand name drug rather than a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. The employee shall be responsible for paying the difference between the cost of the brand name drug and the cost of the generic pharmaceutical medication or of an over-the-counter alternative to a prescription medication. The employee may not seek reimbursement for the difference in cost from an insurance carrier and is not entitled to use the medical dispute resolution provisions of Chapter 413 with regard to the prescription. A payment described by this subsection by an employee to a health care provider does not violate Section 413.042. This subsection does not affect the duty of a health care provider to comply with the requirements of Subsection (b) when prescribing medications or ordering over-the-counter alternatives to prescription medications.

(f) Notwithstanding any other provision of this title, the commissioner by rule shall adopt a fee schedule for pharmacy and pharmaceutical services that will:

(1) provide reimbursement rates that are fair and reasonable;

(2) assure adequate access to medications and services for injured workers;

(3) minimize costs to employees and insurance carriers; and

(4) take into consideration the increased security of payment afforded by this subtitle.

(g) Section 413.011(d) and the rules adopted to implement that subsection do not apply to the fee schedule adopted by the commissioner under Subsection (f).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.01, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 468, Sec. 1, eff. Sept. 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.090, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 705, Sec. 2, eff. June 17, 2011.

SEC. 408.0281. REIMBURSEMENT FOR PHARMACEUTICAL SERVICES; ADMINISTRATIVE VIOLATION.

(a) In this section:

(1) "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 pharmaceutical services; and

(B) includes a specific fee schedule.

(2) "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 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, by an insurance carrier for the provision of pharmaceutical services.

(b) Notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 of this code, prescription medication or services, as defined by Section 401.011(19)(E):

(1) may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a contract rate in accordance with this section; and

(2) may not be delivered through:

(A) a workers' compensation health care network under Chapter 1305, Insurance Code; or

(B) a contract described by Section 504.053(b)(2).

(c) Notwithstanding any other provision of this title, including Section 408.028(f), or any provision of Chapter 1305, Insurance Code, an insurance carrier may pay a health care provider fees for pharmaceutical services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier 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 pharmaceutical 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 pharmaceutical 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, as appropriate, 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 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

(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.

(e) 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 413 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 705, Sec. 3, eff. June 17, 2011.

SEC. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR VOLUNTARY NETWORKS.

(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.

(b) Each informal or voluntary network shall report any changes to the information provided under Subsection (a) to the division not later than the 30th day after the effective date of the change.

(c) An informal or voluntary network shall submit a report required under this section, including a report of changes required under Subsection (b), to the division through the division's online reporting system available through the division's Internet website.

(d) An informal or voluntary network commits an administrative violation if the informal or voluntary network violates any provision of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 3, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 2, eff. September 1, 2013.

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.

(e) 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 413 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 3, eff. September 1, 2013.

SEC. 408.029. NURSE FIRST ASSISTANT SERVICES.

An insurance carrier may not refuse to reimburse a health care practitioner solely because that practitioner is a nurse first assistant, as defined by Section 301.1525, Occupations Code, for a covered service that a physician providing health care services under this subtitle has requested the nurse first assistant to perform.

Added by Acts 2001, 77th Leg., ch. 812, Sec. 9, eff. Sept. 1, 2001.

SEC. 408.030. REPORTS OF PHYSICIAN VIOLATIONS.

If the division discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of a state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the division shall immediately report that act or omission to the Texas State Board of Medical Examiners.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 38, eff. June 10, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.091, eff. September 1, 2005.

SEC. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS.

(a) Notwithstanding any other provision of this chapter, an injured employee may receive benefits under a workers' compensation health care network established under Chapter 1305, Insurance Code, in the manner provided by that chapter.

(b) In the event of a conflict between this title and Chapter 1305, Insurance Code, as to the

provision of medical benefits for injured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of the health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks, Chapter 1305, Insurance Code, prevails.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.092, eff. September 1, 2005.

SEC. 408.032. STUDY ON INTERDISCIPLINARY PAIN REHABILITATION PROGRAM AND FACILITY ACCREDITATION REQUIREMENT.

The division shall study the issue of required accreditation of interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities that provide services to injured employees and shall report to the legislature regarding any statutory changes that the division considers necessary to require that accreditation.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.093, eff. September 1, 2005.

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SUBCHAPTER C. COMPUTATION OF AVERAGE WEEKLY WAGE

SEC. 408.041. AVERAGE WEEKLY WAGE.

(a) Except as otherwise provided by this subtitle, the average weekly wage of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

(b) The average weekly wage of an employee whose wage at the time of injury has not been fixed or cannot be determined or who has worked for the employer for less than the 13 weeks immediately preceding the injury equals:

(1) the usual wage that the employer pays a similar employee for similar services; or

(2) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services provided for remuneration.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.094, eff. September 1, 2005.

SEC. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE OR EMPLOYEE WITH MULTIPLE EMPLOYMENT.

(a) The average weekly wage of a part-time employee who limits the employee's work to less than a full-time workweek as a regular course of that employee's conduct is computed as provided by Section 408.041.

(b) For part-time employees not covered by Subsection (a), the average weekly wage:

(1) for determining temporary income benefits is computed as provided by Section 408.041; and

(2) for determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits is computed as follows:

(A) if the employee has worked for the employer for at least the 13 weeks immediately preceding the date of the injury, the average weekly wage is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13 and adjusting that amount to the weekly wage level the employee would have attained by working a full-time workweek at the same rate of pay; or

(B) if the employee has worked for the employer for less than 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(i) the weekly wage that the employer pays a similar employee for similar services based on a full-time workweek; or

(ii) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services based on a full-time workweek.

(c) For employees with multiple employment, the average weekly wage for determining temporary income benefits, impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits, is computed as follows:

(1) the average weekly wage for an employee with multiple employment is equal to the sum of the average weekly wages computed under Subdivisions (2) and (3);

(2) for each of the employers for whom the employee has worked for at least the 13 weeks immediately preceding the date of injury, the average weekly wage is equal to the sum of the wages paid by that employer to the employee in the 13 weeks immediately preceding the injury divided by 13;

(3) for each of the employers for whom the employee has worked for less than the 13

weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(A) the weekly wage that employer pays similar employees for similar services; or

(B) if a similar employee does not exist, the usual weekly wage paid in that vicinity for the same or similar services; and

(4) the average weekly wage of an employee with multiple employment who limits the employee's work to less than a full-time workweek, but does not do so as a regular course of that employee's conduct, is adjusted to the weekly wage level the employee would have attained by working a full-time workweek at the employee's average rate of pay.

(d) The commissioner shall:

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

(2) by rule, determine the manner by which the division collects and distributes wage information to implement this section.

(e) For an employee with multiple employment, only the employee's wages that are reportable for federal income tax purposes may be considered. The employee shall document and verify wage payments subject to this section.

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

(g) An insurance carrier is entitled to apply for and receive reimbursement at least annually from the subsequent injury fund for the amount of income and death benefits paid to a worker

under this section that are based on employment other than the employment during which the compensable injury occurred. The commissioner may adopt rules that govern the documentation, application process, and other administrative requirements necessary to implement this subsection.

(h) In this section:

(1) "Employee with multiple employment" means an employee who has more than one employer.

(2) "Full-time workweek" means a 40-hour workweek.

(3) "Part-time employee" means an employee who, at the time of the injury, was working less than a full-time workweek for the employer for whom the employee was working when the compensable injury occurred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.03, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.095, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1150, Sec. 2, eff. September 1, 2007.

SEC. 408.043. AVERAGE WEEKLY WAGE FOR SEASONAL EMPLOYEE.

(a) For determining the amount of temporary income benefits of a seasonal employee, the average weekly wage of the employee is computed as provided by Section 408.041 and is adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period that temporary income benefits are paid.

(b) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a seasonal employee, the average weekly wage of the employee is computed by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(c) If, for good reason, the commissioner determines that computing the average weekly wage for a seasonal employee as provided by this section is impractical, the commissioner shall

compute the average weekly wage as of the time of the injury in a manner that is fair and just to both parties.

(d) In this section, "seasonal employee" means an employee who, as a regular course of the employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.096, eff. September 1, 2005.

SEC. 408.044. AVERAGE WEEKLY WAGE FOR MINOR, APPRENTICE, TRAINEE, OR STUDENT.

(a) For computing impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits, the average weekly wage of an employee shall be adjusted to reflect the level of expected wages during the period that the benefits are payable if:

(1) the employee is a minor, apprentice, trainee, or student at the time of the injury;

(2) the employee's employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages; and

(3) the employee's wages would reasonably be expected to change because of a change of employment during that period.

(b) An adjustment under Subsection (a) may not consider expected wage levels for a period occurring after the third anniversary of the date of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF STATE MILITARY FORCES AND TEXAS TASK FORCE 1.

(a) For purposes of computing income benefits or death benefits under Section 437.227, Government Code, the average weekly wage of a member of the state military forces as defined by Section 437.001, Government Code, who is engaged in authorized training or duty is an amount

equal to the sum of the member's regular weekly wage at any employment the member holds in addition to serving as a member of the state military forces, disregarding any period during which the member is not fully compensated for that employment because the member is engaged in authorized military training or duty, and the member's regular weekly wage as a member of the state military forces, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047.

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

Added by Acts 1999, 76th Leg., ch. 1205, Sec. 4, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 644, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.097, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.14, eff. September 1, 2013.

SEC. 408.0446. AVERAGE WEEKLY WAGE; SCHOOL DISTRICT EMPLOYEE.

(a) For determining the amount of temporary income benefits of a school district employee under Chapter 504, the average weekly wage is computed on the basis of wages earned in a week rather than on the basis of wages paid in a week. The wages earned in any given week are equal to the amount that would be deducted from an employee's salary if the employee were absent from work for one week and the employee did not have personal leave available to compensate the employee for lost wages for that week.

(b) An insurance carrier may adjust a school district employee's average weekly wage as

often as necessary to reflect the wages the employee reasonably could expect to earn during the period for which temporary income benefits are paid. In adjusting a school district employee's average weekly wage under this subsection, the insurance carrier may consider any evidence of the employee's reasonable expectation of earnings.

(c) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a school district employee under Chapter 504, the average weekly wage of the employee is computed by dividing the total amount of wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

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

(e) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 10.04, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.098, eff. September 1, 2005.

SEC. 408.045. NONPECUNIARY WAGES.

The division may not include nonpecuniary wages in computing an employee's average weekly wage during a period in which the employer continues to provide the nonpecuniary wages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.099, eff. September 1, 2005.

SEC. 408.046. SIMILAR EMPLOYEES, SERVICES, OR EMPLOYMENT.

For purposes of this subchapter and Subchapter D, the determination as to whether employees, services, or employment are the same or similar must include consideration of:

(1) the training and experience of the employees;

(2) the nature of the work; and

(3) the number of hours normally worked.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.047. STATE AVERAGE WEEKLY WAGE.

(a) On and after October 1, 2006, the state average weekly wage is equal to 88 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c).

(b) Expired.

(c) Notwithstanding Subsection (a), the commissioner by rule may increase the state average weekly wage to an amount not to exceed 100 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 6, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.100, eff. September 1, 2005.

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SUBCHAPTER D. COMPUTATION OF BENEFITS

SEC. 408.061. MAXIMUM WEEKLY BENEFIT.

(a) A weekly temporary income benefit may not exceed 100 percent of the state average weekly wage under Section 408.047 rounded to the nearest whole dollar.

(b) A weekly impairment income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(c) A weekly supplemental income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(d) A weekly death benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(e) A weekly lifetime income benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(f) The division shall compute the maximum weekly income benefits for each state fiscal year not later than October 1 of each year.

(g) The maximum weekly income benefit in effect on the date of injury is applicable for the entire time that the benefit is payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.101, eff. September 1, 2005.

SEC. 408.062. MINIMUM WEEKLY INCOME BENEFIT.

(a) The minimum weekly income benefit is 15 percent of the state average weekly wage as determined under Section 408.047, rounded to the nearest whole dollar.

(b) The division shall compute the minimum weekly income benefit for each state fiscal year not later than October 1 of each year.

(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire time that income benefits are payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.102, eff. September 1, 2005.

SEC. 408.063. WAGE PRESUMPTIONS; ADMINISTRATIVE VIOLATION.

(a) To expedite the payment of income benefits, the commissioner may by rule establish reasonable presumptions relating to the wages earned by an employee, including the presumption that an employee's last paycheck accurately reflects the employee's usual wage.

(b) Not later than the 30th day after the date the employer receives notice of an injury to the employee, the employer shall file a wage statement showing the amount of all wages paid to the employee.

(c) An employer who fails to file a wage statement in accordance with Subsection (b) commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.103, eff. September 1, 2005.

SEC. 408.064. INTEREST ON ACCRUED BENEFITS.

(a) An order to pay income or death benefits accrued but unpaid must include interest on the amount of compensation due at the rate provided by Section 401.023.

(b) Accrued but unpaid compensation and interest shall be paid in a lump sum.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER E. INCOME BENEFITS IN GENERAL

SEC. 408.081. INCOME BENEFITS.

(a) An employee is entitled to timely and accurate income benefits as provided in this chapter.

(b) Except as otherwise provided by this section or this subtitle, income benefits shall be paid weekly as and when they accrue without order from the commissioner. Interest on accrued but unpaid benefits shall be paid, without order of the commissioner, at the time the accrued benefits are paid.

(c) The commissioner by rule shall establish requirements for agreements under which income benefits may be paid monthly. Income benefits may be paid monthly only:

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

(2) in compliance with the requirements adopted by the commissioner.

(d) An employee's entitlement to income benefits under this chapter terminates on the death of the employee. An interest in future income benefits does not survive after the employee's death.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 11, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.104, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1153, Sec. 1, eff. September 1, 2011.

SEC. 408.0815. RESOLUTION OF OVERPAYMENT OR UNDERPAYMENT OF INCOME BENEFITS.

(a) The commissioner by rule shall establish a procedure by which an insurance carrier:

(1) may recoup an overpayment of income benefits from future income benefit payments that are not reimbursable under Section 410.209; and

(2) shall pay an underpayment of income benefits, including interest on accrued but unpaid benefits, in accordance with this subtitle.

(b) The procedure under Subsection (a) must include:

(1) a process by which an injured employee may notify the insurance carrier of an underpayment;

(2) the time frame and methodology by which an insurance carrier shall pay to an injured employee an underpayment;

(3) a process by which an insurance carrier shall notify an injured employee of an overpayment of income benefits;

(4) the time frame and methodology by which an insurance carrier may recoup an overpayment through the reduction of a future income benefit payment; and

(5) a method for coordinating overpayments that may be recouped from future income benefits and reimbursements described by Section 410.209.

(c) The procedure for recouping overpayments under Subsection (a)(1) must take into consideration the cause of the overpayment and minimize the financial hardship to the injured employee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1153, Sec. 2, eff. September 1, 2011.

SEC. 408.082. ACCRUAL OF RIGHT TO INCOME BENEFITS.

(a) Income benefits may not be paid under this subtitle for an injury that does not result in disability for at least one week.

(b) If the disability continues for longer than one week, weekly income benefits begin to accrue on the eighth day after the date of the injury. If the disability does not begin at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began.

(c) If the disability continues for two weeks or longer after the date it begins, compensation shall be computed from the date the disability begins.

(d) This section does not preclude the recovery of medical benefits as provided by Subchapter B.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.105, eff. September 1, 2005.

SEC. 408.083. TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS.

(a) Except as provided by Subsection (b), an employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks after the date of injury.

(b) If an employee incurs an occupational disease, the employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks after the date on which benefits began to accrue.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.26, eff. Sept. 1, 1995.

SEC. 408.084. CONTRIBUTING INJURY.

(a) At the request of the insurance carrier, the commissioner may order that impairment income benefits and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.

(b) The commissioner shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of the compensable injuries results in an injury compensable under Section 408.161, the benefits for that injury shall be paid as provided by Section 408.162.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.106, eff. September 1, 2005.

SEC. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP.

(a) If there is a likelihood that income benefits will be paid, the commissioner may grant an employee suffering financial hardship advances as provided by this subtitle against the amount of income benefits to which the employee may be entitled. An advance may be ordered before or

after the employee attains maximum medical improvement. An insurance carrier shall pay the advance ordered.

(b) An employee must apply to the division for an advance on a form prescribed by the commissioner. The application must describe the hardship that is the grounds for the advance.

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

(d) The commissioner may not grant an advance to an employee who is receiving, on the date of the application under Subsection (b), at least 90 percent of the employee's net preinjury wages under Section 408.003 or 408.129.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.107, eff. September 1, 2005.

SEC. 408.086. DIVISION DETERMINATION OF EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT.

(a) During the period that impairment income benefits or supplemental income benefits are being paid to an employee, the commissioner shall determine at least annually whether any extended unemployment or underemployment is a direct result of the employee's impairment.

(b) To make this determination, the commissioner may require periodic reports from the employee and the insurance carrier and, at the insurance carrier's expense, may require physical or other examinations, vocational assessments, or other tests or diagnoses necessary to perform the commissioner's duty under this section and Subchapter H.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.108, eff. September 1, 2005.

SUBCHAPTER F. TEMPORARY INCOME BENEFITS

SEC. 408.101. TEMPORARY INCOME BENEFITS.

(a) An employee is entitled to temporary income benefits if the employee has a disability and has not attained maximum medical improvement.

(b) On the initiation of compensation as provided by Section 409.021, the insurance carrier shall pay temporary income benefits as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.102. DURATION OF TEMPORARY INCOME BENEFITS.

(a) Temporary income benefits continue until the employee reaches maximum medical improvement.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.109, eff. September 1, 2005.

SEC. 408.103. AMOUNT OF TEMPORARY INCOME BENEFITS.

(a) Subject to Sections 408.061 and 408.062, the amount of a temporary income benefit is equal to:

(1) 70 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage; or

(2) for the first 26 weeks, 75 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than $8.50 an hour.

(b) A temporary income benefit under Subsection (a)(2) may not exceed the employee's actual earnings for the previous year. It is presumed that the employee's actual earnings for the

previous year are equal to:

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

(2) the employee's wages in the single quarter of the most recent four quarters in which the employee's earnings were highest, divided by 13, if the commissioner finds that the employee's most recent four quarters' earnings reported in the Texas Workforce Commission wage reports are not representative of the employee's usual earnings; or

(3) the amount the commissioner determines from other credible evidence to be the actual earnings for the previous year if the Texas Workforce Commission does not have a wage report reflecting at least one quarter's earnings because the employee worked outside the state during the previous year.

(c) A presumption under Subsection (b) may be rebutted by other credible evidence of the employee's actual earnings.

(d) The Texas Employment Commission shall provide information required under this section in the manner most efficient for transferring the information.

(e) For purposes of Subsection (a), if an employee is offered a bona fide position of employment that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equal to the weekly wage for the position offered to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.110, eff. September 1, 2005.

SEC. 408.104. MAXIMUM MEDICAL IMPROVEMENT AFTER SPINAL SURGERY.

(a) On application by either the employee or the insurance carrier, the commissioner by order may extend the 104-week period described by Section 401.011(30)(B) if the employee has

had spinal surgery, or has been approved for spinal surgery under Section 408.026 and commissioner rules, within 12 weeks before the expiration of the 104-week period. If an order is issued under this section, the order shall extend the statutory period for maximum medical improvement to a date certain, based on medical evidence presented to the commissioner.

(b) Either the employee or the insurance carrier may dispute an application for extension made under this section. A dispute under this subsection is subject to Chapter 410.

(c) The commissioner shall adopt rules to implement this section, including rules establishing procedures for requesting and disputing an extension.

Added by Acts 1997, 75th Leg., ch. 1443, Sec. 5, eff. Jan. 1, 1998.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.111, eff. September 1, 2005.

SEC. 408.105. SALARY CONTINUATION IN LIEU OF TEMPORARY INCOME BENEFITS.

(a) In lieu of payment of temporary income benefits under this subchapter, an employer may continue to pay the salary of an employee who sustains a compensable injury under a contractual obligation between the employer and employee, such as a collective bargaining agreement, written agreement, or policy.

(b) Salary continuation may include wage supplementation if:

(1) employer reimbursement is not sought from the carrier as provided by Section 408.127; and

(2) the supplementation does not affect the employee's eligibility for any future income benefits.

Added by Acts 1999, 76th Leg., ch. 1003, Sec. 3, eff. Sept. 1, 1999.

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SUBCHAPTER G. IMPAIRMENT INCOME BENEFITS

SEC. 408.121. IMPAIRMENT INCOME BENEFITS.

(a) An employee's entitlement to impairment income benefits begins on the day after the date the employee reaches maximum medical improvement and ends on the earlier of:

(1) the date of expiration of a period computed at the rate of three weeks for each percentage point of impairment; or

(2) the date of the employee's death.

(b) The insurance carrier shall begin to pay impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement. Impairment income benefits shall be paid for a period based on the impairment rating, unless that rating is disputed under Subsection (c).

(c) If the insurance carrier disputes the impairment rating used under Subsection (a), the carrier shall pay the employee impairment income benefits for a period based on the carrier's reasonable assessment of the correct rating.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS.

A claimant may not recover impairment income benefits unless evidence of impairment based on an objective clinical or laboratory finding exists. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.27, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 5.03, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.112, eff. September 1, 2005.

SEC. 408.1225. DESIGNATED DOCTOR.

(a) To be eligible to serve as a designated doctor, a doctor must maintain an active certification by the division.

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

(a-2) The rules adopted by the commissioner under Subsection (a-1) must:

(1) require the division to evaluate the qualification of designated doctors for certification using eligibility requirements, including:

(A) educational experience;

(B) previous training; and

(C) 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) The division shall 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:

(1) a standard curriculum;

(2) standard course materials; and

(3) testing criteria.

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

(a-5) The division may authorize an independent training and testing provider to conduct the certification program for the division under the guidelines developed under Subsection (a-3).

(b) The commissioner shall ensure the quality of designated doctor decisions and reviews

through active monitoring of the decisions and reviews, and may take action as necessary to:

(1) restrict the participation of a designated doctor;

(2) deny renewal of a designated doctor's certification; or

(3) revoke a designated doctor's certification under Section 413.044.

(c) The report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee has reached maximum medical improvement on the report unless the preponderance of the other medical evidence is to the contrary.

(d) The commissioner shall develop rules to ensure 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.

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

(f) A designated doctor shall 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. The commissioner by rule shall prescribe the circumstances under which a designated doctor is permitted to discontinue providing services, including:

(1) the doctor decides to stop practicing in the workers' compensation system; or

(2) the doctor relocates the doctor's residence or practice.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.112, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 5, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 12, eff. September 1, 2011.

SEC. 408.123. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING.

(a) After an employee has been certified by a doctor as having reached maximum medical

improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating using the impairment rating guidelines described by Section 408.124. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted to the treating doctor, and the treating doctor shall indicate agreement or disagreement with the certification and evaluation.

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

(1) the division;

(2) the employee; and

(3) the insurance carrier.

(c) The commissioner shall 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, written notice shall be given to the employee that the employee may dispute the certification of maximum medical improvement and assigned impairment rating. The notice to the employee must state how to dispute the certification of maximum medical improvement and impairment rating.

(d) If an employee is not certified as having reached maximum medical improvement before the expiration of 102 weeks after the date income benefits begin to accrue, the division shall notify the treating doctor of the requirements of this subchapter.

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

(f) An employee's first certification of maximum medical improvement or assignment of an

impairment rating may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the impairment rating;

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

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

(2) other compelling circumstances exist as prescribed by commissioner rule.

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

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 278, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1190, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1323, Sec. 2, eff. June 21, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 265, Sec. 3.113, eff. September 1, 2005.

SEC. 408.124. IMPAIRMENT RATING GUIDELINES.

(a) An award of an impairment income benefit, whether by the commissioner or a court, must be based on an impairment rating determined using the impairment rating guidelines described by this section.

(b) For determining the existence and degree of an employee's impairment, the division shall use "Guides to the Evaluation of Permanent Impairment," third edition, second printing, dated February 1989, published by the American Medical Association.

(c) Notwithstanding Subsection (b), the commissioner by rule may adopt the fourth edition of the "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, or a subsequent edition of those guides, for determining the existence and degree of an employee's impairment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 12, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.114, eff. September 1, 2005.

SEC. 408.125. DISPUTE AS TO IMPAIRMENT RATING.

(a) If an impairment rating is disputed, the commissioner shall direct the employee to the next available doctor on the division's list of designated doctors, as provided by Section 408.0041.

(b) The designated doctor shall report in writing to the division.

(c) The report of the designated doctor shall have presumptive weight, and the division shall base the impairment rating on that report unless the preponderance of the other medical evidence is to the contrary. If the preponderance of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the division, the division shall adopt the impairment rating of one of the other doctors.

(d) To avoid undue influence on a person selected as a designated doctor under this section, only the injured employee or an appropriate member of the staff of the division may

communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff members. The designated doctor may initiate communication with any doctor who has previously treated or examined the injured employee for the work-related injury.

(e) Notwithstanding Subsection (d), the treating doctor and the insurance carrier are both responsible for sending to the designated doctor all the injured employee's medical records that are in their possession and that relate to the issue to be evaluated by the designated doctor. The treating doctor and the insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and the insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(f) A violation of Subsection (d) is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.28, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 5.04, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.115, eff. September 1, 2005.

SEC. 408.126. AMOUNT OF IMPAIRMENT INCOME BENEFITS.

Subject to Sections 408.061 and 408.062, an impairment income benefit is equal to 70 percent of the employee's average weekly wage.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.127. REDUCTION OF IMPAIRMENT INCOME BENEFITS.

(a) An insurance carrier shall reduce impairment income benefits to an employee by an amount equal to employer payments made under Section 408.003 that are not reimbursed or

reimbursable under that section.

(b) The insurance carrier shall remit the amount of a reduction under this section to the employer who made the payments.

(c) The commissioner shall adopt rules and forms to ensure the full reporting and the accuracy of reductions and reimbursements made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.116, eff. September 1, 2005.

SEC. 408.128. COMMUTATION OF IMPAIRMENT INCOME BENEFITS.

(a) An employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage.

(b) An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.129. ACCELERATION OF IMPAIRMENT INCOME BENEFITS.

(a) On approval by the commissioner of a written request received from an employee, an insurance carrier shall accelerate the payment of impairment income benefits to the employee. The accelerated payment may not exceed a rate of payment equal to that of the employee's net preinjury wage.

(b) The commissioner shall approve the request and order the acceleration of the benefits if the commissioner determines that the acceleration is:

(1) required to relieve hardship; and

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

(c) The duration of the impairment income benefits to which the employee is entitled shall be reduced to offset the increased payments caused by the acceleration taking into consideration the

discount for present payment computed at the rate provided under Section 401.023.

(d) The commissioner may prescribe forms necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.117, eff. September 1, 2005.

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SUBCHAPTER H. SUPPLEMENTAL INCOME BENEFITS

SEC. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS.

An award of a supplemental income benefit, whether by the commissioner or a court, shall be made in accordance with this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.118, eff. September 1, 2005.

SEC. 408.1415. WORK SEARCH COMPLIANCE STANDARDS.

(a) The commissioner by rule shall adopt compliance standards for supplemental income benefit recipients that require each recipient to demonstrate an active effort to obtain employment. To be eligible to receive supplemental income benefits under this chapter, a recipient must provide evidence satisfactory to the division of:

(1) active participation in a vocational rehabilitation program conducted by the Department of Assistive and Rehabilitative Services or a private vocational rehabilitation provider;

(2) active participation in work search efforts conducted through the Texas Workforce Commission; or

(3) active work search efforts documented by job applications submitted by the recipient.

(b) In adopting rules under this section, the commissioner shall:

(1) establish the level of activity that a recipient should have with the Texas Workforce Commission and the Department of Assistive and Rehabilitative Services;

(2) define the number of job applications required to be submitted by a recipient to satisfy the work search requirements; and

(3) consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors.

(c) The commissioner may consult with the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and other appropriate entities in adopting rules under this section.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.119, eff. September 1, 2005.

SEC. 408.142. SUPPLEMENTAL INCOME BENEFITS.

(a) An employee is entitled to supplemental income benefits if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:

(1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;

(2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(3) has not elected to commute a portion of the impairment income benefit under Section 408.128; and

(4) has complied with the requirements adopted under Section 408.1415.

(b) If an employee is not entitled to supplemental income benefits at the time of payment of the final impairment income benefit because the employee is earning at least 80 percent of the employee's average weekly wage, the employee may become entitled to supplemental income benefits at any time within one year after the date the impairment income benefit period ends if:

(1) the employee earns wages for at least 90 days that are less than 80 percent of the employee's average weekly wage;

(2) the employee meets the requirements of Subsections (a)(1), (3), and (4); and

(3) the decrease in earnings is a direct result of the employee's impairment from the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.1195, eff. September 1, 2005.

SEC. 408.143. EMPLOYEE STATEMENT.

(a) After the commissioner's initial determination of supplemental income benefits, the employee must file a statement with the insurance carrier stating:

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

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

(3) that the employee has complied with the requirements adopted under Section 408.1415.

(b) The statement required under this section must be filed quarterly on a form and in the manner provided by the commissioner. The commissioner may modify the filing period as appropriate to an individual case.

(c) Failure to file a statement under this section relieves the insurance carrier of liability for supplemental income benefits for the period during which a statement is not filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.120, eff. September 1, 2005.

SEC. 408.144. COMPUTATION OF SUPPLEMENTAL INCOME BENEFITS.

(a) Supplemental income benefits are calculated quarterly and paid monthly.

(b) Subject to Section 408.061, the amount of a supplemental income benefit for a week is equal to 80 percent of the amount computed by subtracting the weekly wage the employee earned during the reporting period provided by Section 408.143(b) from 80 percent of the employee's average weekly wage determined under Section 408.041, 408.042, 408.043, 408.044, 408.0445, or 408.0446.

(c) For the purposes of this subchapter, if an employee is offered a bona fide position of

employment that the employee is capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly wages are considered to be equal to the weekly wages for the position offered to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.1205, eff. September 1, 2005.

SEC. 408.145. PAYMENT OF SUPPLEMENTAL INCOME BENEFITS.

An insurance carrier shall pay supplemental income benefits beginning not later than the seventh day after the expiration date of the employee's impairment income benefit period and shall continue to pay the benefits in a timely manner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.146. TERMINATION OF SUPPLEMENTAL INCOME BENEFITS; REINITIATION.

(a) If an employee earns wages that are at least 80 percent of the employee's average weekly wage for at least 90 days during a time that the employee receives supplemental income benefits, the employee ceases to be entitled to supplemental income benefits for the filing period.

(b) Supplemental income benefits terminated under this section shall be reinitiated when the employee:

(1) satisfies the conditions of Section 408.142(b); and

(2) files the statement required under Section 408.143.

(c) Notwithstanding any other provision of this section, an employee who is not entitled to supplemental income benefits for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.147. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES.

(a) An insurance carrier may request a benefit review conference to contest an employee's

entitlement to supplemental income benefits or the amount of supplemental income benefits.

(b) If an insurance carrier fails to make a request for a benefit review conference within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's statement, the insurance carrier waives the right to contest entitlement to supplemental income benefits and the amount of supplemental income benefits for that period of supplemental income benefits.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.53, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 8.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.121, eff. September 1, 2005.

SEC. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION.

The commissioner may reinstate supplemental income benefits to an employee who is discharged within 12 months of the date of losing entitlement to supplemental income benefits under Section 408.146(c) if the commissioner finds that the employee was discharged at that time with the intent to deprive the employee of supplemental income benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.122, eff. September 1, 2005.

SEC. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE.

(a) Not more than once in each period of 12 calendar months, an employee and an

insurance carrier each may request the commissioner to review the status of the employee and determine whether the employee's unemployment or underemployment is a direct result of impairment from the compensable injury.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.123, eff. September 1, 2005.

SEC. 408.150. VOCATIONAL REHABILITATION.

(a) The division shall refer an employee to the Department of Assistive and Rehabilitative Services with a recommendation for appropriate services if the division determines that an employee could be materially assisted by vocational rehabilitation or training in returning to employment or returning to employment more nearly approximating the employee's preinjury employment. The division shall also notify insurance carriers of the need for vocational rehabilitation or training services. The insurance carrier may provide services through a private provider of vocational rehabilitation services under Section 409.012.

(b) An employee who refuses services or refuses to cooperate with services provided under this section by the Department of Assistive and Rehabilitative Services or a private provider loses entitlement to supplemental income benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1426, Sec. 13, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.124, eff. September 1, 2005.

SEC. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME BENEFITS.

(a) On or after the second anniversary of the date the commissioner makes the initial award of supplemental income benefits, an insurance carrier may not require an employee who is

receiving supplemental income benefits to submit to a medical examination more than annually if, in the preceding year, the employee's medical condition resulting from the compensable injury has not improved sufficiently to allow the employee to return to work.

(b) If a dispute exists as to whether the employee's medical condition has improved sufficiently to allow the employee to return to work, the commissioner shall direct the employee to be examined by a designated doctor chosen by the division. The designated doctor shall report to the division. The report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee's medical condition has improved sufficiently to allow the employee to return to work on that report unless the preponderance of the other medical evidence is to the contrary.

Added by Acts 1999, 76th Leg., ch. 850, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.125, eff. September 1, 2005.

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SUBCHAPTER I. LIFETIME INCOME BENEFITS

SEC. 408.161. LIFETIME INCOME BENEFITS.

(a) Lifetime income benefits are paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss of both feet at or above the ankle;

(3) loss of both hands at or above the wrist;

(4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;

(6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or

(7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

(b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

(c) Subject to Section 408.061, the amount of lifetime income benefits is equal to 75 percent of the employee's average weekly wage. Benefits being paid shall be increased at a rate of three percent a year notwithstanding Section 408.061.

(d) An insurance carrier may pay lifetime income benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the lifetime income benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1426, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 9.01, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.126, eff. September 1, 2005.

SEC. 408.162. SUBSEQUENT INJURY FUND BENEFITS.

(a) If a subsequent compensable injury, with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed.

(b) The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER J. DEATH AND BURIAL BENEFITS

SEC. 408.181. DEATH BENEFITS.

(a) An insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death.

(b) Subject to Section 408.061, the amount of a death benefit is equal to 75 percent of the employee's average weekly wage.

(c) The commissioner by rule shall establish requirements for agreements under which death benefits may be paid monthly. Death benefits may be paid monthly only:

(1) on the request of the legal beneficiary and the agreement of the legal beneficiary and the insurance carrier; and

(2) in compliance with the requirements adopted by the commissioner.

(d) An insurance carrier may pay death benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the death benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 15, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.127, eff. September 1, 2005.

SEC. 408.182. DISTRIBUTION OF DEATH BENEFITS.

(a) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If an eligible child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(b) If there is an eligible spouse and no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild and no eligible spouse, the death benefits shall

be paid to the eligible children or grandchildren.

(d) If there is no eligible spouse, no eligible child, and no eligible grandchild, the death benefits shall be paid in equal shares to surviving dependents of the deceased employee who are parents, stepparents, siblings, or grandparents of the deceased.

(d-1) If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death benefits made under this subsection may not exceed one payment per household. Total payments under this section may not exceed 104 weeks regardless of the number of surviving eligible parents.

(d-2) Except as otherwise provided by this subsection, to be eligible to receive death benefits under Subsection (d-1), an eligible parent must file with the division a claim for those benefits not later than the first anniversary of the date of the injured employee's death from the compensable injury. The claim must designate all eligible parents and necessary information for payment to the eligible parents. The insurance carrier is not liable for payment to any eligible parent not designated on the claim. Failure to file a claim in the time required bars the claim unless good cause exists for the failure to file a claim under this section.

(e) If an employee is not survived by legal beneficiaries or eligible parents, the death benefits shall be paid to the subsequent injury fund under Section 403.007.

(f) In this section:

(1) "Eligible child" means a child of a deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or

(C) a dependent of the deceased employee at the time of the employee's

death.

(2) "Eligible grandchild" means a grandchild of a deceased employee who is a dependent of the deceased employee and whose parent is not an eligible child.

(3) "Eligible spouse" means the surviving spouse of a deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good cause, as determined by the division.

(4) "Eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent. The term does not include a parent whose parental rights have been terminated.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.128, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 5, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 6, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 344, Sec. 1, eff. September 1, 2009.

SEC. 408.183. DURATION OF DEATH BENEFITS.

(a) Entitlement to death benefits begins on the day after the date of an employee's death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive benefits until the child attains the age of 18.

(d) A child eligible for death benefits under Subsection (c) who at age 18 is enrolled as a full-time student in an accredited educational institution or a child who is eligible for death benefits because on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is entitled to receive or to continue to receive, as appropriate, benefits until the earliest of:

(1) the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution;

(2) the date the child attains the age of 25; or

(3) the date the child dies.

(e) A child who is eligible for death benefits because the child is a dependent of the deceased employee on the date of the employee's death is entitled to receive benefits until the earlier of:

(1) the date the child dies; or

(2) if the child is dependent:

(A) because the child is an individual with a physical or mental disability, the date the child no longer has the disability; or

(B) because of a reason other than a physical or mental disability, the date of the expiration of 364 weeks of death benefit payments.

(f) An eligible grandchild is entitled to receive death benefits until the earlier of:

(1) the date the grandchild dies; or

(2) if the grandchild is:

(A) a minor at the time of the employee's death, the date the grandchild ceases to be a minor; or

(B) not a minor at the time of the employee's death, the date of the expiration of 364 weeks of death benefit payments.

(f-1) An eligible parent who is not a surviving dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the date the eligible parent dies; or

(2) the date of the expiration of 104 weeks of death benefit payments.

(g) Any other person entitled to death benefits is entitled to receive death benefits until the

earlier of:

(1) the date the person dies; or

(2) the date of the expiration of 364 weeks of death benefit payments.

(h) Section 401.011(16) does not apply to the use of the term "disability" in this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.129, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 7, eff. September 1, 2007.

SEC. 408.184. REDISTRIBUTION OF DEATH BENEFITS.

(a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries as provided by Sections 408.182 and 408.183.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries remain constant for 104 weeks. After the 104th week, the spouse's share of benefits shall be redistributed as provided by Sections 408.182 and 408.183.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 364 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay to the subsequent injury fund an amount computed by subtracting the total amount paid from the amount that would be paid for 364 weeks of death benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.185. EFFECT OF BENEFICIARY DISPUTE; ATTORNEY'S FEES.

On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee not to exceed 25 percent of the settlement, paid periodically, and based on time and expenses.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.186. BURIAL BENEFITS.

(a) If the death of an employee results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $6,000.

(b) If the employee died away from the employee's usual place of employment, the insurance carrier shall pay the reasonable cost of transporting the body, not to exceed the cost of transporting the body to the employee's usual place of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 16, eff. Sept. 1, 1999.

SEC. 408.187. AUTOPSY.

(a) If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy.

(b) A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section.

(c) The commissioner shall require the insurance carrier to pay the costs of a procedure ordered under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.130, eff. September 1, 2005.

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SUBCHAPTER K. PROTECTION OF RIGHTS TO BENEFITS

SEC. 408.201. BENEFITS EXEMPT FROM LEGAL PROCESS.

Benefits are exempt from:

(1) garnishment;

(2) attachment;

(3) judgment; and

(4) other actions or claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 408.202. ASSIGNABILITY OF BENEFITS.

Benefits are not assignable, except a legal beneficiary may, with the commissioner's approval, assign the right to death benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.131, eff. September 1, 2005.

SEC. 408.203. ALLOWABLE LIENS.

(a) An income or death benefit is subject only to the following lien or claim, to the extent the benefit is unpaid on the date the insurance carrier receives written notice of the lien or claim, in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in a matter arising under this subtitle;

(2) court-ordered child support; or

(3) a subrogation interest established under this subtitle.

(b) A benefit that is subject to a lien or claim for payment of court-ordered child support shall be paid as required by an order or writ of income withholding under Chapter 158, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.53, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 22, eff. Sept. 1, 2003.

SUBCHAPTER L. ATTORNEY'S FEES IN WORKERS' COMPENSATION BENEFIT MATTERS

SEC. 408.221. ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL.

(a) An attorney's fee, including a contingency fee, for representing a claimant before the division or court under this subtitle must be approved by the commissioner or court.

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the division or court. Except as provided by Subsection (c) or Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c) An insurance carrier that seeks judicial review under Subchapter G, Chapter 410, of a final decision of the appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits is liable for reasonable and necessary attorney's fees as provided by Subsection (d) incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues contained in Section 410.302. If the carrier appeals multiple issues and the claimant prevails on some, but not all, of the issues appealed, the court shall apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (d). This subsection does not apply to attorney's fees for which an insurance carrier may be liable under Section 408.147. An award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (f).

(d) In approving an attorney's fee under this section, the commissioner or court shall consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions involved;

(3) the skill required to perform the legal services properly;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved in the controversy;

(6) the benefits to the claimant that the attorney is responsible for securing; and

(7) the experience and ability of the attorney performing the services.

(e) The commissioner by rule or the court may provide for the commutation of an attorney's fee, except that the attorney's fee shall be paid in periodic payments in a claim involving death benefits if the only dispute is as to the proper beneficiary or beneficiaries.

(f) The commissioner by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with this section.

(g) An attorney's fee may not be allowed in a case involving a fatal injury or lifetime income benefit if the insurance carrier admits liability on all issues and tenders payment of maximum benefits in writing under this subtitle while the claim is pending before the division.

(h) An attorney's fee shall be paid to the attorney by separate draft.

(i) Except as provided by Subsection (c) or Section 408. 147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 8.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.132, eff. September 1, 2005.

SEC. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL.

(a) The amount of an attorney's fee for defending an insurance carrier in a workers' compensation action brought under this subtitle must be approved by the division or court and determined by the division or court to be reasonable and necessary.

(b) In determining whether a fee is reasonable under this section, the division or court shall consider issues analogous to those listed under Section 408.221(d). The defense counsel shall

present written evidence to the division or court relating to:

(1) the time spent and expenses incurred in defending the case; and

(2) other evidence considered necessary by the division or court in making a determination under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 8.03, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.133, eff. September 1, 2005.

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LABOR CODE CHAPTER 409. COMPENSATION PROCEDURES

SUBCHAPTER A. INJURY REPORTS, CLAIMS, AND RECORDS

SEC. 409.001. NOTICE OF INJURY TO EMPLOYER.

(a) An employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which:

(1) the injury occurs; or

(2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment.

(b) The notice required under Subsection (a) may be given to:

(1) the employer; or

(2) an employee of the employer who holds a supervisory or management position.

(c) If the injury is an occupational disease, for purposes of this section, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 409.002. FAILURE TO FILE NOTICE OF INJURY.

Failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

(1) the employer, a person eligible to receive notice under Section 409.001(b), or the employer's insurance carrier has actual knowledge of the employee's injury;

(2) the division determines that good cause exists for failure to provide notice in a timely manner; or

(3) the employer or the employer's insurance carrier does not contest the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.134, eff. September 1, 2005.

SEC. 409.003. CLAIM FOR COMPENSATION.

An employee or a person acting on the employee's behalf shall file with the division a claim for compensation for an injury not later than one year after the date on which:

(1) the injury occurred; or

(2) if the injury is an occupational disease, the employee knew or should have known that the disease was related to the employee's employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.135, eff. September 1, 2005.

SEC. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR COMPENSATION.

Failure to file a claim for compensation with the division as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

(1) good cause exists for failure to file a claim in a timely manner; or

(2) the employer or the employer's insurance carrier does not contest the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.136, eff. September 1, 2005.

SEC. 409.005. REPORT OF INJURY; MODIFIED DUTY PROGRAM NOTICE; ADMINISTRATIVE VIOLATION.

(a) An employer shall report to the employer's insurance carrier if:

(1) an injury results in the absence of an employee of that employer from work for more than one day; or

(2) an employee of the employer notifies that employer of an occupational disease under Section 409.001.

(b) The report under Subsection (a) must be made not later than the eighth day after:

(1) the employee's absence from work for more than one day due to an injury; or

(2) the day on which the employer receives notice under Section 409.001 that the employee has contracted an occupational disease.

(c) The employer shall deliver a written copy of the report under Subsection (a) to the injured employee at the time that the report is made to the insurance carrier.

(d) The insurance carrier shall file the report of the injury on behalf of the policyholder. Except as provided by Subsection (e), the insurance carrier must electronically file the report with the division not later than the seventh day after the date on which the carrier receives the report from the employer.

(e) The commissioner may waive the electronic filing requirement under Subsection (d) and allow an insurance carrier to mail or deliver the report to the division not later than the seventh day after the date on which the carrier receives the report from the employer.

(f) A report required under this section may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the division or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

(g) In addition to any information required under Subsection (h), the report provided to the injured employee under Subsection (c) must contain a summary written in plain language of the employee's statutory rights and responsibilities under this subtitle.

(h) The commissioner may adopt rules relating to:

(1) the information that must be contained in a report required under this section, including the summary of rights and responsibilities required under Subsection (g); and

(2) the development and implementation of an electronic filing system for injury reports under this section.

(i) An employer and insurance carrier shall file subsequent reports as required by commissioner rule.

(j) The employer shall, on the written request of the employee, a doctor, the insurance carrier, or the division, notify the employee, the employee's treating doctor if known to the employer, and the insurance carrier of the existence or absence of opportunities for modified duty

or a modified duty return-to-work program available through the employer. If those opportunities or that program exists, the employer shall identify the employer's contact person and provide other information to assist the doctor, the employee, and the insurance carrier to assess modified duty or return-to-work options.

(k) This section does not prohibit the commissioner from imposing requirements relating to return-to-work under other authority granted to the division in this subtitle.

(l) A person commits an administrative violation if the person fails to comply with this section unless good cause exists.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.29, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 3.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.137, eff. September 1, 2005.

SEC. 409.006. RECORD OF INJURIES; ADMINISTRATIVE VIOLATION.

(a) An employer shall maintain a record of each employee injury as reported by an employee or otherwise made known to the employer.

(b) The record shall be available to the division at reasonable times and under conditions prescribed by the commissioner.

(c) The commissioner may adopt rules relating to the information that must be contained in an employer record under this section.

(d) Information contained in a record maintained under this section is not an admission by the employer that:

(1) the injury did in fact occur; or

(2) a fact maintained in the record is true.

(e) A person commits an administrative violation if the person fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.138, eff. September 1, 2005.

SEC. 409.007. DEATH BENEFIT CLAIMS.

(a) A person must file a claim for death benefits with the division not later than the first anniversary of the date of the employee's death.

(b) Failure to file in the time required by Subsection (a) bars the claim unless:

(1) the person is a minor or incompetent; or

(2) good cause exists for the failure to file a claim under this section.

(c) A separate claim must be filed for each legal beneficiary unless the claim expressly includes or is made on behalf of another person.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.139, eff. September 1, 2005.

SEC. 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED.

If an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 409.009. SUBCLAIMS.

A person may file a written claim with the division as a subclaimant if the person has:

(1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and

(2) sought and been refused reimbursement from the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.140, eff. September 1, 2005.

SEC. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES.

(a) In this section, "health care insurer" means an insurance carrier and an authorized representative of an insurance carrier, as described by Section 402.084(c-1).

(b) This section applies only to a request for reimbursement by a health care insurer.

(c) Health care paid by a health care insurer may be reimbursable as a medical benefit.

(d) Except as provided by Subsection (e), this section does not prohibit or limit a substantive defense by a workers' compensation insurance carrier that the health care paid for by the health care insurer was not a medical benefit or not a correct payment. A subclaimant may not be reimbursed for payment for any health care that was previously denied by a workers' compensation insurance carrier under:

(1) a preauthorization review of the specific service or medical procedure; or

(2) a medical necessity review that determined the service was not medically necessary for the treatment of a compensable injury.

(e) It is not a defense to a subclaim by a health care insurer that:

(1) the subclaimant has not sought reimbursement from a health care provider or the subclaimant's insured;

(2) the subclaimant or the health care provider did not request preauthorization under Section 413.014 or rules adopted under that section; or

(3) the health care provider did not bill the workers' compensation insurance carrier, as provided by Section 408.027, before the 95th day after the date the health care for which the subclaimant paid was provided.

(f) Subject to the time limits under Subsection (n), the health care insurer shall provide, with any reimbursement request, the tax identification number of the health care insurer and the

following to the workers' compensation insurance carrier, in a form prescribed by the division:

(1) information identifying the workers' compensation case, including:

(A) the division claim number;

(B) the name of the patient or claimant;

(C) the social security number of the patient or claimant; and

(D) the date of the injury; and

(2) information describing the health care paid by the health care insurer, including:

(A) the name of the health care provider;

(B) the tax identification number of the health care provider;

(C) the date of service;

(D) the place of service;

(E) the ICD-9 code;

(F) the CPT, HCPCS, NDC, or revenue code;

(G) the amount charged by the health care provider; and

(H) the amount paid by the health care insurer.

(g) The workers' compensation insurance carrier shall reduce the amount of the reimbursable subclaim by any payments the workers' compensation insurance carrier previously made to the same health care provider for the provision of the same health care on the same dates of service. In making such a reduction in reimbursement to the subclaimant, the workers' compensation insurance carrier shall provide evidence of the previous payments made to the provider.

(h) For each medical benefit paid, the workers' compensation insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline as of the date of service or the actual amount paid by the health care insurer. In the absence of a fee guideline for a specific service paid, the amount per service paid by the health care insurer shall be

considered in determining a fair and reasonable payment under rules under this subtitle defining fair and reasonable medical reimbursement. The health care insurer may not recover interest as a part of the subclaim.

(i) On receipt of a request for reimbursement under this section, the workers' compensation insurance carrier shall respond to the request in writing not later than the 90th day after the date on which the request is received. If additional information is requested under Subsection (j), the workers' compensation insurance carrier shall respond not later than the 120th day unless the time is extended under Subsection (j).

(j) If the workers' compensation insurance carrier requires additional information from the health care insurer, the workers' compensation insurance carrier shall send notice to the health care insurer requesting the additional information. The health care insurer shall have 30 days to provide the requested information. The workers' compensation insurance carrier and the health care insurer may establish additional periods for compliance with this subsection by written mutual agreement.

(k) Unless the parties have agreed to an extension of time under Subsection (j), the health care insurer must file a written subclaim under this section not later than the 120th day after:

(1) the workers' compensation insurance carrier fails to respond to a request for reimbursement; or

(2) receipt of the workers' compensation insurance carrier's notice of denial to pay or reduction in reimbursement.

(l) Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and division rules. The commissioner of insurance and the commissioner of workers' compensation shall modify rules under this subtitle as necessary to allow the health care insurer access as a subclaimant to the appropriate dispute resolution

process. Rules adopted or amended by the commissioner of insurance and the commissioner of workers' compensation must recognize the status of a subclaimant as a party to the dispute. Rules modified or adopted under this section should ensure that the workers' compensation insurance carrier is not penalized, including not being held responsible for costs of obtaining the additional information, if the workers' compensation insurance carrier denies payment in order to move to dispute resolution to obtain additional information to process the request.

(m) In a dispute filed under Chapter 410 that arises from a subclaim under this section, a hearing officer may issue an order regarding compensability or eligibility for benefits and order the workers' compensation insurance carrier to reimburse health care services paid by the health care insurer as appropriate under this subtitle. Any dispute over the amount of medical benefits owed under this section, including medical necessity issues, shall be determined by medical dispute resolution under Sections 413.031 and 413.032.

(n) Except as provided by Subsection (s), a health care insurer must file a request for reimbursement with the workers' compensation insurance carrier not later than six months after the date on which the health care insurer received information under Section 402.084(c-3) and not later than 18 months after the health care insurer paid for the health care service.

(o) The commissioner and the commissioner of insurance shall amend or adopt rules to specify the process by which an employee who has paid for health care services described by Section 408.027(d) may seek reimbursement.

(p) Until September 1, 2011, a workers' compensation insurance carrier is exempt from any department and division data reporting requirements affected by a lack of information caused by reimbursement requests or subclaims under this section. If data reporting is required after that date, the requirement is prospective only and may not require any data to be reported between September 1, 2007, and the date required reporting is reinstated. The department and the division may make legislative recommendations to the 82nd Legislature for the collection of reimbursement

request and subclaim data.

(q) An action or failure to act by a workers' compensation insurance carrier under this section may not serve as the basis for an examination or administrative action by the department or the division, or for any cause of action by any person, except for judicial review under this subtitle.

(r) The commissioner of insurance and the commissioner of workers' compensation may adopt additional rules to clarify the processes required by, fulfill the purpose of, or assist the parties in the proper adjudication of subclaims under this section.

(s) On or after September 1, 2007, from information provided to a health care insurer before January 1, 2007, under Section 402.084(c-3), the health care insurer may file not later than March 1, 2008:

(1) a subclaim with the division under Subsection (l) if a request for reimbursement has been presented and denied by a workers' compensation insurance carrier; or

(2) a request for reimbursement under Subsection (f) if a request for reimbursement has not previously been presented and denied by the workers' compensation insurance carrier.

Added by Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 8, eff. September 1, 2007.

SEC. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL BENEFICIARY.

Immediately on receiving notice of an injury or death from any person, the division shall mail to the employee or legal beneficiary a clear and concise description of:

(1) the services provided by:

(A) the division; and

(B) the office of injured employee counsel, including the services of the ombudsman program;

(2) the division's procedures; and

(3) the person's rights and responsibilities under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.141, eff. September 1, 2005.

SEC. 409.011. INFORMATION PROVIDED TO EMPLOYER; EMPLOYER'S RIGHTS.

(a) Immediately on receiving notice of an injury or death from any person, the division shall mail to the employer a description of:

(1) the services provided by the division and the office of injured employee counsel;

(2) the division's procedures; and

(3) the employer's rights and responsibilities under this subtitle.

(b) The information must include a clear statement of the following rights of the employer:

(1) the right to be present at all administrative proceedings relating to an employee's claim;

(2) the right to present relevant evidence relating to an employee's claim at any proceeding;

(3) the right to report suspected fraud;

(4) the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits;

(5) the right to receive notice, after making a written request to the insurance carrier, of:

(A) a proposal to settle a claim; or

(B) an administrative or a judicial proceeding relating to the resolution of a claim; and

(6) the right to contest the failure of the insurance carrier to provide accident prevention services under Subchapter E, Chapter 411.

(c) The division is not required to provide the information to an employer more than once during a calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.142, eff. September 1, 2005.

SEC. 409.012. VOCATIONAL REHABILITATION INFORMATION.

(a) The division shall analyze each report of injury received from an employer under this chapter to determine whether the injured employee would be assisted by vocational rehabilitation.

(b) If the division determines that an injured employee would be assisted by vocational rehabilitation, the division shall notify:

(1) the injured employee in writing of the services and facilities available through the Department of Assistive and Rehabilitative Services and private providers of vocational rehabilitation; and

(2) the Department of Assistive and Rehabilitative Services and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(c) The division shall cooperate with the office of injured employee counsel, the Department of Assistive and Rehabilitative Services, and private providers of vocational rehabilitation in the provision of services and facilities to employees by the Department of Assistive and Rehabilitative Services.

(d) A private provider of vocational rehabilitation services may register with the division.

(e) The commissioner by rule may require that a private provider of vocational rehabilitation services maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation insurance claim.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(127), eff. June 17, 2011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.143, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(127), eff. June 17, 2011.

SEC. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF INJURED EMPLOYEE.

(a) The division shall develop information for public dissemination about the benefit process and the compensation procedures established under this chapter. The information must be written in plain language and must be available in English and Spanish.

(b) On receipt of a report under Section 409.005, the division shall contact the affected employee by mail or by telephone and shall provide the information required under Subsection (a) to that employee, together with any other information that may be prepared by the office of injured employee counsel or the division for public dissemination that relates to the employee's situation, such as information relating to back injuries or occupational diseases.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.30, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.144, eff. September 1, 2005.

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SUBCHAPTER B. PAYMENT OF BENEFITS

SEC. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION.

(a) An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall:

(1) begin the payment of benefits as required by this subtitle; or

(2) notify the division and the employee in writing of its refusal to pay and advise the employee of:

(A) the right to request a benefit review conference; and

(B) the means to obtain additional information from the division.

(a-1) An insurance carrier that fails to comply with Subsection (a) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e).

(a-2) An insurance carrier is not required to comply with Subsection (a) if the insurance carrier has accepted the claim as a compensable injury and income or death benefits have not yet accrued but will be paid by the insurance carrier when the benefits accrue and are due.

(b) An insurance carrier shall notify the division in writing of the initiation of income or death benefit payments in the manner prescribed by commissioner rules.

(c) If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.

(d) An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

(e) 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.

Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 939, Sec. 1

(f) For purposes of this section, "written notice" to a certified self-insurer occurs only on written notice to the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c).

Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 1100, Sec. 1

(f) For purposes of this section:

(1) a certified self-insurer receives notice on the date the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c) receives notice; and

(2) a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for administering the claim for the political subdivision receives notice.

(j) Each insurance carrier shall establish a single point of contact in the carrier's office for an injured employee for whom the carrier receives a notice of injury.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 939, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1100, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.145, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 13, eff. September 1, 2011.

SEC. 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION.

(a) An insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for the refusal.

(b) The grounds for the refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

(c) An insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.146, eff. September 1, 2005.

SEC. 409.023. PAYMENT OF BENEFITS; ADMINISTRATIVE VIOLATION.

(a) An insurance carrier shall continue to pay benefits promptly as and when the benefits accrue without a final decision, order, or other action of the commissioner, except as otherwise provided.

(b) Benefits shall be paid solely to the order of the employee or the employee's legal beneficiary.

(c) An insurance carrier commits an administrative violation if the insurance carrier fails to comply with this section.

(d) An insurance carrier that commits multiple violations of this section commits an additional administrative violation and is subject to:

(1) the sanctions provided under Section 415.023; and

(2) revocation of the right to do business under the workers' compensation laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.147, eff. September 1, 2005.

SEC. 409.0231. PAYMENT BY ELECTRONIC FUNDS TRANSFER.

(a) An insurance carrier shall offer employees entitled to the payment of benefits for a period of sufficient duration the option of receiving the payments by electronic funds transfer. The insurance carrier shall provide the necessary forms to an employee who requests that benefits be paid by electronic funds transfer.

(b) The commissioner shall adopt rules in consultation with the Texas Department of Information Resources as necessary to implement this section, including rules prescribing a period of benefits that is of sufficient duration to allow payment by electronic funds transfer.

Added by Acts 1999, 76th Leg., ch. 690, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.148, eff. September 1, 2005.

SEC. 409.0232. TIMELINESS OF PAYMENTS.

An insurance carrier is considered to have paid benefits in a timely manner if a payment:

(1) is made by electronic funds transfer and is deposited in the employee's account on or before the benefit payment due date;

(2) is made by mail and is mailed in time for the payment to be postmarked on or before the benefit payment due date; or

(3) is to be picked up by the employee and the payment is made available to the employee during regular business hours not later than the opening of business on the benefit payment due date.

Added by Acts 1999, 76th Leg., ch. 690, Sec. 1, eff. June 18, 1999.

SEC. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION.

(a) An insurance carrier shall file with the division a notice of termination or reduction of benefits, including the reasons for the termination or reduction, not later than the 10th day after the

date on which benefits are terminated or reduced.

(b) An insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds to terminate or reduce benefits, as determined by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.149, eff. September 1, 2005.

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LABOR CODE CHAPTER 410. ADJUDICATION OF DISPUTES

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS.

A proceeding before the division to determine the liability of an insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.150, eff. September 1, 2005.

SEC. 410.003. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.

Except as otherwise provided by this chapter, Chapter 2001, Government Code does not apply to a proceeding under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SEC. 410.005. VENUE FOR ADMINISTRATIVE PROCEEDINGS.

(a) Unless the division determines that good cause exists for the selection of a different location, a benefit review conference or a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(b) Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(c) All appeals panel proceedings shall be conducted in Travis County.

(d) Notwithstanding Subsection (a), the division may conduct a benefit review conference telephonically on agreement by the injured employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.151, eff. September 1, 2005.

SEC. 410.006. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS.

(a) A claimant may be represented at a benefit review conference, a contested case hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee:

(1) is a relative of the claimant; and

(2) does not receive a fee.

(b) An insurance carrier may be represented by an attorney or adjuster.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.007. INFORMATION LIST.

(a) The division shall determine the type of information that is most useful to parties to help resolve disputes regarding income benefits. That information may include:

(1) reports regarding the compensable injury;

(2) medical information regarding the injured employee; and

(3) wage records.

(b) The division shall publish a list developed from the information described under Subsection (a) in appropriate media, including the division's Internet website, to provide guidance to a party to a dispute regarding the type of information the party should have available at a benefit review conference or a contested case hearing.

(c) At the time a benefit review conference or contested case hearing is scheduled, the division shall make available a copy of the list developed under Subsection (b) to each party to the dispute.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.152, eff. September 1, 2005.

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SUBCHAPTER B. BENEFIT REVIEW CONFERENCE

SEC. 410.021. PURPOSE.

A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve disputed issues by agreement of the parties in accordance with this subtitle and the policies of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.153, eff. September 1, 2005.

SEC. 410.022. BENEFIT REVIEW OFFICERS; QUALIFICATIONS.

(a) A benefit review officer shall conduct a benefit review conference.

(b) A benefit review officer must:

(1) be an employee of the division;

(2) be trained in the principles and procedures of dispute mediation; and

(3) have documentation satisfactory to the commissioner that evidences the completion by the officer of at least 40 classroom hours of training in dispute resolution techniques from an alternative dispute resolution organization recognized by the commissioner.

(c) The division shall institute and maintain an education and training program for benefit review officers and shall consult or contract with the Federal Mediation and Conciliation Service or other appropriate organizations for this purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.154, eff. September 1, 2005.

SEC. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE.

(a) On receipt of a request from a party or on its own motion, the division may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The division shall require the party requesting the benefit review conference to provide documentation of efforts made to resolve the disputed issues before the request was submitted.

(c) The commissioner by rule shall:

(1) adopt guidelines regarding the type of information necessary to satisfy the requirements of Subsection (b); and

(2) establish a process through which the division evaluates the sufficiency of the documentation provided under Subsection (b).

(d) The division may 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).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.155, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 14, eff. September 1, 2011.

SEC. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO FURTHER PROCEEDINGS ON CERTAIN CLAIMS.

(a) Except as otherwise provided by law or commissioner rule, the parties to a disputed compensation claim are not entitled to a contested case hearing or arbitration on the claim unless a benefit review conference is conducted as provided by this subchapter.

(b) The commissioner by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing or arbitration.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.156, eff. September 1, 2005.

SEC. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE; NOTICE.

(a) The commissioner by rule shall prescribe the time within which a benefit review conference must be scheduled.

(b) The division shall schedule a contested case hearing to be held not later than the 60th day after the date of the benefit review conference if the disputed issues are not resolved at the benefit review conference.

(c) The division shall send written notice of the benefit review conference to the parties to the claim and the employer.

(d) The commissioner by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.157, eff. September 1, 2005.

SEC. 410.026. POWERS AND DUTIES OF BENEFIT REVIEW OFFICER.

(a) A benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with this subtitle and the policies of the division;

(2) thoroughly inform all parties of their rights and responsibilities under this subtitle, especially in a case in which the employee is not represented by an attorney or other representative;

(3) ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in a case in which the employee is not represented by an attorney or other representative; and

(4) prepare a written report that details each issue that is not resolved at the benefit review conference, as required under Section 410.031, including any issue raised for the first time

at the conclusion of an additional benefit review conference conducted under Subsection (b).

(b) A benefit review officer may schedule an additional benefit review conference if:

(1) the benefit review officer determines that any available information pertinent to the resolution of disputed issues was not produced at the initial benefit review conference; and

(2) a second benefit review conference has not already been conducted.

(c) A benefit review officer may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(d) A benefit review officer may not make a formal record.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.158, eff. September 1, 2005.

SEC. 410.027. RULES.

(a) The commissioner shall adopt rules for conducting benefit review conferences.

(b) A benefit review conference is not subject to common law or statutory rules of evidence or procedure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.159, eff. September 1, 2005.

SEC. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION.

(a) A scheduled benefit review conference shall 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) If a party to a benefit review conference under Section 410.023 requests that the benefit review conference be rescheduled under this section, the party must submit a request in the same manner as an initial request under Section 410.023. The division shall 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) 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).

(d) The commissioner shall adopt rules necessary to implement and enforce this section, including rules that:

(1) define good cause; and

(2) establish deadlines for requesting that a benefit review conference be rescheduled under Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.160, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 15, eff. September 1, 2011.

SEC. 410.029. RESOLUTION AT BENEFIT REVIEW CONFERENCE; WRITTEN AGREEMENT.

(a) A dispute may be resolved either in whole or in part at a benefit review conference.

(b) If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement.

(c) A settlement takes effect on the date it is approved by the director in accordance with Section 408.005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.030. BINDING EFFECT OF AGREEMENT.

(a) An agreement signed in accordance with Section 410.029 is binding on the insurance

carrier through the conclusion of all matters relating to the claim, unless the division or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

(b) The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the division, unless the commissioner for good cause relieves the claimant of the effect of the agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.161, eff. September 1, 2005.

SEC. 410.031. INCOMPLETE RESOLUTION; REPORT.

(a) If a dispute is not entirely resolved at a benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not resolved at the conference.

(b) The report must also include:

(1) a statement of each resolved issue;

(2) a statement of each issue raised but not resolved;

(3) a statement of the position of the parties regarding each unresolved issue;

(4) a statement of the procedures required to request a contested case hearing or arbitration and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings; and

(5) the date of the contested case hearing scheduled in accordance with Section 410.025(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.162, eff. September 1, 2005.
Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1177, Sec. 1
For text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1150, Sec. 4, see other Sec. 410.032.

*SEC. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER.

(a) The benefit review officer who presides at the benefit review conference shall consider a request for an interlocutory order and shall give the opposing party the opportunity to respond before issuing an interlocutory order.

(b) The interlocutory order may address the payment or suspension of accrued benefits, future benefits, or both accrued benefits and future benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.162, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1177, Sec. 1, eff. September 1, 2007.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1150, Sec. 4

For text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1177, Sec. 1, see other Sec. 410.032.

*SEC. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER.

(a) The benefit review officer who presides at the benefit review conference shall:

(1) consider a written or verbal request for an interlocutory order for the payment of benefits; and

(2) if the benefit review officer determines that issuance of an interlocutory order is appropriate, issue the interlocutory order not later than the third day after the date of receipt of the request under Subdivision (1).

(b) The interlocutory order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.162, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1150, Sec. 4, eff. September 1, 2007.

SEC. 410.033. MULTIPLE CARRIERS.

(a) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the commissioner may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share is computed by dividing the compensation due by the number of insurance carriers involved.

(b) On final determination of liability, an insurance carrier determined to be not liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.163, eff. September 1, 2005.

SEC. 410.034. FILING OF AGREEMENT AND REPORT.

(a) The benefit review officer shall file the signed agreement and the report with the division.

(b) The commissioner by rule shall prescribe the times within which the agreement and report must be filed.

(c) The division shall furnish a copy of the file-stamped report to:

(1) the claimant;

(2) the employer; and

(3) the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.164, eff. September 1, 2005.

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SUBCHAPTER C. ARBITRATION

SEC. 410.101. PURPOSE.

The purpose of arbitration is to:

(1) enter into formal, binding stipulations on issues on which the parties agree;

(2) resolve issues on which the parties disagree; and

(3) render a final award with respect to all issues in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.102. ARBITRATORS; QUALIFICATIONS.

(a) An arbitrator must be an employee of the division, except that the division may contract with qualified arbitrators on a determination of special need.

(b) An arbitrator must:

(1) be a member of the National Academy of Arbitrators;

(2) be on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service; or

(3) meet qualifications established by the commissioner by rule.

(c) The division shall require that each arbitrator have appropriate training in the workers' compensation laws of this state. The commissioner shall establish procedures to carry out this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.165, eff. September 1, 2005.

SEC. 410.103. DUTIES OF ARBITRATOR.

An arbitrator shall:

(1) protect the interests of all parties;

(2) ensure that all relevant evidence has been disclosed to the arbitrator and to all parties; and

(3) render an award consistent with this subtitle and the policies of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.166, eff. September 1, 2005.

SEC. 410.104. ELECTION OF ARBITRATION; EFFECT.

(a) If issues remain unresolved after a benefit review conference, the parties, by agreement, may elect to engage in arbitration in the manner provided by this subchapter. Arbitration may be used only to resolve disputed benefit issues and is an alternative to a contested case hearing. A contested case hearing scheduled under Section 410.025(b) is canceled by an election under this subchapter.

(b) To elect arbitration, the parties must file the election with the division not later than the 20th day after the last day of the benefit review conference. The commissioner shall prescribe a form for that purpose.

(c) An election to engage in arbitration under this subchapter is irrevocable and binding on all parties for the resolution of all disputes arising out of the claims that are under the jurisdiction of the division.

(d) An agreement to elect arbitration binds the parties to the provisions of Chapter 408 relating to benefits, and any award, agreement, or settlement after arbitration is elected must comply with that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.167, eff. September 1, 2005.

SEC. 410.105. LISTS OF ARBITRATORS.

(a) The division shall establish regional lists of arbitrators who meet the qualifications prescribed under Sections 410.102(a) and (b). Each regional list shall be initially prepared in a random name order, and subsequent additions to a list shall be added chronologically.

(b) The commissioner shall review the lists of arbitrators annually and determine if each

arbitrator is fair and impartial and makes awards that are consistent with and in accordance with this subtitle and the rules of the commissioner. The commissioner shall remove an arbitrator if, after the review, the commissioner determines that the arbitrator is not fair and impartial or does not make awards consistent with this subtitle and commissioner rules.

(c) The division's lists are confidential and are not subject to disclosure under Chapter 552, Government Code. The lists may not be revealed by any division employee to any person who is not a division employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section or Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that the violation is relevant to the issues in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.168, eff. September 1, 2005.

SEC. 410.106. SELECTION OF ARBITRATOR.

The division shall assign the arbitrator for a particular case by selecting the next name after the previous case's selection in consecutive order. The division may not change the order of names once the order is established under this subchapter, except that once each arbitrator on the list has been assigned to a case, the names shall be randomly reordered.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.169, eff. September 1, 2005.

SEC. 410.107. ASSIGNMENT OF ARBITRATOR.

(a) The division shall assign an arbitrator to a pending case not later than the 30th day after the date on which the election for arbitration is filed with the division.

(b) When an arbitrator has been assigned to a case under Subsection (a), the parties shall be notified immediately.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.170, eff. September 1, 2005.

SEC. 410.108. REJECTION OF ARBITRATOR.

(a) Each party is entitled, in its sole discretion, to one rejection of the arbitrator in each case. If a party rejects the arbitrator, the division shall assign another arbitrator as provided by Section 410.106.

(b) A rejection must be made not later than the third day after the date of notification of the arbitrator's assignment.

(c) When all parties have exercised their right of rejection or if no rejection is registered, the assignment is final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.171, eff. September 1, 2005.

SEC. 410.109. SCHEDULING OF ARBITRATION.

(a) The arbitrator shall schedule arbitration to be held not later than the 30th day after the date of the arbitrator's assignment and shall notify the parties and the division of the scheduled date.

(b) If an arbitrator is unable to schedule arbitration in accordance with Subsection (a), the division shall appoint the next arbitrator on the applicable list. Each party is entitled to reject the arbitrator appointed under this subsection in the manner provided under Section 410.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.172, eff. September 1, 2005.

SEC. 410.110. CONTINUANCE.

(a) A request by a party for a continuance of the arbitration to another date must be directed to the director. The director may grant a continuance only if the director determines, giving due regard to the availability of the arbitrator, that good cause for the continuance exists.

(b) If the director grants a continuance under this section, the rescheduled date may not be later than the 30th day after the original date of the arbitration.

(c) Without regard to whether good cause exists, the director may not grant more than one continuance to each party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.111. RULES.

The commissioner shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.173, eff. September 1, 2005.

SEC. 410.112. EXCHANGE AND FILING OF INFORMATION; ADMINISTRATIVE VIOLATION.

(a) Not later than the seventh day before the first day of arbitration, the parties shall exchange and file with the arbitrator:

(1) all medical reports and other documentary evidence not previously exchanged or filed that are pertinent to the resolution of the claim; and

(2) information relating to their proposed resolution of the disputed issues.

(b) A party commits an administrative violation if the party, without good cause as determined by the arbitrator, fails to comply with Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.174, eff. September 1, 2005.

SEC. 410.113. DUTIES OF PARTIES AT ARBITRATION; ATTENDANCE; ADMINISTRATIVE VIOLATION.

(a) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues on which it is prepared to stipulate.

(b) A party commits an administrative violation if the party does not attend the arbitration

unless the arbitrator determines that the party had good cause not to attend.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.175, eff. September 1, 2005.

SEC. 410.114. TESTIMONY; RECORD.

(a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party.

(b) The division shall make an electronic recording of the proceeding.

(c) An official stenographic record is not required, but any party may at the party's expense make a stenographic record of the proceeding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.176, eff. September 1, 2005.

SEC. 410.115. EVIDENCE.

(a) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to an understanding and determination of the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not required.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.116. CLOSING STATEMENTS; BRIEFS.

The parties may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.117. EX PARTE CONTACTS PROHIBITED.

A party and an arbitrator may not communicate outside the arbitration unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.118. AWARD.

(a) The arbitrator shall enter the arbitrator's award not later than the seventh day after the last day of arbitration.

(b) The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(c) The award must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(d) The arbitrator shall file a copy of the award as part of the permanent claim file at the division and shall notify the parties in writing of the decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.177, eff. September 1, 2005.

SEC. 410.119. EFFECT OF AWARD.

(a) An arbitrator's award is final and binding on all parties. Except as provided by Section 410.121, there is no right to appeal.

(b) An arbitrator's award is a final order of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.178, eff. September 1, 2005.

SEC. 410.120. CLERICAL ERROR.

For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.121. COURT VACATING AWARD.

(a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the award was outside the jurisdiction of the division.

(b) If an award is vacated, the case shall be remanded to the division for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the appealing party knew or should have known of a basis for suit under this section, but in no event later than 12 months after an order denying compensation or after the expiration of the income or death benefit period.

(d) Venue for a suit to vacate an award is in the county in which the arbitration was conducted.

(e) In a suit to vacate an arbitrator's award, only the court may make determinations, including findings of fact or conclusions of law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.179, eff. September 1, 2005.

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SUBCHAPTER D. CONTESTED CASE HEARING

SEC. 410.151. CONTESTED CASE HEARING; SCOPE.

(a) If arbitration is not elected under Section 410.104, a party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 410.024 is entitled to a contested case hearing.

(b) An issue that was not raised at a benefit review conference or that was resolved at a benefit review conference may not be considered unless:

(1) the parties consent; or

(2) if the issue was not raised, the commissioner determines that good cause existed for not raising the issue at the conference.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.180, eff. September 1, 2005.

SEC. 410.152. HEARING OFFICERS; QUALIFICATIONS.

(a) A hearing officer shall conduct a contested case hearing.

(b) A hearing officer must be licensed to practice law in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

Chapter 2001, Government Code, applies to a contested case hearing to the extent that the commissioner finds appropriate, except that the following do not apply:

(1) Section 2001.054;

(2) Sections 2001.061 and 2001.062;

(3) Section 2001.202; and

(4) Subchapters F, G, I, and Z, except for Section 2001.141(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.93, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.181, eff. September 1, 2005.

SEC. 410.154. SCHEDULING OF HEARING.

The division shall schedule a contested case hearing in accordance with Section 410.024 or 410.025(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.182, eff. September 1, 2005.

SEC. 410.155. CONTINUANCE.

(a) A written request by a party for a continuance of a contested case hearing to another date must be directed to the division.

(b) The division may grant a continuance only if the division determines that there is good cause for the continuance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.183, eff. September 1, 2005.

SEC. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION.

(a) Each party shall attend a contested case hearing.

(b) A party commits an administrative violation if the party, without good cause as determined by the hearing officer, does not attend a contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.184, eff. September 1, 2005.

SEC. 410.157. RULES.

The commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.185, eff. September 1, 2005.

SEC. 410.158. DISCOVERY.

(a) Except as provided by Section 410.162, discovery is limited to:

(1) depositions on written questions to any health care provider;

(2) depositions of other witnesses as permitted by the hearing officer for good cause shown; and

(3) interrogatories as prescribed by the commissioner.

(b) Discovery under Subsection (a) may not seek information that may readily be derived from documentary evidence described in Section 410.160. Answers to discovery under Subsection (a) need not duplicate information that may readily be derived from documentary evidence described in Section 410.160.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.186, eff. September 1, 2005.

SEC. 410.159. STANDARD INTERROGATORIES.

(a) The commissioner by rule shall prescribe standard form sets of interrogatories to elicit information from claimants and insurance carriers.

(b) Standard interrogatories shall be answered by each party and served on the opposing party within the time prescribed by commissioner rule, unless the parties agree otherwise.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.187, eff. September 1, 2005.

SEC. 410.160. EXCHANGE OF INFORMATION.

Within the time prescribed by commissioner rule, the parties shall exchange:

(1) all medical reports and reports of expert witnesses who will be called to testify at the hearing;

(2) all medical records;

(3) any witness statements;

(4) the identity and location of any witness known to the parties to have knowledge of relevant facts; and

(5) all photographs or other documents that a party intends to offer into evidence at the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.188, eff. September 1, 2005.

SEC. 410.161. FAILURE TO DISCLOSE INFORMATION.

A party who fails to disclose information known to the party or documents that are in the party's possession, custody, or control at the time disclosure is required by Sections 410.158-410.160 may not introduce the evidence at any subsequent proceeding before the division or in court on the claim unless good cause is shown for not having disclosed the information or documents under those sections.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.189, eff. September 1, 2005.

SEC. 410.162. ADDITIONAL DISCOVERY.

For good cause shown, a party may obtain permission from the hearing officer to conduct additional discovery as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.163. POWERS AND DUTIES OF HEARING OFFICER.

(a) At a contested case hearing the hearing officer shall:

(1) swear witnesses;

(2) receive testimony;

(3) allow examination and cross-examination of witnesses;

(4) accept documents and other tangible evidence; and

(5) allow the presentation of evidence by affidavit.

(b) A hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. A hearing officer may permit the

use of summary procedures, if appropriate, including witness statements, summaries, and similar measures to expedite the proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.164. RECORD.

(a) The proceedings of a contested case hearing shall be recorded electronically. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(b) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(c) At each contested case hearing, as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 11.01, eff. June 17, 2001.

SEC. 410.165. EVIDENCE.

(a) The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Conformity to legal rules of evidence is not necessary.

(b) A hearing officer may accept a written statement signed by a witness and shall accept all written reports signed by a health care provider.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.166. STIPULATIONS.

A written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.167. EX PARTE CONTACTS PROHIBITED.

A party and a hearing officer may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.168. DECISION.

(a) The hearing officer shall issue a written decision that includes:

(1) findings of fact and conclusions of law;

(2) a determination of whether benefits are due; and

(3) an award of benefits due.

(b) The decision may address accrued benefits, future benefits, or both accrued benefits and future benefits.

(c) The hearing officer may enter an interlocutory order for the payment of all or part of medical benefits or income benefits. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits. The order is binding during the pendency of an appeal to the appeals panel.

(d) On a form that the commissioner by rule prescribes, the hearing officer shall issue a separate written decision regarding attorney's fees and any matter related to attorney's fees. The decision regarding attorney's fees and the form may not be made known to a jury in a judicial review of an award, including an appeal.

(e) The commissioner by rule shall prescribe the times within which the hearing officer must file the decisions with the division.

(f) The division shall send a copy of the decision to each party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.190, eff. September 1, 2005.

SEC. 410.169. EFFECT OF DECISION.

A decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal to the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER E. APPEALS PANEL

SEC. 410.201. APPEALS JUDGES; QUALIFICATIONS.

(a) Appeals judges, in a three-member panel, shall conduct administrative appeals proceedings.

(b) An appeals judge must be licensed to practice law in this state.

(c) An appeals judge may not conduct a benefit review conference or a contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.191, eff. September 1, 2005.

SEC. 410.202. REQUEST FOR APPEAL; RESPONSE.

(a) To appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party.

(b) The respondent shall file a written response with the appeals panel not later than the 15th day after the date on which the copy of the request for appeal is served and shall on the same date serve a copy of the response on the appellant.

(c) A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought.

(d) Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 12.01, eff. June 17, 2001.

SEC. 410.203. POWERS AND DUTIES OF APPEALS PANEL; PRIORITY OF HEARING ON REMAND.

(a) The appeals panel shall consider:

(1) the record developed at the contested case hearing; and

(2) the written request for appeal and response filed with the appeals panel.

(b) The appeals panel may:

(1) reverse the decision of the hearings officer and render a new decision;

(2) reverse the decision of the hearings officer and remand the case to the hearing officer for further consideration and development of evidence; or

(3) affirm the decision of the hearings officer in a case described by Section 410.204(a-1).

(c) The appeals panel may not remand a case under Subsection (b)(2) more than once.

(d) A hearing on remand shall be accelerated and the commissioner shall adopt rules to give priority to the hearing over other proceedings.

(e) The appeals panel shall issue and maintain a precedent manual. The precedent manual shall be composed of precedent-establishing decisions and may include other information as identified by the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.192, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 16, eff. September 1, 2011.

SEC. 410.204. DECISION.

(a) The appeals panel shall review each request and issue a written decision on each reversed or remanded case. The appeals panel may issue a written decision on an affirmed case as described by Subsection (a-1). The decision must be in writing and shall be issued not later than the 45th day after the date on which the written response to the request for appeal is filed. The appeals panel shall file a copy of the decision with the commissioner.

(a-1) An appeals panel may 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:

(A) findings of fact for which insufficient evidence exists;

(B) incorrect conclusions of law;

(C) findings of fact or conclusions of law regarding matters that were not properly before the hearings officer; and

(D) legal errors not otherwise described by this subdivision.

(b) A copy of the decision of the appeals panel shall be sent to each party not later than the seventh day after the date the decision is filed with the division.

(c) If the appeals panel does not issue a decision in accordance with this section, the decision of the hearing officer becomes final and is the final decision of the appeals panel.

(d) Each final decision of the appeals panel shall conclude with a separate paragraph stating: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)."

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 11.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.193, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 17, eff. September 1, 2011.

SEC. 410.205. EFFECT OF DECISION.

(a) A decision of the appeals panel regarding benefits is final in the absence of a timely appeal for judicial review.

(b) The decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 4, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.194, eff. September 1, 2005.

SEC. 410.206. CLERICAL ERROR.

The division may revise a decision in a contested case hearing on a finding of clerical error.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.195, eff. September 1, 2005.

SEC. 410.207. CONTINUATION OF DIVISION JURISDICTION.

During judicial review of the appeals panel decision on any disputed issue relating to a workers' compensation claim, the division retains jurisdiction of all other issues related to the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.196, eff. September 1, 2005.

SEC. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION.

(a) If a person refuses or fails to comply with an interlocutory order, final order, or decision of the commissioner, the division may bring suit in Travis County to enforce the order or decision.

(b) If an insurance carrier refuses or fails to comply with an interlocutory order, a final order, or a decision of the commissioner, the claimant may bring suit in the county of the claimant's residence at the time of the injury, or death if the employee is deceased, or, in the case of an occupational disease, in the county in which the employee resided on the date disability began or any county agreed to by the parties.

(c) If the division brings suit to enforce an interlocutory order, final order, or decision of the commissioner, the division is entitled to reasonable attorney's fees and costs for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision and any other

remedy provided by law.

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

(e) A person commits an administrative violation if the person fails or refuses to comply with an interlocutory order, final order, or decision of the commissioner within 20 days after the date the order or decision becomes final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.197, eff. September 1, 2005.

SEC. 410.209. REIMBURSEMENT FOR OVERPAYMENT.

The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an interlocutory order or decision if that order or decision is reversed or modified by final arbitration, order, or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

Added by Acts 1999, 76th Leg., ch. 955, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.198, eff. September 1, 2005.

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SUBCHAPTER F. JUDICIAL REVIEW--GENERAL PROVISIONS

SEC. 410.251. EXHAUSTION OF REMEDIES.

A party that has exhausted its administrative remedies under this subtitle and that is aggrieved by a final decision of the appeals panel may seek judicial review under this subchapter and Subchapter G, if applicable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.252. TIME FOR FILING PETITION; VENUE.

(a) A party may seek judicial review by filing suit not later than the 45th day after the date on which the division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the division.

(b) The party bringing suit to appeal the decision must file a petition with the appropriate court in:

(1) the county where the employee resided at the time of the injury or death, if the employee is deceased; or

(2) in the case of an occupational disease, in the county where the employee resided on the date disability began or any county agreed to by the parties.

(c) If a suit under this section is filed in a county other than the county described by Subsection (b), the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in a county described by Subsection (b). Notice of the transfer of a suit shall be given to the parties. A suit transferred under this subsection shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

(d) If a suit is initially filed within the 45-day period in Subsection (a), and is transferred under Subsection (c), the suit is considered to be timely filed in the court to which it is transferred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 663, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1200, Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1066, Sec. 1, eff. September 1, 2011.

SEC. 410.253. SERVICE; NOTICE.

(a) A party seeking judicial review shall simultaneously:

(1) file a copy of the party's petition with the court;

(2) serve any opposing party to the suit; and

(3) provide written notice of the suit or notice of appeal to the division.

(b) A party may not seek judicial review under Section 410.251 unless the party has provided written notice of the suit to the division as required by this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.199, eff. September 1, 2005.

SEC. 410.254. INTERVENTION.

On timely motion initiated by the commissioner, the division shall be permitted to intervene in any judicial proceeding under this subchapter or Subchapter G.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.200, eff. September 1, 2005.

SEC. 410.255. JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS.

(a) For all issues other than those covered under Section 410.301(a), judicial review shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code.

(b) Judicial review conducted under this section is governed by the substantial evidence rule.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), eff. Sept. 1, 1995.

SEC. 410.256. COURT APPROVAL OF SETTLEMENT.

(a) A claim or issue may not be settled contrary to the provisions of the appeals panel decision issued on the claim or issue unless a party to the proceeding has filed for judicial review under this subchapter or Subchapter G. The trial court must approve a settlement made by the parties after judicial review of an award is sought and before the court enters judgment.

(b) The court may not approve a settlement except on a finding that:

(1) the settlement accurately reflects the agreement between the parties;

(2) the settlement adheres to all appropriate provisions of the law; and

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

(c) A settlement may not provide for:

(1) payment of any benefits in a lump sum except as provided by Section 408.128; or

(2) limitation or termination of the claimant's right to medical benefits under Section 408.021.

(d) A settlement or agreement that resolves an issue of impairment may not be made before the claimant reaches maximum medical improvement and must adopt one of the impairment ratings under Subchapter G, Chapter 408.

(e) A party proposing a settlement before judgment is entered by the trial court may petition the court orally or in writing for approval of the settlement.

(f) Settlement of a claim or issue under this section does not constitute a modification or reversal of the decision awarding benefits for the purpose of Section 410.209.

(g) Settlement of a claim or issue must be in compliance with all appropriate provisions of the law, including this section and Section 410.258 of this subchapter. A settlement which on its face does not comply with this section is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1267, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 397, Sec. 3, eff. Sept. 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.2001, eff. September 1, 2005.

SEC. 410.257. JUDGMENT AFTER JUDICIAL REVIEW.

(a) A judgment entered by a court on judicial review of the appeals panel decision under this subchapter or Subchapter G must comply with all appropriate provisions of the law.

(b) A judgment under this section may not provide for:

(1) payment of benefits in a lump sum except as provided by Section 408.128; or

(2) the limitation or termination of the claimant's right to medical benefits under Section 408.021.

(c) A judgment that resolves an issue of impairment may not be entered before the date the claimant reaches maximum medical improvement. The judgment must adopt an impairment rating under Subchapter G, Chapter 408, except to the extent Section 410.307 applies.

(d) A judgment under this section may not order reimbursement from the subsequent injury fund.

(e) A judgment under this section based on default or on an agreement of the parties does not constitute a modification or reversal of a decision awarding benefits for the purpose of Section 410. 209.

(f) A judgment that on its face does not comply with this section is void.

Added by Acts 1997, 75th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.2002, eff. September 1, 2005.

SEC. 410.258. NOTIFICATION OF DIVISION OF PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE.

(a) The party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement made by the parties to the proceeding, including a proposed default judgment, with the division not later than the 30th day before the date on which the court is

scheduled to enter the judgment or approve the settlement. The proposed judgment or settlement must be mailed to the division by certified mail, return receipt requested.

(b) The division may intervene in a proceeding under Subsection (a) not later than the 30th day after the date of receipt of the proposed judgment or settlement.

(c) The commissioner shall review the proposed judgment or settlement to determine compliance with all appropriate provisions of the law. If the commissioner determines that the proposal is not in compliance with the law, the division may intervene as a matter of right in the proceeding not later than the 30th day after the date of receipt of the proposed judgment or settlement. The court may limit the extent of the division's intervention to providing the information described by Subsection (e).

(d) If the division does not intervene before the 31st day after the date of receipt of the proposed judgment or settlement, the court shall enter the judgment or approve the settlement if the court determines that the proposed judgment or settlement is in compliance with all appropriate provisions of the law.

(e) If the division intervenes in the proceeding, the commissioner shall inform the court of each reason the commissioner believes the proposed judgment or settlement is not in compliance with the law. The court shall give full consideration to the information provided by the commissioner before entering a judgment or approving a settlement.

(f) A judgment entered or settlement approved without complying with the requirements of this section is void.

Added by Acts 1997, 75th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.201, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 3.202, eff. September 1, 2005.

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SUBCHAPTER G. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS

SEC. 410.301. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS.

(a) Judicial review of a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this subchapter.

(b) A determination of benefits before a court shall be in accordance with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.203, eff. September 1, 2005.

SEC. 410.302. ADMISSIBILITY OF RECORDS; LIMITATION OF ISSUES.

(a) The records of a contested case hearing conducted under this chapter are admissible in a trial under this subchapter in accordance with the Texas Rules of Evidence.

(b) A trial under this subchapter is limited to issues decided by the appeals panel and on which judicial review is sought. The pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.204, eff. September 1, 2005.

SEC. 410.303. BURDEN OF PROOF.

The party appealing the decision on an issue described in Section 410.301(a) has the burden of proof by a preponderance of the evidence.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.304. CONSIDERATION OF APPEALS PANEL DECISION.

(a) In a jury trial, the court, before submitting the case to the jury, shall inform the jury in the court's instructions, charge, or questions to the jury of the appeals panel decision on each disputed issue described by Section 410.301(a) that is submitted to the jury.

(b) In a trial to the court without a jury, the court in rendering its judgment on an issue described by Section 410.301(a) shall consider the decision of the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.205, eff. September 1, 2005.

SEC. 410.305. CONFLICT WITH RULES OF CIVIL PROCEDURE.

(a) To the extent that this subchapter conflicts with the Texas Rules of Civil Procedure or any other rules adopted by the supreme court, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, or any other law, the supreme court may not adopt rules in conflict with or inconsistent with this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 410.306. EVIDENCE.

(a) Evidence shall be adduced as in other civil trials.

(b) The division on payment of a reasonable fee shall make available to the parties a certified copy of the division's record. All facts and evidence the record contains are admissible to the extent allowed under the Texas Rules of Evidence.

(c) Except as provided by Section 410.307, evidence of extent of impairment shall be limited to that presented to the division. The court or jury, in its determination of the extent of impairment, shall adopt one of the impairment ratings under Subchapter G, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.206, eff. September 1, 2005.

SEC. 410.307. SUBSTANTIAL CHANGE OF CONDITION.

(a) Evidence of the extent of impairment is not limited to that presented to the division if the court, after a hearing, finds that there is a substantial change of condition. The court's finding of a substantial change of condition may be based only on:

(1) medical evidence from the same doctor or doctors whose testimony or opinion

was presented to the division;

(2) evidence that has come to the party's knowledge since the contested case hearing;

(3) evidence that could not have been discovered earlier with due diligence by the party; and

(4) evidence that would probably produce a different result if it is admitted into evidence at the trial.

(b) If substantial change of condition is disputed, the court shall require the designated doctor in the case to verify the substantial change of condition, if any. The findings of the designated doctor shall be presumed to be correct, and the court shall base its finding on the medical evidence presented by the designated doctor in regard to substantial change of condition unless the preponderance of the other medical evidence is to the contrary.

(c) The substantial change of condition must be confirmable by recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(d) If the court finds a substantial change of condition under this section, new medical evidence of the extent of impairment must be from and is limited to the same doctor or doctors who made impairment ratings before the division under Section 408.123.

(e) The court's finding of a substantial change of condition may not be made known to the jury.

(f) The court or jury in its determination of the extent of impairment shall adopt one of the impairment ratings made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.207, eff. September 1, 2005.

SEC. 410.308. CERTIFIED COPY OF NOTICE SECURING COMPENSATION.

(a) The division shall furnish any interested party in the claim with a certified copy of the

notice of the employer securing compensation with the insurance carrier, filed with the division.

(b) The certified copy of the notice is admissible in evidence on trial of the claim pending and is prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.208, eff. September 1, 2005.

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LABOR CODE CHAPTER 411. WORKERS' HEALTH AND SAFETY

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 411.001. DEFINITIONS.

In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(23), eff. September 1, 2005.

(2) "Employer" means a person who makes a contract of hire.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(23), eff. September 1, 2005.

SEC. 411.002. APPLICATION.

(a) An employer who obtains workers' compensation insurance coverage is subject to this chapter.

(b) An employer is subject to this chapter if the employer:

(1) is not required to and does not obtain workers' compensation insurance coverage; and

(2) employs five or more employees not exempt from workers' compensation insurance coverage.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(b), eff. Sept. 1, 1995.

SEC. 411.003. IMMUNITY FROM CERTAIN LIABILITY.

(a) An insurance company, the agent, servant, or employee of the insurance company, or a safety consultant who performs a safety consultation under this chapter has no liability for an accident, injury, or occupational disease based on an allegation that the accident, injury, or occupational disease was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company for the prevention of accidents in

connection with operations of the employer.

(b) The immunity provided by Subsection (a) does not affect the liability of an insurance carrier for compensation or as otherwise provided in this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 957, Sec. 1.01, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.2085, eff. September 1, 2005.

SEC. 411.004. EXCLUSIVE REMEDY.

Except as specifically provided by Subchapter F, this chapter does not create an independent cause of action at law or in equity. This chapter provides the sole remedy for violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER B. GENERAL POWERS AND DUTIES OF DIVISION

SEC. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS AND RULES.

The division shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.012. COLLECTION AND ANALYSIS OF INFORMATION.

(a) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use that information to:

(1) identify and assign priorities to safety needs; and

(2) better coordinate the safety services provided by public or private organizations, including insurance carriers.

(b) The division shall coordinate or supervise the collection by state or federal entities of information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.013. FEDERAL CONTRACTS AND PROGRAMS.

The division may:

(1) enter into contracts with the federal government to perform occupational safety projects; and

(2) apply for federal funds through any federal program relating to occupational safety.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.209, eff. September 1, 2005.

SEC. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER ENTITIES.

(a) The division shall promote workers' health and safety through educational and other

innovative programs developed by the department, the division, or other state agencies.

(b) The division shall cooperate with other entities in the development and approval of safety courses, safety plans, and safety programs.

(c) The division shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers concerning workplace safety.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.2095, eff. September 1, 2005.

SEC. 411.015. EDUCATIONAL PUBLICATIONS.

(a) The division shall publish or procure and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material.

(b) Specific educational material shall be directed to high-risk industries and employments and must specifically address means and methods of avoiding high frequency, but preventable, workers' injuries.

(c) Other educational material shall be directed to business and industry generally and must specifically address means and methods of avoiding common workers' injuries.

(d) The division shall make specific decisions regarding the issues and problems to be addressed by the educational materials after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations.

(e) The educational materials provided under this section must include specific references to:

(1) the requirements of state and federal laws and regulations;

(2) recommendations and practices of business, industry, and trade associations; and

(3) if needed, recommended work practices based on recommendations made by the division for the prevention of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.016. PEER REVIEW SAFETY PROGRAM.

The division shall certify safe employers to provide peer review safety programs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS.

The division shall advise insurance carrier loss control service organizations of safety needs and priorities developed by the division and of:

(1) hazard classifications, specific employers, industries, occupations, or geographic regions to which loss control services should be directed; or

(2) the identity and types of injuries or occupational diseases and means and methods for prevention of those injuries or diseases to which loss control services should be directed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.018. FEDERAL OSHA COMPLIANCE.

In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER C. JOB SAFETY INFORMATION SYSTEM

SEC. 411.031. JOB SAFETY INFORMATION SYSTEM; COOPERATION WITH OTHER AGENCIES.

(a) The division shall maintain a job safety information system.

(b) The division shall obtain from any appropriate state agency, including the Texas Workforce Commission, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services, data and statistics, including data and statistics compiled for rate-making purposes.

(c) The division shall consult with the Texas Workforce Commission in the design of data information and retrieval systems to accomplish the mutual purposes of the division and the Texas Workforce Commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.210, eff. September 1, 2005.

SEC. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE REPORT; ADMINISTRATIVE VIOLATION.

(a) An employer shall file with the division a report of each:

(1) on-the-job injury that results in the employee's absence from work for more than one day; and

(2) occupational disease of which the employer has knowledge.

(b) The commissioner shall adopt rules and prescribe the form and manner of reports filed under this section.

(c) An employer commits an administrative violation if the employer fails to report to the division as required under Subsection (a) unless good cause exists, as determined by the commissioner, for the failure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.32, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.211, eff. September 1, 2005.

SEC. 411.033. JOB SAFETY DATA BASE.

The job safety information system must include a comprehensive data base that incorporates all pertinent information relating to each injury reported under Section 411.032, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior workers' compensation claims by the employee;

(7) the prior loss history of the employer;

(8) the standard industrial classification code of the employer;

(9) the classification code of the employer; and

(10) any other information considered useful for statistical analysis.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.034. CONFIDENTIALITY REQUIREMENT; OFFENSE; PENALTY.

(a) The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this section to a person not authorized to receive the information.

(c) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this section and that the person is not authorized to receive.

(d) An offense under this section is a Class A misdemeanor.

(e) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(f) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.33, eff. Sept. 1, 1995.

SEC. 411.035. USE OF INJURY REPORT.

A report made under Section 411.032 may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the division or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.212, eff. September 1, 2005.

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SUBCHAPTER E. ACCIDENT PREVENTION SERVICES

SEC. 411.061. ACCIDENT PREVENTION SERVICES; PREREQUISITE FOR LICENSE.

(a) As a prerequisite for writing workers' compensation insurance in this state, an insurance company must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations.

(b) To implement a program of accident prevention services, a facility must include:

(1) surveys;

(2) recommendations;

(3) training programs;

(4) consultations;

(5) analyses of accident causes;

(6) industrial hygiene; and

(7) industrial health services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 172, Sec. 4, eff. Sept. 1, 2001.

SEC. 411.063. ACCIDENT PREVENTION PERSONNEL.

(a) To provide qualified accident prevention personnel and services, an insurance company may:

(1) employ qualified personnel;

(2) retain qualified independent contractors;

(3) contract with the policyholder to provide the personnel and services; or

(4) use a combination of the methods provided by this subsection.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(26), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(26), eff. September 1, 2005.

SEC. 411.064. INSPECTIONS.

(a) The division may conduct inspections to determine the adequacy of the accident prevention services required by Section 411.061 for each insurance company writing workers' compensation insurance in this state.

(b) If, after an inspection under Subsection (a), an insurance company's accident prevention services are determined to be inadequate, the division shall reinspect the accident prevention services of the insurance company not earlier than the 180th day or later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(c) The insurance company shall reimburse the division for the reasonable cost of the reinspection, including a reasonable allocation of the division's administrative costs incurred in conducting the inspections.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 957, Sec. 3.01, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.213, eff. September 1, 2005.

SEC. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE COMPANY.

(a) Each insurance company writing workers' compensation insurance in this state shall submit to the division at least once a year detailed information on the type of accident prevention facilities offered to that insurance company's policyholders.

(b) The information must include:

(1) the amount of money spent by the insurance company on accident prevention services;

(2) the number of site inspections performed;

(3) accident prevention services for which the insurance company contracts;

(4) a breakdown of the premium size of the risks to which services were provided;

(5) evidence of the effectiveness of and accomplishments in accident prevention; and

(6) any additional information required by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.214, eff. September 1, 2005.

SEC. 411.066. NOTICE TO POLICYHOLDERS.

Notice that accident prevention services are available to the policyholder from the insurance company must appear in at least 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.067. DIVISION PERSONNEL.

(a) The division shall employ the personnel necessary to enforce this subchapter, including at least 10 safety inspectors to perform inspections at a job site and at an insurance company to determine the adequacy of the accident prevention services provided by the insurance company.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(27), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.215, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 3.216, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(27), eff. September 1, 2005.

SEC. 411.068. ADMINISTRATIVE VIOLATION.

(a) An insurance company commits a violation if the insurance company does not:

(1) maintain or provide the accident prevention services required by this subchapter; or

(2) use the services in a reasonable manner to prevent injury to employees of its policyholders.

(b) A violation under Subsection (a) is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.217, eff. September 1, 2005.

SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL MATERIALS

SEC. 411.081. TELEPHONE HOTLINE.

(a) The division shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law.

(b) Each employer shall notify its employees of this service in a manner prescribed by the commissioner. The commissioner shall, by rule, require the notice to be posted in English and Spanish, as appropriate.

(c) The commissioner shall adopt rules requiring that the notice required by Subsection (b) be posted:

(1) in a conspicuous place in the employer's place of business; and

(2) in sufficient locations to be convenient to all employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.219, eff. September 1, 2005.

SEC. 411.082. EMPLOYER RETALIATION PROHIBITED.

An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the telephone service to report in good faith an alleged violation of an occupational health or safety law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.083. JUDICIAL RELIEF FOR EMPLOYER RETALIATION.

(a) An employee whose employment is terminated or suspended in violation of Section 411.082 is entitled to:

(1) reinstatement to the employee's former position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination.

(b) An employee seeking relief under this section must file suit not later than the 90th day after the alleged conduct of the employer occurred or was discovered or discoverable by the employee through reasonable diligence.

(c) An employee who prevails in a suit under this section is entitled to recover court costs and reasonable attorney's fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 411.084. EDUCATIONAL PUBLICATIONS.

(a) The division shall provide to employers and employees educational material, including books, pamphlets, brochures, films, videotapes, or other informational material.

(b) Educational material shall be provided to employees in English and Spanish.

(c) The department shall adopt minimum content requirements for the educational material required under this section, including:

(1) information on an employee's right to report an unsafe working environment;

(2) instructions on how to report unsafe working conditions and safety violations; and

(3) information on state laws regarding retaliation by employers.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.220, eff. September 1, 2005.

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SUBCHAPTER H. GENERAL REQUIREMENTS RELATING TO OCCUPATIONAL HEALTH AND SAFETY

SEC. 411.101. LEGISLATIVE POLICY; PURPOSE.

It is the policy of this state to protect the health and welfare of its people and to reduce and, to every reasonable extent, eliminate the causes of loss of production, reduction of work hours, temporary and permanent incapacity of workers, and increases in certain insurance rates by:

(1) promoting the adoption, application, and implementation of safety measures in industry and enterprise;

(2) protecting workers against unsafe and hazardous working conditions; and

(3) encouraging correction of any unsafe and hazardous working conditions in industry and enterprise.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

SEC. 411.102. DEFINITIONS.

In this subchapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(28), eff. September 1, 2005.

(2) "Employee" means an individual who works for an employer for compensation. The term does not include an individual employed to perform domestic services in a private residence.

(3) "Employer" means a person who has control or custody of any employment, place of employment, or employee. The term does not include a carrier, as that term is used in Title 49, United States Code, that is regulated by the Interstate Commerce Commission, except that the term includes a railroad.

(4) "Place of employment" means a location, other than a private residence where domestic service is performed, where:

(A) a trade, industry, or business is temporarily or permanently conducted; or

(B) an employee is directly or indirectly employed by another for direct or indirect gain.

(5) "Safe" as applied to employment or places of employment means freedom from occupational injury for employees to the extent reasonably permitted by the nature of the employment.

(6) "Safeguard" means any practicable method of mitigating or preventing occupational injury.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(28), eff. September 1, 2005.

SEC. 411.103. DUTY OF EMPLOYER TO PROVIDE SAFE WORKPLACE.

Each employer shall:

(1) provide and maintain employment and a place of employment that is reasonably safe and healthful for employees;

(2) install, maintain, and use methods, processes, devices, and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health, and safety of the employer's employees; and

(3) take all other actions reasonably necessary to make the employment and place of employment safe.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

SEC. 411.104. DIVISION DUTIES.

(a) The division shall administer this subchapter.

(b) In addition to the duties specified in this chapter, the division shall perform other duties as required by the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

SEC. 411.105. CONFIDENTIAL INFORMATION; PENALTY.

(a) The division and its employees may not disclose at a public hearing or otherwise information relating to secret processes, methods of manufacture, or products.

(b) The commissioner or an employee of the division commits an offense if the commissioner or employee wilfully discloses or conspires to disclose information made confidential under this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $1,000 and by forfeiture of the person's appointment as commissioner or as an employee of the division.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.221, eff. September 1, 2005.

SEC. 411.106. SAFETY CLASSIFICATION.

(a) To establish a safety classification for employers, the division shall:

(1) obtain medical and compensation cost information regularly compiled by the department in performing rate-making duties and functions regarding employer liability and workers' compensation insurance; and

(2) collect and compile information relating to:

(A) the frequency rate of accidents;

(B) the existence and implementation of private safety programs;

(C) the number of work-hour losses because of injuries; and

(D) other facts showing accident experience.

(b) From the information obtained under Subsection (a), the division shall classify employers as appropriate to implement this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.222, eff. September 1, 2005.

SEC. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS.

The division may endeavor to eliminate an impediment to occupational or industrial safety that is reported to the division by an affected employer. In attempting to eliminate an impediment the division may advise and consult with an employer, or a representative of an employer, who is directly involved.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.223, eff. September 1, 2005.

SEC. 411.108. ACCIDENT REPORTS.

The division may require an employer and any other appropriate person to report accidents, personal injuries, fatalities, or other statistics and information relating to accidents on forms prescribed by and covering periods designated by the commissioner.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.224, eff. September 1, 2005.

SEC. 411.109. EFFECT ON OTHER LAW.

This subchapter and Chapters 341 and 755, Health and Safety Code, to the extent possible shall all be given effect.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

SEC. 411.110. LABOR DISPUTES.

(a) It is the intent of the legislature that this subchapter, or an act performed under this subchapter, may not be:

(1) used as an issue involved in a labor dispute; or

(2) used or asserted to advantage in collective bargaining by employers, employees, or their respective representatives.

(b) Notwithstanding any other provision of this subchapter, this subchapter does not apply to a place of employment while that place of employment is subject to picketing or to a strike,

slowdown, or other work stoppage.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

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LABOR CODE CHAPTER 412. STATE OFFICE OF RISK MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 412.001. DEFINITIONS.

In this chapter:

(1) "Board" means the risk management board.

(2) "Director" means the executive director of the office.

(3) "Office" means the State Office of Risk Management.

(4) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state.

Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

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SUBCHAPTER B. OFFICE

SEC. 412.011. POWERS AND DUTIES OF OFFICE.

(a) The State Office of Risk Management shall administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs.

(b) The office shall:

(1) operate as a full-service risk manager and insurance manager for state agencies as provided by Subsection (c);

(2) maintain and review records of property, casualty, or liability insurance coverages purchased by or for a state agency;

(3) administer the program for the purchase of surety bonds for state officers and employees as provided by Chapter 653, Government Code;

(4) administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses;

(5) review, verify, monitor, and approve risk management programs adopted by state agencies;

(6) assist a state agency that has not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the board;

(7) administer the workers' compensation insurance program for state employees established under Chapter 501; and

(8) provide risk management services for employees of community supervision and corrections departments established under Chapter 76, Government Code, as if the employees were employees of a state agency.

(c) The office shall:

(1) perform risk management for each state agency subject to Chapter 412; and

(2) purchase insurance coverage for a state agency subject to Chapter 501, except for an institution subject to Section 501.022, under any line of insurance other than health or life insurance, including liability insurance authorized under Chapter 612, Government Code.

(d) The board by rule shall develop an implementation schedule for the purchase under this section of insurance for state agencies by the office. The board shall phase in, by line of insurance, the requirement that a state agency purchase coverage only through the office.

(e) A state agency subject to Chapter 501, except for an institution subject to Section 501.022, may not purchase property, casualty, or liability insurance coverage without the approval of the board.

(f) The office shall work with each state agency to develop an agency-level business continuity plan under Section 412.054.

(g) The office shall make available to each agency subject to Section 412.054 guidelines and models for each element listed in Section 412.054. The office shall assist the agency as necessary to ensure that:

(1) agency staff understands each element of the business continuity plan developed under Section 412.054; and

(2) each agency practices implementation of the plan.

(h) The office and the Texas Building and Procurement Commission shall adopt a memorandum of understanding that:

(1) includes the type, amount, and frequency of safety-related information that may be shared between the office and the commission; and

(2) designates points of contact within the office and the commission to coordinate the sharing of information.

(i) The office shall:

(1) maintain a system to promptly and efficiently act on complaints filed with the office;

(2) maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and disposition of the complaint;

(3) make information available describing the office's procedures for complaint investigation and resolution; and

(4) periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.01, eff. Sept. 1, 2002; Acts 2003, 78th Leg., ch. 527, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 1, eff. September 1, 2007.

SEC. 412.0111. AFFILIATION WITH OFFICE OF ATTORNEY GENERAL.

The office is administratively attached to the office of the attorney general and the office of the attorney general shall provide the facilities for the office, but the office shall be independent of the office of the attorney general's direction.

Added by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002. Redesignated from Labor Code Sec. 412.011(c).

Text of section as amended by Acts 2001, 77th Leg., ch. 559, Sec. 1 and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

*SEC. 412.012. FUNDING.

The office shall be administered through money appropriated by the legislature and through the allocation program for the financing of state workers' compensation benefits and risk management costs.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999,

76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

*SEC. 412.012. FUNDING.

The office shall be administered through money appropriated by the legislature and through:

(1) interagency contracts for purchase of insurance coverage and the operation of the risk management program; and

(2) the allocation program for the financing of state workers' compensation benefits.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1 and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

*SEC. 412.0121. INTERAGENCY CONTRACTS.

(a) Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

(1) services of office employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(c) The costs of risk management services provided by a state agency under the interagency contract shall be allocated in the same proportion and determined in the same manner as the costs of workers' compensation.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(b) by Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

*SEC. 412.0121. INTERAGENCY CONTRACTS.

(a) Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

(1) services of office employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(c) The amount of the costs to be paid by a state agency under the interagency contract is based on:

(1) the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;

(2) the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and

(3) the number and aggregate cost of claims and losses incurred by the state agency compared to those incurred by all state agencies to which this chapter applies.

(d) The board may by rule establish the formula for allocating the cost of this chapter in an interagency contract in a manner that gives consideration to the factors in Subsection (c) and any other factors it deems relevant, including an agency's risk management expenditures, unique risks, and established programs.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1, and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

*SEC. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION.

The state is self-insuring with respect to an employee's compensable injury.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

*SEC. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION.

(a) The state is self-insuring with respect to an employee's compensable injury.

(b) The legislature shall appropriate the amount designated by the appropriation structure for the payment of state workers' compensation claims costs to the office. This section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as added by Acts 2001, 77th Leg., ch. 559, Sec. 1, and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

*SEC. 412.0123. ALLOCATION OF WORKERS' COMPENSATION AND RISK MANAGEMENT COSTS; RISK REWARD PROGRAM.

Text of subsec. (a) as added by Acts 2001, 77th Leg., ch. 559, Sec. 1

(a) The office shall establish an allocation program for the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

Text of subsec. (a) as added by Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

(a) The office shall establish a risk reward the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

(b) The office shall establish a formula for allocating the state's workers' compensation costs among covered agencies based on the claims experience of each agency, the current and projected size of each agency's workforce, each agency's payroll, the related costs incurred in administering claims, and other factors that the office determines to be relevant. The agency may provide modifiers to the formula to promote the effective implementation of risk management programs by state agencies.

(c) The board has final authority to determine the assessments to be paid by the covered agencies.

Added by 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(d) by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

*SEC. 412.0123. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES.

(a) All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

(b) Funds deposited under this section may be used for the payment of workers' compensation benefits to state employees.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(d) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

*SEC. 412.0124. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES.

All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(d) and amended by Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001; Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001.

SEC. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE MANAGEMENT.

(a) The office shall provide each state agency with return-to-work coordination services as necessary to facilitate an injured employee's return to employment. The office shall notify each state agency of the availability of return-to-work coordination services.

(b) As part of return-to-work coordination services under this section, the office shall:

(1) establish a time frame for case management of an injured employee that ensures services are provided to the injured employee as soon as practicable to improve the employee's chance of returning to work as quickly as possible;

(2) provide guidance to each state agency to identify appropriate services for an injured employee;

(3) adopt rules that set standards and provide guidance to a state agency interacting with an injured employee; and

(4) implement any other services provided under Section 413.021 that will facilitate the reintegration of an injured employee.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 2, eff. September 1, 2007.

SEC. 412.0126. ANALYSIS.

(a) The board shall adopt rules as necessary to collect data on lost time and return-to-work outcomes of each state agency to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(b) The office shall:

(1) collect and analyze data from each state agency regarding lost time, including sick leave and annual leave used by an injured employee;

(2) identify state agencies that need additional training or case management services related to return-to-work services;

(3) modify as necessary the office's assessment computation to encourage state agencies to effectively reduce workers' compensation costs;

(4) incorporate as necessary return-to-work goals developed by the division of workers' compensation under Section 413.025;

(5) work with the workers' compensation research and evaluation group to develop analytical tools to assist the office with its duties under this section;

(6) require state agencies to report information in a standardized format;

(7) monitor the information reported by each state agency; and

(8) evaluate the information provided under this section to determine outcomes over time for each state agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 2, eff. September 1, 2007.

SEC. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER.

(a) Notwithstanding Section 403.016, Government Code, and except as provided by Subsection (b), the office shall pay an employee entitled to an indemnity benefit payment using the same payment method as the method by which the employee receives the employee's wages.

(b) The office shall adopt rules to facilitate the use of electronic funds transfer as the preferred method of payment under this section.

(c) The office may issue an indemnity benefit payment by check on request or if electronic funds transfer is not feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 2, eff. September 1, 2007.

SEC. 412.0128. CONFIDENTIALITY OF INFORMATION.

Information in or derived from a workers' compensation claim file regarding an employee, and information in or derived from a risk management review related to facility security or continuity

of operations of the Texas military forces, is confidential and may not be disclosed by the office except as provided by this subchapter or other law. Classified or sensitive information of the Texas military forces specifically preempted from disclosure by federal law retains the confidentiality protection provided by this section for all purposes, including disclosure to the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.11, eff. September 1, 2013.

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SUBCHAPTER C. BOARD

SEC. 412.021. RISK MANAGEMENT BOARD.

(a) The office is governed by the risk management board. Members of the board must have demonstrated experience in the fields of:

(1) insurance and insurance regulation;

(2) workers' compensation; and

(3) risk management administration.

(a-1) A person may not be a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the office;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the office; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the office other than compensation or reimbursement authorized by law for risk management board membership, attendance, or expenses.

(b) The board is composed of five members appointed by the governor.

(c) Members of the board hold office for staggered terms of six years with one or two members' terms expiring February 1 of each odd-numbered year. A member appointed to fill a vacancy shall hold office for the remainder of that term.

(d) The governor shall designate one member of the board as presiding officer. The presiding officer shall serve in that capacity at the pleasure of the governor.

(e) The board is subject to Chapters 552 and 2001, Government Code.

(f) The risk management board and the office are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this section expires September 1, 2019.

(g) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(h) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and the staff of the risk management office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.03, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1481, Sec. 3.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 40.01, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 3, eff. September 1, 2007.

SEC. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS.

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the enabling legislation that created the office and the office's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the office;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the office or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.04, eff. Sept. 1, 2002.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 4, eff. September 1, 2007.

SEC. 412.023. EFFECT OF LOBBYING ACTIVITY.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of insurance or health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of insurance or health care.

(c) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 5, eff. September 1, 2007.

SEC. 412.024. GROUNDS FOR REMOVAL FROM BOARD.

(a) It is a ground for removal from the board if a member:

(1) does not have at the time of taking office the qualifications required by Section 412.021;

(2) does not maintain during service on the board the qualifications required by Section 412.021;

(3) is ineligible for membership under Section 412.021 or 412.023;

(4) cannot because of illness or incapacity discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(a-1) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(b) If the director knows that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest officer of the board, who shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 6, eff. September 1, 2007.

SEC. 412.027. USE OF TECHNOLOGY.

The board shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 7, eff. September 1, 2007.

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SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD

SEC. 412.031. RULEMAKING AUTHORITY.

The board shall adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

SEC. 412.032. BOARD'S REPORT TO LEGISLATURE.

(a) Based on the recommendations of the director, the board shall report to each legislature relating to:

(1) methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses;

(2) the operation, financing, and management of those risks;

(3) the handling of claims brought against the state;

(4) return-to-work outcomes under Section 412.0126 for each state agency; and

(5) the business continuity plan developed by state agencies under Section 412.054.

(b) The report must include:

(1) the frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments;

(2) the identification of each state agency that has not complied with the risk management guidelines and reporting requirements of this chapter;

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes;

(4) a report of outcomes by state agency of lost time due to employee injury and return-to-work programs based on the information collected and analyzed by the office in Section 412.0126; and

(5) an evaluation of business continuity plans developed by state agencies under Section 412.054 for completeness and viability.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 8, eff. September 1, 2007.

SEC. 412.033. HIRING DIRECTOR.

The board shall hire a qualified person to serve as director of the office. The director serves at the pleasure of the board.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

SEC. 412.034. PUBLIC HEARING.

The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 9, eff. September 1, 2007.

SEC. 412.035. DISPUTE RESOLUTION.

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 10, eff. September 1, 2007.

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SUBCHAPTER E. DIRECTOR

SEC. 412.041. DIRECTOR DUTIES.

(a) The director serves as the state risk manager.

(b) The director shall supervise the development and administration of systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and

(4) reduce the property and liability losses, including workers' compensation, incurred by each state agency.

(c) In addition to other duties provided by this chapter, by Chapter 501, and by the board, the director shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501;

(4) hire staff as necessary to accomplish the objectives of the board and may delegate powers and duties to members of that staff as necessary;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the

reports and information that the board may direct or authorize.

(d) If necessary to the administration of this chapter and Chapter 501, the director, with the approval of the board, may secure and provide for services that are necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(e) The director also serves as the administrator of the government employees workers' compensation insurance program.

(f) In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury before September 1, 1995, the director shall act in the capacity of employer and insurer. In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury on or after September 1, 1995, the director shall act in the capacity of insurer.

(g) The director shall act as an adversary before the division and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(h) For the purposes of Subsection (f) and Chapter 501, the director is entitled to the legal counsel of the attorney general.

(i) In administering Chapter 501, the director is subject to the rules, orders, and decisions of the commissioner in the same manner as a private employer, insurer, or association.

(j) The director shall:

(1) prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501; and

(2) prepare for adoption by the board and enforce reasonable rules for the prevention of accidents and injuries.

(k) The director shall hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this chapter and Chapter 501.

(l) The director shall furnish copies of all rules to:

(1) the commissioner of insurance;

(2) the commissioner; and

(3) the administrative heads of all state agencies affected by this chapter and Chapter 501.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.05, eff. Sept. 1, 2002.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.225, eff. September 1, 2005.

SEC. 412.042. REPORTS TO THE LEGISLATURE.

(a) The director shall report to the legislature at the beginning of each regular session regarding the services provided by the office to a state agency subject to Chapter 501.

The report required under this subsection shall be dated January 1 of the year in which the regular session is held and must include:

(1) a summary of administrative expenses;

(2) a statement:

(A) showing the amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report; and

(B) estimating the amount of that balance necessary to administer Chapter 501 for the remainder of that fiscal year; and

(3) an estimate, based on experience factors, of the amount of money that will be required to administer Chapter 501 and pay for the compensation and services provided under Chapter 501 during the next succeeding biennium.

(b) In addition to the report required under Subsection (a), the director shall report to the legislature not later than February 1 of each odd-numbered year regarding insurance coverage purchased for state agencies, premium dollars spent to obtain that coverage, and losses incurred

under that coverage.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 9.01(a)(11), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1017, Sec. 1.06, eff. Sept. 1, 2002.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 9.01(a)(11), eff. September 1, 2011.

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SUBCHAPTER F. STATE AGENCIES

SEC. 412.051. DUTIES OF STATE AGENCIES; INSURANCE NOTIFICATION REQUIREMENTS.

(a) Each state agency shall actively manage the risks of that agency by:

(1) developing, implementing, and maintaining programs designed to assist employees who sustain compensable injuries to return to work; and

(2) cooperating with the office and the Texas Department of Insurance in the purchase of property, casualty, and liability lines of insurance coverage.

(b) Subject to Section 412.011, each state agency that intends to purchase property, casualty, or liability insurance coverage in a manner other than through the services provided by the office shall notify the office of the intended purchase in the manner prescribed by the office. The state agency shall notify the office of the intended purchase not later than the 30th day before the date on which the purchase of the coverage is scheduled to occur. The office may require a state agency to submit copies of insurance forms, policies, and other relevant information.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.07, eff. Sept. 1, 2002.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 81, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 82, eff. September 1, 2013.

SEC. 412.052. EXEMPTION OF CERTAIN STATE AGENCIES.

This chapter does not apply to a state agency that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

SEC. 412.053. ANNUAL REPORT BY STATE AGENCY.

(a) Each state agency shall report to the director for each fiscal year:

(1) the location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgments;

(2) loss information obtained by the state agency in the course of its administration of the workers' compensation program;

(3) detailed information on existing and potential exposure to loss, including property location and values, descriptions of agency operations, and estimates of maximum probable and maximum possible losses by category of risk;

(4) estimates by category of risk of losses incurred but not reported;

(5) information the director determines necessary to prepare a Texas Workers' Compensation Unit Statistical Report; and

(6) additional information that the director determines to be necessary.

(b) The information shall be reported not later than the 60th day before the last day of each fiscal year.

(c) This section does not apply to an institution of higher education or university system. In this subsection, "institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.08, eff. Sept. 1, 2002.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 6.13, eff. June 17, 2011.

SEC. 412.054. BUSINESS CONTINUITY PLAN.

(a) Each state agency shall work with the office to develop an agency-level business continuity plan that outlines procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. The plan must include detailed information regarding resumption of essential services after a catastrophe, including:

(1) coordination with public authorities;

(2) management of media;

(3) customer service delivery;

(4) assessing immediate financial and operational needs; and

(5) other services as determined by the office.

(b) A business continuity plan is considered to meet the requirements of this section if the agency forwards the plan to the office for review and the agency is:

(1) involved in the delivery of emergency services as a member of the governor's Emergency Management Council; or

(2) part of the State Data Center program.

Added by Acts 2007, 80th Leg., R.S., Ch. 407, Sec. 11, eff. September 1, 2007.

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LABOR CODE CHAPTER 413. MEDICAL REVIEW

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 413.002. MEDICAL REVIEW.

(a) The division shall monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner relating to health care, including medical policies and fee guidelines.

(b) In monitoring health care providers who serve as designated doctors under Chapter 408 and independent review organizations who provide services described by this chapter, the division shall evaluate:

(1) compliance with this subtitle and with rules adopted by the commissioner relating to medical policies, fee guidelines, treatment guidelines, return-to-work guidelines, and impairment ratings; and

(2) the quality and timeliness of decisions made under Section 408.0041, 408.122, 408.151, or 413.031.

(c) The division shall report the results of the monitoring of independent review organizations under Subsection (b) to the department on at least a quarterly basis.

(d) If the commissioner determines that an independent review organization is in violation of this chapter, rules adopted by the commissioner under this chapter, applicable provisions of this code or rules adopted under this code, or applicable provisions of the Insurance Code or rules adopted under that code, the commissioner or a designated representative shall notify the independent review organization of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.42, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.227, eff. September 1, 2005.

SEC. 413.003. AUTHORITY TO CONTRACT.

The division may contract with a private or public entity to perform a duty or function of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.228, eff. September 1, 2005.

SEC. 413.004. COORDINATION WITH PROVIDERS.

The division shall coordinate its activities with health care providers as necessary to perform its duties under this chapter. The coordination may include:

(1) conducting educational seminars on commissioner rules and procedures; or

(2) providing information to and requesting assistance from professional peer review organizations.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.229, eff. September 1, 2005.

SEC. 413.006. ADVISORY COMMITTEES.

The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.230, eff. September 1, 2005.

SEC. 413.007. INFORMATION MAINTAINED BY DIVISION.

(a) The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by:

(1) the commissioner in adopting the medical policies and fee guidelines; and

(2) the division in administering the medical policies, fee guidelines, or rules.

(b) The division shall ensure that the data base:

(1) contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols; and

(2) can be used in a meaningful way to allow the commission to control medical costs as provided by this subtitle.

(c) The division shall ensure that the data base is available for public access for a reasonable fee established by the commissioner. The identities of injured workers and beneficiaries may not be disclosed.

(d) The division shall take appropriate action to be aware of and to maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.231, eff. September 1, 2005.

SEC. 413.008. INFORMATION FROM INSURANCE CARRIERS; ADMINISTRATIVE VIOLATION.

(a) On request from the division for specific information, an insurance carrier shall provide to the division any information in the carrier's possession, custody, or control that reasonably relates to the division's duties under this subtitle and to health care:

(1) treatment;

(2) services;

(3) fees; and

(4) charges.

(b) The division shall keep confidential information that is confidential by law.

(c) An insurance carrier commits an administrative violation if the insurance carrier fails or refuses to comply with a request or violates a rule adopted to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.232, eff. September 1, 2005.

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SUBCHAPTER B. MEDICAL SERVICES AND FEES

SEC. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES; TREATMENT GUIDELINES AND PROTOCOLS.

(a) The commissioner shall adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, the commissioner shall adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of Section 413.053.

(b) In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d). The commissioner shall also provide for reasonable fees for the evaluation and management of care as required by Section 408.025(c) and commissioner rules. This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services.

(c) This section may not be interpreted in a manner that would discriminate in the amount or method of payment or reimbursement for services in a manner prohibited by Section 1451.104, Insurance Code, or as restricting the ability of chiropractors to serve as treating doctors as authorized by this subtitle. The commissioner shall also develop guidelines relating to fees charged or paid for providing expert testimony relating to an issue arising under this subtitle.

(d) Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an

equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commissioner shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.

(d-1) Expired.

(d-2) Expired.

(d-3) Expired.

(d-4) Notwithstanding this section or any other provision of this title, an insurance carrier, an insurance carrier's authorized agent, or a network certified under Chapter 1305, Insurance Code, arranging for non-network services or out-of-network services under Section 1305.006, Insurance Code, may continue to contract with a health care provider to secure health care for an injured employee for fees that exceed the fees adopted by the division under this section.

(d-5) The commissioner and the commissioner of insurance may adopt rules as necessary to implement this section.

(d-6) Expired.

(e) The commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols. Treatment guidelines and protocols must be evidence-based, scientifically valid, and outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Treatment may not be denied solely on the basis that the treatment for the compensable injury in question is not specifically addressed by the treatment guidelines.

(f) In addition to complying with the requirements of Subsection (e), medical policies or guidelines adopted by the commissioner must be:

(1) designed to ensure the quality of medical care and to achieve effective medical cost control;

(2) designed to enhance a timely and appropriate return to work; and

(3) consistent with Sections 413.013, 413.020, 413.052, and 413.053.

(g) The commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. The commissioner by rule may identify claims in which application of disability management activities is required and prescribe at what point in the claim process a treatment plan is required. The determination may be based on any factor considered relevant by the commissioner. Rules adopted under this subsection do not apply to claims subject to workers' compensation health care networks under Chapter 1305, Insurance Code.

(h) A dispute involving a treatment plan required under Subsection (g) may be appealed to an independent review organization in the manner described by Section 413.031.

(i) The division shall examine whether injured employees have reasonable access to surgically implanted, inserted, or otherwise applied devices or tissues and investigate whether reimbursement rates or any other barriers exist that reduce the ability of an injured employee to access those medical needs. The division shall recommend to the legislature any statutory changes necessary to ensure appropriate access to those medical needs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 962, Sec. 1, 2, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.233, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1177, Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1177, Sec. 2, eff. January 1, 2011.

SEC. 413.0111. PROCESSING AGENTS.

The rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on the behalf of the pharmacies under terms and conditions agreed on by the pharmacies.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.234, eff. September 1, 2005.

SEC. 413.0115. REQUIREMENTS FOR CERTAIN VOLUNTARY OR INFORMAL NETWORKS.

(a) In this section:

(1) "Informal network" means a health care provider network described by Section 413.011(d-1) that:

(A) is established under a contract between an insurance carrier and health care providers; and

(B) includes a specific fee schedule.

(2) "Voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier under former Section 408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005.

(b) Not later than January 1, 2011, each informal network or voluntary network must be certified as a workers' compensation health care network under Chapter 1305, Insurance Code.

(c) Effective September 1, 2007, each informal network and voluntary network must provide the following information to the division:

(1) an executive contact for official correspondence for the network;

(2) a toll-free telephone number by which a health care provider may contact the informal network or voluntary network;

(3) a list of each insurance carrier with whom the network contracts; and

(4) a list of each entity associated with the network working on behalf of the insurance carrier, including contact information for each entity.

(d) Each informal network and voluntary network shall report any changes to the information provided under Subsection (c) to the division not later than the 30th day after the effective date of the change.

Added by Acts 2007, 80th Leg., R.S., Ch. 1177, Sec. 3, eff. September 1, 2007.

SEC. 413.012. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED.

The medical policies and fee guidelines shall be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 413.013. PROGRAMS.

The commissioner by rule shall establish:

(1) a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services;

(2) a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the division to ensure that the medical policies or guidelines are not exceeded;

(3) a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the division; and

(4) a program to increase the intensity of review for compliance with the medical policies or fee guidelines for any health care provider that has established a practice or pattern in charges and treatments inconsistent with the medical policies and fee guidelines.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.235, eff. September 1, 2005.

SEC. 413.014. PREAUTHORIZATION REQUIREMENTS; CONCURRENT REVIEW AND CERTIFICATION OF HEALTH CARE.

(a) In this section, "investigational or experimental service or device" means a health care treatment, service, or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly

accepted as the prevailing standard of care.

(b) The commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Treatments and services for a medical emergency do not require express preauthorization.

(c) The commissioner's rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for:

(1) spinal surgery, as provided by Section 408.026;

(2) work-hardening or work-conditioning services provided by a health care facility that is not credentialed by an organization recognized by commissioner rules;

(3) inpatient hospitalization, including any procedure and length of stay;

(4) physical and occupational therapy;

(5) outpatient or ambulatory surgical services, as defined by commissioner rule; and

(6) any investigational or experimental services or devices.

(d) The insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner.

(e) If a specified health care treatment or service is preauthorized as provided by this section, that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service.

(f) The division may not prohibit an insurance carrier and a health care provider from voluntarily discussing health care treatment and treatment plans and pharmaceutical services, either prospectively or concurrently, and may not prohibit an insurance carrier from certifying or agreeing to pay for health care consistent with those agreements. The insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and may not dispute the certified or agreed-on preauthorized health care treatment

and treatment plans and pharmaceutical services at a later date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 4.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 980, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.236, eff. September 1, 2005.

SEC. 413.0141. INITIAL PHARMACEUTICAL COVERAGE.

The commissioner may by rule provide that an insurance carrier shall provide for payment of specified pharmaceutical services sufficient for the first seven days following the date of injury if the health care provider requests and receives verification of insurance coverage and a verbal confirmation of an injury from the employer or from the insurance carrier as provided by Section 413.014. The rules adopted by the commissioner shall provide that an insurance carrier is eligible for reimbursement for pharmaceutical services paid under this section from the subsequent injury fund in the event the injury is determined not to be compensable.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 4.03, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.237, eff. September 1, 2005.

SEC. 413.015. PAYMENT BY INSURANCE CARRIERS; AUDIT AND REVIEW.

(a) Insurance carriers shall make appropriate payment of charges for medical services provided under this subtitle. An insurance carrier may contract with a separate entity to forward payments for medical services. Any payment due the insurance carrier from the separate entity must be made in accordance with the contract. The separate entity is subject to the direction of the insurance carrier, and the insurance carrier is responsible for the actions of the separate entity under this subsection.

(b) The commissioner shall provide by rule for the review and audit of the payment by insurance carriers of charges for medical services provided under this subtitle to ensure compliance of health care providers and insurance carriers with the medical policies and fee guidelines adopted by the commissioner.

(c) The rules must require the insurance carrier to pay the expenses of the review and audit.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.03, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.238, eff. September 1, 2005.

SEC. 413.016. PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND FEE GUIDELINES.

(a) The division shall order a refund of charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this subtitle to the division of compliance and practices.

(b) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical policies or fee guidelines adopted by the commissioner, the division shall investigate the potential violation. If the insurance carrier reduced a charge of a health care provider that was within the guidelines, the insurance carrier shall be directed to submit the difference to the provider unless the reduction is in accordance with an agreement between the health care provider and the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.239, eff. September 1, 2005.

SEC. 413.017. PRESUMPTION OF REASONABLENESS.

The following medical services are presumed reasonable:

(1) medical services consistent with the medical policies and fee guidelines adopted by the commissioner; and

(2) medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the division and that are authorized by an insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.240, eff. September 1, 2005.

SEC. 413.018. REVIEW OF MEDICAL CARE IF GUIDELINES EXCEEDED.

(a) The commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded.

(b) The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

(c) The division shall implement a program to encourage employers and treating doctors to discuss the availability of modified duty to encourage the safe and more timely return to work of injured employees. The division may require a treating or examining doctor, on the request of the employer, insurance carrier, or division, to provide a functional capacity evaluation of an injured employee and to determine the employee's ability to engage in physical activities found in the workplace or in activities that are required in a modified duty setting.

(d) The division shall provide through the division's health and safety information and medical review outreach programs information to employers regarding effective return to work programs. This section does not require an employer to provide modified duty or an employee to accept a modified duty assignment. An employee who does not accept an employer's offer of modified duty determined by the division to be a bona fide job offer is subject to Section 408.103(e).

(e) The commissioner may adopt rules and forms as necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.241, eff. September 1, 2005.

SEC. 413.019. INTEREST EARNED FOR DELAYED PAYMENT, REFUND, OR OVERPAYMENT.

(a) Interest on an unpaid fee or charge that is consistent with the fee guidelines accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the health care

provider submits the bill to an insurance carrier until the date the bill is paid.

(b) Interest on a refund from a health care provider accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the provider receives notice of alleged overpayment from the insurance carrier until the date the refund is paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 413.020. DIVISION CHARGES.

The commissioner by rule shall establish procedures to enable the division to charge:

(1) an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges under this subtitle; and

(2) a health care provider who exceeds a fee or utilization guideline established under this subtitle or an insurance carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline established under this subtitle a reasonable fee for review of health care treatment, fees, or charges under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.242, eff. September 1, 2005.

SEC. 413.021. RETURN-TO-WORK COORDINATION SERVICES.

(a) An insurance carrier shall, with the agreement of a participating employer, provide the employer with return-to-work coordination services on an ongoing basis as necessary to facilitate an employee's return to employment, including on receipt of a notice that an injured employee is eligible to receive temporary income benefits. The insurance carrier shall notify the employer of the availability of the return-to-work reimbursement program under Section 413.022. The insurance carrier shall evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, case managers who are appropriately certified shall be used to perform these evaluations. A claims adjuster may

not be used as a case manager. These services may be offered by insurance carriers in conjunction with the accident prevention services provided under Section 411.061. Nothing in this section supersedes the provisions of a collective bargaining agreement between an employer and the employer's employees, and nothing in this section authorizes or requires an employer to engage in conduct that would otherwise be a violation of the employer's obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

(b) Return-to-work coordination services under this section may include:

(1) job analysis to identify the physical demands of a job;

(2) job modification and restructuring assessments as necessary to match job requirements with the functional capacity of an employee; and

(3) medical or vocational case management to coordinate the efforts of the employer, the treating doctor, and the injured employee to achieve timely return to work.

(c) An insurance carrier is not required to provide physical workplace modifications under this section and is not liable for the cost of modifications made under this section to facilitate an employee's return to employment.

(d) The division shall use certified rehabilitation counselors or other appropriately trained or credentialed specialists to provide training to division staff regarding the coordination of return-to-work services under this section.

(e) The commissioner shall adopt rules necessary to collect data on return-to-work outcomes to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(f) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.02(a).

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 3.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.02(a), eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.243, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1388, Sec. 1, eff. June 19, 2009.

SEC. 413.022. RETURN-TO-WORK REIMBURSEMENT PROGRAM FOR EMPLOYERS; FUND.

(a) In this section:

(1) "Account" means the workers' compensation return-to-work account.

(2) "Eligible employer" means any employer, other than this state or a political subdivision subject to Subtitle C, who has workers' compensation insurance coverage and who:

(A) employed at least two but not more than 50 employees on each business day during the preceding calendar year; or

(B) is a type of employer designated as eligible to participate in the program by the commissioner.

(3) "Program" means the return-to-work reimbursement program established under this section.

(b) The commissioner shall establish by rule a return-to-work reimbursement program designed to promote the early and sustained return to work of an injured employee who sustains a compensable injury. The commissioner, by rule, may expand eligibility to participate in the program to types of employers who are not described by Subsection (a)(2)(A).

(c) The program shall reimburse from the account an eligible employer for expenses incurred by the employer to make workplace modifications necessary to accommodate an injured employee's return to modified or alternative work. Reimbursement under this section to an eligible employer may not exceed $5,000. The expenses must be incurred to allow the employee to perform modified or alternative work within doctor-imposed work restrictions. Allowable expenses may include:

(1) physical modifications to the worksite;

(2) equipment, devices, furniture, or tools; and

(3) other costs necessary for reasonable accommodation of the employee's

restrictions.

(c-1) The commissioner by rule shall establish an optional preauthorization plan for eligible employers who participate in the program. To participate in the preauthorization plan, an employer must submit a proposal to the division, in the manner prescribed by the division, that describes the workplace modifications and other changes that the employer proposes to make to accommodate an injured employee's return to work. If the division approves the employer's proposal, the division shall guarantee reimbursement of the expenses incurred by the employer in implementing the modifications and changes from the account unless the division determines that the modifications and changes differ materially from the employer's proposal. If determined to be a public purpose by the commissioner, and in accordance with rules adopted by the commissioner, the division may provide the employer an advance of funds under this subsection. Reimbursement or an advance of funds under this subsection is subject to the limit imposed under Subsection (c).

(d) The account is established as a special account in the general revenue fund. From administrative penalties received by the division under this subtitle, the commissioner shall deposit in the account an amount not to exceed $100,000 annually. Money in the account may be spent by the division, on appropriation by the legislature, only for the purposes of implementing this section.

(e) 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) Notwithstanding Subsections (a)-(e), this section may be implemented only to the extent funds are available.

(g) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.244, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 106, Sec. 1, eff. May 17, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1388, Sec. 2, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1388, Sec. 3, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1388, Sec. 4, eff. June 19, 2009.

SEC. 413.023. INFORMATION TO EMPLOYERS.

(a) The division shall provide employers with information on methods to enhance the ability of an injured employee to return to work. The information may include access to available research and best practice information regarding return-to-work programs for employers.

(b) The division shall augment return-to-work program information provided to employers to include information regarding methods for an employer to appropriately assist an injured employee to obtain access to doctors who:

(1) provide high-quality care; and

(2) use effective occupational medicine treatment practices that lead to returning employees to productive work.

(c) The information provided to employers under this section must help to foster:

(1) effective working relationships with local doctors and with insurance carriers or workers' compensation health care networks certified under Chapter 1305, Insurance Code, to improve return-to-work communication; and

(2) access to return-to-work coordination services provided by insurance carriers.

(d) The division shall develop and make available the information described by this section.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.244, eff. September 1, 2005.

SEC. 413.024. INFORMATION TO EMPLOYEES.

The division shall provide injured employees with information regarding the benefits of early return to work. The information must include information on how to receive assistance in accessing high-quality medical care through the workers' compensation system.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.244, eff. September 1, 2005.

SEC. 413.025. RETURN-TO-WORK GOALS AND ASSISTANCE.

(a) The division shall assist recipients of income benefits to return to the workforce. The division shall develop improved data sharing, within the standards of federal privacy requirements,

with all appropriate state agencies and workforce programs to inform the division of changes needed to assist income benefit recipients to successfully reenter the workforce.

(b) The division shall train staff dealing with income benefits to respond to questions and assist injured employees in their effort to return to the workforce. If the division determines that an injured employee is unable to ever return to the workforce, the division shall inform the employee of possible eligibility for other forms of benefits, such as social security disability income benefits.

(c) As necessary to implement the requirements of this section, the division shall:

(1) attempt to remove any barriers to successful employment that are identified at the division, the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and private vocational rehabilitation programs;

(2) ensure that data is tracked among the division, the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and insurance carriers, including outcome data;

(3) establish a mechanism to refer income benefit recipients to the Texas Workforce Commission and local workforce development centers for employment opportunities; and

(4) develop a mechanism to promote employment success that includes post-referral contacts by the division with income benefit recipients.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.244, eff. September 1, 2005.

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SUBCHAPTER C. DISPUTE RESOLUTION

SEC. 413.031. MEDICAL DISPUTE RESOLUTION.

(a) A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required or allowed by this subtitle or commissioner rules;

(3) ordered by the commissioner to refund a payment received; or

(4) ordered to make a payment that was refused or reduced for a medical service rendered.

(b) A health care provider who submits a charge in excess of the fee guidelines or treatment policies is entitled to a review of the medical service to determine if reasonable medical justification exists for the deviation. A claimant is entitled to a review of a medical service for which preauthorization is sought by the health care provider and denied by the insurance carrier. The commissioner shall adopt rules to notify claimants of their rights under this subsection.

(c) In resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment given the relevant statutory provisions and commissioner rules. The division shall publish on its Internet website the division's medical dispute decisions, including decisions of independent review organizations, and any subsequent decisions by the State Office of Administrative Hearings. Before publication, the division shall redact only that information necessary to prevent identification of the injured worker.

(d) A review of the medical necessity of a health care service requiring preauthorization under Section 413.014 or commissioner rules under that section or Section 413.011(g) shall be conducted by an independent review organization under Chapter 4202, Insurance Code, in the

same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e) Except as provided by Subsections (d), (f), and (m), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Chapter 4202, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e-1) In performing a review of medical necessity under Subsection (d) or (e), the independent review organization shall consider the division's health care reimbursement policies and guidelines adopted under Section 413.011. If the independent review organization's decision is contrary to the division's policies or guidelines adopted under Section 413.011, the independent review organization must indicate in the decision the specific basis for its divergence in the review of medical necessity.

(e-2) Notwithstanding Section 4202.002, Insurance Code, an independent review organization that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state.

(e-3) Notwithstanding Subsections (d) and (e) of this section or Chapters 4201 and 4202, Insurance Code, a doctor, other than a dentist or a chiropractor, who performs a utilization review or an independent review of a health care service provided to an injured employee is subject to Section 408.0043. A dentist who performs a utilization review or an independent review of a dental service provided to an injured employee is subject to Section 408.0044. A chiropractor who performs a utilization review or an independent review of a chiropractic service provided to an injured employee is subject to Section 408.0045.

(f) The commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement.

(g) In performing a review of medical necessity under Subsection (d) or (e), an independent review organization may request that the commissioner order an examination by a designated doctor under Chapter 408.

(h) The insurance carrier shall pay the cost of the review if the dispute arises in connection with:

(1) a request for health care services that require preauthorization under Section 413.014 or commissioner rules under that section; or

(2) a treatment plan under Section 413.011(g) or commissioner rules under that section.

(i) Except as provided by Subsection (h), the cost of the review shall be paid by the nonprevailing party.

(j) Notwithstanding Subsections (h) and (i), an employee may not be required to pay any portion of the cost of a review.

(k) A party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing under Section 413.0311 or 413.0312, as applicable.

(k-1) A party who has exhausted all administrative remedies described by Subsection (k) and who is aggrieved by a final decision of the division or the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that in the case of a medical fee dispute the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the decision.

For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings.

(k-2) The division and the department are not considered to be parties to the medical dispute for purposes of Subsections (k) and (k-1).

(l) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(1), eff. September 1, 2011.

(m) The decision of an independent review organization under Subsection (d) is binding during the pendency of a dispute.

(n) The commissioner by rule may prescribe an alternate dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization. The cost of a review under the alternate dispute resolution process shall be paid by the nonprevailing party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.43, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 6.04, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 980, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1323, Sec. 1, eff. June 21, 2003. Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.245, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 133, Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 6, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 18, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1066, Sec. 2, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 18, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(1), eff. September 1, 2011.

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

(a) This section applies only to an appeal of an independent review organization decision regarding determination of the medical necessity for a health care service.

(b) A party to a medical dispute described by Subsection (a) is entitled to a contested case hearing. A contested case hearing under this section shall be conducted by a hearings officer in the manner provided for contested case hearings under Subchapter D, Chapter 410. Notwithstanding Section 410.024, a benefit review conference is not a prerequisite to a contested

case hearing under this section.

(c) The decision of a hearings officer under this section is final in the absence of a timely appeal by a party for judicial review under Subsection (d).

(d) 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) may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the division mailed the party the decision of the hearings officer. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision of the hearings officer was filed with the division.

(e) The division and the department are not considered to be parties to the medical dispute for purposes of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1007, Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1066, Sec. 3, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 19, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 20, eff. September 1, 2011.

SEC. 413.0312. REVIEW OF MEDICAL FEE DISPUTES; BENEFIT REVIEW CONFERENCE.

(a) This section applies only to a medical fee dispute that remains unresolved after any applicable review under Sections 413.031(b) through (i).

(b) Subject to Subsection (e), a party to a medical fee dispute described by Subsection (a) must adjudicate the dispute in the manner required by Subchapter B, Chapter 410.

(c) At a benefit review conference conducted under this section, the parties to the dispute may not resolve the dispute by negotiating fees that are inconsistent with any applicable fee guidelines adopted by the commissioner.

(d) If issues remain unresolved after a benefit review conference, the parties may elect to engage in arbitration as provided by Section 410.104.

(e) If arbitration is not elected as described by Subsection (d), a party to a medical fee dispute described by Subsection (a) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

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

(g) Except as otherwise provided by this subsection, the nonprevailing party shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. If the injured employee is the nonprevailing party, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. The party required to reimburse the division under this subsection shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

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

(i) The State Office of Administrative Hearings shall identify the nonprevailing party and any costs for services provided by the office under this section in its final decision. Money collected by the division under this section shall be deposited in the general revenue fund to the credit of the Texas Department of Insurance operating account.

(j) Interest on the amount of reimbursement required by this section that remains unpaid accrues at a rate provided by Section 401.023 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. Failure to pay the division as required by this section is an administrative violation under this subtitle.

(k) The commissioner by rule shall 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 the State Office of Administrative Hearings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 21, eff. September 1, 2011.

SEC. 413.032. INDEPENDENT REVIEW ORGANIZATION DECISION; APPEAL.

(a) An independent review organization that conducts a review under this chapter shall specify the elements on which the decision of the organization is based. At a minimum, the decision must include:

(1) a list of all medical records and other documents reviewed by the organization;

(2) a description and the source of the screening criteria or clinical basis used in making the decision;

(3) an analysis of and explanation for the decision, including the findings and conclusions used to support the decision; and

(4) a description of the qualifications of each physician or other health care provider who reviews the decision.

(b) The independent review organization shall certify that each physician or other health care provider who reviews the decision certifies that no known conflicts of interest exist between

that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the independent review organization.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.247, eff. September 1, 2005.

SUBCHAPTER D. HEALTH CARE PROVIDERS

SEC. 413.041. DISCLOSURE.

(a) Each health care practitioner shall disclose to the division the identity of any health care provider in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest. The health care practitioner shall make the disclosure in the manner provided by commissioner rule.

(b) The commissioner shall require by rule that a doctor disclose financial interests in other health care providers as a condition of registration for the approved doctor list established under Section 408.023 and shall define "financial interest" for purposes of this section as provided by analogous federal regulations. The commissioner by rule shall adopt the federal standards that prohibit the payment or acceptance of payment in exchange for health care referrals relating to fraud, abuse, and antikickbacks.

(c) A health care provider that fails to comply with this section is subject to penalties and sanctions as provided by this subtitle, including forfeiture of the right to reimbursement for services rendered during the period of noncompliance.

(d) The division shall publish all final disclosure enforcement orders issued under this section on the division's Internet website.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.05, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.246, eff. September 1, 2005.

SEC. 413.042. PRIVATE CLAIMS; ADMINISTRATIVE VIOLATION.

(a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the claimant by the provider unless:

(1) the injury is finally adjudicated not compensable under this subtitle; or

(2) the employee violates Section 408.022 relating to the selection of a doctor and the

doctor did not know of the violation at the time the services were rendered.

(b) A health care provider commits an administrative violation if the provider violates Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.248, eff. September 1, 2005.

SEC. 413.043. OVERCHARGING PROHIBITED; OFFENSE.

(a) A health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 413.044. SANCTIONS ON DESIGNATED DOCTOR.

(a) In addition to or in lieu of an administrative penalty under Section 415.021 or a sanction imposed under Section 415.023, the commissioner may impose sanctions against a person who serves as a designated doctor under Chapter 408 who, after an evaluation conducted under Section 413.002(b), is determined by the division to be out of compliance with this subtitle or with rules adopted by the commissioner relating to:

(1) medical policies, fee guidelines, and impairment ratings; or

(2) the quality of decisions made under Section 408.0041 or Section 408.122.

(b) Sanctions imposed under Subsection (a) may include:

(1) revocation of certification for a designated doctor on the division list of designated doctors; or

(2) restrictions on the reviews made by the person as a designated doctor.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.44, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.249, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 22, eff. September 1, 2011.

SUBCHAPTER E. IMPLEMENTATION OF COMMISSION POWERS AND DUTIES

SEC. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS.

(a) In this section, "health care provider professional review organization" includes an independent review organization.

(b) The division may contract with a health care provider, health care provider professional review organization, or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines.

(c) For purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the division may contract with a health care provider, health care provider professional review organization, or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

(d) The division may contract with a health care provider, health care provider professional review organization, or other entity for medical consultant services, including:

(1) independent medical examinations;

(2) medical case reviews; or

(3) establishment of medical policies and fee guidelines.

(e) The commissioner shall establish standards for contracts under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.250, eff. September 1, 2005.

SEC. 413.0511. MEDICAL ADVISOR.

(a) The division shall employ or contract with a medical advisor, who must be a doctor as that term is defined by Section 401.011.

(b) The medical advisor shall make recommendations regarding the adoption of rules and

policies to:

(1) develop, maintain, and review guidelines as provided by Section 413.011, including rules regarding impairment ratings;

(2) review compliance with those guidelines;

(3) regulate or perform other acts related to medical benefits as required by the commissioner;

(4) impose sanctions or delete doctors from the division's list of approved doctors under Section 408.023 for:

(A) any reason described by Section 408.0231; or

(B) noncompliance with commissioner rules;

(5) impose conditions or restrictions as authorized by Section 408.0231(f);

(6) receive, and share with the medical quality review panel established under Section 413.0512, confidential information, and other information to which access is otherwise restricted by law, as provided by Sections 413.0512, 413.0513, and 413.0514 from the Texas State Board of Medical Examiners, the Texas Board of Chiropractic Examiners, or other occupational licensing boards regarding a physician, chiropractor, or other type of doctor who applies for registration or is registered with the division on the list of approved doctors;

(7) determine minimal modifications to the reimbursement methodology and model used by the Medicare system as necessary to meet occupational injury requirements; and

(8) monitor the quality and timeliness of decisions made by designated doctors and independent review organizations, and the imposition of sanctions regarding those decisions.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.251, eff. September 1, 2005.

SEC. 413.05115. MEDICAL QUALITY REVIEW PROCESS.

(a) The division shall develop, and the commissioner shall adopt, criteria concerning the medical case review process under this subchapter. In developing the criteria, and before adopting the criteria, the division and the commissioner, as applicable, must consult with the medical advisor and seek input from potentially affected parties, including health care providers and insurance carriers.

(b) The criteria developed and adopted under this section must establish a clear process or processes:

(1) for handling complaint-based medical case reviews; and

(2) through which the division selects health care providers or other entities for a compliance audit or review.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 24, eff. September 1, 2011.

SEC. 413.0512. MEDICAL QUALITY REVIEW PANEL.

(a) The medical advisor shall establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under Section 413.0511. The panel is not subject to Chapter 2110, Government Code.

(b) The agencies that regulate health professionals who are licensed or otherwise authorized to practice a health profession under Title 3, Occupations Code, and who are involved in the provision of health care as part of the workers' compensation system in this state shall develop lists of health care providers licensed or otherwise regulated by those agencies who have demonstrated experience in workers' compensation or utilization review. The medical advisor shall 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, shall 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. The medical advisor shall also consider nominations for the panel made by labor, business, and insurance organizations.

(c) The medical quality review panel shall recommend to the medical advisor:

(1) appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations;

(2) the addition or deletion of doctors from the list of approved doctors under Section 408.023; and

(3) the certification, revocation of certification, or denial of renewal of certification of a designated doctor under Section 408.1225.

(d) A person who serves on the medical quality review panel is immune from suit and from civil liability for an act performed, or a recommendation made, within the scope of the person's functions as a member of the panel if the person acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that 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, the person is entitled to the same protections afforded the commissioner under Section 402.00123.

(e) The actions of a person serving on the medical quality review panel do not constitute utilization review and are not subject to Chapter 4201, Insurance Code.

(f) A member of the medical quality review panel who reviews a specific workers' compensation case is subject to Section 408.0043, 408.0044, or 408.0045, as applicable.

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

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.252, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1218, Sec. 7, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 23, eff. September 1, 2011.

SEC. 413.05121. QUALITY ASSURANCE PANEL.

(a) The medical advisor shall 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) and the medical quality review panel in performing that panel's duties under Section 413.0512.

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

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 24, eff. September 1, 2011.

SEC. 413.05122. MEDICAL QUALITY REVIEW PANEL: RULES; TRAINING.

(a) The commissioner, after consultation with the medical advisor, shall 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) In addition to the rules required under Subsection (a), the commissioner shall adopt rules concerning the training requirements for members of the medical quality review panel. The rules adopted under this subsection must 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. The rules adopted under this subsection may 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 must 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 and the immunity from liability provided to members of the panel under Section 413.054; and

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 24, eff. September 1, 2011.

SEC. 413.0513. CONFIDENTIALITY REQUIREMENTS.

(a) Information collected, assembled, or maintained by or on behalf of the division under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section.

(b) Confidential information, and other information to which access is restricted by law, developed by or on behalf of the division under Section 413.0511 or 413.0512 is not subject to discovery or court subpoena in any action other than:

(1) an action to enforce this subtitle brought by the division, an appropriate licensing or regulatory agency, or an appropriate enforcement authority; or

(2) a criminal proceeding.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 3, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.253, eff. September 1, 2005.

SEC. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL LICENSING BOARDS.

(a) This section applies only to information held by or for the division, the Texas State Board of Medical Examiners, and Texas Board of Chiropractic Examiners that relates to a person who is licensed or otherwise regulated by any of those state agencies.

(b) The division and the Texas State Board of Medical Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The division and the Texas State Board of Medical Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that the sending agency determines is relevant to the investigation. Except as provided by this section, confidential information that is shared under this

section remains confidential under law and legal restrictions on access to the information remain in effect. Furnishing information by the Texas State Board of Medical Examiners to the division or by the division to the Texas State Board of Medical Examiners under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(c) Information that is received by the division from the Texas State Board of Medical Examiners or by the Texas State Board of Medical Examiners from the division remains confidential, may not be disclosed by the division except as necessary to further the investigation, and shall be exempt from disclosure under Sections 402.092 and 413.0513.

(d) The division and the Texas Board of Chiropractic Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The division and the Texas Board of Chiropractic Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. Furnishing information by the Texas Board of Chiropractic Examiners to the division or by the division to the Texas Board of Chiropractic Examiners under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(e) Information that is received by the division from the Texas Board of Chiropractic Examiners or by the Texas Board of Chiropractic Examiners from the division remains confidential and may not be disclosed by the division except as necessary to further the investigation unless the agency sharing the information and the agency receiving the information agree to use of the information by the receiving agency for enforcement purposes.

(f) The division and the Texas State Board of Medical Examiners shall provide information to

each other on all disciplinary actions taken.

(g) The division and the Texas Board of Chiropractic Examiners shall provide information to each other on all disciplinary actions taken.

Added by Acts 2003, 78th Leg., ch. 963, Sec. 4, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.254, eff. September 1, 2005.

SEC. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR VIOLATIONS.

(a) If the division or the Texas State Board of Medical Examiners discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the agency shall report that act or omission to the other agency.

(b) If the division or the Texas Board of Chiropractic Examiners discovers an act or omission by a chiropractor that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the agency shall report that act or omission to the other agency.

Added by Acts 2003, 78th Leg., ch. 963, Sec. 4, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.255, eff. September 1, 2005.

SEC. 413.052. PRODUCTION OF DOCUMENTS.

The commissioner by rule shall establish procedures to enable the division to compel the production of documents.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.256, eff. September 1, 2005.

SEC. 413.053. STANDARDS OF REPORTING AND BILLING.

The commissioner by rule shall establish standards of reporting and billing governing both

form and content.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.257, eff. September 1, 2005.

SEC. 413.054. IMMUNITY FROM LIABILITY.

(a) 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.

(b) Immunity from liability under this section does not apply to a person providing medical treatment to an injured employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.258, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 25, eff. September 1, 2011.

SEC. 413.055. INTERLOCUTORY ORDERS; REIMBURSEMENT.

(a) The commissioner may enter an interlocutory order for the payment of all or part of medical benefits. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

(b) The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an order entered under Subsection (a) if the order is reversed or modified by final arbitration, order, or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

(c) A party that disputes an order entered under Subsection (a) is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code. The order is binding during the pendency of the appeal.

Added by Acts 1999, 76th Leg., ch. 955, Sec. 6, eff. Sept. 1, 1999.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.259, eff. September 1, 2005.

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LABOR CODE CHAPTER 414. ENFORCEMENT OF COMPLIANCE AND PRACTICE REQUIREMENTS

SEC. 414.002. MONITORING DUTIES.

(a) The division shall monitor for compliance with commissioner rules, this subtitle, and other laws relating to workers' compensation the conduct of persons subject to this subtitle. Persons to be monitored include:

(1) persons claiming benefits under this subtitle;

(2) employers;

(3) insurance carriers;

(4) attorneys and other representatives of parties; and

(5) health care providers.

(b) The division shall monitor conduct described by Sections 415.001, 415.002, and 415.003 and refer persons engaging in that conduct to the division of hearings.

(c) The division shall monitor payments made to health care providers on behalf of workers' compensation claimants who receive medical services to ensure that the payments are made on time as required by Section 408.027.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.260, eff. September 1, 2005.

SEC. 414.003. COMPILATION AND USE OF INFORMATION.

(a) The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this chapter that:

(1) violate this subtitle, commissioner rules, or a commissioner order or decision; or

(2) otherwise adversely affect the workers' compensation system of this state.

(b) The commissioner shall use the information compiled under this section to impose appropriate penalties and other sanctions under Chapters 415 and 416.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.261, eff. September 1, 2005.

SEC. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS.

(a) The division shall review regularly the workers' compensation records of insurance carriers as required to ensure compliance with this subtitle.

(b) Each insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this subtitle shall:

(1) cooperate with the division;

(2) make available to the division any records or other necessary information; and

(3) allow the division access to the information at reasonable times at the person's offices.

(c) The insurance carrier, other than a governmental entity, shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the office of the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 414.005. INVESTIGATION UNIT.

(a) The division shall 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 and 416.

(b) As often as the commissioner considers necessary, the commissioner or the investigation unit may 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) The review described by Subsection (b) may include on-site visits to the person's premises. The commissioner is not required to announce an on-site visit in advance.

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

(e) The commissioner by rule shall 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.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.262, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 26, eff. September 1, 2011.

SEC. 414.006. REFERRAL TO OTHER AUTHORITIES.

For further investigation or the institution of appropriate proceedings, the division may refer the persons involved in a case subject to an investigation to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.263, eff. September 1, 2005.

SEC. 414.007. MEDICAL REVIEW.

The division shall review information concerning alleged violations of this subtitle regarding the provision of medical benefits, commissioner rules, or a commissioner order or decision, and, under Sections 414.005 and 414.006 and Chapters 415 and 416, may conduct investigations, make referrals to other authorities, and initiate administrative violation proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.264, eff. September 1, 2005.

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LABOR CODE CHAPTER 415. ADMINISTRATIVE VIOLATIONS

SUBCHAPTER A. PROHIBITED ACTS

SEC. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY.

A representative of an employee or legal beneficiary commits an administrative violation if the person:

(1) fails without good cause to attend a dispute resolution proceeding within the division;

(2) attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate an agreement or settlement;

(3) commits an act of barratry under Section 38.12, Penal Code;

(4) withholds from the employee's or legal beneficiary's weekly benefits or from advances amounts not authorized to be withheld by the division;

(5) enters into a settlement or agreement without the knowledge, consent, and signature of the employee or legal beneficiary;

(6) takes a fee or withholds expenses in excess of the amounts authorized by the division;

(7) refuses or fails to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(8) violates the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas;

(9) misrepresents the provisions of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(10) violates a commissioner rule; or

(11) fails to comply with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.265, eff. September 1, 2005.

SEC. 415.002. ADMINISTRATIVE VIOLATION BY INSURANCE CARRIER.

(a) An insurance carrier or its representative commits an administrative violation if that person:

(1) misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(2) terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law;

(3) instructs an employer not to file a document required to be filed with the division;

(4) instructs or encourages an employer to violate a claimant's right to medical benefits under this subtitle;

(5) fails to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the insurance carrier;

(6) allows an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled;

(7) fails to confirm medical benefits coverage to a person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the insurance carrier;

(8) fails, without good cause, to attend a dispute resolution proceeding within the division;

(9) attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate agreement or settlement;

(10) adjusts a workers' compensation claim in a manner contrary to license

requirements for an insurance adjuster, including the requirements of Chapter 4101, Insurance Code, or the rules of the commissioner of insurance;

(11) fails to process claims promptly in a reasonable and prudent manner;

(12) fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(13) misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits;

(14) dates documents to misrepresent the actual date of the initiation of benefits;

(15) makes a notation on a draft or other instrument indicating that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the division;

(16) fails or refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits;

(17) fails to pay an order awarding benefits;

(18) controverts a claim if the evidence clearly indicates liability;

(19) unreasonably disputes the reasonableness and necessity of health care;

(20) violates a commissioner rule;

(21) makes a statement denying all future medical care for a compensable injury; or

(22) fails to comply with a provision of this subtitle.

(b) An insurance carrier or its representative does not commit an administrative violation under Subsection (a)(6) by allowing an employer to:

(1) freely discuss a claim;

(2) assist in the investigation and evaluation of a claim; or

(3) attend a proceeding of the division and participate at the proceeding in accordance with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.266, eff. September 1, 2005.

SEC. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE PROVIDER.

A health care provider commits an administrative violation if the person:

(1) submits a charge for health care that was not furnished;

(2) administers improper, unreasonable, or medically unnecessary treatment or services;

(3) makes an unnecessary referral;

(4) violates the division's fee and treatment guidelines;

(5) violates a commissioner rule; or

(6) fails to comply with a provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.267, eff. September 1, 2005.

SEC. 415.0035. ADDITIONAL VIOLATIONS BY INSURANCE CARRIER OR HEALTH CARE PROVIDER.

(a) An insurance carrier or its representative commits an administrative violation if that person:

(1) fails to submit to the division a settlement or agreement of the parties;

(2) fails to timely notify the division of the termination or reduction of benefits and the reason for that action; or

(3) denies preauthorization in a manner that is not in accordance with rules adopted by the commissioner under Section 413.014.

(b) A health care provider commits an administrative violation if that person:

(1) fails or refuses to timely file required reports or records; or

(2) fails to file with the division the annual disclosure statement required by Section 413.041.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

(e) 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.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.06, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.268, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 27, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

SEC. 415.0036. ADMINISTRATIVE VIOLATION BY PERSON PERFORMING CERTAIN CLAIM SERVICES.

(a) This section applies to an insurance adjuster, case manager, or other person who has authority under this title to request the performance of a service affecting the delivery of benefits to an injured employee or who actually performs such a service, including peer reviews, performance of required medical examinations, or case management.

(b) A person described by Subsection (a) commits an administrative violation if the person offers to pay, pays, solicits, or receives an improper inducement relating to the delivery of benefits to an injured employee or improperly attempts to influence the delivery of benefits to an injured employee, including through the making of improper threats. This section applies to each person described by Subsection (a) who is a participant in the workers' compensation system of this state and to an agent of such a person.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(3), eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 198, Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(3), eff. September 1, 2011.

SEC. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; ADMINISTRATIVE VIOLATION.

(a) A health care provider commits a violation if the person charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) A violation under this section is an administrative violation. A health care provider may be liable for an administrative penalty regardless of whether a criminal action is initiated under Section 413.043.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.269, eff. September 1, 2005.

SEC. 415.006. EMPLOYER CHARGEBACKS PROHIBITED; ADMINISTRATIVE VIOLATION.

(a) An employer may not collect from an employee, directly or indirectly, a premium or other fee paid by the employer to obtain workers' compensation insurance coverage, except as provided by Sections 406.123 and 406.144.

(b) An employee or legal beneficiary of an employee has a right of action to recover damages against an employer who violates Subsection (a).

(c) A person commits an administrative violation if the person violates Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.270, eff. September 1, 2005.

SEC. 415.007. LOANS BY ATTORNEYS PROHIBITED.

(a) An attorney who represents a claimant before the division may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable for the credit extended to the claimant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.271, eff. September 1, 2005.

SEC. 415.008. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION.

(a) A person commits an administrative 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:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act described by Subdivision (1), (2), or (3).

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(5), eff. September 1, 2011.

(c) A person who has obtained an excess payment in violation of this section is liable for full repayment plus interest computed at the rate prescribed by Section 401.023. If the person is an employee or person claiming death benefits, the repayment may be redeemed from future income or death benefits to which the person is otherwise entitled.

(d) An employer who has committed an act described by Subsection (a) that results in denial of payments is liable for the past benefit payments that would otherwise have been payable by the insurance carrier during the period of denial, plus interest computed at the rate prescribed by Section 401.023. The insurance carrier is not liable for benefit payments during the period of denial.

(e) If an administrative violation proceeding is pending under this section against an employee or person claiming death benefits, the division may not take final action on the person's benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.272, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 28, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(5), eff. September 1, 2011.

SEC. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION.

A person commits an administrative 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.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.273, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 29, eff. September 1, 2011.

SEC. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION.

A party to an agreement approved by the division commits an administrative violation if the person breaches a provision of the agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.274, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 29, eff. September 1, 2011.

SEC. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION WORKERS' COMPENSATION CLAIM AND PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION.

(a) In this section, "license holder" has the meaning assigned by Section 91.001.

(a-1) Except as provided by Subsection (c), a license holder commits a violation if the license holder fails to provide the information required by Sections 91.042(g) and (h).

(b) A violation under Subsection (a) is an administrative violation.

(c) A license holder does not commit an administrative violation under this section if the license holder requested the information required by Sections 91.042(g) and (h) from the license holder's workers' compensation insurance provider and the provider does not provide the information to the license holder within the required time. A license holder shall notify the Texas Department of Insurance of a provider's failure to comply with the requirements of Section

2051.151, Insurance Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 20, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 21, eff. September 1, 2013.

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SUBCHAPTER B. SANCTIONS

SEC. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES.

(a) 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. In addition to any sanctions, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation. The administrative penalty shall not exceed $25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation. 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.

(b) The commissioner may enter a cease and desist order against a person who:

(1) commits repeated administrative violations;

(2) allows, as a business practice, the commission of repeated administrative violations; or

(3) violates an order or decision of the commissioner.

(c) In assessing an administrative penalty:

(1) the commissioner shall consider:

(A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(B) the history and extent of previous administrative violations;

(C) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(D) the penalty necessary to deter future violations; and

(E) other matters that justice may require; and

(2) the commissioner shall, to the extent reasonable, consider the economic benefit resulting from the prohibited act.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter C.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.07, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.275, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 31, eff. September 1, 2011.

SEC. 415.0211. EMERGENCY CEASE AND DESIST ORDER.

(a) The commissioner ex parte may 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) On issuance of an order under Subsection (a), the commissioner shall 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. The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address. 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) A person affected by an order is entitled to request a hearing to contest the order. The affected person must request the hearing not later than the 30th day after the date the person receives the order required by Subsection (b). A request to contest an order must:

(1) be in writing;

(2) be directed to the commissioner; and

(3) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the commissioner shall serve notice of the time and place of the hearing. The hearing is subject to the procedures for a contested case under Chapter 2001, Government Code. The hearing shall 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. At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed. Following receipt of the proposal for decision from the State Office of Administrative Hearings regarding the hearing, the commissioner shall wholly or partly affirm, modify, or set aside the order.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 32, eff. September 1, 2011.

SEC. 415.0215. SANCTIONS.

(a) The division may impose sanctions against any person regulated by the division under this subtitle.

(b) Only the commissioner may impose:

(1) a sanction that deprives a person of the right to practice before the division or of the right to receive remuneration under this subtitle for a period exceeding 30 days; or

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

(c) A sanction imposed by the division is binding pending appeal.

Transferred and redesignated from Labor Code, Section 402.072 by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 33, eff. September 1, 2011.

SEC. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION.

(a) A person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under

Subsection (b) in addition to the penalty assessed for the violation.

(b) The commissioner may adopt rules providing for:

(1) a reduction or denial of fees;

(2) public or private reprimand by the commissioner;

(3) suspension from practice before the division;

(4) restriction, suspension, or revocation of the right to receive reimbursement under this subtitle; or

(5) referral and petition to the appropriate licensing authority for appropriate disciplinary action, including the restriction, suspension, or revocation of the person's license.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.08, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.276, eff. September 1, 2005.

SEC. 415.024. BREACH OF SETTLEMENT AGREEMENT; ADMINISTRATIVE VIOLATION.

A material and substantial breach of a settlement agreement that establishes a compliance plan is an administrative violation. In determining the amount of the penalty, the commissioner shall consider the total volume of claims handled by the insurance carrier.

Added by Acts 1997, 75th Leg., ch. 1443, Sec. 9, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.277, eff. September 1, 2005.

SEC. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY.

A reference in this code or other law, or in rules of the former Texas Workers' Compensation Commission or the commissioner, to a particular class of violation, administrative violation, or penalty shall be construed as a reference to an administrative penalty. An administrative penalty may not exceed $25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.278, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 34, eff. September 1, 2011.

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SUBCHAPTER C. PROCEDURES

SEC. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS.

Any person may request the initiation of administrative violation proceedings by filing a written allegation with the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.279, eff. September 1, 2005.

SEC. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE.

(a) If investigation by the division indicates that an administrative violation has occurred, the division shall notify the person alleged to have committed the violation in writing of:

(1) the charge;

(2) the proposed sanction;

(3) the right to consent to the charge and the sanction; and

(4) the right to request a hearing.

(b) Not later than the 20th day after the date on which notice is received, the charged party shall:

(1) remit the amount of the sanction to the division or otherwise consent to the imposed sanction; or

(2) submit to the division a written request for a hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.280, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 34, eff. September 1, 2011.

SEC. 415.033. FAILURE TO RESPOND.

If, without good cause, a charged party fails to respond as required under Section 415.032, the division shall initiate enforcement proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.281, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 34, eff. September 1, 2011.

SEC. 415.034. HEARING PROCEDURES.

On the request of the charged party or the commissioner, the State Office of Administrative Hearings shall set a hearing. The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.46, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.282, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 34, eff. September 1, 2011.

SEC. 415.035. JUDICIAL REVIEW.

(a) A decision under Section 415.034 is subject to judicial review in the manner provided for judicial review under Chapter 2001, Government Code.

(b) If an administrative penalty is assessed, the person charged shall:

(1) forward the amount of the penalty to the division for deposit in an escrow account; or

(2) post with the division a bond for the amount of the penalty, effective until all judicial review of the determination is final.

(c) Failure to comply with Subsection (b) results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) If the court determines that the penalty should not have been assessed or reduces the amount of the penalty, the division shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

(2) release the bond.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.283, eff. September 1, 2005.

SEC. 415.036. STANDARD OF JUDICIAL REVIEW OF COMMISSIONER'S ORDER.

An order of the commissioner is subject to judicial review under the substantial evidence rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 35, eff. September 1, 2011.

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LABOR CODE CHAPTER 416. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY

SEC. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED.

An action taken by an insurance carrier under an order of the commissioner or recommendations of a benefit review officer under Section 410.031, 410.032, or 410.033 may not be the basis of a cause of action against the insurance carrier for a breach of the duty of good faith and fair dealing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.284, eff. September 1, 2005.

SEC. 416.002. EXEMPLARY DAMAGES.

(a) In an action against an insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to the greater of:

(1) four times the amount of actual damages; or

(2) $250,000.

(b) An action against a governmental entity or unit or an employee of a governmental entity or unit for a breach of the duty of good faith and fair dealing is governed by Chapters 101 and 104, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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LABOR CODE CHAPTER 417. THIRD-PARTY LIABILITY

SEC. 417.001. THIRD-PARTY LIABILITY.

(a) An employee or legal beneficiary may seek damages from a third party who is or becomes liable to pay damages for an injury or death that is compensable under this subtitle and may also pursue a claim for workers' compensation benefits under this subtitle.

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary. The insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest, the insurance carrier shall:

(1) reimburse itself and pay the costs from the amount recovered; and

(2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

(c) If a claimant receives benefits from the subsequent injury fund, the division is:

(1) considered to be the insurance carrier under this section for purposes of those benefits;

(2) subrogated to the rights of the claimant; and

(3) entitled to reimbursement in the same manner as the insurance carrier.

(d) The division shall remit money recovered under this section to the comptroller for deposit to the credit of the subsequent injury fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 204, Sec. 4.09, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.285, eff. September 1, 2005.

SEC. 417.002. RECOVERY IN THIRD-PARTY ACTION.

(a) The net amount recovered by a claimant in a third-party action shall be used to reimburse the insurance carrier for benefits, including medical benefits, that have been paid for the compensable injury.

(b) Any amount recovered that exceeds the amount of the reimbursement required under Subsection (a) shall be treated as an advance against future benefits, including medical benefits, that the claimant is entitled to receive under this subtitle.

(c) If the advance under Subsection (b) is adequate to cover all future benefits, the insurance carrier is not required to resume the payment of benefits. If the advance is insufficient, the insurance carrier shall resume the payment of benefits when the advance is exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 417.003. ATTORNEY'S FEE FOR REPRESENTATION OF INSURANCE CARRIER'S INTEREST.

(a) An insurance carrier whose interest is not actively represented by an attorney in a third-party action shall pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the insurance carrier. In the absence of an agreement, the court shall award to the attorney payable out of the insurance carrier's recovery:

(1) a reasonable fee for recovery of the insurance carrier's interest that may not exceed one-third of the insurance carrier's recovery; and

(2) a proportionate share of expenses.

(b) An attorney who represents the claimant and is also to represent the subrogated insurance carrier shall make a full written disclosure to the claimant before employment as an attorney by the insurance carrier. The claimant must acknowledge the disclosure and consent to the representation. A signed copy of the disclosure shall be furnished to all concerned parties and

made a part of the division file. A copy of the disclosure with the claimant's consent shall be filed with the claimant's pleading before a judgment is entered and approved by the court. The claimant's attorney may not receive a fee under this section to which the attorney is otherwise entitled under an agreement with the insurance carrier unless the attorney complies with the requirements of this subsection.

(c) If an attorney actively representing the insurance carrier's interest actively participates in obtaining a recovery, the court shall award and apportion between the claimant's and the insurance carrier's attorneys a fee payable out of the insurance carrier's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the insurance carrier as a result of each attorney's service. The total attorney's fees may not exceed one-third of the insurance carrier's recovery.

(d) For purposes of determining the amount of an attorney's fee under this section, only the amount recovered for benefits, including medical benefits, that have been paid by the insurance carrier may be considered.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.286, eff. September 1, 2005.

SEC. 417.004. EMPLOYER LIABILITY TO THIRD PARTY.

In an action for damages brought by an injured employee, a legal beneficiary, or an insurance carrier against a third party liable to pay damages for the injury or death under this chapter that results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury or death occurred, a written agreement with the third party to assume the liability.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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LABOR CODE CHAPTER 418. CRIMINAL PENALTIES

SEC. 418.001. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS.

(a) A person commits an offense if the person, with the intent to obtain or deny payment of benefits, including medical benefits, under this subtitle or Subtitle C, for himself or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact; or

(3) fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the value of the benefits is less than $1,500; and

(2) a state jail felony if the value of the benefits is $1,500 or more.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.47, eff. Sept. 1, 1995.

SEC. 418.002. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE.

(a) A person commits an offense if the person, with the intent to obtain workers' compensation insurance coverage under the workers' compensation insurance laws of this state or to avoid payment of premiums due for that coverage, for himself or another, knowingly or intentionally:

(1) makes a false statement;

(2) misrepresents or conceals a material fact; or

(3) makes a false entry in, fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the amount of premium avoided is less than $1,500; and

(2) a state jail felony if the amount of the premium avoided is $1,500 or more.

(c) The court may order a person to pay restitution to an insurance company, including the Texas Mutual Insurance Company, if the person commits an offense under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.47, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1195, Sec. 2.12, eff. Sept. 1, 2001.

SEC. 418.003. ELECTION OF PROSECUTION.

A person who commits an offense under this chapter may be prosecuted under this chapter or any other law of this state under which the person may be prosecuted.

Added by Acts 2007, 80th Leg., R.S., Ch. 429, Sec. 1, eff. June 15, 2007.

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LABOR CODE CHAPTER 419. MISUSE OF DIVISION NAME

SEC. 419.001. DEFINITIONS.

(a) In this chapter:

(1) "Representation of the division's logo" includes a nonexact representation that is deceptively similar to the logo used by the division.

(2) "Representation of the state seal" has the meaning assigned by Section 17.08(a)(2), Business & Commerce Code.

(b) A term or representation is "deceptively similar" for purposes of this chapter if:

(1) a reasonable person would believe that the term or representation is in any manner approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the circumstances under which the term is used could mislead a reasonable person as to its identity.

(c) For purposes of this chapter, a person acts in a "deceptive manner" if the person knows or should know that the person's actions would convey, or could reasonably be interpreted or construed as conveying, the false impression that:

(1) an item is approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the person represents, speaks for, or has an authorization from the division, the department, this state, or an agency of this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 743 (S.B. 381), Sec. 1, eff. September 1, 2013.

SEC. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS PROHIBITED.

(a) Except as authorized by law, a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, business document, product, or

service made or offered by the person regarding workers' compensation coverage or benefits, may not knowingly use or cause 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) A person subject to Subsection (a) may not knowingly use or cause to be used in a deceptive manner a word, term, or initials described by Subsection (a) alone or in conjunction with:

(1) the state seal or a representation of the state seal;

(2) a picture or map of this state; or

(3) the official logo of the department or the division or a representation of the department's or division's logo.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 743 (S.B. 381), Sec. 2, eff. September 1, 2013.

SEC. 419.003. RULES.

The commissioner may adopt rules relating to the regulation of the use of the division's name and other rules as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.287, eff. September 1, 2005.

SEC. 419.004. CIVIL PENALTY.

(a) A person who violates Section 419.002 or a rule adopted under this chapter is liable for a civil penalty not to exceed $5,000 for each violation.

(b) The attorney general, at the request of the commissioner, shall bring an action to collect a civil penalty under this section in a district court in Travis County.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.287, eff. September 1, 2005.

SEC. 419.005. ADMINISTRATIVE PENALTY.

(a) The division may assess an administrative penalty against a person who violates Section 419.002 or a rule adopted under this chapter.

(b) An administrative penalty imposed under this section is subject to the procedural requirements adopted for administrative penalties imposed under Section 415.021.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.287, eff. September 1, 2005.

SEC. 419.006. INJUNCTIVE RELIEF.

(a) At the request of the commissioner, the attorney general or a district attorney may bring an action in district court in Travis County to enjoin or restrain a violation or threatened violation of this chapter on a showing that a violation has occurred or is likely to occur.

(b) The division may recover the costs of investigating an alleged violation of this chapter if an injunction is issued.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.287, eff. September 1, 2005.

SEC. 419.007. REMEDIES NOT EXCLUSIVE.

The remedies provided by this chapter are not exclusive and may be sought in any combination determined by the commissioner as necessary to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.287, eff. September 1, 2005.

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SUBTITLE B. DISCRIMINATION ISSUES

LABOR CODE CHAPTER 451. DISCRIMINATION PROHIBITED

SEC. 451.001. DISCRIMINATION AGAINST EMPLOYEES PROHIBITED.

A person may not discharge or in any other manner discriminate against an employee because the employee has:

(1) filed a workers' compensation claim in good faith;

(2) hired a lawyer to represent the employee in a claim;

(3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or

(4) testified or is about to testify in a proceeding under Subtitle A.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 451.002. REMEDIES; BURDEN OF PROOF.

(a) A person who violates Section 451.001 is liable for reasonable damages incurred by the employee as a result of the violation.

(b) An employee discharged in violation of Section 451.001 is entitled to reinstatement in the former position of employment.

(c) The burden of proof in a proceeding under this section is on the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 451.003. INJUNCTION.

A district court may restrain, for cause shown, a violation of Section 451.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBTITLE C. WORKERS' COMPENSATION INSURANCE COVERAGE FOR CERTAIN GOVERNMENT EMPLOYEES

LABOR CODE CHAPTER 501. WORKERS' COMPENSATION INSURANCE COVERAGE FOR STATE EMPLOYEES, INCLUDING EMPLOYEES UNDER THE DIRECTION OR CONTROL OF THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 501.001. DEFINITIONS.

In this chapter:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Compensable injury" has the meaning assigned to that term under Subtitle A.

(3) "Director" means the director of the State Office of Risk Management.

(4) "Office" means the State Office of Risk Management.

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 2.12, Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g), Code of Criminal Procedure;

(D) a member of the state military forces, as defined by Section 437.001, Government Code, who is engaged in authorized training or duty; or

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education

Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by Texas Task Force 1.

(6) "State agency" includes a department, board, commission, or institution of this state.

(7) "Board" means the risk management board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1205, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 14.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 644, Sec. 3, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.288, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 2B.09, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.15, eff. September 1, 2013.

SEC. 501.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES.

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Subchapters B and D through H, Chapter 406, other than Sections 406.071(a), 406.073, and 406.075;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;

(9) Chapters 412-417; and

(10) Chapter 451.

(b) For the purposes of this chapter and Chapter 451, the individual state agency shall be

considered the employer.

(c) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "insurer" or "employer" means "state," "office," "director," or "state agency," as applicable.

(d) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the state, a state agency, or an employee of the state beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

(e) For the purposes of this chapter and Chapter 451, the adjutant general is considered the employer of a member of the state military forces while engaged in authorized training or duty.

(f) For purposes of this chapter and Subchapter D, Chapter 88, Education Code, the Texas Engineering Extension Service of The Texas A&M University System shall perform all duties of an employer in relation to a Texas Task Force 1 member who is injured and receives benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 2.01, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1098, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1205, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 644, Sec. 4, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.289, eff. September 1, 2005.

SEC. 501.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE.

(a) The provisions of this chapter and the rules of the board affecting an employee also apply to the legal beneficiary of a deceased employee.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 4, eff. Sept. 1, 1997.

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SUBCHAPTER B. COVERAGE

SEC. 501.021. WORKERS' COMPENSATION COVERAGE FOR EMPLOYEES.

An employee with a compensable injury is entitled to compensation by the director as provided by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 501.022. EMPLOYEES OF COMPONENT INSTITUTIONS OF TEXAS TECH UNIVERSITY SYSTEM.

(a) An eligible employee of Texas Tech University, Texas Tech University Health Sciences Center, Angelo State University, or another agency under the direction and control of the board of regents of Texas Tech University System is entitled to participate in the workers' compensation program for state employees provided under this chapter.

(b) For purposes of this chapter, Texas Tech University is a state agency and shall act in the capacity of employer.

(c) For purposes of this chapter, Texas Tech University Health Sciences Center is a state agency and shall act in the capacity of employer.

(d) For purposes of this chapter, Angelo State University is a state agency and shall act in the capacity of employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 2.02, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 179, Sec. 12, eff. September 1, 2007.

SEC. 501.024. EXCLUSIONS FROM COVERAGE.

The following persons are excluded from coverage as an employee under this chapter:

(1) a person performing personal services for the state as an independent contractor or volunteer;

(2) a person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance;

(3) a prisoner or inmate of a prison or correctional institution, other than a work program participant participating in a Texas Correctional Industries contract described by Section 497.006, Government Code;

(4) a client or patient of a state agency;

(5) a person employed by the Texas Department of Transportation who is covered under Chapter 505;

(6) a person employed by The University of Texas System who is covered by Chapter 503; and

(7) a person employed by The Texas A&M University System who is covered by Chapter 502.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1188, Sec. 1.45, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1205, Sec. 7, eff. Sept. 1, 1999.

SEC. 501.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES.

(a) An employee who performs services outside the state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 501.026. COVERAGE FOR CERTAIN SERVICES PROVIDED BY VOLUNTEERS.

(a) In this section, "disaster" means an occurrence in which the governor has issued a

declaration of a state of disaster under Chapter 418, Government Code, or another occurrence that initiates the state emergency management plan.

(b) A person not otherwise covered by workers' compensation insurance for the services performed under this section who performs volunteer services for the state in a disaster or in scheduled emergency response training under the direction of an officer or employee of the state is entitled to medical benefits under this chapter for an injury sustained by the person in the course of providing those services. For purposes of this subsection, an injury is not sustained in the course of providing services in a disaster unless the injury occurs while the state of disaster may reasonably be considered to be in existence.

(c) A person employed by a political subdivision who is injured in the course of providing services described by Subsection (b) is entitled to benefits as provided by that subsection only if the services are performed outside the jurisdiction of the political subdivision by which the person is employed.

(d) A person entitled to benefits under this section may receive the benefits only if the person seeks medical attention from a doctor for the injury not later than 48 hours after the occurrence of the injury or after the date the person knew or should have known the injury occurred. The person shall comply with the requirements of Section 409.001 by providing notice of the injury to the division or the state agency with which the officer or employee under Subsection (b) is associated.

Added by Acts 1999, 76th Leg., ch. 985, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.290, eff. September 1, 2005.

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SUBCHAPTER C. ADMINISTRATION

SEC. 501.0431. COMPILATION OF STATISTICS RELATING TO FRAUD.

The director shall maintain statistics on the number, type, and disposition of fraudulent claims for medical benefits under this chapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 6.02(b), eff. Sept. 1, 1997.

SEC. 501.044. EFFECT OF SICK LEAVE; ANNUAL LEAVE.

(a) An employee may elect to use accrued sick leave before receiving income benefits. 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.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. 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.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 2, eff. Sept. 1, 1999.

SEC. 501.045. EFFECT OF EMERGENCY LEAVE.

(a) Payments for emergency leave authorized by the administrative head of a state agency in accordance with the General Appropriations Act for an employee receiving income benefits under this chapter may not:

(1) exceed for a month the amount computed by subtracting the amount of income benefits received for the month from the basic monthly wage of the employee; and

(2) be paid for a period longer than six months after the date on which benefits begin.

(b) The administrative head authorizing the emergency leave payments shall review the merits of each case individually.

(c) If payment for emergency leave is authorized, the state agency shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period

affected by the leave.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 501.046. REPORTS OF TERMINATION OR CONTINUATION OF INJURIES.

In addition to other reports required by the board, the director shall file a subsequent report not later than the 10th day after the date of the termination of the injured employee's incapacity. If the employee's incapacity extends beyond 60 days, the director shall file a subsequent report before the 70th day after the date the employee's incapacity began.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 5, eff. Sept. 1, 1997.

SEC. 501.048. STATE AGENCY SUMMARY IN BUDGET REQUESTS.

Each state agency shall submit in the administrative statement of its biennial budget request a summary containing:

(1) the number of first reports of injury filed by the agency during the preceding biennium;

(2) the amount of workers' compensation indemnity and medical benefits paid to or for employees during the preceding biennium;

(3) the number of on-the-job injuries per 100 of its employees during each year of the preceding biennium; and

(4) a description of the efforts made by the agency to increase job safety and to reduce job injuries, including the participation of the head of the agency and the executive staff of the agency in training programs offered by the division and others.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 501.050. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE.

(a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.291, eff. September 1, 2005.

SEC. 501.051. PAYMENT OF MEDICAL AND INDEMNITY BENEFITS.

Medical benefit and income benefit payments made by the office are subject to this subtitle and are exempt from Chapter 2251, Government Code.

Added by Acts 1999, 76th Leg., ch. 953, Sec. 3, eff. Sept. 1, 1999.

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LABOR CODE 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

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 502.001. DEFINITIONS.

In this chapter:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means a person employed in the service of an institution whose name appears on the institution's payroll.

(3) "Institution" means an institution of higher education or agency under the direction or governance of the board of regents of The Texas A&M University System.

(4) "System" has the meaning assigned by Section 85.01(1), Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.293, eff. September 1, 2005.

SEC. 502.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES.

(a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 502.022.

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.294, eff. September 1, 2005.

SEC. 502.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE.

(a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER B. COVERAGE

SEC. 502.021. WORKERS' COMPENSATION COVERAGE FOR INSTITUTION EMPLOYEES.

(a) The system shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.295, eff. September 1, 2005.

SEC. 502.022. AUTHORITY TO SELF-INSURE.

An institution may self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 502.023. INSURANCE REQUIREMENT.

(a) The board of regents of the system may require each employee, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

(b) This section does not apply to an employee who is paid on a piece-work basis or on any basis other than by the hour, day, week, month, or year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 502.024. PREEXISTING DISQUALIFYING CONDITION.

(a) An institution may certify as an employee a person who indicates a preexisting

disqualifying physical condition in a medical history obtained under Section 502.064 or who is found to have a preexisting disqualifying medical condition in a physical examination under Section 502.064 on the condition that the person execute in writing a waiver of coverage under this chapter for the preexisting disqualifying physical condition before becoming an employee of the institution.

(b) A waiver under Subsection (a) is valid and binding on the employee who executes the waiver. Compensation or death benefits may not be paid to the employee or the employee's beneficiaries for an injury or death of the employee that is attributable to the condition for which coverage was waived.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 502.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES.

(a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.02, eff. June 20, 2003.

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SUBCHAPTER C. OFFSETS

SEC. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE.

(a) An employee may elect to use accrued sick leave before receiving income benefits. 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.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. 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.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.296, eff. September 1, 2005.

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SUBCHAPTER D. ADMINISTRATION

SEC. 502.061. ADMINISTRATION AND RULES.

(a) The system shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The system may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.297, eff. September 1, 2005.

SEC. 502.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS.

(a) An institution may set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 502.063. CERTIFIED COPIES OF DIVISION DOCUMENTS.

(a) The division shall furnish a certified copy of an order, award, decision, or paper on file in the division's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The system or an institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division for making a copy under Subsection (a) that exceeds the fee charged for the copy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.298, eff. September 1, 2005.

SEC. 502.064. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS; INSTITUTION RECORDS.

(a) An institution may obtain and record on a form prescribed by the institution the medical history of a person to be employed by the institution.

(b) The institution may require that an individual may not be certified as an employee of the institution under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician or chiropractor to be physically fit to perform the duties and services to which the individual is to be assigned.

(c) The institution may designate a convenient number of licensed practicing physicians and chiropractors to perform physical examinations under this section.

(d) A physician or chiropractor designated under Subsection (c) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(e) The institution shall maintain all reports and medical histories filed with the institution under this section as part of the institution's permanent records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 502.065. REPORTS OF INJURIES.

(a) In addition to a report of an injury filed with the division under Section 409.005(a), an

institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.299, eff. September 1, 2005.

SEC. 502.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION.

(a) The division may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) On the request of an employee or the system, the employee, the institution, or the system is entitled to have a physician or chiropractor selected by the employee, the institution, or the system, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The system or the institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician or chiropractor selected by the system or the institution. The system or

the institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician or chiropractor selected by the employee present to participate in an examination under this subsection.

(e) The system or the institution shall pay the fee set by the division for the services of a physician or chiropractor selected by the employee under Subsection (b) or (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.300, eff. September 1, 2005.

SEC. 502.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT.

(a) The commissioner of workers' compensation may order or direct the system or the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, chiropractic, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.301, eff. September 1, 2005.

SEC. 502.068. POSTPONEMENT OF HEARING.

If an injured employee is receiving benefits under this chapter and the system or the institution is providing hospitalization, medical treatment, or chiropractic care to the employee, the division may postpone the hearing on the employee's claim. An appeal may not be taken from a division order under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 3.302, eff. September 1, 2005.

SEC. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE.

(a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.303, eff. September 1, 2005.

SEC. 502.070. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE.

The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 503.001. DEFINITIONS.

In this chapter:

(1) "Commissioner" means the commissioner of workers' compensation.

(1-a) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means a person employed in the service of the system under an appointment or oral or written express contract for hire whose name appears on the system's payroll.

(3) "Institution" means an institution of higher education or agency under the direction of the board of regents of The University of Texas System.

(4) "System" has the meaning assigned by Section 65.01(1), Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.305, eff. September 1, 2005.

SEC. 503.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES.

(a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 503.022.

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.306, eff. September 1, 2005.

SEC. 503.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE.

(a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER B. COVERAGE

SEC. 503.021. WORKERS' COMPENSATION COVERAGE FOR SYSTEM AND INSTITUTION EMPLOYEES.

(a) The system shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.307, eff. September 1, 2005.

SEC. 503.022. AUTHORITY TO SELF-INSURE.

An institution may self-insure as part of a system insurance plan.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.308, eff. September 1, 2005.

SEC. 503.023. INSURANCE REQUIREMENT.

The board of regents of the system may require each person employed by the system or an institution other than by appointment or express contract for hire, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 503.024. WAIVER OF RIGHTS.

An agreement by an employee to waive the employee's rights under this chapter is valid if made in writing by the employee before becoming an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 503.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES.

(a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.03, eff. June 20, 2003.

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SUBCHAPTER C. OFFSETS

SEC. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE.

(a) An employee may elect to use accrued sick leave before receiving income benefits. 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.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. 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.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.309, eff. September 1, 2005.

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SUBCHAPTER D. ADMINISTRATION

SEC. 503.061. ADMINISTRATION AND RULES.

(a) The system shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The system may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.310, eff. September 1, 2005.

SEC. 503.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS.

(a) An institution may set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 503.063. CERTIFIED COPIES OF DIVISION DOCUMENTS.

(a) The division shall furnish a certified copy of an order, award, decision, or paper on file in the division's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The system or the institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division for making a copy under Subsection (a) that exceeds the fee charged for the copy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.311, eff. September 1, 2005.

SEC. 503.064. EXAMINING PHYSICIANS.

(a) The institution shall designate a convenient number of licensed practicing physicians to perform physical examinations of individuals employed or to be employed by the institution to determine if an individual is physically fit to be classified as an employee.

(b) A physician designated under Subsection (a) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(c) The institution shall maintain all reports under this section as part of the institution's permanent records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 503.065. REPORTS OF INJURIES.

(a) In addition to a report of an injury filed with the division under Section 409.005(a), an institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.312, eff. September 1, 2005.

SEC. 503.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION.

(a) The division may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) On the request of an employee, the system, or the institution, the employee, the system, or the institution is entitled to have a physician selected by the employee, the system, or the institution, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The system or the institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the system or the institution. The system or the institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician selected by the employee present to participate in an examination under this subsection.

(e) The system or the institution shall pay the fee, as set by the division, of a physician selected by the employee under Subsection (b) or (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.313, eff. September 1, 2005.

SEC. 503.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT.

(a) The commissioner may order or direct the system or the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.314, eff. September 1, 2005.

SEC. 503.068. POSTPONEMENT OF HEARING.

If an injured employee is receiving benefits under this chapter and the system or the institution is providing hospitalization or medical treatment to the employee, the division may postpone the hearing on the employee's claim. An appeal may not be taken from a commissioner order under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.315, eff. September 1, 2005.

SEC. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE.

(a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.316, eff. September 1, 2005.

SEC. 503.070. VENUE FOR JUDICIAL REVIEW.

(a) A party who does not consent to abide by the final decision of the commissioner shall file notice with the division as required by Section 410.253 and bring suit in the county in which the injury occurred to set aside the final decision of the commissioner.

(b) If a suit under this section is filed in a county other than the county in which the injury occurred, the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in the county in which the injury occurred.

(c) Notice of the transfer of a suit under Subsection (b) shall be given to the parties. A suit transferred under Subsection (b) shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.317, eff. September 1, 2005.

SEC. 503.071. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE.

The attorney general is the institution's legal representative and may bring and defend all

suits and hearings necessary to carry out the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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LABOR CODE CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 504.001. DEFINITIONS.

In this chapter, unless a different meaning is plainly required by the context:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means:

(A) a person in the service of a political subdivision who has been employed as provided by law; or

(B) a person for whom optional coverage is provided under Section 504.012 or 504.013.

(3) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state.

(4) "Pool" means two or more political subdivisions collectively self-insuring under an interlocal contract under Chapter 791, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.318, eff. September 1, 2005.

SEC. 504.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES.

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section

401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.006-406.009 and Subchapters B and D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409-412;

(8) Chapter 413, except as provided by Section 504.053;

(9) Chapters 414-417; and

(10) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "political subdivision."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against a political subdivision or an employee of a political subdivision beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

(d) For the purpose of applying the provisions listed by Subsection (a), "written notice" to a political subdivision that self-insures, either individually or collectively through an interlocal agreement as described by Section 504.011, occurs only on written notice to the intergovernmental risk pool or other entity responsible for administering the claim.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 939, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.319, eff. September 1, 2005.

SEC. 504.003. ELECTION OF REMEDIES.

A person may not bring an action for wrongful discharge under both Chapter 451 and

Chapter 554, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(77), eff. Sept. 1, 1995.

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SUBCHAPTER B. COVERAGE

SEC. 504.011. METHOD OF PROVIDING COVERAGE.

A political subdivision shall extend workers' compensation benefits to its employees by:

(1) becoming a self-insurer;

(2) providing insurance under a workers' compensation insurance policy; or

(3) entering into an interlocal agreement with other political subdivisions providing for self-insurance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.012. OPTIONAL COVERAGES.

(a) A political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law. Notwithstanding any other law, the governing body of the political subdivision may elect to provide compensation payments to a person covered under this subsection that are greater than the minimum benefits provided under this title.

(b) By majority vote of the members of the governing body of a political subdivision, the political subdivision may cover as employees:

(1) an elected official;

(2) persons paid for jury service; or

(3) persons paid for service in the conduct of an election.

(c) A political subdivision may cover a child who is in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution under Section 54.041(b), Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 18, eff. Sept. 1, 1999.

SEC. 504.013. COVERAGE FOR TRUSTEES AND STAFF OF SELF-INSURANCE FUND.

By majority vote of the board of trustees of a self-insurance fund created under this chapter, the fund may cover:

(1) members of the board of trustees;

(2) staff of the fund, including persons with whom the fund has contracted to perform staff functions; or

(3) any other self-insurance fund created under Chapter 791, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.014. EXCLUSIONS.

A person is not an employee and is not entitled to compensation under this chapter if the person:

(1) is in the service of a political subdivision and is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year;

(2) is a patient or client of a political subdivision involved in vocational training;

(3) is a prisoner incarcerated by a political subdivision; or

(4) performs services that may benefit a political subdivision, or is employed by or under contract with a performer providing those services, but does not receive payment from the political subdivision for the performance of the services, if the services are performed in connection with the operation or production of:

(A) a stock show;

(B) a rodeo;

(C) a carnival;

(D) a circus;

(E) a musical, vocal, or theatrical performance;

(F) a professional baseball league or game;

(G) a professional hockey league or game;

(H) a wrestling event or match;

(I) a vehicle or motorcycle event; or

(J) another entertainment event.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 841, Sec. 1, eff. Sept. 1, 2003.

SEC. 504.015. MUNICIPAL UTILITIES.

(a) This section applies to a municipal utility operated by a board of trustees established under Section 1502.070, Government Code, or a similar law.

(b) The board of trustees of a utility has the authority of the governing body of the municipality under this chapter to:

(1) adopt a self-insurance program or take out a policy of workers' compensation insurance; and

(2) adopt resolutions, give notices, and do all things concerning workers' compensation regarding the utility's employees that the governing body of the municipality would be authorized to do regarding other municipal employees or groups of employees.

(c) Funds set aside or spent for the purpose of workers' compensation insurance are considered operating expenses of the utility. Funds set aside or paid by the board of trustees for self-insurance or for premiums on insurance policies shall be paid out of utility revenues. A provision for self-insurance or an obligation incurred under an insurance policy is not a general liability of the municipality but is payable only out of utility revenues.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.282, eff. Sept. 1, 2001.

SEC. 504.016. JOINT INSURANCE FUND.

(a) Two or more political subdivisions may establish a joint insurance fund as provided by this section.

(b) A political subdivision may pay into the fund its proportionate part as due and may contract for the fund, by and through its directors, to make the payments due under this chapter to employees of the political subdivision.

(c) The fund may be operated under the rules and bylaws established by the participating political subdivisions.

(d) A joint insurance fund created under this section may provide to the Texas Department of Insurance loss data in the same manner as an insurance company writing workers' compensation insurance. The State Board of Insurance shall use the loss data as provided by Subchapter D, Chapter 5, Insurance Code.

(e) Except as provided by Subsection (d), a joint insurance fund created under this section is not considered insurance for purposes of any state statute and is not subject to State Board of Insurance rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES.

An entity is eligible to participate under Section 504.016 or Chapter 791 or 2259, Government Code, if the entity provides transportation subsidized in whole or in part by and provided to clients of:

(1) the Department of Assistive and Rehabilitative Services;

(2) the Department of State Health Services;

(3) the Cancer Prevention and Research Institute of Texas;

(4) the Texas Department of Housing and Community Affairs;

(5) the Health and Human Services Commission;

(6) the Department of Aging and Disability Services;

or

(7) the Texas Youth Commission.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266, Sec. 5, eff. November 6, 2007.

SEC. 504.018. NOTICE TO DIVISION AND EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY.

(a) A political subdivision shall notify the division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

(b) A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Employees of a political subdivision are conclusively considered to have accepted the compensation provisions instead of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries received in the course of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.320, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 3.321, eff. September 1, 2005.

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SUBCHAPTER C. BENEFITS AND OFFSETS

SEC. 504.051. OFFSET AGAINST PAYMENTS FOR INCAPACITY.

(a) Benefits provided under this chapter shall be offset:

(1) to the extent applicable, by any amount for incapacity received as provided by:

(A) Chapter 143, Local Government Code; or

(B) any other statute in effect on June 19, 1975, that provides for the payment for incapacity to work because of injury on the job that is also covered by this chapter; and

(2) by any amount paid under Article III, Section 52e, of the Texas Constitution, as added in 1967.

(b) If benefits are offset, the employer may not withhold the offset portion of the employee's wages until the time that benefits under this chapter are received.

(c) If an employee's wages are offset, the employee and employer shall contribute to the pension fund on the amount of money by which the employee's wages were offset. An employee's pension benefit may not be reduced as a result of the employee's injuries or any compensation received under this chapter unless the reduction results from a pension revision passed by a majority vote of the affected members of a pension system.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.052. SICK LEAVE BENEFITS.

(a) The governing body of a political subdivision, by majority vote, may provide that while an employee of the political subdivision is receiving benefits under this chapter, the employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference between the benefits under this chapter and the weekly compensation that the employee was receiving before the injury that resulted in the claim.

(b) Sick leave benefits received under Subsection (a) shall be deducted proportionately from the employee's sick leave balance.

(c) This section does not limit the medical benefits to be paid to the employee. A sick leave plan may not require an employee to take sick leave benefits before receiving benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.053. ELECTION.

(a) A political subdivision that self-insures either individually or collectively shall provide workers' compensation medical benefits to the injured employees of the political subdivision through a workers' compensation health care network certified under Chapter 1305, Insurance Code, if the governing body of the political subdivision determines that provision of those benefits through a network is available to the employees and practical for the political subdivision. A political subdivision may enter into interlocal agreements and other agreements with other political subdivisions to establish or contract with networks under this section.

(b) If a political subdivision or a pool determines that a workers' compensation health care network certified under Chapter 1305, Insurance Code, is not available or practical for the political subdivision or pool, the political subdivision or pool may provide medical benefits to its injured employees or to the injured employees of the members of the pool:

(1) in the manner provided by Chapter 408, other than Sections 408.001(b) and (c) and Section 408.002, and by Subchapters B and C, Chapter 413; or

(2) by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code.

(c) If the political subdivision or pool provides medical benefits in the manner authorized under Subsection (b)(2), the following do not apply:

(1) Sections 408.004 and 408.0041, unless use of a required medical examination or designated doctor is necessary to resolve an issue relating to the entitlement to or amount of income benefits under this title;

(2) Subchapter B, Chapter 408, except for Section 408.021;

(3) Chapter 413, except for Section 413.042; and

(4) Chapter 1305, Insurance Code, except for Sections 1305.501, 1305.502, and 1305.503.

(d) If the political subdivision or pool provides medical benefits in the manner authorized under Subsection (b)(2), the following standards apply:

(1) the political subdivision or pool must ensure that workers' compensation medical benefits are reasonably available to all injured workers of the political subdivision or the injured workers of the members of the pool within a designed service area;

(2) the political subdivision or pool must ensure that all necessary health care services are provided in a manner that will ensure the availability of and accessibility to adequate health care providers, specialty care, and facilities;

(3) the political subdivision or pool must have an internal review process for resolving complaints relating to the manner of providing medical benefits, including an appeal to the governing body or its designee and appeal to an independent review organization;

(4) the political subdivision or pool must establish reasonable procedures for the transition of injured workers to contract providers and for the continuity of treatment, including notice of impending termination of providers and a current list of contract providers;

(5) the political subdivision or pool shall provide for emergency care if an injured worker cannot reasonably reach a contract provider and the care is for medical screening or other evaluation that is necessary to determine whether a medical emergency condition exists, necessary emergency care services including treatment and stabilization, and services originating in a hospital emergency facility following treatment or stabilization of an emergency medical condition;

(6) prospective or concurrent review of the medical necessity and appropriateness of

health care services must comply with Article 21.58A, Insurance Code;

(7) the political subdivision or pool shall continue to report data to the appropriate agency as required by Title 5 of this code and Chapter 1305, Insurance Code; and

(8) a political subdivision or pool is subject to the requirements under Sections 1305.501, 1305.502, and 1305.503, Insurance Code.

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action.

Added by Acts 2005, 79th Leg., Ch. 265, Sec. 3.322, eff. September 1, 2005.

SEC. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW.

(a) A party to a medical dispute that remains unresolved after the review described by Section 504.053(d)(3) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the division in the same manner as a hearing conducted under Section 413.0311.

(b) The hearing officer conducting the contested case hearing under Subsection (a) shall consider any treatment guidelines adopted by the political subdivision or pool that provides medical benefits under Section 504.053(b)(2) if those guidelines meet the standards provided by Section 413.011(e).

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

(d) Judicial review under Subsection (c) shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, and is governed by the substantial evidence rule.

(e) A decision of the independent review organization is binding during the pendency of a dispute.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 36, eff. September 1, 2011.

SEC. 504.055. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN

INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT.

(a) In this section, "first responder" means:

(1) an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2.12, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue; or

(2) an individual covered under Section 504.012(a) who is providing volunteer services to a political subdivision of this state as:

(A) a volunteer firefighter, without regard to whether the volunteer firefighter is certified under Subchapter D, Chapter 419, Government Code; or

(B) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code.

(b) This section applies only to a first responder who sustains a serious bodily injury, as defined by Section 1.07, Penal Code, in the course and scope of employment. 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.

(c) The political subdivision, division, and insurance carrier shall 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 described by Subsection (b).

(d) The division shall accelerate, under rules adopted by the commissioner of workers' compensation, 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 described by Subsection (b). The first responder shall provide notice to the division and independent review organization that the contested case or appeal involves a first responder.

(e) Except as otherwise provided by this section, a first responder is entitled to review of a medical dispute in the manner provided by Section 504.054.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 36, eff. September 1, 2011.

SEC. 504.056. INTENT OF EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT.

The purpose of Section 504.055 is to ensure that an injured first responder's claim for medical benefits is accelerated by a political subdivision, insurance carrier, and the division to the full extent authorized by current law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 36, eff. September 1, 2011.

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SUBCHAPTER D. ADMINISTRATION

SEC. 504.071. RULES; FORMS.

A political subdivision may:

(1) adopt and publish rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.072. APPROPRIATIONS FOR DISBURSEMENTS; ACCOUNT; REPORT.

(a) A political subdivision may set aside from available appropriations, other than itemized salary appropriations, an amount sufficient to pay all costs, administrative expenses, benefits, insurance, and attorney's fees authorized by this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the political subdivision's records showing the disbursements authorized by this chapter. A statement of the amount set aside for disbursements from the account shall be included in an annual report made to the political subdivision's governing body and its treasurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 504.073. REPRESENTATION IN LEGAL PROCEEDINGS.

(a) Except as provided by Subsection (b), in a proceeding in connection with workers' compensation benefits provided by a political subdivision as a self-insurer, the political subdivision may be represented by:

(1) the political subdivision's attorney or that attorney's assistants; or

(2) outside counsel.

(b) In a proceeding involving workers' compensation for employees of a municipal utility operated by a board of trustees established under Section 1502.070, Government Code, or a similar law, if the board of trustees is a self-insurer, the municipality shall be represented by the

regularly employed attorney or outside counsel of the board of trustees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.284, eff. Sept. 1, 2001.

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LABOR CODE CHAPTER 505. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF TEXAS DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

SEC. 505.001. DEFINITIONS.

(a) In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(32), eff. September 1, 2005.

(2) "Department" means the Texas Department of Transportation.

(3) "Employee" means a person in the service of the department under an appointment or express contract of hire and whose name appears on the department's payroll.

(4) "Legal beneficiary" has the meaning assigned to that term under Section 401.011.

(b) A reference in this chapter to an employee who has been injured includes the employee's legal beneficiary if the injured employee is dead.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(32), eff. September 1, 2005.

SEC. 505.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES.

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012, defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Subchapters B, D, E, and H, Chapter 406, other than Sections 406.071-406.073, and 406.075;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;

(9) Chapters 412-417; and

(10) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "department."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the department or an employee of the department beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.323, eff. September 1, 2005.

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SUBCHAPTER B. COVERAGE

SEC. 505.011. WORKERS' COMPENSATION COVERAGE FOR DEPARTMENT EMPLOYEES.

The department shall pay benefits as provided by this chapter to an employee with a compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 505.012. AUTHORITY TO SELF-INSURE.

The department may self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 505.013. INDIVIDUALS EMPLOYED BY SUBCONTRACTORS.

(a) Except as provided by Subsection (b), an individual employed by a subcontractor performing work under contract with the department is not considered an employee for purposes of this chapter.

(b) The department shall treat a person leasing a tractor, a truck, mowing or cutting machinery, or other equipment to the department and using the equipment to perform work under a contract with the department:

(1) as an independent contractor, and the department shall require the person, while performing the contract, to provide life, health and accident, and disability insurance for the person and any individual employed by the person to perform the contract in an amount and with coverage approved by the Texas Department of Insurance as substantially the same as provided for under workers' compensation insurance;

(2) as an employee of the state for workers' compensation purposes, and the department shall require the person to provide workers' compensation insurance for each individual employed by the person to perform the contract, in which case this chapter applies to the person and the individuals employed by the person without regard to the number of individuals employed; or

(3) as an employee of the state for workers' compensation purposes, and each individual employed by that person to perform the contract as an employee of the state for workers' compensation purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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SUBCHAPTER C. ADMINISTRATION

SEC. 505.051. ADMINISTRATION; RULES; FORMS.

(a) The department shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The department may:

(1) adopt rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 505.052. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS.

(a) The department may set aside from its available appropriations, other than itemized appropriations, an amount not exceeding three and one-half percent of the department's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the department's records. The balance of the account at any time may not exceed an amount equal to three and one-half percent of the department's annual payroll.

(c) The account shall show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 505.053. CERTIFIED COPIES OF DIVISION DOCUMENTS.

(a) The division of workers' compensation shall furnish a certified copy of an order, award, decision, or paper on file with the division to a person entitled to the copy on written request and payment of the fee for the copy. The fee shall be the same as that charged for similar services by

the secretary of state's office.

(b) The department may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division of workers' compensation for making the copies that exceeds the fee charged for the copies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.324, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265, Sec. 3.325, eff. September 1, 2005.

SEC. 505.054. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS.

(a) An individual may not be certified as an employee of the department under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician to be physically fit to perform the duties and services to which the individual is to be assigned.

(b) Absence of a physical examination under this section does not bar recovery.

(c) The department shall designate a convenient number of regularly licensed practicing physicians to make physical examinations of individuals employed by or to be employed by the department to determine if the individuals are physically fit to be classified as department employees.

(d) A physician designated under Subsection (c) who conducts an examination shall file with the department a complete transcript of the examination on a form furnished by the department. The department shall maintain all reports under this subsection as part of the department's permanent records. A report under this subsection is admissible in evidence before the division of workers' compensation and in an appeal from a final award or ruling of the commissioner of workers' compensation in which the individual named in the examination is a claimant for compensation under this chapter. A report under this subsection that is admitted is prima facie

evidence of the facts stated in the report.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.326, eff. September 1, 2005.

SEC. 505.055. REPORTS OF INJURIES.

(a) A report of an injury filed with the division of workers' compensation under Section 409.005, in addition to the information required by commissioner of workers' compensation rules, must contain:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) In addition to subsequent reports of an injury filed with the division of workers' compensation under Section 409.005(e), the department shall file a subsequent report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.327, eff. September 1, 2005.

SEC. 505.056. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION.

(a) The division of workers' compensation may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) An employee is not entitled to compensation during or for a period in which the employee

refuses to submit to an examination under Subsection (a) or Section 408.004.

(c) The department may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the department. The department shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination.

(d) On the request of an employee or the department, the employee or the department is entitled to have a physician selected by the employee or the department present to participate in an examination under Subsection (a) or Section 408.004. The employee is entitled to have a physician selected by the employee present to participate in an examination under Subsection (c). The department shall pay the fee set by the commissioner of workers' compensation of a physician selected by the employee under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.328, eff. September 1, 2005.

SEC. 505.057. REFUSAL TO SUBMIT TO MEDICAL TREATMENT.

(a) The commissioner of workers' compensation may order or direct the department to reduce or suspend the compensation of an injured employee if the employee:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.329, eff. September 1, 2005.

SEC. 505.058. POSTPONEMENT OF HEARING.

If an injured employee is receiving benefits under this chapter and the department is providing hospitalization or medical treatment to the employee, the division of workers' compensation may postpone the hearing of the employee's claim. An appeal may not be taken from an order of the commissioner of workers' compensation under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.330, eff. September 1, 2005.

SEC. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE.

(a) In each case appealed from the division of workers' compensation to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265, Sec. 3.331, eff. September 1, 2005.

SEC. 505.060. EFFECT OF SICK LEAVE; ANNUAL LEAVE.

(a) An employee may elect to use accrued sick leave before receiving income benefits. 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.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. 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.

Added by Acts 2001, 77th Leg., ch. 706, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1017, Sec. 2.01, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1456, Sec. 14.03, eff. June 17, 2001.

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LABOR CODE CHAPTER 506. MISCELLANEOUS PROVISIONS APPLICABLE TO GOVERNMENT EMPLOYEES

SEC. 506.001. LATE PAYMENT OF JUDGMENT BY THE STATE.

(a) In a workers' compensation case in which a claimant is awarded a judgment against the state or a political subdivision of the state under Chapter 501, 502, 503, 504, or 505, the state or political subdivision shall comply with the judgment not later than the 30th day after the judgment is entered.

(b) If the state or a political subdivision of the state fails or refuses to comply with a judgment as provided under Subsection (a) and the claimant secures a mandamus order against the state or political subdivision to force compliance with the judgment, the claimant is also entitled to an award of:

(1) a penalty of 12 percent of the amount of compensation recovered in the judgment; and

(2) reasonable attorney's fees for prosecution of the mandamus action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SEC. 506.002. REIMBURSEMENT FROM NON-TREASURY FUNDS.

(a) An agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund to former or current employees of the agency or other instrumentality shall reimburse the general revenue fund by writing a check to the comptroller:

(1) for deposit into the appropriate account in the general revenue fund; and

(2) not later than 30 days after receiving the statement of amounts due.

(b) The workers' compensation division of the office of the attorney general shall send to the comptroller a copy of each statement of amounts due from an agency or other instrumentality

of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund.

(c) An agency or other instrumentality of state government affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the general revenue fund for the workers' compensation payments made to its current or former employees.

(d) The state auditor may review affected entities for compliance with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.40, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 64, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 83, eff. September 1, 2013.

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*Statues listed twice are due to more than one piece of legislation being enacted on the statute in the same legislative session. For additional information about this circumstance please see Government Code §311.025 at http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.311.htm#311.028 or visit the TLC website at http://www.statutes.legis.state.tx.us/.

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