

## **BILL ANALYSIS**

C.S.H.B. 472  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Third party administrators are entities to which insurance companies delegate authority for claim adjusting, processing, and bill payment. Some third party administrators even create, adopt, or lease networks, treatment guidelines, and formularies for their client insurance company. These third party administrators in Texas, with the exception of workers' compensation third party administrators, are currently regulated by the Texas Department of Insurance under the Texas Third Party Administrator Act in the Texas Insurance Code, Chapter 4151.

C.S.H.B. 472 includes workers' compensation third party administrators into the Act, as well as enhances auditing and reporting requirements of all third party administrators to the Texas Department of Insurance.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 1.03 of this bill and to the commissioner of insurance in SECTIONS 1.04, 1.05, 1.08, 1.17, and 1.19 of this bill.

### **ANALYSIS**

**ARTICLE 1.** of C.S.H.B. 472 amends the Texas Third Party Administrator Act (The Act), Chapter 4151 of the Texas Insurance Code.

Section 4151.001 of the Act is amended to include third party administrators (administrators) performing delegated duties for a workers' compensation insurer, including workers' compensation networks under Chapter 1305, Insurance Code, and adds definitions for workers' compensation benefits, workers' compensation insurance coverage, and workers' compensation self-insurer. Section 4151.002 of the Act is amended to clarify that an attorney is exempted from having to obtain a certificate of authority if the attorney is settling claims or doing adjustment work as an attorney for claims related to life, health, accident benefits and annuities. Section 4151.002 is further clarified to include property and casualty insurance adjusters to the list of exempted adjusters who settle small claims. Section 4151.002 is also amended by excluding certified self-insured workers' compensation entities who administer their own claims from having to obtain a certificate of authority.

C.S.H.B. 472 adds Section 4151.0021 to clarify an exemption for processing agents as described in Section 413.0111, Labor Code, as long as the processing agent does not adjust pharmacy claims for an insurer. It also adds Section 4151.0031, which allows the commissioner of insurance (commissioner) to conduct market analyses and examinations of an administrator. Section 4151.0051 is added to clarify that an administrator may not refer a claim to a person who does not hold an adjusters license under Insurance Code, Chapter 4101.

Section 4151.006 amends the current rulemaking authority granted to the commissioner to include rules establishing financial standards, reporting requirements and required contract provisions.

The application process is enhanced by providing the Texas Department of Insurance (department) more discretion over the approval of applications for certificates of authority as well as increasing the duty upon the applicants to provide current information. Section 4151.052 is amended to require any administrator to notify the department of any material change in the

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applicant's ownership or control not later than thirty days after the effective date of the change. Additionally, an applicant shall notify the department of any other factor or circumstance affecting the applicant's qualifications for a certificate of authority. Section 4151.056 is amended to exclude the applicability of Insurance Code, Chapter 4005, Subchapter B (Prohibited Conduct) and C (Disciplinary Actions and Procedures; Enforcement) to certified administrators (this is due to the addition of Subchapter G which addresses these issues for certificate holders under Chapter 4151).

The responsibilities of all administrators are enhanced by amendments to Subchapter C of Chapter 4151. Section 4151.101 is amended to allow the commissioner to adopt rules to prescribe provisions that must be included in a written agreement required by Section 4151.102 between the administrator and the insurer or plan sponsor. This agreement is enhanced to include a statement of the duties that the administrator is expected to perform and the lines, classes or types of insurance that the administrator is authorized to administer, including provisions regarding underwriting, claims handling, and other standards relating to the business underwritten by the insurer. This written agreement is required to be retained under amendments to Section 4151.103 during the term of the agreement and until the fifth anniversary of the expiration of the agreement.

The notice required in Section 4151.104 to covered individuals is amended to include a requirement that notice be provided to employees covered by workers' compensation insurance as well. This section is also amended to provide for an administrative penalty for failure to provide the notice.

C.S.H.B. 472 adds Section 4151.1041 which prohibits an insurer from knowingly referring a claim to a administrator unless they have ascertained that the administrator holds a certificate of authority issued by the department.

Subsection 4151.111(c) is added to clarify that if there is a conflict between Section 4151.111 and the Labor Code relating to prompt pay provisions, the Workers' Compensation Act prevails for workers' compensation claims.

C.S.H.B. 472 adds Section 4151.1042 which clarifies the insurer's responsibility if it utilizes an administrator. Even if an insurer utilizes an administrator, the insurer retains responsibility for determining benefits, premium rates, reimbursement procedures, underwriting criteria, and claims payment procedures applicable to coverage and for securing any necessary reinsurance. A written copy of all requirements related to these matters, and the administrator's duties in relation to these matters, must be provided to the administrator by the insurer. An insurer shall ensure competent administration of its programs. If an administrator administers benefits for more than 100 certificate holders, subscribers, claimants, or policyholders on behalf of an insurer, then the insurer is required to perform audits of the performance of the administrator at least semiannually, with at least one on-site audit.

Section 4151.113(b) is amended to reflect the addition of a workers' compensation subscribing employer.

Section 4151.117 is added by C.S.H.B. 472 to prohibit compensation for administrators to be based on the amount the administrator saves the insurer through adverse determinations made by the administrator.

The report required to be submitted to the department by administrators holding certificates, under Section 4151.205, is clarified to detail the contents of the report. New required information in the report shall include an audited financial statement performed by an independent certified public accountant and the complete name and address of each insurer which the administrator had a written agreement to perform services for in the preceding year. This information must be verified by at least two officers of the administrator. The financial statement included in the report is confidential and not subject to Government Code, Chapter 552. An administrator who receives less than \$10 million annually under written agreements must still file a financial statement with the report, but may forego the independently audited financial report.

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Section 4151.206(a)(2) includes a technical change to refer to an examination under the Third Party Administrator Act Section 4151.201, rather than the Utilization Review Agents Act Section 4201.201.

C.S.H.B. 472 adds Section 4151.210 which prohibits an officer, director, or shareholder with a controlling interest of an administrator with a certificate to operate in Texas to hold those positions if that person has had a certificate or license to engage in the business of insurance revoked in this or another state, unless the commissioner determines the person's position is in the best interest of the public.

Section 4151.211 is also added by C.S.H.B. 472. This section grants the commissioner approval over the acquisition of ownership or of majority shareholder position of a third party administrator which holds a certificate to operate in Texas. The individual, or each partner, corporation or controlling member of a partnership, syndicate or other group, must file certain information. The department may disapprove an acquisition after a hearing, for reasons listed, but the acquisition is considered approved if the department does not take action before the 61st day after the date on which the department receives all information required.

Section 4151.212 is added to clarify that the department may suspend, revoke, or refuse to renew a certificate if a holder fails to maintain the qualifications needed to originally obtain the certificate.

C.S.H.B. 472 adds Subchapter F (Workers' Compensation Benefit Plans) to Section 4151 of the Insurance Code. It defines applicability of this section to certified self-insurers and employers who enter into a large deductible workers' compensation policy under Section 2053.202(b) of the Insurance Code, but specifically excludes non-subscribing employers. Subchapter F requires an insurer writing workers' compensation insurance in Texas which enters into an agreement with an administrator, or whose agent enters into an agreement with an administrator on the insurer's behalf to adjust or handle claims, to get approval of the agreement from the Commissioner.

Subchapter F also clarifies that an administrator may only enter into an agreement and receive compensation for the adjustment or handling of workers' compensation claims affecting residents of Texas with an insurer responsible for those claims. Subchapter F also allows a certified self-insurer to utilize an administrator which it uses in another state as long as the administrator has a certificate in Texas. Subchapter F prohibits employers with large deductible workers' compensation policies from contracting with the services of an administrator for claims administration services unless the administrator has a written agreement with the insurer who has ultimate responsibility for those claims under the workers' compensation policy.

C.S.H.B. 472 also adds Subchapter G (Disciplinary Actions; Penalties) to Chapter 4151 of the Insurance Code. Subchapter G outlines the reasons for which the commissioner may deny an application for a certificate of authority or suspend or revoke an administrator's certificate of authority. Subchapter G allows for an administrative penalty or probated suspension in addition to the options of suspension or revocation of a certificate. Subchapter G requires a hearing at the State Office of Administrative Hearings if the department proposes to deny, suspend, or revoke a certificate, and outlines the procedure for applying for a certificate after a denial or revocation. The commissioner may suspend a certificate without a hearing if the administrator is insolvent or impaired; a proceeding for receivership, conservatorship, rehabilitation, or any other delinquency in proceeding regarding the administrator has commenced in any state; or the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety, or welfare of the state of Texas. A hearing is provided for to challenge the suspension of the certificate.

C.S.H.B. 472 transfers Section 4151.207 and 208 and renumbers them as Sections 4151.308 (General Administrative Sanctions) and 4151.309 (Criminal Penalties) respectively.

**ARTICLE 2.** makes conforming changes throughout the Insurance Code. In Chapter 1305, Workers' Compensation Networks, it clarifies that administrators must hold certificates of authority under Chapter 4151. Section 4101.002, General Exemptions for Insurance Adjuster's License, clarifies that an individual who investigates or settles only workers' compensation claims is exempt from the requirements of Chapter 4101 and clarifies that claims arising out of a

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workers' compensation insurance policy, including claims serviced by a workers' compensation health care network under Chapter 1305, do not constitute life, accident, or health insurance claims as described in Section 4101.002(a)(6).

**ARTICLE 3.** makes conforming changes to the Labor Code. In Section 407.001, it clarifies that a qualified claims servicing contractor must hold a certificate of authority under Chapter 4151 of the Insurance Code and Section 407A.001(a) is amended to define "third party administrators" as persons who hold a certificate of authority as an administrator under Chapter 4151 of the Insurance Code. Labor Code, Section 407A.009 is clarified to require that a service company, which adjusts or settles claims for a workers' compensation self-insurance group, must hold a certificate of authority as an administrator under Chapter 4151, Insurance Code.

**ARTICLE 4.** outlines the transition and effective dates of C.S.H.B. 472. The Texas Department of Insurance shall start issuing certificates to applicants under Section 4151.052, Insurance Code beginning September 1, 2007, but a person who serves as an administrator for a workers' compensation insurer is not required to have a certificate of authority until January 1, 2008.

Subchapter G, Chapter 4151, Insurance Code, as added by this Act, applies to a disciplinary action commenced on or after January 1, 2008.

#### **EFFECTIVE DATE**

September 1, 2007; however a person is not required to hold a certificate of authority under Insurance Code, Chapter 4151 to adjust workers' compensation benefits until January 1, 2008.

Subchapter G, Chapter 4151, Insurance Code, as added by this Act, applies to a disciplinary action commenced on or after January 1, 2008.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The following represent the material changes to the original H.B. 472 by C.S.H.B. 472. C.S.H.B. 472 does not change references throughout Chapter 4151, Insurance Code from certificate to license.

1. C.S.H.B. 472 includes workers' compensation networks who administer workers' compensation claims for insurers in the definition of administrator.
2. C.S.H.B. 472 adds a definition of workers' compensation benefits.
3. C.S.H.B. 472 deletes the exemption for licensed insurance adjusters as long as they are not performing certain functions listed in 4151.002(13), Insurance Code, and just left the language exempting adjusters.
4. C.S.H.B. 472 adds Section 4151.0021, Insurance Code to clarify an exemption for processing agents as described in Section 413.0111, Labor Code, as long as the processing agent does not adjust pharmacy claims for an insurer.
5. C.S.H.B. 472 also adds Section 4151.0031, Insurance Code which allows the Commissioner of Insurance (commissioner) to conduct market analyses and examinations of an administrator.
6. C.S.H.B. 472 adds Section 4151.0051 to clarify that an administrator may not refer a claim to a person who does not hold an adjuster license under Insurance Code, Chapter 4101.
7. C.S.H.B. 472 amends Section 4151.006, Insurance Code, the current rulemaking authority granted to the commissioner, to include rules establishing financial standards, reporting requirements and required contract provisions. Additional rulemaking authority is granted to the commissioner of workers' compensation in Section 4151.0021, and to the commissioner in Sections 4151.052, 4151.205, and 4151.211, Insurance Code
8. C.S.H.B. 472, Section 4151.051, Insurance Code adds a time frame for when any material change in the applicant's qualifications must be reported to the Texas Department of Insurance (department).
9. C.S.H.B. 472 deletes Section 4151.053(b) , Insurance Code, which in H.B. 472 allowed the commissioner discretion for denying an application for a certificate for incompetency, trustworthiness, or for a lack of financial responsibility.

10. C.S.H.B. 472 amends Section 4151.056, Insurance Code to also exclude the applicability of Insurance Code, Chapter 4005, Subchapter B.
11. C.S.H.B. 472 amends Section 4151.101, Insurance Code by adding Subsection (b) to allow the commissioner to adopt rules to prescribe provisions that must be included in a written agreement under Section 4151.102, Insurance Code between the administrator and the insurer or plan sponsor, instead of adding subsection (b) in H.B. 472 which clarified the applicability of the section. C.S.H.B. 472 further deletes that the requirements in Sections 4151.102-103, Insurance Code are required of exempt entities under Chapter 4151, Insurance Code, as well as licensed entities.
12. Subsection 4151.111(c), Insurance Code is added to clarify that if there is a conflict between Section 4151.111, Insurance Code and the Labor Code relating to prompt pay provisions, the Workers' Compensation Act prevails for workers' compensation claims.
13. C.S.H.B. 472 adds Section 4151.1041, Insurance Code, which prohibits an insurer from knowingly referring a claim to an administrator unless it has ascertained that the administrator holds a certificate of authority issued by the department.
14. The requirements in H.B. 472 under Section 4151.1045, Insurance Code are in C.S.H.B. 472 as Section 4151.1042, Insurance Code, with the exception that C.S.H.B. 472 deletes the requirement that the provisions in this section are required of exempt entities under Chapter 4151, Insurance Code.
15. Section 4151.117, Insurance Code is added by C.S.H.B. 472 to prohibit compensation for administrators to be based on the amount the administrator saves the insurer through adverse determinations made by the administrator.
16. C.S.H.B. 472 ensures the financial statement included in the report pursuant to Section 4151.205, Insurance Code is confidential and not subject to Government Code, Chapter 552. An administrator who receives less than \$10 million annually under written agreements must still file a financial statement with the report, but may forego the independently audited financial report.
17. C.S.H.B. 472 adds Section 4151.210, Insurance Code, which prohibits an officer, director, or shareholder with a controlling interest of an administrator with a certificate to operate in Texas to hold those positions if that person has had a certificate or license to engage in the business of insurance revoked in this or another state, unless the commissioner determines the person's position is in the best interest of the public.
18. Section 4151.211, Insurance Code is also added by C.S.H.B. 472. This section grants the commissioner approval over the acquisition of ownership or of a majority shareholder position of an administrator which holds a certificate to operate in Texas. The individual, or each partner, corporation or controlling member of a partnership, syndicate or other group, must file certain information. The department may disapprove an acquisition after a hearing, for reasons listed, but the acquisition is considered approved if the department does not take action before the 61st day after receipt of all information required.
19. Section 4151.212, Insurance Code is added in C.S.H.B. 472 to clarify that the department may suspend, revoke, or refuse to renew a certificate if a holder fails to maintain the qualifications required to obtain the certificate.
20. C.S.H.B. 472 also allows for probated suspension under Section 4151.303, Insurance Code.
21. In C.S.H.B. 472, Subchapter G, Chapter 4151, Insurance Code requires a hearing at the State Office of Administrative Hearings if the department proposes to deny, suspend, or revoke a certificate, and outlines the procedure for applying for a certificate after a denial or revocation.
22. Section 4101.002, Insurance Code, as amended by C.S.H.B. 472 clarifies that a person performing only workers' compensation claims adjustment is exempt from the requirements of Chapter 4101, Insurance Code and that claims arising out of a workers' compensation claim do not meet the requirements of the exemption as described in 4101.002(a)(6), Insurance Code.
23. Changes are made to the transition requirements in Article 4 of C.S.H.B. 472 to reflect that no change in terminology was made from certificate of authority to a license in the substitute.