

By: Solomons

H.B. No. 472

A BILL TO BE ENTITLED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ACT

relating to the regulation of third-party administrators, including administrators with delegated duties in the workers' compensation system of this state; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. THIRD-PARTY ADMINISTRATORS

SECTION 1.01. Section 4151.001, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (6), (7), and (8) to read as follows:

(1) "Administrator" means a person who, in connection with annuities or life benefits, health benefits, ~~[and]~~ accident benefits, ~~[including]~~ pharmacy benefits, or workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims for residents of this state. The term includes a delegated entity under Chapter 1272 and a workers' compensation health care network authorized under Chapter 1305 that administers a workers' compensation claim for an insurer, including an insurer that establishes or contracts with the network to provide health care services. The term does not include a person described by Section 4151.002.

(2) "Insurer" means a person who engages in the business of life, health, ~~[or]~~ accident, or workers' compensation insurance under the law of this state. For purposes of this chapter only, the term also includes an "insurance carrier," as defined by

1 Section 401.011(27), Labor Code, other than a governmental entity.

2 (6) "Workers' compensation benefits" means benefits
3 provided under Title 5, Labor Code, or services provided through a
4 certified workers' compensation health care network authorized
5 under Chapter 1305.

6 (7) "Workers' compensation insurance coverage" means
7 coverage subject to Subtitle E, Title 10. The term includes
8 coverage described by Sections 401.011(44)(A) and (B), Labor Code.

9 (8) "Workers' compensation self-insurer" means a legal
10 entity subject to regulation under Chapter 407 or 407A, Labor Code.

11 SECTION 1.02. Section 4151.002, Insurance Code, is amended
12 to read as follows:

13 Sec. 4151.002. EXEMPTIONS. A person is not an
14 administrator if the person is:

15 (1) an employer, other than a certified workers'
16 compensation self-insurer, administering an employee benefit plan
17 or the plan of an affiliated employer under common management and
18 control [~~acting on behalf of its employees or the employees of one~~
19 ~~or more subsidiaries or affiliated corporations of the employer~~];

20 (2) a union administering a benefit plan [~~acting~~] on
21 behalf of its members;

22 (3) an insurer or a group hospital service corporation
23 subject to Chapter 842 acting with respect to a policy lawfully
24 issued and delivered by the insurer or corporation in and under the
25 law of a state in which the insurer or corporation was authorized to
26 engage in the business of insurance;

27 (4) a health maintenance organization that is

1 authorized to operate in this state under Chapter 843 with respect
2 to any activity that is specifically regulated under that chapter,
3 Chapter 1271, 1272, or 1367, Subchapter A, Chapter 1452, or
4 Subchapter B, Chapter 1507;

5 (5) an agent licensed under Subchapter B, Chapter
6 4051, Subchapter B, Chapter 4053, or Subchapter B, Chapter 4054,
7 who receives commissions as an agent and is acting:

8 (A) under appointment on behalf of an insurer
9 authorized to engage in the business of insurance in this state; and

10 (B) in the customary scope and duties of the
11 person's authority as an agent;

12 (6) a creditor acting on behalf of its debtor with
13 respect to insurance that covers a debt between the creditor and its
14 debtor, if the creditor performs only the functions of a group
15 policyholder or a creditor;

16 (7) a trust established in conformity with 29 U.S.C.
17 Section 186 or a trustee or employee who is acting under the trust;

18 (8) a trust that is exempt from taxation under Section
19 501(a), Internal Revenue Code of 1986, or a trustee or employee
20 acting under the trust;

21 (9) a custodian or a custodian's agent or employee who
22 is acting under a custodian account that complies with Section
23 401(f), Internal Revenue Code of 1986;

24 (10) a bank, credit union, savings and loan
25 association, or other financial institution that is subject to
26 supervision or examination under federal or state law by a federal
27 or state regulatory authority, if the institution is performing

1 only those functions for which the institution holds a license
2 under federal or state law;

3 (11) a company that advances and collects a premium or
4 charge from its credit card holders on their authorization, if the
5 company does not adjust or settle claims and acts only in the
6 company's debtor-creditor relationship with its credit card
7 holders;

8 (12) a person who adjusts or settles claims in the
9 normal course of the person's practice or employment as a licensed
10 attorney and who does not collect any premium or charge in
11 connection with annuities or with life, health, ~~[or]~~ accident,
12 pharmacy, or workers' compensation benefits~~[, including pharmacy~~
13 ~~benefits];~~

14 (13) an adjuster licensed under Subtitle C by the
15 department who is engaged in the performance of the individual's
16 ~~[person's]~~ powers and duties as an adjuster in the scope of the
17 individual's ~~[person's]~~ license;

18 (14) a person who provides technical, advisory,
19 utilization review, precertification, or consulting services to an
20 insurer, plan, or plan sponsor but does not make any management or
21 discretionary decisions on behalf of the insurer, plan, or plan
22 sponsor;

23 (15) an attorney in fact for a Lloyd's plan operating
24 under Chapter 941 or for a reciprocal or interinsurance exchange
25 operating under Chapter 942 who is acting in the capacity of
26 attorney in fact under the applicable chapter;

27 (16) a joint fund, risk management pool, or

1 self-insurance pool composed of political subdivisions of this
2 state that participate in a fund or pool through interlocal
3 agreements, any nonprofit administrative agency or governing body
4 or other nonprofit entity that acts solely on behalf of a fund,
5 pool, agency, or body, or any other fund, pool, agency, or body
6 established under or for the purpose of implementing an interlocal
7 governmental agreement;

8 (17) a self-insured political subdivision;

9 (18) a plan under which insurance benefits are
10 provided exclusively by an insurer authorized to engage in the
11 business of insurance in this state and the administrator of which
12 is:

13 (A) a full-time employee of the plan's organizing
14 or sponsoring association, trust, or other entity; or

15 (B) a trustee of the organizing or sponsoring
16 trust; [~~or~~]

17 (19) a parent of a wholly owned direct or indirect
18 subsidiary insurer authorized to engage in the business of
19 insurance in this state or a wholly owned direct or indirect
20 subsidiary insurer that is a part of the parent's holding company
21 system that, under an agreement regulated and approved under
22 Chapter 823 or a similar statute of the domiciliary state if the
23 parent or subsidiary insurer is a foreign insurer engaged in
24 business in this state, on behalf of only itself or an affiliated
25 insurer:

26 (A) collects premiums or contributions, if the
27 parent or subsidiary insurer:

1 (i) prepares only billing statements and
2 places those statements in the United States mail; and

3 (ii) causes all collected premiums to be
4 deposited directly in a depository account of the particular
5 affiliated insurer; or

6 (B) furnishes proof-of-loss forms, reviews
7 claims, determines the amount of the liability for those claims,
8 and negotiates settlements, if the parent or subsidiary insurer
9 pays claims only from the funds of the particular subsidiary by
10 checks or drafts of that subsidiary; or

11 (20) an affiliate, as described by Chapter 823.003, of
12 a self-insurer certified under Chapter 407, Labor Code, and who:

13 (A) is performing the acts of an administrator on
14 behalf of that certified self-insurer; and

15 (B) directly or indirectly through one or more
16 intermediaries, controls, is controlled by, or is under common
17 control with that certified self-insurer, as the term "control" is
18 described by Section 823.005.

19 SECTION 1.03. Subchapter A, Chapter 4151, Insurance Code,
20 is amended by adding Sections 4151.0021, 4151.0031, and 4151.0051
21 to read as follows:

22 Sec. 4151.0021. APPLICABILITY TO CERTAIN PROCESSING
23 AGENTS. (a) In this section, "processing agent" means a person
24 described by Section 413.0111, Labor Code.

25 (b) A processing agent is not an administrator for purposes
26 of this chapter if the processing agent is acting as an assignee of
27 a pharmacy and if:

1 (1) the assignee has a written contract with the
2 pharmacy to:

3 (A) act as the provider of licensed pharmacy
4 services in lieu of the pharmacy; and

5 (B) purchase the pharmacy's claims at face value,
6 or at a value expressly stated in the contract; and

7 (2) the contract specifically prohibits the assignee
8 from performing any function of an administrator, as that term is
9 defined in this chapter, unless the assignee holds a certificate of
10 authority under this chapter.

11 Sec. 4151.0031. MARKET ANALYSIS. The commissioner may
12 conduct market analyses and examinations of an administrator under
13 Chapter 751.

14 Sec. 4151.0051. REFERRAL TO ADJUSTER BY ADMINISTRATOR. (a)
15 An administrator may not knowingly refer a claim or loss for
16 adjustment in this state to an individual purporting to be or acting
17 as an adjuster unless the individual holds a license under Chapter
18 4101.

19 (b) Before first referring a claim or loss for adjustment,
20 an administrator must ascertain from the commissioner whether the
21 individual selected to perform the adjustment holds a license under
22 Chapter 4101. After receipt of information from the department
23 that the individual does hold an adjuster license, the
24 administrator may refer claims or losses to the individual for
25 adjustment until the administrator has actual knowledge or receives
26 information from the department that the individual no longer holds
27 an adjuster license under Chapter 4101. The department shall keep

1 an updated list of individuals who hold adjuster licenses.

2 SECTION 1.04. Section 4151.006, Insurance Code, is amended
3 to read as follows:

4 Sec. 4151.006. RULES. The commissioner may adopt, in the
5 manner prescribed by Subchapter A, Chapter 36, rules that are fair,
6 [and] reasonable, and appropriate [rules, minimum standards, or
7 limitations as appropriate] to augment and implement this chapter,
8 including rules establishing financial standards, reporting
9 requirements, and required contract provisions.

10 SECTION 1.05. Section 4151.052, Insurance Code, is amended
11 to read as follows:

12 Sec. 4151.052. APPLICATION. (a) An application for a
13 certificate of authority to engage in business as an administrator
14 must be in a form prescribed by the commissioner and must include
15 the following:

16 (1) a copy of each basic organizational document of
17 the applicant, including the articles of incorporation, bylaws,
18 articles of association, trade name certificate, and any other
19 similar document and a copy of any amendment to any of those
20 documents;

21 (2) a description of the applicant and the applicant's
22 services, facilities, and personnel;

23 (3) if the applicant is not domiciled in this state, a
24 power of attorney executed by the applicant appointing the
25 commissioner, the commissioner's successors in office, or the
26 commissioner's appointed designee as the applicant's attorney in
27 this state on whom process may be served in any legal action or

1 proceeding based on a cause of action arising in this state against
2 the applicant;

3 (4) an audited financial statement of the applicant
4 covering the preceding three calendar years or any lesser period
5 that the applicant and any predecessors of the applicant have been
6 in existence, or if an audited financial statement is not
7 available, an unaudited financial statement as of a date not
8 earlier than the 120th day before the date the application is filed,
9 accompanied by an affidavit or certification of the applicant that:

10 (A) the unaudited financial statement is true and
11 correct, as of its date; and

12 (B) a material change in financial condition has
13 not occurred from the date of the financial statement to the
14 execution date of the affidavit or certification; and

15 (5) any other information the commissioner reasonably
16 requires.

17 (b) An applicant for a certificate of authority or a
18 certificate holder under this chapter shall notify the department
19 in the manner prescribed by commissioner rule of a change of control
20 in the applicant's or certificate holder's ownership not later than
21 the 30th day after the effective date of the change and shall notify
22 the department of any other fact or circumstance affecting the
23 applicant's or certificate holder's qualifications for a
24 certificate of authority in this state as required by commissioner
25 rule.

26 SECTION 1.06. Section 4151.056, Insurance Code, is amended
27 to read as follows:

1 Sec. 4151.056. DURATION OF CERTIFICATE OF AUTHORITY. A
2 certificate of authority issued to an administrator under this
3 chapter is effective until it is suspended, canceled, or revoked.
4 The issuance, denial, suspension, cancellation, or revocation of a
5 certificate of authority to act as an administrator is subject to:

- 6 (1) Subchapters B and C, Chapter 4005; [~~and~~]
7 (2) Chapter 82; and
8 (3) Subchapter G.

9 SECTION 1.07. The heading to Subchapter C, Chapter 4151,
10 Insurance Code, is amended to read as follows:

11 SUBCHAPTER C. POWERS AND DUTIES OF [~~THIRD-PARTY~~] ADMINISTRATORS AND
12 INSURERS

13 SECTION 1.08. Section 4151.101, Insurance Code, is amended
14 to read as follows:

15 Sec. 4151.101. WRITTEN AGREEMENT WITH INSURER OR PLAN
16 SPONSOR REQUIRED. (a) An administrator may provide services only
17 under a written agreement with an insurer or plan sponsor.

18 **(b) The commissioner by rule may prescribe provisions that**
19 **must be included in the written agreement.**

20 SECTION 1.09. Section 4151.102, Insurance Code, is amended
21 by adding Subsection (a-1) to read as follows:

22 **(a-1) The written agreement must include a statement of the**
23 **duties that the administrator is expected to perform on behalf of**
24 **the insurer, and the lines, classes, or types of insurance that the**
25 **administrator is authorized to administer. The agreement must**
26 **include, as applicable, provisions regarding claims handling and**
27 **other standards relating to the business underwritten by the**

1 insurer.

2 SECTION 1.10. Section 4151.103, Insurance Code, is amended
3 by amending Subsection (a) and adding Subsection (d) to read as
4 follows:

5 (a) The [~~During the term of the written agreement, the~~]
6 administrator and the insurer, plan, or plan sponsor shall retain a
7 copy of the written agreement as part of their official records:

8 (1) during the term of the agreement; and

9 (2) until the fifth anniversary of the date on which
10 the agreement expires.

11 (d) The commissioner shall adopt rules to address the
12 transfer of records from one administrator to another.

13 SECTION 1.11. Section 4151.104, Insurance Code, is amended
14 to read as follows:

15 Sec. 4151.104. NOTICE OF USE OF ADMINISTRATOR'S SERVICES.

16 (a) If an insurer, plan, or plan sponsor uses the services of an
17 administrator, the administrator shall give written notice to each
18 insured and injured employee [~~or plan participant~~] of the
19 administrator's identity and the relationship among the
20 administrator and the insurer, plan, or plan sponsor and the
21 insured and injured employee [~~or plan participant~~]. The insurer,
22 plan, or plan sponsor must approve the notice before the notice is
23 distributed.

24 (b) An administrator administering workers' compensation
25 claims may satisfy the requirements of Subsection (a) by including
26 the notice as part of, or in conjunction with, the notice required
27 under Section 406.005(c), Labor Code.

1 (c) An administrator who fails to provide notice as required
2 by Subsection (a) is subject to an administrative penalty in the
3 manner provided by Chapter 84.

4 SECTION 1.12. Subchapter C, Chapter 4151, Insurance Code,
5 is amended by adding Sections 4151.1041 and 4151.1042 to read as
6 follows:

7 Sec. 4151.1041. REFERRAL BY INSURER. (a) An insurer may
8 not knowingly refer a claim or loss for administration in this state
9 to a person purporting to be or acting as an administrator unless
10 the person holds a certificate of authority under this chapter.

11 (b) Before first referring a claim or loss for
12 administration, an insurer must ascertain from the commissioner
13 whether the person performing the administration holds a
14 certificate of authority under this chapter. Once the insurer has
15 ascertained that the person holds a certificate of authority, the
16 insurer may refer a claim to the person for administration and may
17 continue to refer claims to the person until the insurer has
18 knowledge or receives information from the commissioner that the
19 person no longer holds a certificate of authority.

20 Sec. 4151.1042. RESPONSIBILITIES OF INSURER; SEMIANNUAL
21 AUDIT. (a) If an insurer uses the services of an administrator,
22 the insurer is responsible for determining the benefits, premium
23 rates, reimbursement procedures, and claims payment procedures
24 applicable to the coverage and for securing reinsurance, if any.
25 The insurer shall provide a copy of the written requirements
26 relating to those matters to the administrator. The
27 responsibilities of the administrator as to any of those matters

1 must be set forth in the written agreement between the
2 administrator and the insurer.

3 (b) An insurer shall ensure competent administration of its
4 programs.

5 (c) If an administrator administers benefits for more than
6 100 certificate holders, injured employees, plan participants, or
7 policyholders on behalf of an insurer, the insurer shall, at least
8 semiannually, conduct a review of the operations of the
9 administrator. At least biennially, the insurer shall conduct an
10 on-site audit of the operations of the administrator.

11 SECTION 1.13. Section 4151.111, Insurance Code, is amended
12 by adding Subsection (c) to read as follows:

13 (c) In the event of a conflict between this section and a
14 provision of the Labor Code relating to time periods for
15 adjudication and payment of workers' compensation claims, the Labor
16 Code provision prevails.

17 SECTION 1.14. Section 4151.113(b), Insurance Code, is
18 amended to read as follows:

19 (b) A trade secret, including the identity and address of a
20 policyholder, ~~[or]~~ certificate holder, or injured employee, is
21 confidential, except the commissioner may use that information in a
22 proceeding against the administrator.

23 SECTION 1.15. Section 4151.117, Insurance Code, is amended
24 to read as follows:

25 Sec. 4151.117. COMPENSATION OF ADMINISTRATOR. (a) An
26 administrator's compensation may be determined:

27 (1) as a percentage of the premiums or charges the

1 administrator collects or the amount of claims the administrator
2 pays or processes; or

3 (2) except as provided by Subsection (b), on another
4 basis as specified in the written agreement.

5 (b) An insurer or plan sponsor may not permit or provide
6 compensation or another thing of value to an administrator that is
7 based on the savings accruing to the insurer or plan sponsor because
8 of adverse determinations regarding claims for benefits,
9 reductions of or limitations on benefits, or other analogous
10 actions inconsistent with this chapter, that are made or taken by
11 the administrator.

12 SECTION 1.16. The heading to Subchapter E, Chapter 4151,
13 Insurance Code, is amended to read as follows:

14 SUBCHAPTER E. DEPARTMENT REGULATION OF [~~THIRD-PARTY~~]
15 ADMINISTRATORS

16 SECTION 1.17. Section 4151.205, Insurance Code, is amended
17 by amending Subsection (a) and adding Subsections (c), (d), (e),
18 and (f) to read as follows:

19 (a) An administrator shall annually, not later than June 30
20 [~~March 1~~], file with the commissioner a report on a form prescribed
21 by the commissioner. The report must contain any information
22 required by the commissioner and must be verified by at least two
23 officers of the administrator.

24 (c) Except as provided by Subsection (f), the annual report
25 must include an audited financial statement performed by an
26 independent certified public accountant. An audited financial
27 statement prepared on a consolidated basis must include a columnar

1 consolidating or combining worksheet that shall be filed with the
2 annual report and must comply with the following:

3 (1) amounts shown on the consolidated audited
4 financial report must be shown on the worksheet;

5 (2) amounts for each entity must be stated separately;
6 and

7 (3) explanations of consolidating and eliminating
8 entries must be included.

9 (d) The annual report must include notes to the financial
10 statement or attachments that reflect the complete name and address
11 of each insurer in this state with which the administrator had an
12 agreement during the preceding fiscal year.

13 (e) Information derived from an audited financial statement
14 contained in an annual report under this section is confidential
15 and is not subject to disclosure under Chapter 552, Government
16 Code.

17 (f) An administrator who receives less than \$10 million
18 annually as compensation for performing administrative services
19 and operates under written agreements subject to this chapter with
20 insurers or plan sponsors in this state is not required to file an
21 audited financial statement under Subsection (c), but must file a
22 financial statement certified in the manner prescribed by
23 commissioner rule.

24 SECTION 1.18. Section 4151.206(a), Insurance Code, is
25 amended to read as follows:

26 (a) The commissioner shall collect and an applicant or
27 administrator shall pay to the commissioner fees in an amount to be

1 determined by the commissioner as follows:

2 (1) a filing fee not to exceed \$1,000 for processing an
3 original application for a certificate of authority for an
4 administrator;

5 (2) a fee not to exceed \$500 for an examination under
6 Section 4151.201 [~~4201.201~~]; and

7 (3) a filing fee not to exceed \$200 for an annual
8 report.

9 SECTION 1.19. Subchapter E, Chapter 4151, Insurance Code,
10 is amended by adding Sections 4151.210, 4151.211, and 4151.212 to
11 read as follows:

12 Sec. 4151.210. EFFECT OF REVOCATION OF OTHER CERTIFICATES.
13 An officer or a director or a shareholder with a controlling
14 interest of an entity whose certificate of authority to engage in
15 the business of insurance or other analogous authorization has been
16 revoked in this state or in any other state may not act as an
17 officer, director, member, manager, or partner, or as a shareholder
18 with a controlling interest, of an entity that holds a certificate
19 of authority issued under this chapter unless the commissioner
20 determines, for good cause shown, that it is in the public interest
21 to permit the individual to act in that capacity.

22 Sec. 4151.211. RESTRICTIONS ON ACQUISITION OF OWNERSHIP
23 INTEREST. (a) A person may not acquire an ownership interest in an
24 entity that holds a certificate of authority under this chapter if
25 the person is, or after the acquisition would be, directly or
26 indirectly in control of the certificate holder, or otherwise
27 acquire control of or exercise any control over the certificate

1 holder, unless the person has filed with the department under oath:

2 (1) a biographical form for each person by whom or on
3 whose behalf the acquisition of control is to be effected;

4 (2) a statement certifying that no person who is
5 acquiring an ownership interest in or control of the certificate
6 holder has been the subject of a disciplinary action taken by a
7 financial or insurance regulator of this state, another state, or
8 the United States;

9 (3) a statement certifying that, immediately on the
10 change of control, the certificate holder will be able to satisfy
11 the requirements for the issuance of a certificate of authority;
12 and

13 (4) any additional information that the commissioner
14 by rule may prescribe as necessary or appropriate to the public
15 interest and the protection of the insurance consumers of this
16 state.

17 (b) The department may require a partnership, syndicate, or
18 other group that is required to file a statement under Subsection
19 (a) to provide the information required under that subsection for
20 each partner of the partnership, each member of the syndicate or
21 group, and each person who controls the partner or member. If the
22 partner, member, or person is a corporation or the person required
23 to file the statement under Subsection (a) is a corporation, the
24 department may require that the information required under that
25 subsection be provided regarding:

26 (1) the corporation;

27 (2) each individual who is an executive officer or

1 director of the corporation; and

2 (3) each person who is directly or indirectly the
3 beneficial owner of more than 10 percent of the outstanding voting
4 securities of the corporation.

5 (c) The department may disapprove an acquisition of control
6 if, after notice and opportunity for hearing, the commissioner
7 determines that:

8 (1) immediately on the change of control the
9 certificate holder would not be able to satisfy the requirements
10 for the certificate of authority;

11 (2) the competence, trustworthiness, experience, and
12 integrity of the persons who would control the operation of the
13 certificate holder are such that it would not be in the interest of
14 the insurance consumers of this state to permit the acquisition of
15 control; or

16 (3) the acquisition of control would violate this code
17 or another law of this state, another state, or the United States.

18 (d) Notwithstanding Subsection (c), a change in control is
19 considered approved if the commissioner has not proposed to deny
20 the requested change before the 61st day after the date on which the
21 department receives all information required by this section.

22 Sec. 4151.212. MAINTENANCE OF QUALIFICATIONS REQUIRED. The
23 department may, in the manner prescribed by Section 4151.056 and by
24 Subchapter G, revoke, suspend, or refuse to renew the certificate
25 of authority of a certificate holder who does not maintain the
26 qualifications necessary to obtain a certificate of authority
27 issued under this chapter.

1 SECTION 1.20. Chapter 4151, Insurance Code, is amended by
2 adding Subchapter F to read as follows:

3 SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

4 Sec. 4151.251. APPLICATION. (a) This subchapter applies
5 to the administration of workers' compensation insurance coverage
6 for:

7 (1) an insurer; and

8 (2) an employer that enters into an agreement with an
9 insurer for a large deductible policy under Section 2053.202(b).

10 (b) This subchapter does not apply to an employer that does
11 not elect to obtain workers' compensation insurance coverage under
12 Subchapter A, Chapter 406, Labor Code.

13 Sec. 4151.252. AGREEMENTS BETWEEN EMPLOYERS AND
14 ADMINISTRATORS. (a) An administrator may enter into an agreement
15 with an insurer for the adjustment or handling of workers'
16 compensation claims only with the insurer responsible for those
17 claims.

18 (b) Except as provided by Section 4151.117, an
19 administrator may accept compensation of any kind for the
20 adjustment or handling of workers' compensation claims only from
21 the insurer responsible for those claims.

22 Sec. 4151.253. LARGE DEDUCTIBLE POLICIES. (a) An employer
23 who enters into an agreement with an insurer under Section
24 2053.202(b) may not use an administrator to handle workers'
25 compensation claims unless the administrator has entered into a
26 written agreement with the insurer under Subchapter C under which
27 the insurer is responsible for:

- 1 (1) setting standards used in the handling of claims;
2 and
3 (2) arranging for payment of the administrative costs
4 incurred by the administrator.

5 (b) The commissioner shall adopt rules to implement
6 Subsection (a)(2), including rules prescribing requirements for
7 administrative cost payment arrangements.

8 SECTION 1.21. Chapter 4151, Insurance Code, is amended by
9 adding Subchapter G to read as follows:

10 SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

11 Sec. 4151.301. GROUNDS FOR DENIAL, SUSPENSION, OR
12 REVOCAION OF CERTIFICATE OF AUTHORITY. The department may deny an
13 application for a certificate of authority or discipline the holder
14 of a certificate of authority under this subchapter if the
15 department determines that the applicant or holder, individually,
16 or through an officer, director, or shareholder:

17 (1) has wilfully violated an insurance law of this
18 state;

19 (2) has intentionally made a material misstatement in
20 the application for a certificate of authority;

21 (3) has obtained or attempted to obtain a certificate
22 of authority by fraud or misrepresentation;

23 (4) has misappropriated, converted to the applicant's
24 or holder's own use, or illegally withheld money belonging to:

25 (A) an insurance carrier, as that term is
26 defined by Section 401.011, Labor Code;

27 (B) an insurer, as that term is defined by

1 Section 4001.003;

2 (C) a health maintenance organization; or

3 (D) an insured, enrollee, injured employee, or
4 beneficiary;

5 (5) has engaged in fraudulent or dishonest acts or
6 practices;

7 (6) has materially misrepresented the terms and
8 conditions of an insurance policy, certificate, evidence of
9 coverage, or contract;

10 (7) has been convicted of a felony;

11 (8) is in a financial condition, or is operating or
12 conducting business in a manner, that would render further
13 transaction of business in this state hazardous or injurious to
14 insured persons or the public;

15 (9) has failed to comply with any judgment rendered
16 against the applicant or holder before the 60th day after the date
17 on which the judgment becomes final;

18 (10) has wilfully violated a commissioner rule;

19 (11) has refused to be examined or to produce
20 accounts, records, and files for examination as required by this
21 chapter or commissioner rule;

22 (12) at any time fails to meet a qualification for
23 which issuance of the certificate of authority could have been
24 denied had the failure then existed and been known to the
25 commissioner;

26 (13) has had a certificate of authority, license, or
27 other authority issued by this state, another state, or the United

1 States suspended or revoked; or

2 (14) has failed to timely file the annual report
3 required by Section 4151.205.

4 Sec. 4151.302. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR
5 COMMISSIONER RULES. In addition to any other remedy available
6 under Chapter 82 for a violation of this code, another insurance law
7 of this state, or a commissioner rule, the department may:

8 (1) deny an application for a certificate of
9 authority;

10 (2) suspend or revoke a certificate of authority;

11 (3) place on probation a person whose certificate of
12 authority has been suspended;

13 (4) assess an administrative penalty; or

14 (5) reprimand a certificate of authority holder.

15 Sec. 4151.303. PROBATED SUSPENSION. If the suspension of a
16 certificate of authority is probated, the commissioner may require
17 the holder to:

18 (1) report regularly to the department on any matter
19 that is the basis of the probation; or

20 (2) limit the holder's practice to the areas
21 prescribed by the department.

22 Sec. 4151.304. HEARING. If the department proposes to deny
23 an application for a certificate of authority, or to suspend or
24 revoke a certificate of authority, the applicant or holder is
25 entitled to notice and a hearing conducted by the State Office of
26 Administrative Hearings as provided by Chapter 40.

27 Sec. 4151.305. APPLICATION FOR CERTIFICATE OF AUTHORITY

1 AFTER DENIAL OR REVOCATION. (a) A person, or officer, director, or
2 shareholder of a person, whose application has been denied or whose
3 certificate of authority has been revoked under this subchapter may
4 not apply for a certificate of authority before the fifth
5 anniversary of:

6 (1) the effective date of the denial or revocation; or

7 (2) the date of a final court order affirming the
8 denial or revocation if judicial review was sought.

9 (b) An application filed after the period required by
10 Subsection (a) may be denied by the commissioner if the applicant
11 fails to show good cause why the denial or revocation should not be
12 a bar to the issuance of a new certificate.

13 (c) Subsection (b) does not apply to an applicant whose
14 application was denied for failure by the applicant to submit a
15 properly completed application for a certificate of authority.

16 Sec. 4151.306. DISCIPLINARY PROCEEDING FOR CONDUCT
17 COMMITTED BEFORE SURRENDER OR FORFEITURE OF CERTIFICATE. (a) The
18 department may institute a disciplinary proceeding against a former
19 certificate holder, or officer, director, or shareholder of a
20 former certificate holder, for conduct committed before the
21 effective date of a voluntary surrender or automatic forfeiture of
22 the certificate of authority.

23 (b) In a proceeding under this section, the fact that the
24 certificate holder, or officer, director, or shareholder of a
25 certificate holder, has surrendered or forfeited the certificate
26 does not affect the former certificate holder's, or officer,
27 director, or shareholder of a former certificate holder's,

1 culpability for the conduct that is the subject of the proceeding.

2 Sec. 4151.307. EMERGENCY CERTIFICATE SUSPENSION. (a) The
3 commissioner may suspend the certificate of an administrator
4 without notice or hearing if the commissioner determines that:

5 (1) the administrator is insolvent or impaired;

6 (2) an order for receivership, conservatorship,
7 rehabilitation, or any other delinquency regarding the
8 administrator has been entered in any state; or

9 (3) the financial condition or business practices of
10 the administrator otherwise pose an imminent threat to the public
11 health, safety, or welfare of the residents of this state.

12 (b) On determining that grounds exist under Subsection (a)
13 to suspend the administrator's certificate of authority, the
14 commissioner may issue an order suspending the certificate. The
15 commissioner shall immediately serve notice of the suspension on
16 the holder.

17 (c) The notice required by Subsection (b) must:

18 (1) be personally served on the holder or be sent by
19 registered or certified mail, return receipt requested, to the
20 holder's last known address according to the department's records;

21 (2) state the grounds for the suspension; and

22 (3) inform the holder of the right to a hearing on the
23 suspension order.

24 (d) An administrator whose certificate of authority is
25 suspended under this section is entitled to request a hearing on the
26 suspension not later than the 30th day after the date of receipt of
27 notice of the suspension. Not later than the 10th day after the

1 date a hearing is requested, the commissioner shall issue a notice
2 of hearing.

3 (e) The hearing must be held not later than the 10th day
4 after the date notice of hearing is issued, unless the parties agree
5 to a later date.

6 (f) A hearing on a suspension order under this section is
7 subject to Chapter 2001, Government Code, and to Subchapter A,
8 Chapter 40. After the hearing, the administrative law judge shall
9 recommend to the commissioner whether to uphold, vacate, or modify
10 the suspension order.

11 (g) A suspension order issued under this section remains in
12 effect until further action is taken by the commissioner.

13 SECTION 1.22. Section 4151.207, Insurance Code, is
14 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
15 by this Act, renumbered as Section 4151.308, and amended to read as
16 follows:

17 Sec. 4151.308 [~~4151.207~~]. GENERAL ADMINISTRATIVE SANCTIONS.
18 An administrator or other person who violates this chapter is
19 subject to the sanctions provided by Chapter 82.

20 SECTION 1.23. Section 4151.208, Insurance Code, is
21 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
22 by this Act, renumbered as Section 4151.309, and amended to read as
23 follows:

24 Sec. 4151.309 [~~4151.208~~]. CRIMINAL PENALTY [~~OFFENSE~~]. (a)
25 An administrator commits an offense if the administrator knowingly
26 violates this chapter or a rule of the commissioner adopted under
27 this chapter.

1 (b) An offense under this section is a misdemeanor
2 punishable by a fine of not less than \$500 or more than \$5,000.

3 ARTICLE 2. CONFORMING AMENDMENTS--INSURANCE CODE

4 SECTION 2.01. Section 1305.004(a), Insurance Code, is
5 amended by adding Subdivision (1-a) to read as follows:

6 (1-a) "Administrator" has the meaning assigned by
7 Section 4151.001.

8 SECTION 2.02. Subchapter A, Chapter 1305, Insurance Code,
9 is amended by adding Section 1305.008 to read as follows:

10 Sec. 1305.008. ADMINISTRATOR CERTIFICATE OF AUTHORITY
11 REQUIRED. A person that performs the functions of an administrator
12 under Chapter 4151 must hold a certificate of authority issued
13 under that chapter to provide those functions under this chapter
14 for an insurance carrier.

15 SECTION 2.03. Sections 1305.1545(a) and (c), Insurance
16 Code, are amended to read as follows:

17 (a) An insurance carrier or [~~third-party~~] administrator may
18 not reimburse a doctor or other health care provider, an
19 institutional provider, or an organization of doctors and health
20 care providers on a discounted fee basis for services that are
21 provided to an injured employee unless:

22 (1) the carrier or [~~third-party~~] administrator has
23 contracted with either:

24 (A) the doctor or other health care provider,
25 institutional provider, or organization of doctors and health care
26 providers; or

27 (B) a network that has contracted with the doctor

1 or other health care provider, institutional provider, or
2 organization of doctors and health care providers; and

3 (2) the doctor or other health care provider,
4 institutional provider, or organization of doctors and health care
5 providers has agreed to the contract and has agreed to provide
6 health care services under the terms of the contract.

7 (c) An insurance carrier or [~~third-party~~] administrator who
8 violates this section:

9 (1) commits an unfair claim settlement practice in
10 violation of Subchapter A, Chapter 542, Insurance Code; and

11 (2) is subject to administrative penalties under
12 Chapters 82 and 84, Insurance Code.

13 SECTION 2.04. Section 4101.001(a), Insurance Code, is
14 amended to read as follows:

15 (a) In this chapter, "adjuster" means an individual who:

16 (1) investigates or adjusts losses on behalf of an
17 insurer as an independent contractor or as an employee of:

18 (A) an adjustment bureau;

19 (B) an association;

20 (C) a general property and casualty agent;

21 (D) an independent contractor;

22 (E) an insurer; or

23 (F) a managing general agent; [~~or~~]

24 (2) supervises the handling of claims; or

25 (3) investigates, adjusts, supervises the handling
26 of, or settles workers' compensation claims, including claims
27 arising from services provided through a certified workers'

1 compensation health care network as authorized under Chapter 1305,
2 on behalf of an administrator, as defined by Chapter 4151, or on
3 behalf of an insurance carrier, as defined by Section 401.011,
4 Labor Code.

5 SECTION 2.05. Section 4101.002, Insurance Code, is amended
6 by adding Subsection (c) to read as follows:

7 (c) For purposes of Subsection (a)(6), claims arising under
8 workers' compensation insurance policies, including claims
9 relating to services provided through a certified workers'
10 compensation health care network authorized under Chapter 1305, do
11 not constitute claims arising under life, accident, or health
12 insurance policies.

13 ARTICLE 3. CONFORMING AMENDMENTS--LABOR CODE

14 SECTION 3.01. Section 406.010(b), Labor Code, is amended to
15 read as follows:

16 (b) Each insurance carrier shall designate persons to
17 provide claims service in sufficient numbers and at appropriate
18 locations to reasonably service policies written by the carrier.
19 If an insurance carrier uses the services of a person required to
20 hold a certificate of authority under Chapter 4151, Insurance Code,
21 the carrier must comply with the requirements of that chapter.

22 SECTION 3.02. Section 407.001(5), Labor Code, is amended to
23 read as follows:

24 (5) "Qualified claims servicing contractor" means a
25 person who provides claims service for a certified self-insurer,
26 who is a separate business entity from the affected certified
27 self-insurer, and who holds a certificate of authority under

1 Chapter 4151 ~~[is:~~

2 ~~[(A) an insurance company authorized by the Texas~~
3 ~~Department of Insurance to write workers' compensation insurance,~~

4 ~~[(B) a subsidiary of an insurance company that~~
5 ~~provides claims service under contract; or~~

6 ~~[(C) a third-party administrator that has on its~~
7 ~~staff an individual licensed under Chapter 4101, Insurance Code].~~

8 SECTION 3.03. Section 407.061(c), Labor Code, is amended to
9 read as follows:

10 (c) The applicant must present a plan for claims
11 administration that:

12 (1) is acceptable to the commissioner;

13 (2) ~~[and that]~~ designates a qualified claims servicing
14 contractor; and

15 (3) complies with Chapter 4151, Insurance Code.

16 SECTION 3.04. Section 407A.001(a), Labor Code, is amended
17 by adding Subdivision (5-a) and amending Subdivision (8) to read as
18 follows:

19 (5-a) "Managing company" means an individual,
20 partnership, or corporation engaged by the board of trustees of a
21 group to implement the policies established by the board of
22 trustees and to provide day-to-day management of the group.

23 (8) "Service company" means a person that provides
24 services to the group other than services provided by the managing
25 company ~~[administrator]~~, including:

26 (A) claims adjustment;

27 (B) safety engineering;

1 (C) compilation of statistics and the
2 preparation of premium, loss, and tax reports;

3 (D) preparation of other required self-insurance
4 reports;

5 (E) development of members' assessments and
6 fees; and

7 (F) administration of a claim fund.

8 SECTION 3.05. Subchapter A, Chapter 407A, Labor Code, is
9 amended by adding Section 407A.009 to read as follows:

10 Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR
11 CERTAIN SERVICE COMPANIES. A service company that adjusts or
12 settles claims for the group must hold a certificate of authority as
13 an administrator under Chapter 4151, Insurance Code.

14 SECTION 3.06. Section 407A.051(c), Labor Code, is amended
15 to read as follows:

16 (c) The application must be accompanied by:

17 (1) a nonrefundable \$1,000 filing fee;

18 (2) proof of compliance with the financial
19 requirements under Section 407A.053;

20 (3) proof of compliance with the excess insurance
21 requirements under Section 407A.054;

22 (4) a copy of the articles of association or
23 declaration of trust of the group, if any;

24 (5) a copy of any agreements entered into with a
25 managing company [~~an administrator~~] or a service company;

26 (6) a copy of the bylaws of the proposed group;

27 (7) a copy of the agreement between the group and each

1 employer who is a member of the group that:

2 (A) secures the payment of workers' compensation
3 benefits; and

4 (B) includes provisions for payment of
5 assessments as provided by Section 407A.355;

6 (8) designation of the initial board of trustees and
7 managing company [~~administrator~~] of the group;

8 (9) the address in this state where the books and
9 records of the group will be maintained at all times;

10 (10) a pro forma financial statement, in a form
11 acceptable to the commissioner, that shows the financial ability of
12 the group to pay the workers' compensation obligations of the
13 employers who are members of the group;

14 (11) proof of one of the following:

15 (A) payment to the group, or a bona fide promise
16 to pay on approval of the group, by each employer who is a member of
17 the group of not less than 25 percent of that member's first year
18 estimated modified schedule rating premium on a date prescribed by
19 the commissioner, which shall be considered part of the first year
20 premium payment of each member; or

21 (B) if the group is formed from a trust existing
22 on September 1, 2003, that the assets of the trust are sufficient to
23 cover the workers' compensation obligations of the trust;

24 (12) a \$250,000 fidelity bond for the managing company
25 [~~administrator~~] in the form prescribed by the commissioner;

26 (13) a \$250,000 fidelity bond for the service company
27 in the form prescribed by the commissioner; and

1 (14) an indemnity agreement that meets the
2 requirements of Section 407A.056.

3 SECTION 3.07. Subchapter B, Chapter 407A, Labor Code, is
4 amended by adding Section 407A.0511 to read as follows:

5 Sec. 407A.0511. RESTRICTIONS ON PERFORMANCE OF CERTAIN
6 FUNCTIONS BY MANAGING COMPANY. A managing company may not perform
7 the functions of an administrator under Chapter 4151, Insurance
8 Code.

9 SECTION 3.08. Section 407A.151(b), Labor Code, is amended
10 to read as follows:

11 (b) A managing company [~~An administrator~~] or service
12 company of the group, or owner, officer, employee of, or any other
13 person affiliated with the managing company [~~administrator~~] or
14 service company, may not serve on the board of trustees.

15 SECTION 3.09. Section 407A.152, Labor Code, is amended to
16 read as follows:

17 Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board
18 of trustees shall:

19 (1) maintain minutes of its meetings and make the
20 minutes available to the commissioner;

21 (2) designate a managing company [~~an administrator~~]
22 and delineate in the written minutes of its meetings the areas of
23 authority it delegates to the managing company [~~administrator~~]; and

24 (3) retain an independent certified public accountant
25 to audit the financial statements required by Section 407A.251.

26 SECTION 3.10. Section 407A.201(a), Labor Code, is amended
27 to read as follows:

1 (a) An employer who joins an approved workers' compensation
2 self-insurance group shall:

3 (1) submit an application for membership to the board
4 of trustees or its managing company [~~administrator~~]; and

5 (2) enter into the indemnity agreement as required by
6 Section 407A.056.

7 SECTION 3.11. Section 407A.352, Labor Code, is amended to
8 read as follows:

9 Sec. 407A.352. AUDITS. Each member of a group shall be
10 audited annually by the managing company [~~administrator~~] or by an
11 auditor acceptable to the commissioner to verify proper
12 classifications, experience rating, payroll, and rates. The group
13 shall maintain a record of the audit as part of the group's records
14 that are available to the commissioner during an examination
15 conducted under Section 407A.252. The audit shall be performed at
16 the expense of the group.

17 SECTION 3.12. Section 407A.404(b), Labor Code, is amended
18 to read as follows:

19 (b) In addition, the commissioner may revoke a group's
20 certificate of approval if, after notice and an opportunity for
21 hearing, the commissioner determines that:

22 (1) a certificate of approval issued to the group was
23 obtained by fraud;

24 (2) there was a material misrepresentation in the
25 application for the certificate of approval; or

26 (3) the group or its managing company [~~administrator~~]
27 has misappropriated, converted, illegally withheld, or refused to

1 pay on proper demand any money that belongs to a member, an employee
2 of a member, or a person otherwise entitled to the money and that
3 has been entrusted to the group or its managing company
4 [~~administrator~~] in their fiduciary capacities.

5 SECTION 3.13. Section 407A.001(a)(1), Labor Code, is
6 repealed.

7 ARTICLE 4. TRANSITION; EFFECTIVE DATE

8 SECTION 4.01. A person is not required to hold a certificate
9 of authority under Chapter 4151, Insurance Code, as amended by this
10 Act, to comply with Section 1305.008, Insurance Code, as added by
11 this Act, before January 1, 2008.

12 SECTION 4.02. A service company that adjusts or settles
13 claims for a workers' compensation self-insurance group under
14 Chapter 407A, Labor Code, is not required to hold a certificate of
15 authority under Chapter 4151, Insurance Code, as amended by this
16 Act, to comply with Section 407A.009, Labor Code, as added by this
17 Act, before January 1, 2008.

18 SECTION 4.03. The Texas Department of Insurance shall issue
19 certificates of authority to applicants under Section 4151.052,
20 Insurance Code, as amended by this Act, beginning September 1,
21 2007.

22 SECTION 4.04. (a) Except as provided by Subsections (b) and
23 (c) of this section, this Act takes effect September 1, 2007.

24 (b) A person is not required to hold a certificate of
25 authority under Chapter 4151, Insurance Code, as amended by this
26 Act, to administer workers' compensation benefits for an insurer
27 before January 1, 2008.

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