

By: Solomons

H.B. No. 472

A BILL TO BE ENTITLED

1 AN ACT

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

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

7 ARTICLE 1. THIRD-PARTY ADMINISTRATORS

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

11 (1) "Administrator" means a person who, directly or
12 indirectly, underwrites or [~~in connection with annuities or life,~~
13 ~~health, and accident benefits, including pharmacy benefits,~~]
14 collects premiums or contributions from or adjusts or settles
15 claims for residents of this state in connection with annuities,
16 life, health, and accident benefits, including pharmacy benefits,
17 or workers' compensation benefits. The term does not include a
18 person described by Section 4151.002.

19 (2) "Insurer" means a person who engages in the
20 business of life, health, or accident insurance or workers'
21 compensation insurance under the law of this state. The term
22 includes a workers' compensation self-insurer.

23 (6) "Workers' compensation insurance coverage" means
24 coverage subject to Subtitle E, Title 10.

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

3 SECTION 1.02. Section 4151.002, Insurance Code, is amended
4 to read as follows:

5 Sec. 4151.002. EXEMPTIONS. A person is not an
6 administrator if the person is:

7 (1) an employer administering an employee benefit plan
8 or the plan of an affiliated employer under common management and
9 control [~~acting on behalf of its employees or the employees of one~~
10 ~~or more subsidiaries or affiliated corporations of the employer~~];

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

13 (3) an insurer or a group hospital service corporation
14 subject to Chapter 842 acting with respect to a policy lawfully
15 issued and delivered by the insurer or corporation in and under the
16 law of a state in which the insurer or corporation was authorized to
17 engage in the business of insurance;

18 (4) a health maintenance organization that is
19 authorized to operate in this state under Chapter 843 with respect
20 to any activity that is specifically regulated under that chapter,
21 Chapter 1271, 1272, or 1367, Subchapter A, Chapter 1452, or
22 Subchapter B, Chapter 1507;

23 (5) an agent licensed under Subchapter B, Chapter
24 4051, Subchapter B, Chapter 4053, or Subchapter B, Chapter 4054,
25 who receives commissions as an agent and is acting:

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

1 and

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

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

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

10 (8) a trust that is exempt from taxation under Section
11 501(a), Internal Revenue Code of 1986, or a trustee or employee
12 acting under the trust;

13 (9) a custodian or a custodian's agent or employee who
14 is acting under a custodian account that complies with Section
15 401(f), Internal Revenue Code of 1986;

16 (10) a bank, credit union, savings and loan
17 association, or other financial institution that is subject to
18 supervision or examination under federal or state law by a federal
19 or state regulatory authority, if the institution is performing
20 only those functions for which the institution holds a license
21 under federal or state law;

22 (11) a company that advances and collects a premium or
23 charge from its credit card holders on their authorization, if the
24 company does not adjust or settle claims and acts only in the
25 company's debtor-creditor relationship with its credit card
26 holders;

27 (12) a person who adjusts or settles claims in the

1 normal course of the person's practice or employment as a licensed
2 attorney and who does not collect any premium or charge in
3 connection with insurance coverage [~~annuities or with life, health,~~
4 ~~or accident benefits, including pharmacy benefits~~];

5 (13) an adjuster licensed by the department who is
6 engaged in the performance of the person's powers and duties as an
7 adjuster in the scope of the person's license and who does not:

8 (A) receive or manage funds from employers or
9 other persons whose claims are being adjusted;

10 (B) manage or control funds of the insurer
11 providing coverage; or

12 (C) adjust or settle a workers' compensation
13 claim;

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

19 (15) an attorney in fact for a Lloyd's plan operating
20 under Chapter 941 or for a reciprocal or interinsurance exchange
21 operating under Chapter 942 who is acting in the capacity of
22 attorney in fact under the applicable chapter;

23 (16) a joint fund, risk management pool, or
24 self-insurance pool composed of political subdivisions of this
25 state that participate in a fund or pool through interlocal
26 agreements, any nonprofit administrative agency or governing body
27 or other nonprofit entity that acts solely on behalf of a fund,

1 pool, agency, or body, or any other fund, pool, agency, or body
2 established under or for the purpose of implementing an interlocal
3 governmental agreement;

4 (17) a self-insured political subdivision;

5 (18) a plan under which insurance benefits are
6 provided exclusively by an insurer authorized to engage in the
7 business of insurance in this state and the administrator of which
8 is:

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

11 (B) a trustee of the organizing or sponsoring
12 trust; [~~or~~]

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

22 (A) collects premiums or contributions, if the
23 parent or subsidiary insurer:

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

26 (ii) causes all collected premiums to be
27 deposited directly in a depository account of the particular

1 affiliated insurer; or

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

7 (20) a workers' compensation self-insurer
8 administering the self-insurer's workers' compensation benefit
9 obligations.

10 SECTION 1.03. The heading to Subchapter B, Chapter 4151,
11 Insurance Code, is amended to read as follows:

12 SUBCHAPTER B. LICENSE [~~CERTIFICATE OF AUTHORITY~~]

13 SECTION 1.04. Section 4151.051, Insurance Code, is amended
14 to read as follows:

15 Sec. 4151.051. LICENSE [~~CERTIFICATE OF AUTHORITY~~]
16 REQUIRED. (a) An individual, corporation, organization, trust,
17 partnership, or other legal entity may not act as or hold itself out
18 as an administrator unless the entity is covered by and is engaging
19 in business under a license [~~certificate of authority~~] issued under
20 this chapter.

21 (b) An administrator is required to hold only one license
22 [~~certificate of authority~~] issued under this chapter.

23 SECTION 1.05. Section 4151.052, Insurance Code, is amended
24 to read as follows:

25 Sec. 4151.052. APPLICATION. (a) An application for a
26 license [~~certificate of authority~~] to engage in business as an
27 administrator must be in a form prescribed by the commissioner and

1 must include the following:

2 (1) a copy of each basic organizational document of
3 the applicant, including the articles of incorporation, bylaws,
4 articles of association, trade name certificate, and any other
5 similar document and a copy of any amendment to any of those
6 documents;

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

9 (3) if the applicant is not domiciled in this state, a
10 power of attorney executed by the applicant appointing the
11 commissioner, the commissioner's successors in office, or the
12 commissioner's appointed designee as the applicant's attorney in
13 this state on whom process may be served in any legal action or
14 proceeding based on a cause of action arising in this state against
15 the applicant;

16 (4) an audited financial statement of the applicant
17 covering the preceding three calendar years or any lesser period
18 that the applicant and any predecessors of the applicant have been
19 in existence, or if an audited financial statement is not
20 available, an unaudited financial statement as of a date not
21 earlier than the 120th day before the date the application is filed,
22 accompanied by an affidavit or certification of the applicant that:

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

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

1 (5) any other information the commissioner reasonably
2 requires.

3 (b) An applicant for a license under this chapter shall
4 immediately notify the commissioner of any material change in the
5 applicant's ownership or control, and of any other fact or
6 circumstance affecting the applicant's qualifications for a
7 license in this state.

8 SECTION 1.06. Section 4151.053, Insurance Code, is amended
9 to read as follows:

10 Sec. 4151.053. APPROVAL OF APPLICATION. (a) The
11 commissioner shall approve an application for a license
12 [~~certificate of authority~~] to engage in business in this state as an
13 administrator if the commissioner is satisfied that:

14 (1) granting the application would not violate a
15 federal or state law;

16 (2) the financial condition of the applicant or of
17 each person who would operate or control the applicant is such that
18 granting a license [~~certificate of authority~~] would not be adverse
19 to the public interest;

20 (3) the applicant has not attempted to obtain the
21 license [~~certificate of authority~~] through fraud or bad faith;

22 (4) the applicant has complied with this chapter and
23 rules adopted by the commissioner under this chapter; and

24 (5) the name under which the applicant will engage in
25 business in this state is not so similar to that of another
26 administrator or insurer that it is likely to mislead the public.

27 (b) The commissioner may deny an application for a license

1 if the commissioner determines that the applicant, or any
2 individual responsible for the conduct of affairs of the applicant,
3 is not competent, trustworthy, or financially responsible.

4 SECTION 1.07. Section 4151.054(a), Insurance Code, is
5 amended to read as follows:

6 (a) If the commissioner is unable to approve an application
7 for a license [~~certificate of authority~~], the commissioner shall:

8 (1) provide the applicant with written notice
9 specifying each deficiency in the application; and

10 (2) offer the applicant the opportunity for a hearing
11 to address each reason and circumstance for possible denial of the
12 application.

13 SECTION 1.08. Section 4151.055(a), Insurance Code, is
14 amended to read as follows:

15 (a) If the commissioner approves an application for a
16 license [~~certificate of authority~~], before the commissioner issues
17 the license [~~certificate of authority~~], the applicant must:

18 (1) obtain and maintain a fidelity bond that complies
19 with this section; and

20 (2) submit to the commissioner proof that the
21 applicant has obtained the fidelity bond.

22 SECTION 1.09. Section 4151.056, Insurance Code, is amended
23 to read as follows:

24 Sec. 4151.056. DURATION OF LICENSE [~~CERTIFICATE OF~~
25 ~~AUTHORITY~~]. (a) A license [~~certificate of authority~~] issued to an
26 administrator under this chapter is effective until it is
27 suspended, canceled, or revoked. The issuance, denial, suspension,

1 cancellation, or revocation of a license [~~certificate of authority~~]
2 to act as an administrator is subject to:

3 (1) Subchapter [~~Subchapters~~] B [~~and C~~], Chapter 4005;
4 and

5 (2) Chapter 82.

6 (b) Subchapter C, Chapter 4005, does not apply to a license
7 issued under this chapter.

8 SECTION 1.10. The heading to Subchapter C, Chapter 4151,
9 Insurance Code, is amended to read as follows:

10 SUBCHAPTER C. POWERS AND DUTIES OF THIRD-PARTY ADMINISTRATORS AND
11 INSURERS

12 SECTION 1.11. Section 4151.101, Insurance Code, is amended
13 to read as follows:

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

17 (b) Notwithstanding any other provision of this chapter,
18 this section and Sections 4151.102 and 4151.103 apply to an
19 agreement entered into by an insurer that delegates administrative
20 functions to a person exempt from licensure under this chapter
21 under Section 4151.002.

22 SECTION 1.12. Section 4151.102, Insurance Code, is amended
23 by adding Subsection (a-1) to read as follows:

24 (a-1) The written agreement must include a statement of the
25 duties that the administrator is expected to perform on behalf of
26 the insurer, and the lines, classes, or types of insurance that the
27 administrator is authorized to administer. The agreement must

1 include, as applicable, provisions regarding underwriting, claims
2 handling, and other standards relating to the business underwritten
3 by the insurer.

4 SECTION 1.13. Section 4151.103(a), Insurance Code, is
5 amended to read as follows:

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

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

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

12 SECTION 1.14. Section 4151.104, Insurance Code, is amended
13 to read as follows:

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

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

23 (b) An administrator who fails to provide notice as required
24 by Subsection (a) is subject to an administrative penalty in the
25 manner provided by Chapter 84.

26 SECTION 1.15. Subchapter C, Chapter 4151, Insurance Code,
27 is amended by adding Section 4151.1045 to read as follows:

1 Sec. 4151.1045. RESPONSIBILITIES OF INSURER; SEMIANNUAL
2 AUDIT. (a) If an insurer uses the services of an administrator,
3 the insurer is responsible for determining the benefits, premium
4 rates, reimbursement procedures, underwriting criteria, and claims
5 payment procedures applicable to the coverage and for securing
6 reinsurance, if any. The insurer shall provide a copy of the
7 written requirements relating to those matters to the
8 administrator. The responsibilities of the administrator as to any
9 of those matters must be set forth in the written agreement between
10 the administrator and the insurer.

11 (b) An insurer shall ensure competent administration of its
12 programs.

13 (c) If an administrator administers benefits for more than
14 100 certificate holders, subscribers, claimants, or policyholders
15 on behalf of an insurer, the insurer shall, at least semiannually,
16 conduct a review of the operations of the administrator. At least
17 one of the reviews must include an on-site audit of the operations
18 of the administrator.

19 (d) This section applies to an insurer that delegates
20 administrative functions to a person exempt from licensure under
21 this chapter under Section 4151.002.

22 SECTION 1.16. Section 4151.113(b), Insurance Code, is
23 amended to read as follows:

24 (b) A trade secret, including the identity and address of a
25 policyholder, ~~or~~ certificate holder, or subscriber is
26 confidential, except the commissioner may use that information in a
27 proceeding against the administrator.

1 SECTION 1.17. The heading to Subchapter E, Chapter 4151,
2 Insurance Code, is amended to read as follows:

3 SUBCHAPTER E. DEPARTMENT REGULATION OF
4 THIRD-PARTY ADMINISTRATORS

5 SECTION 1.18. Section 4151.205, Insurance Code, is amended
6 by amending Subsection (a) and adding Subsections (c) and (d) to
7 read as follows:

8 (a) An administrator shall annually, not later than March 1,
9 file with the commissioner a report on a form prescribed by the
10 commissioner. The report must contain any information required by
11 the commissioner and must be verified by at least two officers of
12 the administrator.

13 (c) The annual report must include an audited financial
14 statement performed by an independent certified public accountant.
15 An audited financial statement prepared on a consolidated basis
16 must include a columnar consolidating or combining worksheet that
17 shall be filed with the annual report and must comply with the
18 following:

19 (1) amounts shown on the consolidated audited
20 financial report must be shown on the worksheet;

21 (2) amounts for each entity must be stated separately;
22 and

23 (3) explanations of consolidating and eliminating
24 entries must be included.

25 (d) The annual report must include the complete name and
26 address of each insurer with which the administrator had an
27 agreement during the preceding fiscal year.

1 SECTION 1.19. Section 4151.206(a), Insurance Code, is
2 amended to read as follows:

3 (a) The commissioner shall collect and an applicant or
4 administrator shall pay to the commissioner fees in an amount to be
5 determined by the commissioner as follows:

6 (1) a filing fee not to exceed \$1,000 for processing an
7 original application for a license [~~certificate of authority~~] for
8 an administrator;

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

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

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

15 SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

16 Sec. 4151.251. APPLICATION. (a) This subchapter applies
17 to the administration of workers' compensation insurance coverage
18 for:

19 (1) a workers' compensation self-insurer; and

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

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

25 Sec. 4151.252. AGREEMENT WITH AFFILIATED ADMINISTRATOR;
26 COMMISSIONER APPROVAL REQUIRED. An insurer that holds a
27 certificate of authority to engage in the business of workers'

1 compensation insurance in this state may not enter into an
2 agreement with an administrator, or permit an agent, including a
3 managing general agent, to enter into such an agreement on the
4 insurer's behalf, to adjust or handle claims for employees of the
5 administrator or of any other employer affiliated with the
6 administrator without the approval of the commissioner.

7 Sec. 4151.253. AGREEMENTS BETWEEN EMPLOYERS AND
8 ADMINISTRATORS. (a) An administrator may enter into an agreement
9 with an insurer for the adjustment or handling of workers'
10 compensation claims for residents of this state only with the
11 insurer responsible for those claims.

12 (b) An administrator may accept compensation of any kind for
13 the adjustment or handling of workers' compensation claims for
14 residents of this state only from the insurer responsible for those
15 claims.

16 (c) Notwithstanding Subsections (a) and (b), an employer
17 that is approved as a workers' compensation self-insurer in another
18 state, but that is not approved as a workers' compensation
19 self-insurer in this state, may, if in compliance with all
20 provisions of this chapter and subject to Subsection (d), agree
21 with its workers' compensation insurer in this state that the
22 workers' compensation insurer will use the same administrator in
23 this state for the adjustment and handling of workers' compensation
24 claims as the employer uses in the state in which it has been
25 approved as a self-insurer. The agreement may include coordination
26 of claims reports, premium payments, and loss reimbursements under
27 deductible insurance between this state and other states in which

1 the same administrator handles and adjusts workers' compensation
2 claims on behalf of the employer.

3 (d) An administrator described by Subsection (c) must hold a
4 license under this chapter.

5 Sec. 4151.254. LARGE DEDUCTIBLE POLICIES. An employer who
6 enters into an agreement with an insurer under Section 2053.202(b)
7 may not use an administrator to handle workers' compensation claims
8 unless the administrator has entered into a written agreement with
9 the insurer under Subchapter C under which the insurer is
10 responsible for:

11 (1) setting standards used in the handling of claims;
12 and

13 (2) paying the administrative costs incurred by the
14 administrator.

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

17 SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

18 Sec. 4151.301. GROUNDS FOR DENIAL, SUSPENSION, OR
19 REVOCAATION OF LICENSE. (a) The commissioner shall deny an
20 original or renewal license application or suspend or revoke a
21 license if the commissioner determines that the license applicant
22 or administrator:

23 (1) is in an unsound financial condition;

24 (2) is using methods or practices in the conduct of
25 business that would render further transaction of business in this
26 state hazardous or injurious to insured persons or the public; or

27 (3) has failed to pay any judgment rendered against it

1 in this state before the 60th day after the date the judgment
2 becomes final.

3 (b) The commissioner may deny an original or renewal license
4 application or suspend or revoke a license if the commissioner
5 determines that the license applicant or administrator:

6 (1) has violated a rule or order of the commissioner or
7 any provision of the insurance laws of this state;

8 (2) has refused to be examined or to produce its
9 accounts, records, and files for examination;

10 (3) has, without just cause:

11 (A) refused to pay proper claims or perform
12 services arising under its contracts; or

13 (B) caused covered individuals to accept less
14 than the amount due them or required covered individuals to employ
15 attorneys or bring suit against the administrator to secure full
16 payment or settlement of their claims;

17 (4) at any time fails to meet a qualification for which
18 issuance of the license could have been denied had the failure then
19 existed and been known to the commissioner;

20 (5) is subject to suspension or revocation of a
21 license or other authority issued by another state; or

22 (6) has failed to timely file its annual report as
23 required by Section 4151.205.

24 (c) The commissioner may deny an original or renewal license
25 application or suspend or revoke a license if the commissioner
26 determines that any individual responsible for the conduct of
27 affairs of the applicant or administrator has refused to give

1 information with respect to the applicant's or administrator's
2 affairs or has refused to perform any other legal obligation as to
3 an examination when required by the commissioner, including an
4 individual who is:

5 (1) a member of the board of directors, board of
6 trustees, executive committee, or other governing board or
7 committee of the applicant or administrator;

8 (2) if the applicant or administrator is a
9 corporation, a principal officer;

10 (3) if the applicant or administrator is a
11 partnership, association, or limited liability company, a partner
12 or member;

13 (4) a shareholder or member holding, directly or
14 indirectly, 10 percent or more of the voting stock, voting
15 securities, or voting interest of the applicant or administrator;
16 or

17 (5) any other individual who exercises control or
18 influence over the affairs of the applicant or administrator.

19 (d) The commissioner may deny an original or renewal license
20 application or suspend or revoke a license if the commissioner
21 determines that an individual described by Subsection (c):

22 (1) has been convicted of a felony; or

23 (2) has been charged with a felony and placed on
24 community supervision regardless of whether the court defers
25 further proceedings without entering an adjudication of guilt.

26 (e) If the commissioner determines that one or more grounds
27 exist for the suspension or revocation of a license issued under

1 this chapter, the commissioner may impose an administrative penalty
2 on the administrator in lieu of suspension or revocation. An
3 administrative penalty imposed under this subsection is subject to
4 Chapter 84.

5 Sec. 4151.302. EMERGENCY LICENSE SUSPENSION. (a) The
6 commissioner may suspend the license of an administrator without
7 notice or hearing if the commissioner determines that:

8 (1) the administrator is insolvent or impaired;

9 (2) a proceeding for receivership, conservatorship,
10 rehabilitation, or any other delinquency proceeding regarding the
11 administrator has been commenced in any state; or

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

15 (b) On determining that grounds exist under Subsection (a)
16 to suspend the license, the commissioner may issue an order
17 suspending the license. The commissioner shall immediately serve
18 notice of the suspension on the license holder.

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

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

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

25 (3) inform the license holder of the right to a hearing
26 on the suspension order.

27 (d) A license holder whose license is suspended under this

1 section is entitled to request a hearing on the suspension not later
2 than the 30th day after the date of receipt of notice of the
3 suspension. Not later than the fifth day after the date a hearing
4 is requested, the commissioner shall issue a notice of hearing.

5 (e) The hearing must be held not later than the fifth day
6 after the date notice of hearing is issued, unless the parties agree
7 to a later date.

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

13 (g) A suspension order issued under this section remains in
14 effect until further action is taken by the commissioner. If the
15 administrative law judge's recommendation under Subsection (f) is
16 to vacate the order, the commissioner shall determine whether to
17 vacate the order not later than the second day after the date of the
18 recommendation.

19 SECTION 1.22. Section 4151.207, Insurance Code, is
20 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
21 by this Act, renumbered as Section 4151.303, and amended to read as
22 follows:

23 Sec. 4151.303 [~~4151.207~~]. GENERAL ADMINISTRATIVE SANCTIONS.
24 An administrator or other person who violates this chapter is
25 subject to the sanctions provided by Chapter 82.

26 SECTION 1.23. Section 4151.208, Insurance Code, is
27 transferred to Subchapter G, Chapter 4151, Insurance Code, as added

1 by this Act, renumbered as Section 4151.304, and amended to read as
2 follows:

3 Sec. 4151.304 [~~4151.208~~]. CRIMINAL PENALTY [~~OFFENSE~~]. (a)
4 An administrator commits an offense if the administrator knowingly
5 violates this chapter or a rule of the commissioner adopted under
6 this chapter.

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

9 ARTICLE 2. CONFORMING AMENDMENTS--INSURANCE CODE

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

12 (1-a) "Administrator" has the meaning assigned by
13 Section 4151.001.

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

16 Sec. 1305.008. LICENSED ADMINISTRATOR REQUIRED. A third
17 party that performs the functions of an administrator under Chapter
18 4151 must hold a license issued under that chapter to provide those
19 functions under this chapter for an insurance carrier.

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

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

27 (1) the carrier or [~~third-party~~] administrator has

1 contracted with either:

2 (A) the doctor or other health care provider,
3 institutional provider, or organization of doctors and health care
4 providers; or

5 (B) a network that has contracted with the doctor
6 or other health care provider, institutional provider, or
7 organization of doctors and health care providers; and

8 (2) the doctor or other health care provider,
9 institutional provider, or organization of doctors and health care
10 providers has agreed to the contract and has agreed to provide
11 health care services under the terms of the contract.

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

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

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

18 SECTION 2.04. Section 4101.002(a), Insurance Code, is
19 amended to read as follows:

20 (a) This chapter does not apply to:

21 (1) an attorney who:

22 (A) adjusts insurance losses periodically and
23 incidentally to the practice of law; and

24 (B) does not represent that the attorney is an
25 adjuster;

26 (2) a salaried employee of an insurer who is not
27 regularly engaged in the adjustment, investigation, or supervision

1 of insurance claims;

2 (3) a person employed only to furnish technical
3 assistance to a licensed adjuster, including:

- 4 (A) an attorney;
- 5 (B) an engineer;
- 6 (C) an estimator;
- 7 (D) a handwriting expert;
- 8 (E) a photographer; and
- 9 (F) a private detective;

10 (4) an agent or general agent of an authorized insurer
11 who processes an undisputed or uncontested loss for the insurer
12 under a policy issued by the agent or general agent;

13 (5) a person who performs clerical duties and does not
14 negotiate with parties to disputed or contested claims;

15 (6) a person who handles claims arising under life,
16 accident, and health insurance policies;

17 (7) a person:

18 (A) who is employed principally as:

- 19 (i) a right-of-way agent; or
- 20 (ii) a right-of-way and claims agent;

21 (B) whose primary responsibility is the
22 acquisition of easements, leases, permits, or other real property
23 rights; and

24 (C) who handles only claims arising out of
25 operations under those easements, leases, permits, or other
26 contracts or contractual obligations;

27 (8) an individual who is employed to investigate

1 suspected fraudulent insurance claims but who does not adjust
2 losses or determine claims payments; ~~[or]~~

3 (9) a public insurance adjuster licensed under Chapter
4 4102; or

5 (10) an individual who investigates or settles only
6 workers' compensation claims.

7 ARTICLE 3. CONFORMING AMENDMENTS--LABOR CODE

8 SECTION 3.01. Section 407.001(5), Labor Code, is amended to
9 read as follows:

10 (5) "Qualified claims servicing contractor" means a
11 person who provides claims service for a certified self-insurer,
12 who is a separate business entity from the affected certified
13 self-insurer, and who is:

14 (A) an insurance company authorized by the Texas
15 Department of Insurance to write workers' compensation insurance;

16 (B) a subsidiary of an insurance company that
17 provides claims service under contract; or

18 (C) an [a third-party] administrator [that has on
19 its staff an individual] licensed under Chapter 4151 [~~4101~~],
20 Insurance Code.

21 SECTION 3.02. Section 407A.001(a), Labor Code, is amended
22 by adding Subdivision (9) to read as follows:

23 (9) "Third-party administrator" means a person
24 licensed as an administrator under Chapter 4151, Insurance Code.

25 SECTION 3.03. Subchapter A, Chapter 407A, Labor Code, is
26 amended by adding Section 407A.009 to read as follows:

27 Sec. 407A.009. LICENSE REQUIRED FOR CERTAIN SERVICE

1 COMPANIES. A service company that adjusts or settles claims for the
2 group must hold a third-party administrator license issued under
3 Chapter 4151, Insurance Code.

4 ARTICLE 4. TRANSITION; EFFECTIVE DATE

5 SECTION 4.01. (a) A person who, on August 31, 2007, holds a
6 certificate of authority issued under Subchapter B, Chapter 4151,
7 Insurance Code, as that subchapter existed before amendment by this
8 Act, may continue to operate under the authority of that
9 certificate until January 1, 2008.

10 (b) Not later than January 1, 2008, the Texas Department of
11 Insurance shall issue a provisional license to a person described
12 by Subsection (a) of this section who is in compliance with the
13 requirements of Chapter 4151, Insurance Code, as that chapter
14 existed before amendment by this Act. The department shall notify a
15 provisional license holder of any requirements under Chapter 4151,
16 as amended by this Act, that the provisional license holder must
17 meet to be eligible for a permanent license.

18 (c) A person who holds a provisional license issued under
19 Subsection (b) of this section must comply with the requirements of
20 Chapter 4151, Insurance Code, as amended by this Act, not later than
21 June 1, 2008. A provisional license issued under this section
22 expires June 1, 2008.

23 SECTION 4.02. A person is not required to hold a license
24 under Chapter 4151, Insurance Code, as amended by this Act, to
25 comply with Section 1305.008, Insurance Code, as added by this Act,
26 before January 1, 2008.

27 SECTION 4.03. A service company that adjusts or settles

1 claims for a workers' compensation self-insurance group under
2 Chapter 407A, Labor Code, is not required to hold a license under
3 Chapter 4151, Insurance Code, as amended by this Act, to comply with
4 Section 407A.009, Labor Code, as added by this Act, before January
5 1, 2008.

6 SECTION 4.04. The Texas Department of Insurance shall issue
7 licenses to applicants under Section 4151.052, Insurance Code, as
8 amended by this Act, beginning September 1, 2007.

9 SECTION 4.05. (a) Except as provided by Subsections (b) and
10 (c) of this section, this Act takes effect September 1, 2007.

11 (b) A person is not required to hold a license under Chapter
12 4151, Insurance Code, as amended by this Act, to administer
13 workers' compensation benefits for an insurer before January 1,
14 2008.

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