

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 or a workers' compensation self-insurance group subject to
3 regulation under Chapter 407A, Labor Code.

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

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

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

13 SECTION 1.02. Section 4151.002, Insurance Code, is amended
14 to read as follows:

15 Sec. 4151.002. EXEMPTIONS. A person is not an
16 administrator if the person is:

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

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

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

1 engage in the business of insurance;

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

7 (5) an agent licensed under Subchapter B, Chapter
8 4051, Subchapter B, Chapter 4053, or Subchapter B, Chapter 4054,
9 who receives commissions as an agent and is acting:

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

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

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

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

20 (8) a trust that is exempt from taxation under Section
21 501(a), Internal Revenue Code of 1986, or a trustee or employee
22 acting under the trust;

23 (9) a custodian or a custodian's agent or employee who
24 is acting under a custodian account that complies with Section
25 401(f), Internal Revenue Code of 1986;

26 (10) a bank, credit union, savings and loan
27 association, or other financial institution that is subject to

1 supervision or examination under federal or state law by a federal
2 or state regulatory authority, if the institution is performing
3 only those functions for which the institution holds a license
4 under federal or state law;

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

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

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

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

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

1 attorney in fact under the applicable chapter;

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

10 (17) a self-insured political subdivision;

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

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

17 (B) a trustee of the organizing or sponsoring
18 trust; [~~or~~]

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

1 (A) collects premiums or contributions, if the
2 parent or subsidiary insurer:

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

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

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

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

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

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

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

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

27 (b) A processing agent is not an administrator for purposes

1 of this chapter if the processing agent is acting as an assignee of
2 a pharmacy and if:

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

5 (A) act as the provider of licensed pharmacy
6 services in lieu of the pharmacy; and

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

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

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

16 Sec. 4151.0051. REFERRAL TO ADJUSTER BY ADMINISTRATOR. (a)
17 An administrator may not knowingly refer a claim or loss for
18 adjustment in this state to an individual purporting to be or acting
19 as an adjuster unless the individual holds a license under Chapter
20 4101.

21 (b) Before first referring a claim or loss for adjustment,
22 an administrator must ascertain from the commissioner whether the
23 individual selected to perform the adjustment holds a license under
24 Chapter 4101. After receipt of information from the department
25 that the individual does hold an adjuster license, the
26 administrator may refer claims or losses to the individual for
27 adjustment until the administrator has actual knowledge or receives

1 information from the department that the individual no longer holds
2 an adjuster license under Chapter 4101. The department shall keep
3 an updated list of individuals who hold adjuster licenses.

4 SECTION 1.04. Section 4151.006, Insurance Code, is amended
5 to read as follows:

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

12 SECTION 1.05. Section 4151.052, Insurance Code, is amended
13 to read as follows:

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

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

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

25 (3) if the applicant is not domiciled in this state, a
26 power of attorney executed by the applicant appointing the
27 commissioner, the commissioner's successors in office, or the

1 commissioner's appointed designee as the applicant's attorney in
2 this state on whom process may be served in any legal action or
3 proceeding based on a cause of action arising in this state against
4 the applicant;

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

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

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

17 (5) any other information the commissioner reasonably
18 requires.

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

1 SECTION 1.06. Section 4151.056, Insurance Code, is amended
2 to read as follows:

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

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

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

13 SUBCHAPTER C. POWERS AND DUTIES OF [~~THIRD-PARTY~~] ADMINISTRATORS AND
14 INSURERS

15 SECTION 1.08. Section 4151.101, Insurance Code, is amended
16 to read as follows:

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

20 (b) The commissioner by rule may prescribe provisions that
21 must be included in the written agreement.

22 SECTION 1.09. 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 claims handling and
2 other standards relating to the business underwritten by the
3 insurer.

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

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

- 10 (1) during the term of the agreement; and
11 (2) until the fifth anniversary of the date on which
12 the agreement expires.

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

15 SECTION 1.11. Section 4151.104, Insurance Code, is amended
16 to read as follows:

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

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

26 (b) An administrator administering workers' compensation
27 claims may satisfy the requirements of Subsection (a) by including

1 the notice as part of, or in conjunction with, the notice required
2 under Section 406.005(c), Labor Code.

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

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

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

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

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

1 relating to those matters to the administrator. The
2 responsibilities of the administrator as to any of those matters
3 must be set forth in the written agreement between the
4 administrator and the insurer.

5 (b) An insurer shall ensure competent administration of its
6 programs.

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

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

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

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

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

25 SECTION 1.15. Section 4151.117, Insurance Code, is amended
26 to read as follows:

27 Sec. 4151.117. COMPENSATION OF ADMINISTRATOR. (a) An

1 administrator's compensation may be determined:

2 (1) as a percentage of the premiums or charges the
3 administrator collects or the amount of claims the administrator
4 pays or processes; or

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

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

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

16 SUBCHAPTER E. DEPARTMENT REGULATION OF [~~THIRD-PARTY~~]

17 ADMINISTRATORS

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

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

26 (c) Except as provided by Subsection (f), the annual report
27 must include an audited financial statement performed by an

1 independent certified public accountant. An audited financial
2 statement prepared on a consolidated basis must include a columnar
3 consolidating or combining worksheet that shall be filed with the
4 annual report and must comply with the following:

5 (1) amounts shown on the consolidated audited
6 financial report must be shown on the worksheet;

7 (2) amounts for each entity must be stated separately;
8 and

9 (3) explanations of consolidating and eliminating
10 entries must be included.

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

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

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

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

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

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

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

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

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

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

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

1 indirectly in control of the certificate holder, or otherwise
2 acquire control of or exercise any control over the certificate
3 holder, unless the person has filed with the department under oath:

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

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

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

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

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

1 (1) the corporation;

2 (2) each individual who is an executive officer or
3 director of the corporation; and

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

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

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

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

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

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

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

1 qualifications necessary to obtain a certificate of authority
2 issued under this chapter.

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

5 SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

6 Sec. 4151.251. DEFINITION. For purposes of this subchapter
7 only, "insurance carrier" means:

8 (1) an insurance company; or

9 (2) a certified self-insurer for workers' compensation
10 insurance, other than a certified self-insurance group under
11 Chapter 407A, Labor Code, or a governmental entity that
12 self-insures.

13 Sec. 4151.252. APPLICATION. (a) This subchapter applies
14 to the administration of workers' compensation insurance coverage.

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

18 Sec. 4151.253. AGREEMENTS BETWEEN ADMINISTRATORS AND
19 CARRIERS. (a) An administrator shall enter into a contract in
20 connection with workers' compensation benefits for collecting
21 premium or contributions, adjusting claims, or settling claims with
22 the insurance carrier responsible for those claims, including the
23 insurance carrier responsible for claims arising under policies
24 authorized under Section 2053.202(b). A contract required by this
25 subsection may be in the form of a master services agreement.

26 (b) A contract required by Subsection (a) must provide that:

27 (1) the contract does not limit in any way the

1 insurance carrier's authority or responsibility, including
2 financial responsibility, to comply with each statutory or
3 regulatory requirement; and

4 (2) the administrator shall comply with each statutory
5 or regulatory requirement relating to a function assumed by or
6 carried out by the administrator.

7 Sec. 4151.254. AGREEMENTS BETWEEN ADMINISTRATORS AND
8 EMPLOYERS. (a) In addition to the contract required by Section
9 4151.253, an administrator may also enter into a contract with an
10 employer in connection with workers' compensation benefits for
11 collecting premium or contributions, adjusting claims, or settling
12 claims, including an employer purchasing a policy authorized under
13 Section 2053.202(b).

14 (b) A contract entered into under Subsection (a) must
15 provide that:

16 (1) the contract does not limit or modify in any way:

17 (A) the insurance carrier's authority or
18 responsibility, including financial responsibility, to comply with
19 each statutory or regulatory requirement; and

20 (B) the provisions of the contract entered into
21 between the administrator and the insurance carrier under Section
22 4151.253; and

23 (2) the administrator shall comply with each statutory
24 or regulatory requirement relating to a function assumed by or
25 carried out by the administrator.

26 Sec. 4151.255. ADMINISTRATOR COMPENSATION. Except as
27 provided by Section 4151.117, an administrator may accept

1 compensation of any kind for the performance of administrative
2 services in connection with workers' compensation claims from:

3 (1) an insurance carrier responsible for those claims;

4 (2) an employer with whom the administrator has
5 entered into a contract; or

6 (3) both the insurance carrier and the employer.

7 Sec. 4151.256. LARGE DEDUCTIBLE POLICIES. An employer who
8 enters into a contract with an insurance carrier under Section
9 2053.202(b) may not use or contract with an administrator to
10 perform administrative services in connection with workers'
11 compensation benefits unless the administrator has entered into a
12 written agreement with the insurance carrier that:

13 (1) complies with all the provisions of this chapter;

14 and

15 (2) provides that the insurance carrier is responsible

16 for:

17 (A) setting standards used in the handling of
18 claims; and

19 (B) arranging for the payment of claims.

20 Sec. 4151.257. RULES. The commissioner shall adopt rules
21 to implement the requirements of this subchapter, including rules
22 prescribing requirements for contracts and master services
23 agreements and requirements for the payment of claims. The rules
24 must provide for compliance with the requirements of this chapter
25 for any contract that takes effect or has an annual anniversary date
26 on or after January 1, 2008.

27 SECTION 1.21. Chapter 4151, Insurance Code, is amended by

1 adding Subchapter G to read as follows:

2 SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

3 Sec. 4151.301. GROUNDS FOR DENIAL, SUSPENSION, OR
4 REVOCAION OF CERTIFICATE OF AUTHORITY. The department may deny an
5 application for a certificate of authority or discipline the holder
6 of a certificate of authority under this subchapter if the
7 department determines that the applicant or holder, individually,
8 or through an officer, director, or shareholder:

9 (1) has wilfully violated an insurance law of this
10 state;

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

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

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

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

19 (B) an insurer, as that term is defined by
20 Section 4001.003;

21 (C) a health maintenance organization; or

22 (D) an insured, enrollee, injured employee, or
23 beneficiary;

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

26 (6) has materially misrepresented the terms and
27 conditions of an insurance policy, certificate, evidence of

1 coverage, or contract;

2 (7) has been convicted of a felony;

3 (8) is in a financial condition, or is operating or
4 conducting business in a manner, that would render further
5 transaction of business in this state hazardous or injurious to
6 insured persons or the public;

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

10 (10) has wilfully violated a commissioner rule;

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

14 (12) at any time fails to meet a qualification for
15 which issuance of the certificate of authority could have been
16 denied had the failure then existed and been known to the
17 commissioner;

18 (13) has had a certificate of authority, license, or
19 other authority issued by this state, another state, or the United
20 States suspended or revoked; or

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

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

27 (1) deny an application for a certificate of

1 authority;

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

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

5 (4) assess an administrative penalty; or

6 (5) reprimand a certificate of authority holder.

7 Sec. 4151.303. PROBATED SUSPENSION. If the suspension of a
8 certificate of authority is probated, the commissioner may require
9 the holder to:

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

12 (2) limit the holder's practice to the areas
13 prescribed by the department.

14 Sec. 4151.304. HEARING. If the department proposes to deny
15 an application for a certificate of authority, or to suspend or
16 revoke a certificate of authority, the applicant or holder is
17 entitled to notice and a hearing conducted by the State Office of
18 Administrative Hearings as provided by Chapter 40.

19 Sec. 4151.305. APPLICATION FOR CERTIFICATE OF AUTHORITY
20 AFTER DENIAL OR REVOCATION. (a) A person, or officer, director, or
21 shareholder of a person, whose application has been denied or whose
22 certificate of authority has been revoked under this subchapter may
23 not apply for a certificate of authority before the fifth
24 anniversary of:

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

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

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

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

8 Sec. 4151.306. DISCIPLINARY PROCEEDING FOR CONDUCT
9 COMMITTED BEFORE SURRENDER OR FORFEITURE OF CERTIFICATE. (a) The
10 department may institute a disciplinary proceeding against a former
11 certificate holder, or officer, director, or shareholder of a
12 former certificate holder, for conduct committed before the
13 effective date of a voluntary surrender or automatic forfeiture of
14 the certificate of authority.

15 (b) In a proceeding under this section, the fact that the
16 certificate holder, or officer, director, or shareholder of a
17 certificate holder, has surrendered or forfeited the certificate
18 does not affect the former certificate holder's, or officer,
19 director, or shareholder of a former certificate holder's,
20 culpability for the conduct that is the subject of the proceeding.

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

- 24 (1) the administrator is insolvent or impaired;
25 (2) an order for receivership, conservatorship,
26 rehabilitation, or any other delinquency regarding the
27 administrator has been entered in any state; or

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

4 (b) On determining that grounds exist under Subsection (a)
5 to suspend the administrator's certificate of authority, the
6 commissioner may issue an order suspending the certificate. The
7 commissioner shall immediately serve notice of the suspension on
8 the holder.

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

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

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

14 (3) inform the holder of the right to a hearing on the
15 suspension order.

16 (d) An administrator whose certificate of authority is
17 suspended under this section is entitled to request a hearing on the
18 suspension not later than the 30th day after the date of receipt of
19 notice of the suspension. Not later than the 10th day after the
20 date a hearing is requested, the commissioner shall issue a notice
21 of hearing.

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

25 (f) A hearing on a suspension order under this section is
26 subject to Chapter 2001, Government Code, and to Subchapter A,
27 Chapter 40. After the hearing, the administrative law judge shall

1 recommend to the commissioner whether to uphold, vacate, or modify
2 the suspension order.

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

5 SECTION 1.22. Section 4151.207, Insurance Code, is
6 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
7 by this Act, renumbered as Section 4151.308, and amended to read as
8 follows:

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

12 SECTION 1.23. Section 4151.208, Insurance Code, is
13 transferred to Subchapter G, Chapter 4151, Insurance Code, as added
14 by this Act, renumbered as Section 4151.309, and amended to read as
15 follows:

16 Sec. 4151.309 [~~4151.208~~]. CRIMINAL PENALTY [~~OFFENSE~~]. (a)
17 An administrator commits an offense if the administrator knowingly
18 violates this chapter or a rule of the commissioner adopted under
19 this chapter.

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

22 ARTICLE 2. CONFORMING AMENDMENTS--INSURANCE CODE

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

25 (1-a) "Administrator" has the meaning assigned by
26 Section 4151.001.

27 SECTION 2.02. Subchapter A, Chapter 1305, Insurance Code,

1 is amended by adding Section 1305.008 to read as follows:

2 Sec. 1305.008. ADMINISTRATOR CERTIFICATE OF AUTHORITY
3 REQUIRED. A person that performs the functions of an administrator
4 under Chapter 4151 must hold a certificate of authority issued
5 under that chapter to provide those functions under this chapter
6 for an insurance carrier.

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

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

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

16 (A) the doctor or other health care provider,
17 institutional provider, or organization of doctors and health care
18 providers; or

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

22 (2) the doctor or other health care provider,
23 institutional provider, or organization of doctors and health care
24 providers has agreed to the contract and has agreed to provide
25 health care services under the terms of the contract.

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

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

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

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

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

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

10 (A) an adjustment bureau;

11 (B) an association;

12 (C) a general property and casualty agent;

13 (D) an independent contractor;

14 (E) an insurer; or

15 (F) a managing general agent; ~~or~~

16 (2) supervises the handling of claims; or

17 (3) investigates, adjusts, supervises the handling
18 of, or settles workers' compensation claims, including claims
19 arising from services provided through a certified workers'
20 compensation health care network as authorized under Chapter 1305,
21 on behalf of an administrator, as defined by Chapter 4151, or on
22 behalf of an insurance carrier, as defined by Section 401.011,
23 Labor Code.

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

26 (c) For purposes of Subsection (a)(6), claims arising under
27 workers' compensation insurance policies, including claims

1 relating to services provided through a certified workers'
2 compensation health care network authorized under Chapter 1305, do
3 not constitute claims arising under life, accident, or health
4 insurance policies.

5 ARTICLE 3. CONFORMING AMENDMENTS--LABOR CODE

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

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

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

16 (5) "Qualified claims servicing contractor" means a
17 person who provides claims service for a certified self-insurer,
18 who is a separate business entity from the affected certified
19 self-insurer, and who holds a certificate of authority under
20 Chapter 4151 [~~is:~~

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

23 [~~(B) a subsidiary of an insurance company that~~
24 ~~provides claims service under contract, or~~

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

27 SECTION 3.03. Section 407.061(c), Labor Code, is amended to

1 read as follows:

2 (c) The applicant must present a plan for claims
3 administration that:

4 (1) is acceptable to the commissioner;

5 (2) [and that] designates a qualified claims servicing
6 contractor; and

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

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

11 (5-a) "Managing company" means an individual,
12 partnership, or corporation engaged by the board of trustees of a
13 group to implement the policies established by the board of
14 trustees and to provide day-to-day management of the group.

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

18 (A) claims adjustment;

19 (B) safety engineering;

20 (C) compilation of statistics and the
21 preparation of premium, loss, and tax reports;

22 (D) preparation of other required self-insurance
23 reports;

24 (E) development of members' assessments and
25 fees; and

26 (F) administration of a claim fund.

27 SECTION 3.05. Subchapter A, Chapter 407A, Labor Code, is

1 amended by adding Section 407A.009 to read as follows:

2 Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR
3 CERTAIN ADMINISTRATORS AND SERVICE COMPANIES. (a) An
4 administrator or service company under this chapter that performs
5 the acts of an administrator as defined in Chapter 4151, Insurance
6 Code, must hold a certificate of authority under that chapter.

7 (b) An entity is required to hold only one certificate of
8 authority under Chapter 4151, Insurance Code, if:

9 (1) the entity acts as an administrator and a service
10 company as defined in this chapter; and

11 (2) performs the acts of an administrator as that term
12 is defined in Chapter 4151, Insurance Code.

13 (c) Exemptions in Chapter 4151, Insurance Code, as provided
14 in Sections 4151.002(18), (19), and (20), apply to an administrator
15 or service company under this section.

16 ARTICLE 4. TRANSITION; EFFECTIVE DATE

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

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

27 SECTION 4.03. The Texas Department of Insurance shall issue

1 certificates of authority to applicants under Section 4151.052,
2 Insurance Code, as amended by this Act, beginning September 1,
3 2007.

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

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 472 was passed by the House on April 18, 2007, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 472 on May 25, 2007, by the following vote: Yeas 135, Nays 0, 2 present, not voting; and that the House adopted H.C.R. No. 282 authorizing certain corrections in H.B. No. 472 on May 28, 2007, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 472 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 29, Nays 1; and that the Senate adopted H.C.R. No. 282 authorizing certain corrections in H.B. No. 472 on May 28, 2007, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor