

ADVISORY NO. 409
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TOPIC: GOVERNOR SIGNS TPA LICENSING BILL

The Legislature passed, and the Governor has signed House Bill 472, authored by Rep. Burt Solomons. The bill provides that workers' compensation third party administrators are subject to regulation by the Texas Third Party Administrator Act. The bill also increases the auditing, contracting and reporting requirements of all third party administrators to TDI. The bill is not applicable to insurance agents, self-insured political subdivisions or risk pools.

Most provisions of the bill will take effect on September 1, 2007 with limited exceptions. Persons and service companies will not be required to hold a license under the Insurance Code as amended by the bill until January 1, 2008. Also, those persons who on August 31, 2007 already hold a certificate of authority issued under the Act may continue to operate under that authority until January 1, 2008. No later than January 1, 2008, the Texas Department of Insurance shall issue a provisional license to those persons if they are in compliance with the requirements of the Insurance Code, as they existed before the bill amended the Code. These provisional licenses expire June 1, 2008.

The following are the key sections of the legislation.

SECTION 1.01. Includes TPAs who are handling workers' compensation claims, including certified self-insurance claims, to the list of existing business subject to regulation

SECTION 1.02. Provides for a number of exempt entities including insurance agents, self-insured political subdivisions and risk pools.

SECTION 1.03. Provides that a processing agent is not an administrator for purposes of this chapter if the processing agent is acting as an assignee of a pharmacy and if the assignee has a certain written contract with the pharmacy and the contract specifically prohibits the assignee from performing any function of an administrator, as that term is defined in this chapter, unless the assignee holds a certificate of authority (certificate) under this chapter.

SECTION 1.05. Amends Section 4151.052 of the Insurance Code to describe the information to be included with a license application. Such information includes basic organizational documents; a description of the TPA's services, facilities and personnel; service of process information; a three-year audited financial statement and any other material information required by the Commissioner. This section also requires notification of a change in the applicant's ownership or control, and of any other fact or circumstance affecting the applicant's qualifications for a license in this state.

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SECTION 1.06. Provides that a license issued under this chapter is effective until it is suspended, canceled, or revoked.

SECTION 1.08. Provides that a TPA may provide services only under a written agreement with an insurer or plan sponsor, including circumstances where an insurer has delegated administrative functions to an exempt person. The commissioner by rule may establish requirements of such contracts.

SECTION 1.09. A written agreement between the TPA and the insurer must include a statement of the duties that the administrator is expected to perform on behalf of the insurer, and the lines, classes, or types of insurance that the administrator is authorized to administer. The agreement must include, as applicable, provisions regarding underwriting, claims handling, and other standards relating to the business underwritten by the insurer.

SECTION 1.10. The written agreement must be retained by the TPA for at least 5 years after it expires.

SECTION 1.11. This section requires the administrator, to give written notice to each insured and each injured employee, of the administrator's identity and the relationship among the administrator and the insurer, plan, or plan sponsor and the insured and injured employee. This notice may be satisfied by including the notice as part of, or in conjunction with, the notice required under Section 406.005(c) (notice of whether the employer has workers' compensation insurance coverage), Labor Code. An administrator who fails to provide notice as required by Subsection (a) is subject to an administrative penalty in the manner provided by Chapter 84 (Administrative Penalties).

SECTION 1.12. Prohibits an insurer from knowingly referring a claim or loss for administration in this state to a person purporting to be or acting as an administrator unless the person holds a certificate under this chapter.

Also provides that if an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, reimbursement procedures, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. Requires the insurer to provide a copy of the written requirements relating to those matters to the administrator. Requires the responsibilities of the administrator as to any of those matters to be set forth in the written agreement between the administrator and the insurer.

Places a duty on an insurer to ensure competent administration of its programs.

Requires the insurer, if an administrator administers benefits for more than 100 certificate holders, injured employees, plan participants, or policyholders on behalf of an insurer, to conduct a review of the operations of the administrator at least semiannually. Requires the insurer to conduct an on-site audit of the operations of the administrator at least biennially.

SECTION 1.14. Provides for confidentiality of trade secrets.

SECTION 1.15. Prohibits an insurer or plan sponsor from permitting or providing compensation or another thing of value to an administrator that is based on the savings accruing to the insurer or plan sponsor because of adverse determinations regarding claims for benefits, reductions of or limitations on benefits, or other analogous actions inconsistent with this chapter, that are made or taken by the administrator.

SECTION 1.17. Requires that the TPA annually file a verified report with the Commissioner. The annual report must include an audited financial statement performed by an independent certified public accountant, subject to very specific terms and conditions. The annual report must include the complete name and address of each insurer with which the administrator had an agreement during the preceding fiscal year.

An administrator who receives less than \$10 million annually as compensation for performing administrative services and operates under written agreements subject to this chapter with insurers or plan sponsors in this state is not required to file a statement under this section, but is required to file a financial statement certified in the manner prescribed by commissioner rule.

Section 1.18. Requires the commissioner to collect and an applicant to pay to the commissioner a fee not to exceed \$500 for an examination under Section 4151.201

Section 1.19. Provides for restrictions on ownership of licensed administrators. Authorizes TDI to revoke, suspend, or refuse to renew the certificate of authority of a certificate holder who does not maintain the qualifications necessary to obtain a certificate of authority issued under this chapter.

Section 1.20. Provides that this subchapter applies to the administration of workers' compensation insurance coverage for an insurer and an employer that enters into an agreement with an insurer for a large deductible policy under Section 2053.202(b) of the Insurance Code. However, it exempts application for a nonsubscribing employer.

Authorizes an administrator to enter into an agreement with an insurer for the adjustment or handling of workers' compensation claims only with the insurer responsible for those claims. Also authorizes an administrator to accept compensation of any kind for the adjustment or

handling of workers' compensation claims only from the insurer responsible for those claims, except as provided by Section 4151.117 (Compensation of Administrator).

Prohibits an employer who enters into an agreement with an insurer under Section 2053.202(b) from using an administrator to handle workers' compensation claims unless the administrator has entered into a written agreement with the insurer, which provides that the insurer is responsible for setting standards used in the handling of claims and arranging for payment of the administrative costs incurred by the administrator. This section also requires the commissioner to adopt rules to implement Subsection (a)(2) (regarding the arrangement for payment of administrative costs), including rules prescribing requirements for administrative cost payment arrangements.

Section 1.21. Authorizes TDI to deny an application for a certificate or discipline the holder of a certificate under this subchapter if TDI determines that the applicant or holder, individually, or through an officer, director, or shareholder has taken certain actions or meets certain conditions. This section also describes the remedies TDI may seek for violation of insurance laws or TDI rules. An applicant or certificate holder whose application or certificate is denied or revoked is entitled to a hearing.

Section 1.22. Provides for general administrative sanctions that are applicable to license holders under this section, where the holder of the authorization is found to be in violation of, or to have failed to comply with, the insurance code or a rule of the commissioner. Such sanctions include: (1) suspending the authorization for a specified time not to exceed one year; (2) ordering the holder of the authorization to cease and desist from: (A) the activity determined to be in violation of the code or a rule of the commissioner; or (B) the failure to comply with the code or a rule of the commissioner; (3) directing the holder of the authorization to pay an administrative penalty; (4) directing the holder of the authorization to make restitution; or (5) taking any combination of those actions.

Section 1.23. This section makes clear that a TPA who “knowingly violates this chapter or a rule of the commissioner adopted under this chapter” commits a criminal offense (a misdemeanor) punishable by a fine of not less than \$500 or more than \$5,000.

Section 2.02. Amends Section 1305.008, relating to workers’ compensation health care networks to read as follows: “A third party that performs the functions of an administrator under Chapter 4151 must hold a license issued under that chapter to provide those functions under this chapter for an insurance carrier.”

Section 2.03. Deletes existing text prohibiting a third-party administrator from reimbursing a doctor or other health care provider, an institutional provider, or an organization of doctors and

health care providers in the manner set forth in this subsection.

Section 3.05. An administrator or service company acting under Chapter 4151 of the Insurance Code must hold a certificate of authority under Chapter 4151. However, an entity is required to hold only one certificate of authority under Chapter 4151, Insurance Code, if: (1) the entity acts as an administrator and a service company as defined in this chapter; and (2) performs the acts of an administrator as that term is defined in Chapter 4151, Insurance Code.