

**ADVISORY NO. 433**  
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**TOPIC:        TDI PUBLISHES DRAFT TPA RULES**

The Texas Department of Insurance has released a second draft of its TPA licensing rules. This draft represents a substantial rethinking of the TPA rules process. We have attached a summary of these rules with this advisory. The rules will control significant areas of TPA and Carrier responsibilities, particularly in the area of the carrier's audit obligation of its administrators.

Please note that the comment period allowed for these rules is very short, closing on October 27, 2008. The Department clearly has these rules on a very fast track. The comment period will likely be extended if a public hearing is requested on these rules. We believe that a public hearing request is almost certain to be made in this case.

In 2007 the Legislature passed HB 472, which amended Chapter 4151 of the Insurance Code to require administrators to become licensed by the Department of Insurance. If passed in their present form, these rules would impose a number of regulatory obligations, including the regulating the content of the master service agreement, the annual report and the annual audit statement. The proposed rules also outline requirements related to the retention and transfer of records.

Among many other things, HB 472 imposed an obligation on carriers to audit its administrators twice a year, and to conduct an onsite inspection of each administrator once every two years. The problematic part of this obligation concerns the definition of an administrator under the Insurance Code. If the Department defines the term broadly, it may impose an obligation upon carriers to audit traditional TPAs, as well as other service providers such as URAs, RME vendors, bill pay vendors, independent adjusters, private investigators, and so on. Such an obligation would be very difficult to achieve in any cost effective manner.

We have also been concerned about the scope of the audit requirement. It is important that the Department describe the audit obligation clearly, and that it create an obligation that is manageable for carriers to perform. Proposed Rule 7.1611 sets out the proposed audit standard. It also describes the scope of the onsite inspection.

Under these proposed rules, the Department has created two tiers of administrators: the "administrator contractor" and the "administrator subcontractor". The rules propose that carriers audit administrator contractors. They also provide that an audit of the administrator contractor will satisfy any obligation on the part of the carrier to audit the administrator subcontractor.

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These rules have many implications. You should study them carefully and, if appropriate, provide comment to the Department of Insurance before the deadline to do so.