ADVISORY NO. 436
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TOPIC: DEPARTMENT SETS HEARING ON PROPOSED TPA RULES

The Texas Department of Insurance has proposed rules relating to the regulation of third party administrators. These rules are necessary to implement House Bill (HB) 472, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, which amends the Insurance Code Chapter 4151.

The Department will receive public comment regarding the proposed rules until 5:00 on January 5, 2009. In addition, the Department will conduct a public hearing on the rules in Austin, Texas on January 21, 2009 at 9:30 a.m. Written and oral comments presented at that hearing will be considered by the Department as well.

These rules purport to apply to any person who, in connection with annuities or life benefits, health benefits, accident benefits, pharmacy benefits, or workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims for residents of this state, unless that person is excluded under Insurance Code §4151.002.

The proposed rules create a two-tier definition of administrators: administrator contractors and administrator subcontractors. It appears that the term administrator contractor is designed to describe a traditional third party administrator, while the term administrator subcontractor is designed to describe the vendors who may typically be retained by a third party administrator to assist in the adjustment of the claim. The distinction is important from an audit and contracting standpoint.

An administrator must file an annual report with the Department and, unless excluded, must also provide the Department with an annual audit statement. An administrator must also notify the Department of a change of control in the applicant’s or administrator's ownership or of any other fact or circumstance affecting the applicant’s or administrator's qualifications for a certificate of authority. In addition, an administrator must report to the Department when a material change in facts or circumstances has occurred.

Insurers must oversee their administrators. These responsibilities include an obligation to review the operations of each administrator at least twice each fiscal year and to conduct an on-site audit of each administrator at least biennially. The proposed rules prescribe the minimum information that an insurer should review during the required review or on-site audit, which include a review of an administrator’s compliance with the master service agreement and the administrator’s performance of claims adjudication and payment. The insurer must develop a written summary of the objectives and scope of the review or on-site audit and a summary of the results of the review or on-site audit, which must include a corrective action plan addressing any deficiencies found during the review or on-site audit.

Administrators hold all premiums in a fiduciary capacity. They must handle those funds accordingly. The books and records belong to the insurer and must be accessible to the insurer. When requested, administrators must return the books and records of the insurer to the insurer, and must do so promptly.

When business relationships between the insurer, the administrator contractor or the administrator subcontractor are terminated, the transition of duties is subject to the Department's oversight. The Department may take appropriate action if an applicant or administrator is operating in a potentially hazardous or injurious manner.

An insurer must have a written agreement with its administrator contractor that meets certain minimum requirements. Moreover, where appropriate, and administrator contractor must have a written agreement with an administrator subcontractor that meets minimum requirements.

The Department may charge certain fees in connection with the annual report, the application process and the exam process.

Section-by-Section Overview

The following is a section by section overview of the proposed rules.

§7.1601. Scope

Proposed new §7.1601(a) specifies that, except as otherwise provided by the proposed new subchapter or the Insurance Code Chapter 4151, the proposed new subchapter applies to a person acting as or holding itself out as an administrator in any capacity, regardless of whether the person holds another authorization under the Insurance Code or the Labor Code. In accordance with the Insurance Code §1272.058 and the Labor Code §407A.009, proposed new §7.1601(b) requires an administrator performing administrative services on behalf of an HMO or a group to meet the same requirements under the Insurance Code Chapter 4151 and the proposed new subchapter as an administrator performing administrative services on behalf of an insurer or plan sponsor. Proposed new §7.1601(c) requires a person acting as or holding itself out as an administrator to meet the requirements of the Insurance Code Chapter 4151 and the proposed new subchapter. This is in addition to any other requirements applicable to that person under the Insurance Code Chapters 1272 or 1305 or the Labor Code Chapters 407 or 407A and rules adopted thereunder. Proposed new §7.1601(d) clarifies that the proposed new subchapter does not apply to a person acting as or holding itself out as an administrator for an ERISA qualified employee welfare benefit plan that is exempt from regulation by this state with respect to that particular employee welfare benefit plan.

§7.1602. Definitions

Proposed new §7.1602 defines the terms used in the proposed new subchapter.

§7.1603. Certificate of Authority Required

Proposed new §7.1603(a) requires each person acting as or holding itself out as an administrator to hold a certificate of authority under the Insurance Code Chapter 4151, unless the person meets an exemption under that chapter. Proposed new §7.1603(b) requires an administrator contractor and an administrator subcontractor to hold a certificate of authority under the Insurance Code Chapter 4151.

§7.1604. Application for Certificate of Authority

Proposed new §7.1604(a) requires an applicant for a certificate of authority under Chapter 4151 to file an application with the Department, accompanied by a non-refundable fee of $1,000. Proposed new §7.1604(a) also requires the applicant to verify the application by attesting to the truth and accuracy of the information in the application. Proposed new §7.1604(b)(1) adopts by reference the following forms, which comprise the application for a certificate of authority under the Insurance Code Chapter 4151. These forms are available at www.tdi.state.tx.us/forms/form5tpa.html: (i) Form Number FIN 489, Application for a Certificate of Authority; (ii) Form Number FIN 306, Officers and Directors; (iii) Form Number LHL 081, Biographical Affidavit; and (iv) Form Number LHL 082, Service of Process. Proposed new §7.1604(b)(2) specifies that as authorized by the Insurance Code §4151.206(a)(1), the Commissioner adopts a filing fee of $1,000 to be paid by an applicant for processing an original application for a certificate of authority for an administrator. Proposed new §7.1604(c) requires an applicant to register its official name with the Department and the Office of the Secretary of State, as applicable. Additionally, proposed new §7.1604(c) specifies that an applicant must register an alternative name with the Department and the Office of the Secretary of State, as applicable, if the Commissioner determines that an applicant's name is too similar to a name already registered with the Department. Proposed new §7.1604(d)(1) requires each executive officer or other comparable responsible person of an applicant to provide the Department with a completed Form Number LHL 081, Biographical Affidavit. Proposed new §7.1604(d)(1) also specifies that a biographical affidavit is not required if a biographical affidavit from the individual has been filed with the Department within the prior three years and contains substantially accurate information. Further, proposed new §7.1604(d)(1) clarifies that a biographical affidavit contains substantially accurate information if the responses given by the individual in the affidavit on file with the Department continue to indicate sufficient experience, ability, standing, and good record to make success of the applicant probable. Proposed new §7.1604(d)(2) requires each person filing a biographical affidavit under proposed new §7.1604(d)(1) to comply with the requirements of Chapter 1, Subchapter D of Title 28 of the Texas Administrative Code. Pursuant to the Insurance Code §4151.052(a)(5), proposed new §7.1604(e) provides that the Commissioner may require the submission of any other information the Commissioner reasonably requires in determining whether to approve or disapprove an application for a certificate of authority.

§7.1605. Notification Requirements

Proposed new §7.1605(a) specifies that an insurer or HMO that is acting as or holding itself out as an administrator and that is not exempt under the Insurance Code §4151.002(3) or (4) is subject to all provisions of the proposed new subchapter, except proposed new §7.1603, §7.1604, and §7.1609(c) and (d)(1) and (2) (relating to Certificate of Authority Required, Application for Certificate of Authority, and Annual Report). Proposed new §7.1605(b) requires an insurer or HMO meeting the requirements of proposed new §7.1605(a) to submit written notice to the Department that it will be acting as or holding itself out as an administrator. Proposed new §7.1605(b) further requires such notice to include the insurer's or HMO's contact information. This includes: (i) the insurer's or HMO's TDI company number; (ii) a narrative describing the insurer's or HMO's facilities, personnel, and experience relating to the functions the insurer or HMO will be performing as an administrator; and (iii) a list of any other states in which the insurer or HMO will be acting as or holding itself out as an administrator.

§7.1606. Requirements Related to Ownership Interest and Change of Control

The provisions of proposed new §7.1606(a)(1) – (3) relate to a change in the *control* of an applicant or administrator. The three provisions are for purposes of proposed new §7.1606 only and for no other purposes. Proposed new §7.1606(a)(1) provides that *control* means the power to direct, or cause the direction of, the management and policies of a person, other than the power that results from an official position with or corporate office held by the person. Proposed new §7.1606(a)(2) provides that *control* may be possessed by various means, including through ownership of voting securities, ownership by contract, or direct or indirect control of one or more persons that control an administrator. Proposed new §7.1606(a)(3) provides that *control* exists if an individual or a member of an individual's immediate family, directly or indirectly, owns, controls, or holds with the power to vote 10 percent or more of the voting securities or authority of an administrator or another person that directly or indirectly controls an administrator, including when a person holds proxies representing 10 percent or more of the voting securities or authority of the person. Pursuant to the Insurance Code §4151.052(b), proposed new §7.1606(b) requires an applicant or an administrator to notify the Department in writing of a change of control in the ownership of the applicant or the administrator not later than the 30th day after the effective date of the change. The §7.1606(b) notice requirement applies to any instance in which there is a change in the control of an applicant or administrator, including a change in any of the circumstances specified in §7.1606(a). Proposed new §7.1606(c) provides that an applicant or administrator may not file the §7.1606(b) notification until a proposed acquisition of control has been approved under the Insurance Code §4151.211.

§7.1607. Facts and Circumstances Affecting Issuance of Certificate of Authority

Proposed new §7.1607(a) defines the phrase *material change in fact or circumstance.* The phrase is defined as any fact or circumstance that impacts the accuracy or completeness of the information filed in an applicant's or administrator's initial application for a certificate of

authority under the Insurance Code Chapter 4151. It includes: (i) a change in an applicant's or administrator's mailing address; (ii) a felony conviction of any executive officer or other comparable responsible person of an applicant or administrator or of any other person who directly or indirectly controls the applicant or administrator; and (iii) any administrative action, order, or judgment issued against an applicant or administrator. Proposed new §7.1607(b) requires an administrator to notify the Department in writing of a material change in fact or circumstance not later than the 30th day from the date the administrator first becomes aware of the material change in fact or circumstance. Except as provided by proposed new §7.1606(b) (relating to Requirements Related to Ownership Interest and Change of Control), proposed new §7.1607(c) requires an applicant to continually update the information filed in its initial application for a certificate of authority under the Insurance Code Chapter 4151 while the application is pending with the Department. This includes notifying the Department in writing of a material change in fact or circumstance. Proposed new §7.1607(d) requires an applicant or administrator to meet the requirements of the Insurance Code Chapter 4151 and the proposed new subchapter as those requirements apply to any material change of fact or circumstance identified by an administrator or any change in information identified by an applicant. Finally, proposed new §7.1607(e) requires an applicant or an administrator to maintain the qualifications necessary to obtain a certificate of authority under Chapter 4151 at all times.

§7.1608. Fidelity Bond

Proposed new §7.1608(a) requires an applicant to obtain and an administrator to maintain a fidelity bond that complies with the requirements of the Insurance Code §4151.055 and proposed new §7.1608. Proposed new §7.1608(b) specifies that an applicant and an administrator may only obtain a fidelity bond from a surety company authorized to engage in business in this state as a surety or an eligible surplus lines insurer in compliance with the Insurance Code Chapter 981 and rules adopted thereunder. Proposed new §7.1608(c) requires an applicant or an administrator to immediately inform the Commissioner in writing if its fidelity bond is cancelled or terminated and not replaced with new coverage. The new coverage must meet the requirements of the Insurance Code §4151.055 and proposed new §7.1608 and be effective concurrently upon the date of the cancellation or termination. Finally, proposed new §7.1608(c) specifies that the required notification to the Commissioner must be given no later than ten business days from the date the applicant or the administrator first becomes aware of the cancellation or termination.

§7.1609. Annual Report

Proposed new §7.1609(a) requires an administrator to file an annual report with the Department no later than June 30 each year, accompanied by a non-refundable fee of $200. Proposed new §7.1609(b). Proposed new §7.1609(c) specifies that the annual report required by proposed new §7.1609(a) must also include an audit report on the financial statements prepared by an independent certified public accountant that reflects an audit conducted in accordance with

generally accepted auditing standards or with the standards adopted by the Public Company Accounting Oversight Board, as applicable. It must also include a balance sheet, an income statement, a cash flow statement, and a statement of equity. Proposed new §7.1609(d)(1) exempts an administrator receiving less than $10 million in compensation for providing administrative services in Texas during the preceding year from complying with the requirements of proposed new §7.1609(c) for that year. Proposed new §7.1609(d)(2) requires an administrator qualifying for the exemption in §7.1609(d)(1) to file a financial statement with the Department that: (i) includes a completed Form Number FIN 490, Certification of Financial Statement, as referenced in §7.1609(b)(1)(D); and (ii) is verified by at least two officers or other comparable responsible persons of the administrator. Proposed new §7.1609(d)(3) clarifies that an administrator qualifying for the exemption in proposed new §7.1609(d)(1) must still meet the adopts by reference the following forms: (i) Form Number FIN 486, Annual Report Form for Administrators Holding a Certificate of Authority under TIC 4151; (ii) Form Number FIN 487, Annual Report Form for Insurers and HMOs Subject to 28 TAC §7.1605; (iii) Form Number FIN 488, Annual Report Exhibits A-E; and (iv) Form Number 490, Certification of Financial Statement. These forms are available at www.tdi.state.tx.us/forms/form5tpa.html other requirements of proposed new §7.1609. Proposed new §7.1609(e) provides that the Commissioner may request additional information as necessary to determine if an administrator is operating or conducting business in a hazardous or injurious manner.

§7.1610. Financial Statements Under the Education Code

Proposed new §7.1610(a) provides that §7.1610 applies only to an insurer or HMO that: (i) meets the requirements of §7.1605 (relating to Notification Requirements) of this subchapter; and (ii) is subject to the requirements of the Education Code §22.004(g). Proposed new §7.1610(b) provides that an administrator meeting the requirements of §7.1610(a) may comply with the requirement for an audited financial statement under the Education Code §22.004(h) by providing a copy of the financial statement filed with the Department for the preceding calendar year that: (i) was prepared by an independent certified public accountant and; (ii) was filed in compliance with the requirements of §7.18 (relating to the National Association of Insurance Commissioners Accounting Practices and Procedures Manual) and §7.85 (relating to Audited Financial Reports).

§7.1611. Operational Review and On-Site Audit

Proposed new §7.1611(a) requires an insurer, no less than two times each fiscal year, to review the operations of each of its administrators that, in the aggregate, administers benefits in Texas on behalf of the insurer for more than 100 certificate holders, injured employees, plan participants, or policyholders. Proposed new §7.1611(a) also provides that a review of an administrator may be conducted on the premises of the insurer or at another location designated by the insurer. The review may also be conducted by electronic means. Proposed new §7.1611(b) requires an insurer, no less than once every two fiscal years, to conduct an on-site audit of each

of its administrators that, in the aggregate, administers benefits in Texas on behalf of the insurer for more than 100 certificate holders, injured employees, plan participants, or policyholders. Proposed new §7.1611(c) specifies that, notwithstanding the requirements of proposed new §7.1611(a), an insurer is not required to review the operations of an administrator under proposed new §7.1611(a) more than one time in the same fiscal year in which the insurer conducts an on-site audit of that administrator. Proposed new §7.1611(d) specifies that any review and on-site audit must assess the business practices and procedures of the administrator to ensure competent administration, including evaluating: (i) the administrator's compliance with the Insurance Code, the Labor Code, and rules adopted thereunder, as applicable; (ii) the administrator's compliance with the provisions of the written agreement with the insurer; (iii) the administrator's performance of claims adjudication and payment; (iv) the adequacy of the financial security maintained by the administrator, if any; and (v) the administrator's practices and procedures for establishing the adequacy of the insurer's reserves, if any. Proposed new §7.1611(d) also specifies that any review and on-site audit must include a written summary of the objectives and scope of the review or on-site audit and the results of the review or on-site audit. It must also include a corrective action plan addressing any deficiencies found during the review or on-site audit. Proposed new §7.1611(e) specifies that the purpose of the on-site audit is to verify the accuracy, integrity, and completeness of the information received during a review conducted by an insurer pursuant to proposed new §7.1611(a). Proposed new §7.1611(e) also requires that an on-site audit include: (i) a physical inspection of the administrator's place of business; and (ii) a written assessment of the reliability of the information provided to the insurer and relied upon by the insurer when conducting a review or on-site audit of the administrator. Proposed new §7.1611(f) authorizes an insurer or the insurer's designated representative to perform a review or an on-site audit. Proposed new §7.1611(g) permits an insurer to meet the requirements of proposed new §7.1611 for an administrator subcontractor by reviewing and auditing only the administrator contractor if two specified conditions are met: (i) the information supplied to the insurer by the administrator contractor includes all necessary and relevant information relating to the administrator subcontractor; and (ii) provided no evidence of material non-compliance by the administrator subcontractor exists. Proposed new §7.1611(h) requires all information and documentation related to a review or an on-site audit to remain on file with the insurer for at least five years from the date of the review or on-site audit and to be made available to the Commissioner upon request.

§7.1612. Fiduciary Bank Accounts

Pursuant to the Insurance Code §4151.106(b), proposed new §7.1612(a) requires an administrator to hold all premium in a fiduciary capacity. Proposed new §7.1612(b) requires an administrator collecting or receiving any premium to comply with the Insurance Code §4151.105, §4151.106, §4151.107, and §4151.108 and proposed new rule §7.1612. Proposed new §7.1612(b) also requires each administrator who receives any premium on behalf of an insurer, HMO, plan sponsor, or group to report the receipt of that premium to the insurer, HMO,

plan sponsor, or group within a reasonable amount of time. Proposed new §7.1612(c) requires an administrator to establish at least one fiduciary bank account to hold any premium collected or received pursuant to proposed new §7.1612. Proposed new §7.1612(d) requires a fiduciary bank account required by proposed new §7.1612(c) to be established and styled as an escrow account. Proposed new §7.1612(e) requires an administrator to maintain each fiduciary bank account at a financial institution that is (i) organized under the laws of the United States or any state thereof, and (ii) regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies. Additionally, proposed new §7.1612(e) specifies that a fiduciary bank account may only consist of one or more of the following types of investments: (i) cash and cash equivalents, including savings accounts, checking accounts, money market accounts, and certificates of deposit; (ii) non-assessable money market mutual funds that are primarily invested in United States government securities; and (iii) other investments of substantially similar quality, as approved by the Commissioner. Proposed new §7.1612(f) requires an administrator to maintain detailed accounting records for each fiduciary bank account that separately record each deposit and withdrawal from the account. The accounting records must identify each insurer, HMO, plan sponsor, or group for whom the account is maintained. Proposed new §7.1612(g) requires that, upon the reasonable request of the insurer, HMO, plan sponsor, or group, an administrator must provide an insurer, HMO, plan sponsor, or group a copy of all records relating to the requesting entity's account activity in a fiduciary bank account established or maintained by the administrator on behalf of the insurer, HMO, plan sponsor, or group. Proposed new §7.1612(h) provides that all records maintained by an administrator relating to any premium shall be subject to examination by the Commissioner upon request. Pursuant to the Insurance Code §4151.109, proposed new §7.1612(i) prohibits an administrator from paying a claim from a fiduciary bank account. Finally, proposed new §7.1612(j) provides that proposed new §7.1612 does not authorize any transaction that is otherwise prohibited by law.

§7.1613. Written Agreements Between Administrators and Insurers

Proposed new §7.1613(a) prohibits an administrator from providing administrative services in Texas on behalf of an insurer unless the administrator has entered into a written agreement with the insurer that meets the requirements of the Insurance Code Chapter 4151 and proposed new §7.1613. Proposed new §7.1613(b) permits an administrator subcontractor to meet the requirements of proposed new §7.1613 by entering into a written agreement with the administrator contractor only. Section 7.1613(b) also requires that the written agreement meet the requirements of the Insurance Code Chapter 4151 and proposed new §7.1613, as applicable. Proposed new §7.1613(c) prohibits a written agreement entered into under proposed new §7.1613 from being construed to limit, in any way, an insurer's ultimate accountability and responsibility for compliance with all statutory and regulatory requirements under the Insurance Code, the Labor Code, and rules adopted thereunder. Proposed new §7.1613(d) requires a written agreement entered into under proposed new §7.1613 to include: (i) a requirement that an

administrator comply with the requirements of the Insurance Code, the Labor Code, and rules adopted thereunder, including holding appropriate authorizations; (ii) a description of the administrative services the administrator is expected to provide and any applicable instructions related to the performance of those services, including references to an insurer's claims handling practices or procedures; (iii) a provision relating to the continuity of services and addressing the obligations of the administrator and the insurer under proposed new §7.1615 (relating to Transfer of Books and Records), including the method and manner in which the insurer and administrator will meet those requirements; and (iv) a provision addressing an insurer's obligation to review and audit the performance of its administrators under proposed new §7.1611 (relating to Operational Review and On-Site Audit), including the method and manner in which the insurer will meet those requirements. Proposed new §7.1613(e) also requires a written agreement entered into under proposed new §7.1613 to ensure that the books and records of the insurer remain the property of the insurer at all times and that the books and records of the insurer are available to the insurer or its designee at any time while in the custody of the administrator. Proposed new §7.1613(f), however, permits an administrator to retain a proprietary interest in the books and records of an insurer pursuant to the Insurance Code §4151.113(c) under one condition. Retention of a proprietary interest requires that the written agreement between the administrator and the insurer must specifically identify the items that will be subject to the administrator's proprietary interest. Further, proposed new §7.1613(f) prohibits an administrator from withholding, based upon a claim of proprietary interest, any portion of an insurer's books and records that would restrict the ability of the insurer to comply with statutory, regulatory, or contractual obligations. Proposed new §7.1613(g) permits a master services agreement to be used to meet the §7.1613 requirements. Proposed new §7.1613(h) permits any §7.1613 requirement that does not apply to an administrative service offered or performed by the administrator on behalf of the insurer to be omitted from the written agreement between the administrator and the insurer. Proposed new §7.1613(h) also requires the remainder of the written agreement between the administrator and the insurer to comply with the Insurance Code Chapter 4151 and proposed new §7.1613. Finally, proposed new §7.1613(i) requires a written agreement to meet the requirements of proposed new §7.1613 no later than September 1, 2009.

§7.1614. Prohibited Acts

Proposed new §7.1614(a) prohibits an administrator from: (i) misrepresenting the terms or nature of an agreement with an insurer, HMO, plan sponsor, or group; (ii) making false, misleading, or incomplete comparisons to the agreements of other administrators or persons in order to induce any person to enter into, continue, or discontinue an agreement; (iii) accepting or rejecting risk, other than under the authority of, and in accordance with, a written agreement with an insurer, HMO, plan sponsor, or group; (iv) publishing or circulating any advertising or informational material, benefit descriptions, certificates, booklets, or brochures pertaining to business underwritten by an insurer, HMO, plan sponsor, or group without advance written approval of the insurer, HMO, plan sponsor, or group; (v) pursuant to the Labor Code §415.0036, offering to

pay, paying, soliciting, or receiving an improper inducement relating to the delivery of benefits to an injured employee, if the administrator performs administrative services on behalf of a person who is a participant in the workers' compensation system of this state; and (vi) pursuant to the Labor Code §415.0036, improperly attempting to influence the delivery of benefits to an injured employee, including through the making of improper threats, if the administrator performs administrative services on behalf of a person who is a participant in the workers' compensation system of this state. Proposed new §7.1614(b) provides that an administrator may be subject to other prohibitions under the Insurance Code, the Labor Code, and rules adopted thereunder that are not specified in proposed new §7.1614(a).

§7.1615. Transfer of Books and Records

Proposed new §7.1615(a) requires an administrator to provide books and records to a successor administrator no later than 30 days from the date of the termination of the relationship or written agreement with an insurer, HMO, plan sponsor, or group, unless otherwise provided by the Commissioner. If there is not a successor administrator, or if the successor administrator is unknown at the time of the required transfer, the set or copy of the books and records must be provided to the insurer, HMO, plan sponsor, or group. The books and records must be provided either as a complete and accurate original set or a complete and accurate copy or image of the original set of an insurer's, HMO's, plan sponsor's, or group's books and records. to a successor administrator. Proposed new §7.1615(b) requires the books and records to be transferred in an organized and usable manner. Proposed new §7.1615(c) requires the allocation of the payment of costs associated with providing the insurer's books and records to be addressed in the written agreement between the insurer and the administrator. Proposed new §7.1615(d) requires an administrator to provide written notice to the Department of the termination of a relationship or written agreement with an insurer, HMO, plan sponsor, or group no later than thirty days from the date the administrator first learns of the termination. Proposed new §7.1615(e) permits an administrator subcontractor to meet the requirements of proposed new §7.1615 when its relationship or written agreement with an administrator contractor terminates by providing a complete and accurate original set or a complete and accurate copy or image of the original set of the insurer's, HMO's, plan sponsor's, or group's books and records to the administrator contractor. The administrator subcontractor must also provide written notice to the Department of the termination of the relationship or written agreement with the administrator contractor no later than thirty days from the date the administrator subcontractor first learns of the termination.

§7.1616. Hazardous or Injurious Operating Conditions

Proposed new §7.1616(a) provides that an applicant or an administrator may be considered to be operating or conducting business in a hazardous or injurious manner if the administrator or applicant: (i) has failed to file financial statements, documents, records, or reports required under the Insurance Code Chapter 4151 or the proposed new subchapter within the time periods prescribed by the Insurance Code Chapter 4151, the proposed new subchapter, or as requested by

the Department pursuant to law; (ii) has filed any false or misleading financial information; (iii) is unable to pay its obligations as they become due and payable; (iv) has not maintained records sufficient to permit examiners to determine its financial condition or compliance with the Insurance Code, the Labor Code, and rules adopted thereunder; (v) does not employ management staff with the experience, competence, or trustworthiness to conduct its operations in a safe or sound manner; (vi) employs management staff that has engaged in any unlawful activity; (vii) has not complied or is not complying with the terms of a written agreement with an insurer, HMO, plan sponsor, or group; (viii) has engaged or is engaging in a pattern of failing to settle claims in accordance with contractual, regulatory, or statutory requirements; or (ix) has engaged or is engaging in fraudulent or dishonest practices or acts. Proposed new §7.1616(b) provides that other facts and circumstances not specified in proposed new §7.1616(a) may also indicate that an applicant or administrator is operating in a hazardous or injurious manner.

§7.1617. Examinations

New §7.1617(a) proposes the adoption of a non-refundable fee of $500 for the expenses of an examination conducted under the Insurance Code §4151.201. Proposed new §7.1617(b) provides that, prior to an examiner entering the property of an administrator, written notice must be given to the administrator. The written notice must include the date and estimated time the examiner will enter the property of the administrator.

§7.1618. Severability

Proposed new §7.1618 provides that if any section or portion of a section of the proposed new subchapter is held to be invalid for any reason, all valid parts are severable from the invalid parts and remain in effect. Further, proposed new §7.1618 provides that if any section or portion of a section of the proposed new subchapter is held to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. Finally, proposed new §7.1618 provides that all provisions of the proposed new subchapter are severable.