

**House Bill 472**  
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ARTICLE 1. THIRD-PARTY ADMINISTRATORS

Same as House version.

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 Section 401.011(27), Labor Code, other than a governmental entity.

(6) "Workers' compensation benefits" means benefits provided under Title 5, Labor Code, or services provided through a certified workers' compensation health care

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 Section 401.011(27), Labor Code, other than a governmental entity **or a workers' compensation self-insurance group subject to regulation under Chapter 407A, Labor Code.**

(6) "Workers' compensation benefits" means benefits provided under Title 5, Labor Code, or services provided through a certified workers' compensation health care

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network authorized under Chapter 1305.

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

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

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

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

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

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

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

(4) a health maintenance organization that is authorized to operate in this state under Chapter 843 with respect to

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network authorized under Chapter 1305.

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

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

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any activity that is specifically regulated under that chapter, Chapter 1271, 1272, or 1367, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507;

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

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

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

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

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

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

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

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

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license under federal or state law;

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

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

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

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

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

(16) a joint fund, risk management pool, or self-insurance pool composed of political subdivisions of this state that participate in a fund or pool through interlocal agreements, any nonprofit administrative agency or

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governing body or other nonprofit entity that acts solely on behalf of a fund, pool, agency, or body, or any other fund, pool, agency, or body established under or for the purpose of implementing an interlocal governmental agreement;

(17) a self-insured political subdivision;

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

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

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

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

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

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

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

(B) furnishes proof-of-loss forms, reviews claims,

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determines the amount of the liability for those claims, and negotiates settlements, if the parent or subsidiary insurer pays claims only from the funds of the particular subsidiary by checks or drafts of that subsidiary; or  
(20) an affiliate, as described by Chapter 823.003, of a self-insurer certified under Chapter 407, Labor Code, and who:  
(A) is performing the acts of an administrator on behalf of that certified self-insurer; and  
(B) directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that certified self-insurer, as the term "control" is described by Section 823.005.

SECTION 1.03. Subchapter A, Chapter 4151, Insurance Code, is amended by adding Sections 4151.0021, 4151.0031, and 4151.0051 to read as follows:  
Sec. 4151.0021. APPLICABILITY TO CERTAIN PROCESSING AGENTS. (a) In this section, "processing agent" means a person described by Section 413.0111, Labor Code.  
(b) 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:  
(1) the assignee has a written contract with the pharmacy to:  
(A) act as the provider of licensed pharmacy services in lieu of the pharmacy; and  
(B) purchase the pharmacy's claims at face value, or at a

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value expressly stated in the contract; and  
(2) 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 under this chapter.

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

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

(b) Before first referring a claim or loss for adjustment, an administrator must ascertain from the commissioner whether the individual selected to perform the adjustment holds a license under Chapter 4101. After receipt of information from the department that the individual does hold an adjuster license, the administrator may refer claims or losses to the individual for adjustment until the administrator has actual knowledge or receives information from the department that the individual no longer holds an adjuster license under Chapter 4101. The department shall keep an updated list of individuals who hold adjuster licenses.

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

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

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

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

- (1) a copy of each basic organizational document of the applicant, including the articles of incorporation, bylaws, articles of association, trade name certificate, and any other similar document and a copy of any amendment to any of those documents;
- (2) a description of the applicant and the applicant's services, facilities, and personnel;
- (3) if the applicant is not domiciled in this state, a power of attorney executed by the applicant appointing the commissioner, the commissioner's successors in office, or the commissioner's appointed designee as the applicant's attorney in this state on whom process may be served in any legal action or proceeding based on a cause of action arising in this state against the applicant;
- (4) an audited financial statement of the applicant

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

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

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

(5) any other information the commissioner reasonably requires.

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

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

Sec. 4151.056. DURATION OF CERTIFICATE OF AUTHORITY. A certificate of authority issued to an

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administrator under this chapter is effective until it is suspended, canceled, or revoked. The issuance, denial, suspension, cancellation, or revocation of a certificate of authority to act as an administrator is subject to:

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

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

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

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

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

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

Same as House version.

SECTION 1.09. Section 4151.102, Insurance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The written agreement must include a statement of the duties that the administrator is expected to perform

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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 claims handling and other standards relating to the business underwritten by the insurer.

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

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

(1) during the term of the agreement; and

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

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

Same as House version.

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

Sec. 4151.104. NOTICE OF USE OF ADMINISTRATOR'S SERVICES. (a) If an insurer, plan, or plan sponsor uses the services of an administrator, the administrator shall give written notice to each insured and injured employee ~~[or plan participant]~~ of the administrator's identity and the relationship among the administrator and the insurer,

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plan, or plan sponsor and the insured and injured employee ~~[or plan participant]~~. The insurer, plan, or plan sponsor must approve the notice before the notice is distributed.

(b) An administrator administering workers' compensation claims may satisfy the requirements of Subsection (a) by including the notice as part of, or in conjunction with, the notice required under Section 406.005(c), Labor Code.

(c) 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.

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

Sec. 4151.1041. REFERRAL BY INSURER. (a) An insurer may not knowingly refer 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 of authority under this chapter.

(b) Before first referring a claim or loss for administration, an insurer must ascertain from the commissioner whether the person performing the administration holds a certificate of authority under this chapter. Once the insurer has ascertained that the person holds a certificate of authority, the insurer may refer a claim to the person for administration and may continue to refer claims to the person until the insurer has

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knowledge or receives information from the commissioner that the person no longer holds a certificate of authority.

Sec. 4151.1042. RESPONSIBILITIES OF INSURER; SEMIANNUAL AUDIT. (a) 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. The insurer shall provide a copy of the written requirements relating to those matters to the administrator. The responsibilities of the administrator as to any of those matters must be set forth in the written agreement between the administrator and the insurer.

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

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

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

(c) In the event of a conflict between this section and a provision of the Labor Code relating to time periods for adjudication and payment of workers' compensation

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claims, the Labor Code provision prevails.

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

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

Same as House version.

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

Sec. 4151.117. COMPENSATION OF ADMINISTRATOR. (a) An administrator's compensation may be determined:

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

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

(b) An insurer or plan sponsor may not permit or provide 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.

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

SUBCHAPTER E. DEPARTMENT REGULATION OF [THIRD PARTY] ADMINISTRATORS

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

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

(c) Except as provided by Subsection (f), the annual report must include an audited financial statement performed by an independent certified public accountant. An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that shall be filed with the annual report and must comply with the following:

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

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

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

(d) The annual report must include notes to the financial

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statement or attachments that reflect the complete name and address of each insurer in this state with which the administrator had an agreement during the preceding fiscal year.

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

(f) 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 an audited financial statement under Subsection (c), but must file a financial statement certified in the manner prescribed by commissioner rule.

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

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

- (1) a filing fee not to exceed \$1,000 for processing an original application for a certificate of authority for an administrator;
- (2) a fee not to exceed \$500 for an examination under Section 4151.201 [~~4201.201~~]; and
- (3) a filing fee not to exceed \$200 for an annual report.

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

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

Sec. 4151.211. RESTRICTIONS ON ACQUISITION OF OWNERSHIP INTEREST. (a) A person may not acquire an ownership interest in an entity that holds a certificate of authority under this chapter if the person is, or after the acquisition would be, directly or indirectly in control of the certificate holder, or otherwise acquire control of or exercise any control over the certificate holder, unless the person has filed with the department under oath:

- (1) a biographical form for each person by whom or on whose behalf the acquisition of control is to be effected;
- (2) a statement certifying that no person who is acquiring an ownership interest in or control of the certificate holder has been the subject of a disciplinary action taken by a financial or insurance regulator of this

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state, another state, or the United States;

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

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

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

(1) the corporation;

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

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

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

(1) immediately on the change of control the certificate holder would not be able to satisfy the requirements for

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the certificate of authority;

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

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

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

Sec. 4151.212. MAINTENANCE OF QUALIFICATIONS REQUIRED. The department may, in the manner prescribed by Section 4151.056 and by Subchapter G, 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. Chapter 4151, Insurance Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

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

SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

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

(1) an insurance company; or

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

- (1) an insurer; and
- (2) an employer that enters into an agreement with an insurer for a large deductible policy under Section 2053.202(b).

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

Sec. 4151.252. AGREEMENTS BETWEEN EMPLOYERS AND ADMINISTRATORS. (a) An administrator may enter into an agreement with an insurer for the adjustment or handling of workers' compensation claims only with the insurer responsible for those claims.

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

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

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

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

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

- (1) the contract does not limit in any way the insurance carrier's authority or responsibility, including financial responsibility, to comply with each statutory or

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(b) Except as provided by Section 4151.117, an administrator may accept compensation of any kind for the adjustment or handling of workers' compensation claims only from the insurer responsible for those claims.

regulatory requirement; and  
(2) the administrator shall comply with each statutory or regulatory requirement relating to a function assumed by or carried out by the administrator.  
Sec. 4151.254. AGREEMENTS BETWEEN ADMINISTRATORS AND EMPLOYERS. (a) In addition to the contract required by Section 4151.253, an administrator may also enter into a contract with an employer in connection with workers' compensation benefits for collecting premium or contributions, adjusting claims, or settling claims, including an employer purchasing a policy authorized under Section 2053.202(b).  
(b) A contract entered into under Subsection (a) must provide that:  
(1) the contract does not limit or modify in any way:  
(A) the insurance carrier's authority or responsibility, including financial responsibility, to comply with each statutory or regulatory requirement; and  
(B) the provisions of the contract entered into between the administrator and the insurance carrier under Section 4151.252; and  
(2) the administrator shall comply with each statutory or regulatory requirement relating to a function assumed by or carried out by the administrator.  
Sec. 4151.255. ADMINISTRATOR COMPENSATION. Except as provided by Section 4151.117, an administrator may accept compensation of any kind for the performance of administrative services in connection with workers' compensation claims from:

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Sec. 4151.253. LARGE DEDUCTIBLE POLICIES. (a) An employer who enters into an agreement with an insurer under Section 2053.202(b) may not use an administrator to handle workers' compensation claims unless the administrator has entered into a written agreement with the insurer under Subchapter C under which the insurer is responsible for:

(1) setting standards used in the handling of claims; and  
(2) arranging for payment of the administrative costs incurred by the administrator.

(b) The commissioner shall adopt rules to implement Subsection (a)(2), including rules prescribing requirements for administrative cost payment arrangements.

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

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(1) an insurance carrier responsible for those claims;  
(2) an employer with whom the administrator has entered into a contract; or  
(3) both the insurance carrier and the employer.

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

(1) complies with all the provisions of this chapter; and  
(2) provides that the insurance carrier is responsible for:  
(A) setting standards used in the handling of claims; and  
(B) arranging for the payment of claims.

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

Same as House version.

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SUBCHAPTER G. DISCIPLINARY ACTIONS;  
PENALTIES

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

- (1) has wilfully violated an insurance law of this state;
- (2) has intentionally made a material misstatement in the  
application for a certificate of authority;
- (3) has obtained or attempted to obtain a certificate of  
authority by fraud or misrepresentation;
- (4) has misappropriated, converted to the applicant's or  
holder's own use, or illegally withheld money belonging  
to:
  - (A) an insurance carrier, as that term is defined by  
Section 401.011, Labor Code;
  - (B) an insurer, as that term is defined by Section  
4001.003;
  - (C) a health maintenance organization; or
  - (D) an insured, enrollee, injured employee, or  
beneficiary;
- (5) has engaged in fraudulent or dishonest acts or  
practices;
- (6) has materially misrepresented the terms and  
conditions of an insurance policy, certificate, evidence of  
coverage, or contract;

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- (7) has been convicted of a felony;
- (8) is in a financial condition, or is operating or conducting business in a manner, that would render further transaction of business in this state hazardous or injurious to insured persons or the public;
- (9) has failed to comply with any judgment rendered against the applicant or holder before the 60th day after the date on which the judgment becomes final;
- (10) has wilfully violated a commissioner rule;
- (11) has refused to be examined or to produce accounts, records, and files for examination as required by this chapter or commissioner rule;
- (12) at any time fails to meet a qualification for which issuance of the certificate of authority could have been denied had the failure then existed and been known to the commissioner;
- (13) has had a certificate of authority, license, or other authority issued by this state, another state, or the United States suspended or revoked; or
- (14) has failed to timely file the annual report required by Section 4151.205.
- Sec. 4151.302. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR COMMISSIONER RULES.
- In addition to any other remedy available under Chapter 82 for a violation of this code, another insurance law of this state, or a commissioner rule, the department may:
- (1) deny an application for a certificate of authority;
- (2) suspend or revoke a certificate of authority;
- (3) place on probation a person whose certificate of authority has been suspended;



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(4) assess an administrative penalty; or

(5) reprimand a certificate of authority holder.

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

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

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

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

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

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

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

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

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

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

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

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

- (1) the administrator is insolvent or impaired;
- (2) an order for receivership, conservatorship, rehabilitation, or any other delinquency regarding the administrator has been entered in any state; or
- (3) the financial condition or business practices of the administrator otherwise pose an imminent threat to the

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public health, safety, or welfare of the residents of this state.

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

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

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

(2) state the grounds for the suspension; and

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

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

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

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

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suspension order.

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

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

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

Same as House version.

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

Sec. 4151.309 [~~4151.208~~]. CRIMINAL PENALTY [~~OFFENSE~~]. (a) An administrator commits an offense if the administrator knowingly violates this chapter or a rule of the commissioner adopted under this chapter. (b) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$5,000.

Same as House version.

ARTICLE 2. CONFORMING AMENDMENTS--  
INSURANCE CODE

Same as House version.

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SECTION 2.01. Section 1305.004(a), Insurance Code, is amended by adding Subdivision (1-a) to read as follows:  
(1-a) "Administrator" has the meaning assigned by Section 4151.001.

Same as House version.

SECTION 2.02. Subchapter A, Chapter 1305, Insurance Code, is amended by adding Section 1305.008 to read as follows:  
Sec. 1305.008. ADMINISTRATOR CERTIFICATE OF AUTHORITY REQUIRED. A person that performs the functions of an administrator under Chapter 4151 must hold a certificate of authority issued under that chapter to provide those functions under this chapter for an insurance carrier.

Same as House version.

SECTION 2.03. Sections 1305.1545(a) and (c), Insurance Code, are amended to read as follows:  
(a) An insurance carrier or ~~[third party]~~ administrator may not reimburse a doctor or other health care provider, an institutional provider, or an organization of doctors and health care providers on a discounted fee basis for services that are provided to an injured employee unless:  
(1) the carrier or ~~[third party]~~ administrator has contracted with either:  
(A) the doctor or other health care provider, institutional provider, or organization of doctors and health care

Same as House version.

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providers; or

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

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

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

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

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

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

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

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

(A) an adjustment bureau;

(B) an association;

(C) a general property and casualty agent;

(D) an independent contractor;

(E) an insurer; or

(F) a managing general agent; [~~or~~]

(2) supervises the handling of claims; or

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

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

(c) For purposes of Subsection (a)(6), claims arising under workers' compensation insurance policies, including claims relating to services provided through a certified workers' compensation health care network authorized under Chapter 1305, do not constitute claims arising under life, accident, or health insurance policies.

Same as House version.

ARTICLE 3. CONFORMING AMENDMENTS--  
LABOR CODE

Same as House version.

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

(b) Each insurance carrier shall designate persons to provide claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier. If an insurance carrier uses the services of a person required to hold a certificate of

Same as House version.

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authority under Chapter 4151, Insurance Code, the carrier must comply with the requirements of that chapter.

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

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

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

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

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

Same as House version.

SECTION 3.03. Section 407.061(c), Labor Code, is amended to read as follows:

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

(1) is acceptable to the commissioner;

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

(3) complies with Chapter 4151, Insurance Code.

Same as House version.



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

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

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

- (A) claims adjustment;
- (B) safety engineering;
- (C) compilation of statistics and the preparation of premium, loss, and tax reports;
- (D) preparation of other required self-insurance reports;
- (E) development of members' assessments and fees; and
- (F) administration of a claim fund.

SECTION 3.05. Subchapter A, Chapter 407A, Labor Code, is amended by adding Section 407A.009 to read as follows:

Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN SERVICE COMPANIES. A service company that adjusts or settles claims for the group must hold a certificate of authority as an administrator under Chapter 4151, Insurance Code.

Same as House version.

SECTION 3.05. Subchapter A, Chapter 407A, Labor Code, is amended by adding Section 407A.009 to read as follows:

Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN ADMINISTRATORS AND SERVICE COMPANIES. (a) An administrator or service company under this chapter that performs the acts of an administrator as defined in Chapter 4151,

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Insurance Code, must hold a certificate of authority under that chapter.

(b) 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.

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

SECTION 3.06. Section 407A.051(c), Labor Code, is amended to read as follows:

(c) The application must be accompanied by:

- (1) a nonrefundable \$1,000 filing fee;
- (2) proof of compliance with the financial requirements under Section 407A.053;
- (3) proof of compliance with the excess insurance requirements under Section 407A.054;
- (4) a copy of the articles of association or declaration of trust of the group, if any;
- (5) a copy of any agreements entered into with a managing company [~~an administrator~~] or a service company;
- (6) a copy of the bylaws of the proposed group;
- (7) a copy of the agreement between the group and each

No equivalent provision.

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employer who is a member of the group that:

- (A) secures the payment of workers' compensation benefits; and
- (B) includes provisions for payment of assessments as provided by Section 407A.355;
- (8) designation of the initial board of trustees and managing company [~~administrator~~] of the group;
- (9) the address in this state where the books and records of the group will be maintained at all times;
- (10) a pro forma financial statement, in a form acceptable to the commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group;
- (11) proof of one of the following:
  - (A) payment to the group, or a bona fide promise to pay on approval of the group, by each employer who is a member of the group of not less than 25 percent of that member's first year estimated modified schedule rating premium on a date prescribed by the commissioner, which shall be considered part of the first year premium payment of each member; or
  - (B) if the group is formed from a trust existing on September 1, 2003, that the assets of the trust are sufficient to cover the workers' compensation obligations of the trust;
- (12) a \$250,000 fidelity bond for the managing company [~~administrator~~] in the form prescribed by the commissioner;
- (13) a \$250,000 fidelity bond for the service company in

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the form prescribed by the commissioner; and  
(14) an indemnity agreement that meets the requirements of Section 407A.056.

SECTION 3.07. Subchapter B, Chapter 407A, Labor Code, is amended by adding Section 407A.0511 to read as follows:

Sec. 407A.0511. RESTRICTIONS ON PERFORMANCE OF CERTAIN FUNCTIONS BY MANAGING COMPANY. A managing company may not perform the functions of an administrator under Chapter 4151, Insurance Code.

No equivalent provision.

SECTION 3.08. Section 407A.151(b), Labor Code, is amended to read as follows:

(b) A managing company [~~An administrator~~] or service company of the group, or owner, officer, employee of, or any other person affiliated with the managing company [~~administrator~~] or service company, may not serve on the board of trustees.

No equivalent provision.

SECTION 3.09. Section 407A.152, Labor Code, is amended to read as follows:

Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board of trustees shall:

(1) maintain minutes of its meetings and make the minutes available to the commissioner;

No equivalent provision.

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- (2) designate a managing company [~~an administrator~~] and delineate in the written minutes of its meetings the areas of authority it delegates to the managing company [~~administrator~~]; and
- (3) retain an independent certified public accountant to audit the financial statements required by Section 407A.251.

SECTION 3.10. Section 407A.201(a), Labor Code, is amended to read as follows:

- (a) An employer who joins an approved workers' compensation self-insurance group shall:
  - (1) submit an application for membership to the board of trustees or its managing company [~~administrator~~]; and
  - (2) enter into the indemnity agreement as required by Section 407A.056.

SECTION 3.11. Section 407A.352, Labor Code, is amended to read as follows:

Sec. 407A.352. AUDITS. Each member of a group shall be audited annually by the managing company [~~administrator~~] or by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll, and rates. The group shall maintain a record of the audit as part of the group's records that are available to the commissioner during an examination conducted under Section 407A.252. The audit shall be performed at the expense of the group.

No equivalent provision.

No equivalent provision.

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SECTION 3.12. Section 407A.404(b), Labor Code, is amended to read as follows:

(b) In addition, the commissioner may revoke a group's certificate of approval if, after notice and an opportunity for hearing, the commissioner determines that:

(1) a certificate of approval issued to the group was obtained by fraud;

(2) there was a material misrepresentation in the application for the certificate of approval; or

(3) the group or its managing company [~~administrator~~] has misappropriated, converted, illegally withheld, or refused to pay on proper demand any money that belongs to a member, an employee of a member, or a person otherwise entitled to the money and that has been entrusted to the group or its managing company [~~administrator~~] in their fiduciary capacities.

No equivalent provision.

SECTION 3.13. Section 407A.001(a)(1), Labor Code, is repealed.

No equivalent provision.

ARTICLE 4. TRANSITION; EFFECTIVE DATE

Same as House version.

SECTION 4.01. A person is not required to hold a certificate of authority under Chapter 4151, Insurance

Same as House version.

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Code, as amended by this Act, to comply with Section 1305.008, Insurance Code, as added by this Act, before January 1, 2008.

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

Same as House version.

SECTION 4.03. The Texas Department of Insurance shall issue certificates of authority to applicants under Section 4151.052, Insurance Code, as amended by this Act, beginning September 1, 2007.

Same as House version.

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

Same as House version.

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

(c) Subchapter G, Chapter 4151, Insurance Code, as added by this Act, applies to a disciplinary action

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commenced on or after January 1, 2008.