

SUBJECT: Regulating third-party administrators in the workers' compensation system

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Darby, Bohac, Castro, Solomons, Zedler

0 nays

2 absent — Bailey, Martinez

WITNESSES: For — Andrew Kant, Texas Orthopaedic Association; Rick Levy, Texas AFL-CIO; Stephen Norwood, Texas Medical Association; (*Registered, but did not testify*: Michael Cunningham, Texas Building and Construction Trades Council, AFL-CIO; Mary Hennigan, Texas Occupational Therapy Association; John Pike, Texas Orthopaedic Association and Texas Ambulatory Surgery Center Society)

Against — Ron Cobb, American Insurance Association; Cathy DeWitt, Texas Association of Business; (*Registered, but did not testify*: Duwayne Johnson, American Association of Independent Claims Professionals; Joe Woods, Property Casualty Insurers Association of America)

On — (*Registered, but did not testify*: Jennifer Ahrens and Matt Ray, Texas Department of Insurance)

BACKGROUND: Insurance Code, ch. 4151 encompasses regulation of third-party administrators by the Texas Department of Insurance (TDI) for life, health, accident, or pharmacy benefits. Third-party administrators administering worker's compensation claims are not required to hold a certificate of authority under current law and are not regulated by TDI.

DIGEST: The bill would amend Insurance Code, ch. 4151 to specify that a third-party administrator (administrator) could collect premiums or adjust or settle claims for workers' compensation benefits. It also would expand auditing and reporting requirements for all administrators under the chapter.

GENERAL PROVISIONS

Administrator. The term “administrator” would include a workers’ compensation health care network that administered a workers’ compensation claim for an insurer other than the insurance carrier that established or contracted with the network.

The bill would establish that a person was not an administrator if the person was an employer administering an employee benefit plan or the plan of an affiliated employer under common management and control, a union administering a benefit plan on behalf of its members, or a workers’ compensation self-insurer administering workers’ compensation benefit obligations.

Processing agents. A person who operated as a processing agent and also performed the function of an administrator for an insurer, plan, or plan sponsor would be required to hold a certificate of authority. If the processing agent operated only as an agent or assignee for a pharmacy providing pharmaceutical benefits in conjunction with a workers’ compensation claim, the processing agent would not be considered an administrator.

Market analysis. The bill would allow the commissioner of insurance to conduct market analyses and examinations of administrators.

Referral to adjuster by administrator. An administrator knowingly could not refer a claim or loss for adjustment to an individual purporting to be an adjuster unless the individual was licensed under the Insurance Code. Before referring a claim or loss, an administrator would have to ascertain from the commissioner whether the individual selected to do an adjustment was licensed.

CERTIFICATE OF AUTHORITY

The bill would expand the process for an administrator’s application for a certificate of authority to require an administrator to notify TDI of any material change in the applicant’s ownership or control no later than 30 days after the effective date. In addition, an applicant would have to notify TDI of any other fact or circumstance affecting the applicant’s qualifications for a certificate of authority. TDI could revoke, suspend, or

not renew the certificate of authority of a certificate holder who did not maintain the qualifications necessary to obtain a certificate of authority.

POWERS AND DUTIES OF ADMINISTRATORS AND INSURERS

Required written agreement with insurer or plan. The commissioner by rule could adopt provisions for inclusion in the written agreement. The agreement would have to include a statement of the duties that the administrator was expected to perform on behalf of the insurer, and the lines, classes, or types of insurance that the administrator was authorized to administer. The agreement also would have to include, as applicable, provisions regarding claims handling and other standards relating to the business underwritten by the insurer. The written agreement would have to be retained during the term of the agreement and for five years after the agreement expired.

Notice of use of administrator's services. The bill would expand the notice requirement to include employees covered by workers' compensation insurance. It also would create an administrative penalty for failure to provide notice.

Referral by insurer. An insurer knowingly could not refer a claim or loss for administration to an individual or entity purporting to be or acting as an administrator unless the insurer ascertained that the individual or entity held a certificate of authority issued by TDI.

Responsibilities of an insurer. If an insurer used an administrator's services, the insurer would be 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 would provide the administrator a copy of written agreements relating to those matters. The administrator's responsibilities regarding any of those matters would have to be in the written agreement between the administrator and the insurer. An insurer would have to ensure competent administration of its programs. If an administrator administered benefits for more than 100 certificate holders, subscribers, claimants, or policyholders on behalf of an insurer, the insurer would conduct a review, at least semiannually, of the administrator's operations. At least one of the reviews would have to be an on-site audit of the operations of the administrator.

Adjudication of claims. In the event of a conflict between the Insurance Code and the Labor Code as to time periods for adjudication and payment of workers' compensation claims, the Labor Code provisions would prevail.

Compensation of administrator. CSHB 472 would prohibit compensating administrators based on the amount the administrator saved the insurer through adverse determinations.

DEPARTMENT REGULATION OF ADMINISTRATORS

Annual report. The bill would retain a current provision requiring an administrator to file an annual report with the commissioner. The report would have to contain any information required by the commissioner and be verified by at least two officers of the administrator.

The annual report would include the complete name and address of each insurer engaged in the business of workers' compensation in Texas with which the administrator had an agreement during the preceding fiscal year. It also would include an audited financial statement performed by an independent certified public accountant. The bill would specify the format for the audited financial statement, and information derived from such a statement would be confidential and not subject to open records laws. An administrator who received less than \$10 million annually under written agreements still would have to file a financial statement with the report but could forego the independently audited financial report.

Revocation of other certificates. The bill would prohibit an officer, director, or shareholder of an entity whose certificate of authority had been revoked in Texas or any other state from acting in such positions with an entity that held a certificate of authority, unless the commissioner determined that such an arrangement was in the public's best interest.

Restrictions of ownership interest. CSHB 472 would authorize the commissioner to approve the acquisition of ownership or of a majority shareholder position of an administrator that held a certificate to operate in Texas. The individual — or each partner, corporation or controlling member of a partnership, syndicate, or other group — would have to file certain information. TDI could disapprove an acquisition for specified reasons after a hearing, but the acquisition would be considered approved

if TDI did not take action within 61 days of receiving all the required information.

WORKERS' COMPENSATION BENEFIT PLANS

Application. The bill would apply to the administration of workers' compensation insurance coverage for an insurer and an employer that entered into an agreement with an insurer for a large deductible policy established under an optional deductible plan but would exclude non-subscribing employers under the Labor Code.

Affiliated administrator. An insurer authorized to write workers' compensation insurance in Texas could not enter into an agreement with an administrator, or permit an agent, including a managing general agent, to enter into such an agreement to adjust or handle claims for employees of the administrator or any other employer affiliated with the administrator without the approval of the commissioner.

Agreements between employers and administrators. An administrator could enter into an agreement and receive compensation for the adjustment or handling of workers' compensation claims affecting residents of Texas only with an insurer responsible for those claims. The bill would permit a certified self-insurer to use the same administrator that it employed in another state as long as the administrator had a certificate in Texas.

Large deductible policies. An employer that entered into an agreement with an insurer could not use an administrator to handle workers' compensation claims unless the administrator had entered into a written agreement with the insurer under which the insurer was responsible for setting standards used in handling claims and paying the administrative costs incurred by the administrator.

DISCIPLINARY ACTIONS AND PENALTIES

Grounds for denial, suspension, or revocation. TDI would outline the reasons for which the commissioner could deny an application for a certificate of authority or suspend or revoke an administrator's certificate of authority.

Remedies for violations. TDI could deny an application for a certificate of authority, suspend or revoke a certificate, place a person on probation whose certificate of authority had been suspended, assess an administrative penalty, or reprimand a certificate of authority holder.

Hearing. If TDI proposed to deny an application for a certificate of authority or suspend or revoke a certificate, the applicant or holder would be entitled to a hearing conducted by the State Office of Administrative Hearings.

Reapplication for certificated of authority. A person — or officer, director, or shareholder of a person — whose application had been denied or whose certificate of authority had been revoked could not apply for a certificate of authority until five years after the effective date of the denial or revocation or the date of a final court order affirming the denial or revocation. An application filed after the specified period could be denied by the commissioner if the applicant failed to show good cause why the denial or revocation should not bar issuance of a new certificate.

Disciplinary proceeding. TDI could 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. The fact that the certificate holder or related party had surrendered or forfeited the certificate would not affect culpability for the conduct subject to the proceeding.

Emergency certificate suspension. The commissioner could suspend the certificate of an administrator without notice or hearing if:

- the administrator was insolvent or impaired;
- an order for receivership, conservatorship, rehabilitation, or any other delinquency regarding the administrator had been entered in any state; or
- the financial condition or business practices of the administrator otherwise would pose an imminent threat to the public, health, safety, or welfare of the residents of this state.

An administrator whose certificate of authority had been suspended could request a hearing on the suspension of the certificate.

CONFORMING AMENDMENTS

Insurance Code. CSHB 472 would make conforming changes throughout the Insurance Code. It would specify that a third party performing the functions of an administrator would have to hold a certificate of authority to provide those functions for an insurance carrier. Claims arising from workers' compensation insurance policies, including claims relating to services provided through a certified workers' compensation health care network, would not constitute claims arising under life, accident, or health insurance policies.

Labor Code. The bill would specify that a qualified servicing contractor would have to hold a certificate of authority under the Insurance Code. It would use the definition of "third-party administrator" contained in the Insurance Code and require a service company that adjusted or settled claims for a workers' compensation self-insurance group to hold a certificate of authority administered under the Insurance Code.

OTHER PROVISIONS AND EFFECTIVE DATE

The commissioner could adopt rules that were fair, reasonable, and appropriate, including rules establishing financial standards, reporting requirements, and required contract provisions.

TDI would issue certificates of authority to applicants under Insurance Code, sec. 4151.052 beginning September 1, 2007. A person serving as an administrator would not be required to hold a certificate of authority under Insurance Code, ch. 4151 before January 1, 2008. A service company that adjusted or settled claims for a workers' compensation self-insurance group would not be required to hold a certificate of authority until January 1, 2008.

The bill would take effect on September 1, 2007, and apply to a disciplinary action that began on or after January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 472 would extend and enhance TDI's regulatory authority under the Third-Party Administrators Act over third-party administrators (TPAs), who adjust workers' compensation claims. Under current law, unlike administrators who handle annuities, life, health, accident, or pharmacy benefits, TPAs who exclusively administer workers' compensation claims are not required to have a certificate of authority to

operate. This is because the National Association of Insurance Commissioners (NAIC) does not include workers' compensation claims in its model act, which many states, including Texas, have used as a foundation for their laws regulating TPAs. This year, however, NAIC is working toward adding workers' compensation benefits to its model act. There is no reason for the law to treat administrators adjusting workers' compensation claims differently than administrators for any other line of insurance.

CSHB 472 would improve the current regulations affecting TPAs. Specifically, the bill would allow the commissioner to perform market analyses and audits of administrators. It would require insurers to confirm that TPAs held certificates of authority before referring claims to them. The bill also would direct insurers to maintain responsibility for the actions of their administrators and increase transparency regarding which entity was responsible for certain actions in the claims process and the standards under which those responsibilities would be performed.

The bill would direct a carrier to conduct semiannual performance reviews of any TPA who was responsible for at least 100 claims. It would detail contents of items that must be reported to TDI, including a list of all insurers with which the TPA had a contract and a financial statement to ensure the financial solvency of the TPA. For larger TPAs, the financial statement would have to be independently audited by a CPA. Smaller administrators would have an exemption that allowed them to file a financial statement in accordance with TDI rule.

CSHB 472 would prohibit TPAs from getting paid based on the amount the TPA saved an insurer by denying medical treatments or benefits. The committee substitute would clarify the authority of the commissioner to suspend, deny, or revoke a TPA's certificate of authority.

This bill should go forward immediately and not wait more than a year for model language from the NAIC. CSHB 472 would broaden the integrity in the workers' compensation system and continue the trend of accountability begun in 2005 with the workers' compensation revisions in HB 7 by Solomons.

**OPPONENTS
SAY:**

CSHB 626 would add an extra layer of regulation for some workers' compensation insurers already subject to regulation. Some large corporations in Texas are self-insured with regard to workers'

compensation benefits, but they contract with insurance carriers to administer their programs. This bill would force those insurers to obtain a TPA license when they already are subject to stricter accountability under other provisions in current law.

OTHER
OPPONENTS
SAY:

The NAIC model for drawing workers' compensation claims into TPA regulations is in the working-group stage and will not be available for at least another year. Texas would be better served by waiting for the NAIC model before implementing laws regulating TPAs with regard to workers' compensation benefits.

NOTES:

The committee substitute differs from the original bill in these primary ways:

- stipulating that an insurer could not refer a claim to a TPA and a TPA could not refer a claim to an adjuster without confirming that their licenses were in good standing with TDI;
- deleting a provision that would grant the commissioner the ability to deny an application for a TPA certificate because the applicant was not "competent, trustworthy, or financially responsible."
- granting the commissioner the authority to review and approve the transfer of a controlling interest of a TPA to confirm that it did not jeopardize the requirements of the certificate of authority; and
- prohibiting compensation of an administrator from being based on the amount the administrator saved the insurer by making adverse determinations.

The author plans to offer a floor amendment that would make numerous technical changes and inset additional conforming language. The amendment also would make substantive changes, among which would be:

- changing the requirement of an insurer to perform an on-site audit of each TPA from once a year to once every two years;
- amending a requirement that TPAs submit annual reports to TDI by March 1 and changing the deadline to June 30 to allow for the report to include a review of end-of-year financials;
- granting TDI rulemaking authority as to the role of TPAs to handle workers' compensation claims for large deductible policies; and

- using the term “managing company” to avoid confusion with an entity previously defined as an “administrator” that did not perform the function of a TPA and clarifying that a “service company” could perform the function of a TPA or it could perform other duties separate from those of a TPA.