

BILL ANALYSIS

Senate Research Center

H.B. 472
By: Solomons (Van de Putte)
State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Third party administrators are entities to which insurance companies delegate authority for claim adjusting, processing, and bill payment. Some of these administrators create, adopt, or lease networks, treatment guidelines, and formularies for their respective client insurance companies. Most of these administrators are currently regulated by the Texas Department of Insurance (TDI) under the Texas Third Party Administrator Act. However, workers' compensation administrators are exempted from such regulation.

H.B. 472 provides that workers' compensation third party administrators are subject to regulation by the Texas Third Party Administrator Act. The bill also increases the auditing and reporting requirements of all third party administrators to TDI.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1.08 (Section 4151.101, Insurance Code), SECTION 1.10 (Section 4151.103, Insurance Code), and SECTION 1.20 (Section 4151.253, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 1.04 (Section 4151.006, Insurance Code), of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. THIRD-PARTY ADMINISTRATORS

SECTION 1.01. Amends Section 4151.001, Insurance Code, by amending Subdivisions (1) and (2) and adding Subdivisions (6), (7), and (8) to redefine "administrator" and "insurer" and define "workers' compensation benefits," "workers' compensation insurance coverage," and "workers' compensation insurance self-insurer."

SECTION 1.02. Amends Section 4151.002, Insurance Code, to provide that a person is not an administrator if the person is 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; a union administering a benefit plan, on behalf of its members, an agent licensed under Subchapter B (License Required), Chapter 4051 or Subchapter B (License Requirements), Chapter 4053, who receives commissions as an agent and is acting in a certain manner; 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, accident, pharmacy, or workers' compensation benefits; an adjuster licensed under Subtitle C (Adjustors) by the Texas Department of Insurance (TDI) who is engaged in the performance of the individual's powers and duties as an adjuster in the scope of the individual's license; or a certain affiliate, as set forth in this subsection and as described by Chapter [sic] 823.003 (Classification as Affiliate or Subsidiary), of a self-insurer certified under Chapter 407 (Self-insurance Regulation), Labor Code. Deletes existing text providing that an employer acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer is not an administrator. Makes conforming and nonsubstantive changes.

SECTION 1.03. Amends Subchapter A, Chapter 4151, Insurance Code, by adding Sections 4151.0021, 4151.0031, and 4151.0051, as follows:

Sec. 4151.0021. APPLICABILITY TO CERTAIN PROCESSING AGENTS. (a) Defines “processing agent.”

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

Sec. 4151.0031. MARKET ANALYSIS. Authorizes the commissioner of insurance (commissioner) to conduct market analyses and examinations of an administrator under Chapter 751 (Market Conduct Surveillance).

Sec. 4151.0051. REFERRAL TO ADJUSTER BY ADMINISTRATOR. (a) Prohibits an administrator from knowingly referring 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 (Insurance Adjustors).

(b) Requires an administrator, before first referring a claim or loss for adjustment, to ascertain from the commissioner whether the individual selected to perform the adjustment holds a license under Chapter 4101. Authorizes the administrator, after receipt of information from TDI that the individual does hold such a license, to refer claims or losses to that individual for adjustment until the administrator has actual knowledge or receives information from TDI that the individual no longer holds such a license. Requires TDI to keep an updated list of individuals who hold such licenses.

SECTION 1.04. Amends Section 4151.006, Insurance Code, to authorize the commissioner, in the manner prescribed by Subchapter A (Rules), Chapter 36, to adopt rules that are fair, reasonable, and appropriate, rather than 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. Amends Section 4151.052, Insurance Code, as follows:

Sec. 4151.052. APPLICATION. (a) Creates this section from existing text. Makes no changes to this subsection.

(b) Requires an applicant for a certificate or a certificate holder under this chapter to notify TDI 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 change's effective date and to notify TDI of any other fact or circumstance affecting the applicant's or certificate holder's qualifications for a certificate in this state as required by commissioner rule.

SECTION 1.06. Amends Section 4151.056, Insurance Code, to provide that the issuance, denial, suspension, cancellation, or revocation of a certificate to act as an administrator is subject to Subchapter G, in addition to certain other law.

SECTION 1.07. Amends the heading to Subchapter C, Chapter 4151, Insurance Code, to read as follows:

SUBCHAPTER C. POWERS AND DUTIES OF
ADMINISTRATORS AND INSURERS

SECTION 1.08. Amends Section 4151.101, Insurance Code, as follows:

Sec. 4151.101. **WRITTEN AGREEMENT WITH INSURER OR PLAN SPONSOR REQUIRED.** (a) Creates this section from existing text. Makes no changes to this subsection.

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

SECTION 1.09. Amends Section 4151.102, Insurance Code, by adding Subsection (a-1), to require the written agreement to include a statement of the duties that the administrator is expected to perform on behalf of the insurer, and the lines, classes, or types of insurance that the administrator is authorized to administer. Requires the agreement to include, as applicable, provisions regarding claims handling and other standards relating to the business underwritten by the insurer.

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

(a) Requires the administrator and the insurer, plan, or plan sponsor to retain a copy of the written agreement as part of their official records during the term of the agreement and until the fifth anniversary of the date on which the agreement expires. Makes a conforming deletion.

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

SECTION 1.11. Amends Section 4151.104, Insurance Code, as follows:

Sec. 4151.104. **NOTICE OF USE OF ADMINISTRATOR'S SERVICES.** (a) Creates this subsection from existing text. Requires the administrator, if an insurer, plan, or plan sponsor uses an administrator's services, to give written notice to each insured and injured employee, rather than plan participant of the administrator's identity and the relationship among the administrator and the insurer, plan, or plan sponsor and the insured and injured employee.

(b) Authorizes an administrator administering workers' compensation claims to 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) (notice of whether the employer has workers' compensation insurance coverage), Labor Code.

(c) Provides that an administrator who fails to provide notice as required by Subsection (a) is subject to an administrative penalty in the manner provided by Chapter 84 (Administrative Penalties).

SECTION 1.12. Amends Subchapter C, Chapter 4151, Insurance Code, by adding Sections 4151.1041 and 4151.1042, as follows:

Sec. 4151.1041. **REFERRAL BY INSURER.** (a) Prohibits an insurer from knowingly referring a claim or loss for administration in this state to a person purporting to be or acting as an administrator unless the person holds a certificate under this chapter.

(b) Requires an insurer, before first referring a claim or loss for administration, to ascertain from the commissioner whether the person performing the administration holds a certificate under this chapter. Authorizes the insurer, once the insurer has ascertained that the person holds a certificate, to refer a claim to the person for administration and to continue to refer claims to the person until the insurer has knowledge or receives information from the commissioner that the person no longer holds a certificate.

Sec. 4151.1042. **RESPONSIBILITIES OF INSURER; SEMIANNUAL AUDIT.** (a) Provides that if an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, reimbursement procedures, and claims

payment procedures applicable to the coverage and for securing reinsurance, if any. Requires the insurer to provide a copy of the written requirements relating to those matters to the administrator. Requires the responsibilities of the administrator as to any of those matters to be set forth in the written agreement between the administrator and the insurer.

(b) Requires an insurer to ensure competent administration of its programs.

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

SECTION 1.13. Amends Section 4151.111, Insurance Code, by adding Subsection (c), to provide that in the event of a conflict between this section (Adjudication of Claims) and a provision of the Labor Code relating to time periods for adjudication and payment of workers' compensation claims, the Labor Code provision prevails.

SECTION 1.14. Amends Section 4151.113(b), Insurance Code, to provide that a trade secret, including the identity and address of an injured employee, is confidential, except as provided in this subsection.

SECTION 1.15. Amends Section 4151.117, Insurance Code, as follows:

Sec. 4151.117. COMPENSATION OF ADMINISTRATOR. (a) Creates this subsection from existing text. Makes a conforming change.

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

SECTION 1.16. Amends the heading to Subchapter E, Chapter 4151, Insurance Code, to read as follows:

SUBCHAPTER E. DEPARTMENT REGULATION OF ADMINISTRATORS

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

(a) Requires an administrator to annually, not later than June 30, rather than March 1, file with the commissioner a report on a form prescribed by the commissioner. Requires the report to contain any information required by the commissioner and to be verified by at least two officers of the administrator.

(c) Requires the report to include an audited financial statement performed by an independent certified public accountant, except as provided by Subsection (f). Requires the statement prepared on a consolidated basis to include a columnar consolidating or combining worksheet that is required to be filed with the annual report and to comply with certain conditions as set forth in this subsection

(d) Requires the report to include notes to the 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) Provides that information derived from a statement contained in a report under this section is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

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

SECTION 1.18. Amends Section 4151.206(a), Insurance Code, to require the commissioner to collect and an applicant to pay to the commissioner a fee not to exceed \$500 for an examination under Section 4151.201 (Examination of Administrator), rather than 4201.201 (Repetitive Contacts with Health Care Provider or Patient; Frequency of Reviews).

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

Sec. 4151.210. EFFECT OF REVOCATION OF OTHER CERTIFICATES. Prohibits an officer or a director or a shareholder with a controlling interest of an entity whose certificate to engage in the business of insurance or other analogous authorization has been revoked in this state or in any other state from acting as an officer, director, member, manager, or partner, or as a shareholder with a controlling interest, of an entity that holds a certificate 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) Prohibits a person from acquiring an ownership interest in an entity that holds a certificate 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 TDI under oath certain information set forth in this subsection.

(b) Authorizes TDI to 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. Authorizes TDI, if the partner, member, or person is a corporation or the person required to file the statement under Subsection (a) is a corporation, to require the information required under that subsection to be provided regarding certain entities set forth in this subsection.

(c) Authorizes TDI to disapprove an acquisition of control if, after notice and opportunity for hearing, the commissioner makes certain determinations set forth in this subsection.

(d) Provides that 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 TDI receives all information required by this section, notwithstanding Subsection (c).

Sec. 4151.212. MAINTENANCE OF QUALIFICATIONS REQUIRED. Authorizes TDI, in the manner prescribed by Section 4151.056 (Duration of a certificate of Authority) and by Subchapter G, to revoke, suspend, or refuse to renew the certificate of authority of a certificate holder who does not maintain the qualifications necessary to obtain a certificate of authority issued under this chapter.

SECTION 1.20. Amends Chapter 4151, Insurance Code, by adding Subchapter F, as follows:

SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

Sec. 4151.251. APPLICATION. (a) Provides that this subchapter applies to the administration of workers' compensation insurance coverage for an insurer and an

employer that enters into an agreement with an insurer for a large deductible policy under Section 2053.202(b) (for a negotiated deductible that exceeds the highest deductible available under a certain plan section that allows a policyholder to self-insure for the amount of the deductible).

(b) Provides that this subchapter does not apply to an employer that does not elect to obtain workers' compensation insurance coverage under Subchapter A (Coverage Election; Security Procedures), Chapter 406, Labor Code.

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

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

Sec. 4151.253. LARGE DEDUCTIBLE POLICIES. (a) Prohibits an employer who enters into an agreement with an insurer under Section 2053.202(b) from using an administrator to handle workers' compensation claims unless the administrator has entered into a written agreement with the insurer under Subchapter C under which the insurer is responsible for setting standards used in the handling of claims and arranging for payment of the administrative costs incurred by the administrator.

(b) Requires the commissioner to adopt rules to implement Subsection (a)(2) (regarding the arrangement for payment of administrative costs), including rules prescribing requirements for administrative cost payment arrangements.

SECTION 1.21. Amends Chapter 4151, Insurance Code, by adding Subchapter G, as follows:

SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

Sec. 4151.301. GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE OF AUTHORITY. Authorizes TDI to deny an application for a certificate or discipline the holder of a certificate under this subchapter if TDI determines that the applicant or holder, individually, or through an officer, director, or shareholder has taken certain actions or meets certain conditions set forth in this subsection.

Sec. 4151.302. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR COMMISSIONER RULES. Authorizes TDI, in addition to any other remedy available under Chapter 82 (Sanctions) for a violation of this code, another insurance law of this state, or a commissioner rule, to take certain actions set forth in this subsection.

Sec. 4151.303. PROBATED SUSPENSION. Authorizes the commissioner, if the suspension of a certificate is probated, to require the holder to report regularly to TDI on any matter that is the basis of the probation or limit the holder's practice to the areas prescribed by TDI.

Sec. 4151.304. HEARING. Entitles the applicant or holder, if TDI proposes to deny an application for or suspend or revoke a certificate, to notice and a hearing conducted by the State Office of Administrative Hearings as provided by Chapter 40 (Duties of State Office of Administrative Hearings and Commissioner in Certain Proceedings; Rate Setting Proceedings).

Sec. 4151.305. APPLICATION FOR CERTIFICATE OF AUTHORITY AFTER DENIAL OR REVOCATION. (a) Prohibits a person or an officer, director, or shareholder of the person whose application has been denied or whose certificate has been revoked under this subchapter from applying for a certificate before the fifth

anniversary of the effective date of the denial or revocation or the date of a final court order affirming the denial or revocation if judicial review was sought.

(b) Authorizes the commissioner to deny an application filed after the period required by Subsection (a) 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.

(c) Provides that 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.

Sec. 4151.306. **DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF CERTIFICATE.** (a) Authorizes TDI to 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.

(b) Provides that, 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 that person's culpability for the conduct that is the subject of the proceeding.

Sec. 4151.307. **EMERGENCY CERTIFICATE SUSPENSION.** (a) Authorizes the commissioner to suspend the certificate of an administrator without notice or hearing if the commissioner makes certain determinations set forth in this subsection.

(b) Authorizes the commissioner to issue an order suspending an administrator's certificate on determining that grounds exist under Subsection (a) to suspend it. Requires the commissioner to immediately serve notice of the suspension on the holder.

(c) Requires the notice required by Subsection (b) to be sent in the manner and contain certain information set forth in this subsection.

(d) Entitles an administrator whose certificate is suspended under this section to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Requires the commissioner to issue a notice of hearing not later than the 10th day after the date a hearing is requested.

(e) Requires the hearing to 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) Provides that a hearing on a suspension order under this section is subject to Chapter 2001 (Administrative Procedure), Government Code, and to Subchapter A (General Provisions), Chapter 40. Requires the administrative law judge after the hearing to recommend to the commissioner whether to uphold, vacate, or modify the suspension order.

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

SECTION 1.22. Transfers Section 4151.207, Insurance Code, to Subchapter G, Chapter 4151, Insurance Code, as added by this Act, rennumbers it as Section 4151.308, and amends that section as follows:

Sec. 4151.308. New heading: **GENERAL ADMINISTRATIVE SANCTIONS.**

SECTION 1.23. Transfers Section 4151.208, Insurance Code, to Subchapter G, Chapter 4151, Insurance Code, as added by this Act, rennumbers it as Section 4151.309, and amends that section as follows:

Sec. 4151.309. New heading: CRIMINAL PENALTY.

ARTICLE 2. CONFORMING AMENDMENTS--INSURANCE CODE

SECTION 2.01. Amends Section 1305.004(a), Insurance Code, by adding Subdivision (1-a), to define “administrator.”

SECTION 2.02. Amends Subchapter A, Chapter 1305, Insurance Code, by adding Section 1305.008. as follows:

Sec. 1305.008. ADMINISTRATOR CERTIFICATE OF AUTHORITY REQUIRED. Requires a person that performs the functions of an administrator under Chapter 4151 to hold a certificate of authority issued under that chapter to provide those functions under this chapter (Workers’ Compensation Health Care Networks) for an insurance carrier.

SECTION 2.03. Amends Sections 1305.1545(a) and (c), Insurance Code, as follows:

(a) Deletes existing text prohibiting a third-party administrator from reimbursing a doctor or other health care provider, an institutional provider, or an organization of doctors and health care providers in the manner set forth in this subsection.

(c) Makes a conforming change.

SECTION 2.04. Amends Section 4101.001(a), Insurance Code, to redefine “adjuster.”

SECTION 2.05. Amends Section 4101.002, Insurance Code, by adding Subsection (c), to provide that, for purposes of Subsection (a)(6) (providing that this chapter does not apply to a person who handles claims arising under life, accident, and health insurance policies), 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.

ARTICLE 3. CONFORMING AMENDMENTS--LABOR CODE

SECTION 3.01. Amends Section 406.010(b), Labor Code, to require each insurance carrier to designate persons to provide claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier. Requires the carrier, if it uses the services of a person required to hold a certificate under Chapter 4151, Insurance Code, to comply with the requirements of that chapter.

SECTION 3.02. Amends Section 407.001(5), Labor Code, to redefine “qualified claims servicing contractor.”

SECTION 3.03. Amends Section 407.061(c), Labor Code, to make conforming changes.

SECTION 3.04. Amends Section 407A.001(a), Labor Code, by adding Subdivision (5-a) and amending Subdivision (8), to define “managing company” and to redefine “service company.”

SECTION 3.05. Amends Subchapter A, Chapter 407A, Labor Code, by adding Section 407A.009, as follows:

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

SECTION 3.06. Amends Section 407A.051(c), Labor Code, to make conforming changes.

SECTION 3.07. Amends Subchapter B, Chapter 407A, Labor Code, by adding Section 407A.0511, as follows:

Sec. 407A.0511. RESTRICTIONS ON PERFORMANCE OF CERTAIN FUNCTIONS BY MANAGING COMPANY. Prohibits a managing company from performing the functions of an administrator under Chapter 4151, Insurance Code.

SECTION 3.08. Amends Section 407A.151(b), Labor Code, to make conforming changes.

SECTION 3.09. Amends Section 407A.152, Labor Code, to make conforming changes.

SECTION 3.10. Amends Section 407A.201(a), Labor Code, to make a conforming change.

SECTION 3.11. Amends Section 407A.352, Labor Code, to make a conforming change.

SECTION 3.12. Amends Section 407A.404(b), Labor Code, to make conforming changes.

SECTION 3.13. Repealer: Section 407A.001(a)(1) (definition of “administrator”), Labor Code.

ARTICLE 4. TRANSITION; EFFECTIVE DATE

SECTION 4.01. Provides that a person is not required to hold a certificate under Chapter 4151, Insurance 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. Provides that 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 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.

SECTION 4.03. Requires TDI to issue certificates to applicants under Section 4151.052, Insurance Code, as amended by this Act, beginning September 1, 2007.

SECTION 4.04. (a) Effective date: September 1, 2007, except as provided by Subsections (b) and (c) of this section.

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

(c) Provides that Subchapter G, Chapter 4151, Insurance Code, as added by this Act, applies to a disciplinary action commenced on or after January 1, 2008.