§5.9201. Definitions.

In this subchapter:

(1) Loss--A report of injury or damage alleged to have been sustained as a consequence of one or more accidents or fortuitous events, against which the insurer, in consideration of premium, has agreed to indemnify the insured subject to the conditions and exclusions in the insurance contract.

(2) Loss control--A risk management technique that attempts to decrease the frequency or severity of an insured's losses.

(3) Loss ratio--A financial ratio to measure losses and loss adjustment expenses against earned premiums that reflects the percentage of earned premiums consumed by losses. For a given period, the loss ratio equates to incurred losses plus loss adjustment expenses divided by earned premium.

(4) Loss experience--The loss ratio, loss frequency, and loss severity.

(5) Loss control information and services--Include, but are not limited to:

(A) loss data and the results of analysis of that data;

(B) training, publications, and informational materials;

(C) written summary reports resulting from surveys of insureds' operations and facilities;

(D) electronic, telephonic, or in-person communications regarding loss control;

(E) any agreements between the insurer and the insured regarding loss control; and

(F) classes for the training of insureds' supervisory personnel.
(6) Essential recommendation--Relates to a condition or practice that creates a potential for severe injury, destruction of property, or significant financial loss. The insurer must verify the insured's compliance with an essential recommendation to mitigate or eliminate the exposure.

(7) Nonessential recommendation--Relates to a condition or practice that does not directly create a risk for severe loss or injury, but that could contribute to a loss of any kind. The insured's compliance improves the risk and reduces the likelihood of a loss occurring from the recognized hazard or situation, but the insurer is not required to verify the change.

(8) Qualified loss control representative or qualified field safety representative with specialty in hospitals--A person, whether employed by an insurer or third party, who meets the requirements in this subchapter for the relevant line of insurance.

§5.9202. Requirement to Provide Loss Control Information and Services.

(a) Insurers writing the following lines of insurance in Texas must provide loss control information and services to their insureds, on site or remotely:

1. commercial automobile liability insurance;
2. general liability insurance;
3. professional liability insurance for insureds other than hospitals;
4. medical professional liability insurance for insureds other than hospitals; and
5. professional liability insurance for hospitals.

(b) The requirement in this section does not prevent insurers writing other lines of insurance from providing loss control information and services.

§5.9203. Loss Control Information and Services.

Insurers must consider the following factors when deciding how to provide loss control information and services, and the extent of the information and services to provide:

1. risks, including:
   (A) type of operation;
   (B) services provided; and
   (C) probability of accidents or hazards with liability loss potential;
(2) exposures:
    (A) for commercial automobile liability insurance, including the:
        (i) number of vehicles;
        (ii) type of vehicles;
        (iii) type of cargo;
        (iv) number of locations;
        (v) number of drivers; and
        (vi) number of miles driven per year; and
    (B) for general liability insurance, professional liability insurance for insureds other than hospitals, medical professional liability insurance for insureds other than hospitals, or for professional liability insurance for hospitals in Texas, including the:
        (i) number of employees, agents, or contractors;
        (ii) type of services or operations;
        (iii) number of locations; and
        (iv) number of contract services;
(3) loss experience, as defined in §5.9201 of this title (relating to Definitions), for the 12 months preceding the date of the insurer's quarterly review;
(4) other considerations, including the:
    (A) extent and scope of the insured's loss prevention activities;
    (B) insured's commitment and willingness to accept loss control information and services;
    (C) insured's history of compliance with the insurer's past recommendations; and
    (D) unusual circumstances.

§5.9204. Insurer Responsibilities and Methods of Providing Loss Control Information and Services.
  (a) Loss control information and services. An insurer subject to §5.9202 of this title (relating to Requirement to Provide Loss Control Information and Services) must:
      (1) have procedures for the provision of loss control information and services:
(2) notify insureds of the availability of loss control information and services;
(3) provide appropriate and timely loss control information and services to its insureds;
(4) monitor insureds' losses; and
(5) document the consideration and provision of those services.

(b) Policies and procedures manual. The insurer must have written policies and procedures for considering, providing, and documenting the consideration and provision of appropriate and timely loss control information and services to each insured.

(1) The manual must contain the following:
(A) a table of contents and an index;
(B) a management directive regarding the insurer's commitment to providing loss control information and services to insureds;
(C) a description of the methods by which insureds are notified of the availability of loss control information and services;
(D) a description of the insurer's process for providing and following up on essential recommendations; and
(E) a description of the method and frequency with which the insurer verifies the insured's compliance with essential recommendations.

(2) The insurer is responsible for verifying that all parties involved with its loss control program, including employees, agents, vendors, and other contracted third parties, follow all Texas insurance laws and the insurer's policies and procedures manual.

(c) Notice. The insurer must provide an annual written notice of available loss control information and services to each insured. The notice must accompany each policy at issuance and renewal, and include the following information:
(1) group or individual company names;
(2) line of insurance;
(3) a statement advising insureds of the availability of loss control information and services, at no charge; and
(4) direct contact information for requesting loss control information and services.
All insureds must be able to contact the insurer to request services using this method.
(d) Response time. The insurer must respond to each insured's request for loss control information and services within a reasonable time. At a minimum, the insurer must:

   (1) provide remote services within seven days of the insured's request; or
   (2) provide on-site services or schedule a mutually agreeable date for on-site services within 30 days of the insured's request.

(e) Monitor. The insurer must use a loss report to monitor each insured's loss experience, including loss frequency and loss severity. The insurer must generate and review the loss report for each insured, regardless of premium size, at least quarterly. For each insured, if either the loss frequency or the loss severity meets the following triggers, the insurer must consider and evaluate whether to provide the insured with loss control information and services. The triggers in a rolling 12-month period are:

   (1) three losses; or
   (2) a 100 percent loss ratio.

(f) Document. The insurer must document the consideration and provision of loss control information and services.

   (1) Recommendations. The terms "essential recommendation" and "nonessential recommendation" are defined in §5.9201 of this title (relating to Definitions).

   (A) Essential recommendations. The insurer must notify the insured in writing of essential recommendations and verify that the insured complied with any requested corrective action in the recommendation or provided a status report within 30 days of the essential recommendation. If the insured fails to respond to an essential recommendation, the insurer must make at least one written follow-up attempt to seek compliance, with compliance due not later than 30 days after delivery of the follow-up attempt.

   (B) Nonessential recommendations. The insurer may notify the insured in writing of nonessential recommendations, but the insurer is not required to verify that the insured complied with any requested corrective action or provided a status report in response to a nonessential recommendation.

   (C) Closure of the recommendation. The insurer must close each recommendation with documentation of the insured's satisfactory response to or compliance with the recommendation or the insurer's decision to cease follow-up efforts.
(2) Maintenance of a record. The insurer must maintain a record to document its consideration and provision of loss control information and services to an insured as those efforts occur.

(g) Methods. The insurer may use one or more methods to provide loss control information and services, including, but not limited to:

(1) reports, such as loss summaries and analyses;
(2) printed material, such as topic-specific brochures and posters;
(3) audio-visual material, such as videos and web-based presentations;
(4) the knowledge and expertise of qualified loss control representatives or field safety representatives with specialty in hospitals;
(5) surveys, in which the insurer provides on-site identification and subsequent evaluation of exposures relative to employees, patients, visitors, material, equipment, processes, and facilities, followed by a written summary report to the insured following the visit. The summary report must explain the reason for the survey and objectives for addressing loss control needs by identifying the specific types of loss control information, services, and recommendations made as a result of the visit;
(6) consultations, in which the insurer may counsel and advise insureds relative to risks, exposures, and experience in the insured's business;
(7) analysis or a review of procedures and practices the insured uses to identify causes and trends of losses;
(8) training programs for initial and continuing education, and accident prevention or liability loss control techniques; and
(9) classes for the training of insureds' supervisory personnel.

(A) For classes on commercial automobile liability insurance, the subjects covered may include, but are not limited to:

(i) vehicle maintenance and inspection;
(ii) safe driving techniques; and
(iii) supervisory techniques, including recordkeeping and monitoring personnel performance.
(B) For classes on general liability insurance, professional liability insurance for insureds other than hospitals, medical professional liability insurance for insureds other than hospitals, or for professional liability insurance for hospitals in Texas, the subjects covered may include, but are not limited to:

(i) liability loss and hazard indication and analysis;
(ii) selection of appropriate loss control measures, and
(iii) supervisory techniques, including recordkeeping and monitoring personnel performance.

§5.9205. Inspection and Evaluation of Loss Control Information and Services.

(a) Timing. At least once every two years, TDI will evaluate the loss control information and services of each insurer subject to §5.9202 of this title (relating to Requirement to Provide Loss Control Information and Services) by performing an inspection.

(b) Location. The TDI loss control inspector will evaluate the company or group of companies that share the same loss control program management at the same time and place. The choice of an on-site or correspondence inspection is at the inspector's discretion.

(1) On-site inspection. The inspector will conduct an on-site inspection in Texas at the insurer's home office, division office, regional office, or office closest to Austin, unless the inspector and the insurer agree to a different location. The location selected must include a dedicated conference room or office for the inspector to conduct the inspection. If the inspector and the insurer cannot agree on a location, the inspection will be conducted by correspondence.

(2) Correspondence inspection. The inspector will conduct a correspondence inspection by mail, electronic mail, or telephone; or any combination of those methods. The choice of correspondence methods is at the inspector's discretion.

(c) Notice of and preparation for the inspection.

(1) Notice of date, type, and location of inspection. At least 60 days in advance, the inspector will notify each insurer in writing of the inspection date, and whether the inspection will be performed on-site or by correspondence.
(2) Loss control presentation. The insurer may prepare a written presentation to provide an overview of the program, changes since the last inspection, and a guide to locating information in the procedures. To assist the inspector, the presentation may include:

(A) a list of the companies, or group of companies, sharing the same loss control program;

(B) any updates or changes to the loss control program or its procedures since the last inspection, if applicable;

(C) a description of the insurer’s implementation of any previous TDI recommendations or any corrective measures taken as a result of previous disciplinary action, if applicable;

(D) a description of the loss control program, including its location in the organizational chart, key staff names, and a description of the types of exposures for each line;

(E) identification of all persons appointed or contracted to underwrite coverage or to provide loss control information or services, and a general description of each person’s underwriting or contracted authority; and

(F) a description of the insurer’s methods of verifying that persons appointed or contracted to underwrite coverage or to provide loss control information and services are in compliance with all Texas insurance laws and the insurer's policies and procedures manual regarding loss control.

(3) Notice of accounts to be inspected. The inspector may require the insurer to submit a worksheet and a complete electronic copy of the loss control file for selected accounts. The inspector may select a sampling of accounts from any and all lines of insurance identified in §5.9202 of this title (relating to Requirement to Provide Loss Control Information and Services), based on policy name, premium, loss count, and loss ratio. The inspector may require the insurer to submit some or all of the selected accounts before the inspection for early review.

(d) Account information required. If the inspector selects accounts for review, the insurer will have at least 30 days from receiving notice of the selected accounts to prepare the worksheets and present the loss control files.

(1) Information on each worksheet must include, but is not limited to, the following:
(A) account name and policy number;
(B) written premium;
(C) description of operations;
(D) extent and type of services provided;
(E) date of last loss control visit, or direct communication with the insured (if any);
(F) loss occurrence and accident data;
(G) loss potential of risk;
(H) information sent or assistance provided to the insured for loss control purposes, with the date the information or assistance was sent or provided;
(I) loss ratio;
(J) effective date of policy;
(K) recommendations submitted for loss control;
(L) training program information;
(M) for commercial automobile liability insurance:
   (i) number and type of vehicles; and
   (ii) number of drivers;
(N) for general liability insurance, professional liability insurance for insureds other than hospitals, or medical professional liability insurance for insureds other than hospitals, the number of employees;
(O) for professional liability insurance for hospitals in Texas:
   (i) type of hospital (government, for-profit, nonprofit, or other);
   (ii) number of employees;
   (iii) types of patient-care services provided and the dates they were provided;
   (iv) number of physicians;
   (v) number of beds; and
   (vi) number of patient visits (inpatient and outpatient).

(2) Information in the loss control file must include, but is not limited to:
(A) documentation of all loss control information and services provided to
the insured;

(B) documentation to demonstrate the consideration of the provision of
loss control information and services to the insured;

(C) documentation to support any decision to decline to provide loss
control information and services to the insured, if either of the triggers described in §5.9204(e) of
this title have been met during any quarterly review of losses; and

(D) any other documentation that TDI requests during the inspection.

(e) Delivery of information to TDI. The insurer must deliver all information required to
be submitted to TDI in electronic format to the inspector.

(1) On-site inspection. The insurer must deliver the following items to the
inspector by the specified deadlines.

(A) At least 45 days before the inspection, the insurer must submit a list of
insureds and a list of its qualified loss control representatives or, if the insurer writes professional
liability insurance for hospitals in Texas, qualified field safety representatives with specialty in
hospitals as described below.

(i) List of insureds. The insurer must sort and arrange the list of
accounts by company, line of insurance, and written premium. The list must include each
insured's name, policy number, effective date, written premium, loss ratio, and number of
reported losses. If TDI is inspecting multiple insurers, the affiliates must also sort and arrange
the accounts by insurance company.

(ii) List of qualified loss control representatives or, if the insurer
writes professional liability insurance for hospitals in Texas, qualified field safety representatives
with specialty in hospitals. The list must include, but is not limited to, each representative's:

(I) name;
(II) office location;
(III) line of insurance for which the representative provides
loss control information and services;

(IV) contact information; and
(V) designation as employee or contractor.
(iii) Documentation to confirm each loss control representative's or qualified field safety representative's qualifications.

(B) At least five days before the inspection, the insurer must submit:

(i) worksheets for all the selected accounts;

(ii) each loss control file selected for early review;

(iii) at the insurer's option, up to three additional loss control files for other accounts to demonstrate efficacy of its loss control program; and

(iv) at the insurer's option, its loss control presentation.

(C) On the inspection date, the insurer must provide:

(i) its policies and procedures manual;

(ii) all sample notices to the insured of the availability of loss control information and services for each line of coverage the insurer writes;

(iii) representative examples of loss control training, publications, and informational materials;

(iv) all selected loss control files that the inspector did not request for early review; and

(v) any other documentation the inspector requests, including but not limited to, the insurer's

(I) liability loss and claims notification procedures; and

(II) liability loss investigation and analysis for specific claims.

(2) Correspondence inspection. The insurer must submit all of the information in §5.920(e)(1) of this title (relating to Inspection and Evaluation of Loss Control Information and Services) to the inspector by the date the inspector requests.

(f) Evaluation. The inspector will evaluate the adequacy of the loss control information and services that the insurer provides to its insureds.

(1) The insurer must designate a representative to be available and qualified to respond to any questions the inspector may have during the inspection. The representative must have a leadership role and be knowledgeable about the insurer's loss control program.

(2) The inspector will:
(A) review and analyze the files, worksheets, and other documentation provided by the insurer during the inspection; determine how and when the insurer considered the provision of and provided loss control information and services to insureds; and evaluate the adequacy of the provision of loss control information and services to its insureds;  

(B) at the inspector's discretion, and if on site, discuss the preliminary inspection observations with the insurer; and  

(C) provide a loss control report.  

(g) Loss control reports. After the inspection, the inspector will prepare a written report and deliver it to the insurer. The report will include the inspector's observations, analyses, and conclusions; and a determination regarding the adequacy or inadequacy of the insurer's provision of loss control information and services as required by Insurance Code §§1903.003, 1903.051, or 1952.058. The report may include observed deficiencies necessitating correction or improvement.  

§5.9206. Qualifications.  

(a) To provide loss control information and services, the insurer may employ qualified loss control representatives or, if the insurer writes professional liability insurance for hospitals in Texas, qualified field safety representatives with specialty in hospitals, as defined in §5.9201 of this title (relating to Definitions); retain qualified independent contractors; contract with the insured to provide qualified loss control representatives and services; or use a combination of these methods. The insurer is responsible for ensuring that the persons providing loss control information and services are qualified under this section.  

(b) To provide loss control information and services for insureds with commercial automobile liability insurance, general liability insurance, professional liability insurance for insureds other than hospitals, or medical professional liability insurance for insureds other than hospitals, a person must either:  

(1) satisfy the requirements in §5.9207 of this title (relating to Qualifications for Providing Loss Control Information and Services for Commercial Automobile Liability Insurance, General Liability Insurance, Professional Liability Insurance for Insureds Other than Hospitals, or Medical Professional Liability Insurance for Insureds Other than Hospitals); or
(2) work under the supervision of a qualified loss control representative in providing loss control information and services. In that situation, the qualified loss control representative is responsible for the information and services provided; and all surveys, findings, reports, recommendations, correspondence, and file documentation must be issued under the qualified loss control representative's authority.

(c) To be qualified as a Field Safety Representative with Specialty in Hospitals, a person must satisfy the requirements in §5.9208 of this title (relating to Qualifications for Designation as a Field Safety Representative with Specialty in Hospitals; Course of Training).

§5.9207. Qualifications for Providing Loss Control Information and Services for Commercial Automobile Liability Insurance, General Liability Insurance, Professional Liability Insurance for Insureds Other than Hospitals, or Medical Professional Liability Insurance for Insureds Other than Hospitals.

(a) In this section, "experience" means work experience that includes monitoring, identifying, analyzing, coordinating, designing, investigating, planning, or communicating to optimally control or reduce the hazards and exposures that would be detrimental to the insured.

(b) To be qualified to provide loss control information and services for insureds with commercial automobile liability insurance, professional liability insurance for insureds other than hospitals, general liability insurance, or medical professional liability insurance for insureds other than hospitals, a person must meet one or more of the following standards:

(1) hold an active, approved loss control or risk management certification, designation, or license. Acceptable certifications, designations, and licenses include the following:

(A) Certified Safety Professional (CSP) -- Board of Certified Safety Professionals;

(B) Associate in Risk Management (ARM) -- The Institutes (the American Institute for Chartered Property Casualty Underwriters);

(C) Chartered Property and Casualty Underwriter (CPCU) -- The Institutes (the American Institute for Chartered Property Casualty Underwriters);
(D) Certified Risk Manager (CRM)—The National Alliance for Insurance
Education & Research;

(E) Certified Insurance Counselor (CIC)—The National Alliance for
Insurance Education & Research;

(F) Professional Engineer (PE) licensed in any United States jurisdiction;

(G) Licensed Risk Manager, Texas Department of Insurance, as defined
and licensed under Insurance Code Chapter 4153;

(H) for commercial automobile only, a certification relating to commercial
automobile safety from:

   (i) North American Transportation Management Institute
   (NATMI);

   (ii) Texas Trucking Association (TXTA); or

   (iii) U.S. Department of Transportation, Transportation Safety; or

(I) for general liability insurance, professional liability insurance for
insureds other than hospitals, or medical professional liability insurance for insureds other than
hospital insureds only: Certified Industrial Hygienist (CIH)—American Board of Industrial
Hygiene:

   (2) hold a bachelor's, master's or doctorate degree from an accredited college or
university that includes a major or primary specialization relating to loss control or risk
management;

   (3) hold a bachelor's, master's, or doctorate degree from an accredited college or
university (in a subject other than loss control or risk management) and have two years of
documented experience analyzing and mitigating potential hazards to reduce the frequency and
severity of losses in the applicable line of insurance; or

   (4) have four years of documented experience, as defined in §5.9207(a) of this
title, in the applicable line of insurance.

§5.9208. Qualifications for Designation as a Field Safety Representative with Specialty in
Hospitals; Course of Training.
(a) In this section, "experience" means work experience that includes monitoring, identifying, analyzing, coordinating, designing, investigating, planning, and communicating to optimally control or reduce the hazards and exposures that would be detrimental to the insured.

(b) A field safety representative with specialty in hospitals under Insurance Code §1903.003 (concerning Loss Control Services Required) may be an individual:

1. with a bachelor's, master's, or doctorate degree in science or engineering from an accredited college or university;
2. with a bachelor's, master's, or doctorate degree in nursing, pharmacy, or physical therapy from an accredited college or university;
3. with a master's or doctorate degree in hospital administration from an accredited college or university;
4. who is a certified safety professional (CSP) as determined by the Board of Certified Safety Professionals, or a professional engineer (PE) licensed in any United States jurisdiction;
5. who is certified for specific practice in industrial hygiene by the American Board of Industrial Hygienists (CIH);
6. with 10 years of documented experience in occupational safety and health; or
7. who has completed one of the following courses of training designated in accordance with Insurance Code §1903.003(c)(6):
   (A) Certified Professional in Healthcare Risk Management (CPHRM)--American Hospital Association; or
   (B) Certified Professional in Patient Safety (CPPS)--National Patient Safety Foundation.