Subchapter G. Workers' Compensation Insurance
Division 2. Group Self-Insurance Coverage
28 TAC §§5.6401 - 5.6411 and 5.6413

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.6401 - 5.6411 and 5.6413, concerning group self-insurance coverage. Amendments to §5.6401 and §5.6403 implement Senate Bill 264, 89th Legislature, 2025.

EXPLANATION. Amending §5.6401 and §5.6403 is necessary to implement SB 264, which added Labor Code §407A.0521, concerning New Certificates of Approval Prohibited. Section 407A.0521 prohibits the issuance of a certificate of approval to a proposed group on or after September 1, 2025, though it provides that the commissioner may amend a certificate of approval issued to a group before September 1, 2025.

The proposed amendments to §§5.6402, 5.6404 - 5.6411, and 5.6413 include nonsubstantive rule drafting and formatting changes for plain language to conform the sections to the agency's current style and to improve clarity. These changes include changing "shall" to "must," "will," or "may"; "pursuant to" to "under"; "percent" to "%"; and lowercasing "commissioner." Amendments also add chapter and section titles and correct grammatical errors such as fixing unhyphenated adjectives, adding missing commas, and removing unnecessary articles.

Descriptions of the sections' proposed amendments follow.

Section 5.6401. An amendment to §5.6401 removes a reference to applicants, since under Labor Code §407A.0521 applications for new self-insurance group certificates may no longer be approved. Amendments also include nonsubstantive rule drafting and formatting changes.

Section 5.6402. Amendments to §5.6402 include nonsubstantive rule drafting and formatting changes.

Section 5.6403. Amendments to §5.6403 include disallowing unincorporated associations or business trusts that propose to organize as workers' compensation self-insurance groups to file applications for certificates of approval; stating that the commissioner will no longer issue new certificates of approval to proposed groups; stating the commissioner may amend a certificate of approval issued to a group before September 1, 2025; and nonsubstantive rule drafting and formatting changes.

Section 5.6404. Amendments to §5.6404 include nonsubstantive rule drafting and formatting changes.

Section 5.6405. Amendments to §5.6405 include replacing outdated references to provisions from the uncodified Insurance Code and nonsubstantive rule drafting and formatting changes.

Section 5.6406. Amendments to §5.6406 include nonsubstantive rule drafting and formatting changes.

Section 5.6407. Amendments to §5.6407 include nonsubstantive rule drafting and formatting changes. No changes are proposed to Figure 28 TAC §5.6407(b).

Section 5.6408. Amendments to §5.6408 include nonsubstantive rule drafting and formatting changes for plain language. No changes are proposed to Figure 28 TAC §5.6408(c).

Section 5.6409. Amendments to §5.6409 include nonsubstantive rule drafting and formatting changes.

Section 5.6410. Amendments to §5.6410 include replacing outdated references to provisions from the uncodified Insurance Code and nonsubstantive rule drafting and formatting changes.

Section 5.6411. Amendments to §5.6411 include nonsubstantive rule drafting and formatting changes.

Section 5.64013. Amendments to §5.6413 include nonsubstantive rule drafting and formatting changes.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Walker made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Walker expects that administering them will have the public benefits of ensuring that TDI's rules conform to Labor Code §407A.0521 and ensuring that TDI's rules are accurate and transparent by adding titles to citations and eliminating errors in punctuation and grammar.

Ms. Walker expects that the proposed amendments will not increase the cost of compliance with Labor Code §407A.0521 because it does not impose requirements beyond those in statute. Labor Code §407A.0521 prohibits the commissioner from issuing a certificate of approval to a proposed group on or after September 1, 2025. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities because the amendments are largely nonsubstantive in nature and do not impose requirements beyond those in statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed Texas Self-Insurance Group Guaranty Fund Rule is necessary to implement legislation. The proposed rule implements Labor Code §407A.0521, as added by SB 264.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 31, 2026. Consistent with Government Code §2001.024(a)(8), TDI requests public comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2869 at 10:00 a.m., central time, on August 25, 2026. TDI will hold the public hearing remotely using online resources and in person at the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin Texas 78701 in Room 2.035. Details of how to view and participate virtually in the public hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/index.html.

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STATUTORY AUTHORITY. TDI proposes amendments to §§5.6401 - 5.6411 and 5.6413 under Labor Code §407A.008 and Insurance Code §4151.006 and §36.001.

Labor Code §407A.008 authorizes the commissioner to adopt rules as necessary to implement Labor Code Chapter 407A.

Insurance Code §4151.006 authorizes the commissioner to adopt rules that are fair, reasonable, and appropriate to augment and implement Insurance Code Chapter 4151.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 5.6401 and 5.6403 implement Labor Code §407A.0521. Sections 5.6402, 5.6403, and 5.6411 implement Insurance Code §4151.006. Sections 5.6401 - 5.6411 and 5.6413 implement Labor Code §407A.008 and Insurance Code §36.001.

TEXT.

§5.6401. Purpose and Scope.

This division establishes the licensing, contracting, reporting, and financial requirements, procedures, responsibilities, and obligations applicable to [~~applicants and~~] workers' compensation self-insurance groups holding a certificate of approval issued under [~~the~~] Labor Code Chapter 407A, concerning Group Self-Insurance Coverage.

§5.6402. Definitions.

(a) The following words and terms, when used in this division, [~~shall~~] have the following meanings[~~,~~] unless the context clearly indicates otherwise.

(1) Actuary--A member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserves opinions by the Casualty Practice Council of the American Academy of Actuaries.

(2) Administrator--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, as defined in [~~the~~] Labor Code §407A.001(a)(1), concerning Definitions. Day-to-day management may include, but is not limited to, claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss, and tax reports; preparation of other required self-insurance

reports; development of members' assessments and fees; and administration of a claim fund. For purposes of this division, administrator includes and has the same meaning as managing company, as that term is defined in [~~the~~] Labor Code §407A.001(a)(5-a). Any reference to the term administrator in this division in all contexts necessarily includes and references both administrator and managing company.

(3) Books and records [~~Records~~]--All books, accounts, records, documents, written agreements, contracts, papers, correspondence, claims files, receipts, bills, notes, pleadings, investigatory files, or any other written or electronic material relating to the business of a group.

(4) Certified public accountant [~~Public Accountant~~]--An accountant or firm in good standing with the American Institute of Certified Public Accountants and the Texas State Board of Public Accountancy and who conforms to the Code of Professional Ethics of the American Institute of Certified Public Accountants.

(5) Commissioner--The commissioner of insurance [~~Commissioner of Insurance~~].

(6) Department--The Texas Department of Insurance.

(7) Group--An unincorporated association or business trust composed of five or more private employers that meet all of the requirements of [~~the~~] Labor Code Chapter 407A, concerning Group Self-Insurance Coverage, and this division.

(8) Managing company--As defined in paragraph (2) of this subsection.

(9) Modified schedule rating premium--As defined in [~~the~~] Labor Code §407A.001(a)(6).

(10) Person--An individual, partnership, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, association, or any other legal entity.

(11) Same or similar--As set forth in [~~the~~] Labor Code §407A.001(a)(7).

(12) Service company--A person that directly or indirectly provides services to or on behalf of a group, other than the services provided by an administrator, including, but not limited to:

(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.

(13) Third-party [~~Third party~~] administrator--An administrator or service company, as those terms are defined under this division, that holds itself out or acts as an administrator, as that term is defined in [~~the~~] Insurance Code §4151.001(1), concerning Definitions.

(b) A group must [~~shall~~] engage only one administrator to implement the policies established by the board of trustees and to provide day-to-day management of the group. A group may engage more than one service company to provide services to the group.

(c) An individual, partnership, or corporation may act as an administrator for more than one group.

(d) An individual, partnership, or corporation may act as an administrator for one group and as a service company for another group.

(e) An individual, partnership, or corporation may not act as both an administrator and a service company for the same group at the same time.

§5.6403. Application for Initial Certificate of Approval.

(a) Consistent with Labor Code §407A.0521, concerning New Certificates of Approval Prohibited, [~~An~~] unincorporated associations [~~association~~] or business trusts [~~trust composed of five or more private employers~~] that propose [~~proposes~~] to organize as [~~a~~] workers' compensation self-insurance groups may no longer file applications for certificates [~~group shall file with the department an application for a certificate~~] of approval with the department.

(1) Consistent with Labor Code §407A.0521, the commissioner will no longer issue new certificates of approval to proposed groups.

(2) As permitted by Labor Code §407A.0521, the commissioner may amend a certificate of approval that was issued to a group before September 1, 2025.

(b) Contents of the application must include the information required by Labor Code §407A.051, concerning Application for Initial Certificate of Approval; Approval Requirements.

(c) In addition to the information required under subsection (b) of this section, an applicant must [~~shall~~] also provide the following:

(1) A statement that demonstrates that the members of the group are in the same or similar type of business as required by Labor Code §407A.002(a)(1), concerning Application of Chapter; Establishment of Private Group.

(A) The statement should demonstrate that the members of the group have the same governing classification.

(B) If the members of the proposed group have different governing classifications, the statement should demonstrate how the business pursuits of the members of the group are similar enough in operation in the commissioner's [~~Commissioner of Insurance's~~] discretion to be grouped together.

(2) To aid the department in making the determination that the trade or professional association meets the requirements of Labor Code §407A.002(a)(2) that the trade of professional association has been in existence in this state for purposes other than insurance for five years before the establishment of the group, provide copies of documents relating to the organization, governance, and operation of the association and a narrative describing the association's activities [~~of the association~~]. Annual reports, conventions, seminars, dues requirements, newsletters, and other evidence acceptable to the commissioner [~~Commissioner of Insurance~~] may be submitted to aid the department in making its determination.

(3) In addition to the copy of the group's bylaws [~~of the group~~] required by Labor Code §407A.051(c)(6), submit copies of documents relating to the organization, governance, and operation of the group.

(4) Financial statement projections on a quarterly basis [~~Projected financial statements~~] for [~~the~~] 24 months [~~month period~~] from the group's start of operations including a [~~using quarterly~~] balance sheet [~~projections~~] based on the group's fiscal year, [~~quarterly~~] cash flow schedules reflecting expenditures by category, [~~quarterly~~] revenue and expenses, [~~expense projections~~] and an actuarial opinion [~~projection~~] of the group's total projected incurred liabilities for workers' compensation that [~~which~~] demonstrate compliance with Labor Code §407A.051(c)(10). The actuarial opinion must [~~which requires the group to~~] show the group's [~~its~~] financial ability to pay the workers' compensation obligations of the employers who are members of the group. The [~~and Labor Code §407A.053(c) which requires the~~] group must [~~to~~] post security equal to the greater of $300,000 or 25% of the group's total incurred liabilities for workers' compensation in compliance with Labor Code §407A.053(c), concerning Financial Requirements. The projections must [~~shall~~] include an estimate of the employees to be covered on which the

projections and actuarial assumptions are based. The projections must reflect the identity, qualifications, and credentials of the persons making the projections.

(5) A written commitment, binder, or policy or contract of excess insurance that meets the requirements of §5.6405 of this title [~~division~~] (relating to Excess Insurance).

(6) A fidelity bond for an administrator in the amount of $250,000. The fidelity bond must meet the requirements of §5.6408 of this title [~~division~~] (relating to Fidelity and Performance Bonds).

(7) A fidelity bond for a service company identified under [~~pursuant to~~] paragraph (12)(A) or (B) of this subsection, if there is one, in the amount of $250,000. The fidelity bond must meet the requirements of §5.6408 of this title [~~division~~].

(8) A performance bond for a service company identified under [~~pursuant to~~] paragraph (12)(A) of this subsection that provides claims service to or on behalf of a group, if there is one, in the amount of $250,000. This performance bond is in addition to the fidelity bond required in paragraph (7) of this subsection for a service company. The performance bond must [~~shall~~] be in the form prescribed in §5.6408 of this title [~~division~~].

(9) An indemnity agreement executed by the members of the group binding the members, jointly and severally, for the obligations of the group. At a minimum, the agreement must [~~shall~~] include the provisions described in §5.6406 of this title [~~division~~] (relating to Indemnity Agreement).

(10) An acknowledgment [~~acknowledgement~~], in the form prescribed in §5.6407 of this title [~~division~~] (relating to Acknowledgment [~~Acknowledgement~~] of Indemnity Agreement), executed by each member of the group that it is aware that it can be called upon to pay the workers' compensation claims of another member of the group under [~~pursuant to the~~] Labor Code Chapter 407A, concerning Group Self-Insurance Coverage.

(11) The statement required by §5.6404 of this title [~~division~~] (relating to Notification to the Department and Responsibility for Continued Compliance).

(12) A business plan or plan of operation that describes the group's business activities, safety program, and organization. The plan must also include:

(A) the identity of the administrator of the group and any third-party [~~third party~~] administrator that provides services to or on behalf of the group;

(B) excluding any person identified under [~~pursuant to~~] subparagraph (C) of this paragraph, the identity of any service company that performs one or more of the following services:

(i) provides cash and asset management services to a group, including any person that has access to or disbursement authority over any of the group's assets and accounts;

(ii) maintains the group's accounting records or organizational documents;

(iii) stores or maintains the group's electronic books and records, including a person identified by a group under §5.6409(b)(3) of this title [~~division~~] (relating to Books and Records); or

(iv) provides management of a function [~~for which~~] the group retains ultimate responsibility for under the Insurance Code, [~~the~~] Labor Code, or rules adopted under those codes [~~thereunder~~];

(C) the identity of:

(i) the accountant of the group; and

(ii) the actuary of the group.

(D) a general description of the experience, qualifications, facilities, and personnel of a person identified under [~~pursuant to~~] subparagraph (A) or (B) of this paragraph; and

(E) the identity of the affiliates of a person identified under [~~pursuant to~~] subparagraph (A) or (B) of this paragraph. A group may identify such affiliates in an organizational chart.

(13) A copy of each written agreement required under §5.6411 of this title [~~division~~] (relating to Contract Provisions).

(14) A statement that a third-party [~~third party~~] administrator identified under [~~pursuant to~~] paragraph (12)(A) of this subsection either holds the required authorization from the department or has applied for the required authorization from the department and that the group will verify that such authorization has been granted by the department before the group allows the third-party [~~third party~~] administrator to provide services to or on behalf of the group.

(d) The group must also submit [~~the following~~]:

(1) proof that it has received payment or a promise to pay from each member of 25% of its first-year [~~first year~~] estimated modified schedule rating premium. If the group approves a member's submission of a promise to pay the 25% of premium, the employer must submit payment of the amount promised no later than 10 days after the effective date of the member's coverage with the group;[~~,~~] or

(2) a certification by a certified public accountant and an actuary that assets and reserves of the trust satisfy the requirement of [~~the~~] Labor Code §407A.051(c)(11)(B).

(e) Each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified under [~~pursuant to~~] subsection (c)(12)(A) or (B) of this section must [~~shall~~] provide to the department a completed biographical affidavit in accordance with §7.1604(b)(1)(C) of this title (relating to Application for Certificate of Authority [~~Denial, Suspension, Cancellation, or Revocation~~]). A biographical affidavit is not required if a biographical affidavit from the individual has been filed with the department within the prior three years and contains substantially accurate information. A biographical affidavit must demonstrate that the affiant has sufficient experience, ability, standing, and good record to make success of a group probable.

(f) Each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified under [~~pursuant to~~] subsection (c)(12)(A) or (B) of this section must [~~shall~~] comply with the requirements of Chapter 1, Subchapter D, of this title (relating to Effect of Criminal Conduct).

(g) A person subject to this division and to the requirements of [~~the~~] Insurance Code §4151.055, concerning Fidelity Bond Required, may satisfy the requirements of §4151.055 by obtaining a fidelity bond that meets the requirements of subsection (c)(6) or (7) of this section, as applicable.

(h) Under [~~Pursuant to the~~] Labor Code §407A.051(b)(7), the commissioner may require the submission of any other relevant information reasonably required to determine whether to approve or disapprove an application for a certificate of approval.

§5.6404. Notification to the Department and Responsibility for Continued Compliance.

(a) No later than 30 days after the effective date of the change, a group must [~~shall~~] provide written notice to the department identifying:

(1) any change in the information filed by the group under [~~the~~] Labor Code §407A.051(c), concerning Application for Initial Certificate of Approval; Approval Requirements, and §5.6403 of this title [~~division~~] (relating to Application for Initial Certificate of Approval); and

(2) any change in the group's manner of compliance with [~~the~~] Labor Code §407A.051(c) and §5.6403 of this title [~~division~~] .

(b) A group must meet the requirements of [~~the~~] Labor Code §407A.051(c) and §5.6403 of this title [~~division~~] as those requirements apply to any change of information identified by a group under [~~pursuant to~~] subsection (a) of this section.

(c) A group must [~~shall~~] provide written notice to the department no later than 10 days of first becoming aware that any hazardous financial condition exists, or that, in the opinion of its administrator, any hazardous financial condition is likely to occur. For purposes of this subsection only, hazardous financial conditions include the conditions described in [~~the~~] Labor Code §407A.355(a) and (b), concerning Deficits; Insolvencies, and any event, series of events, or negative trend that may affect the group's ability to continue as a viable group.

(d) A group must [~~shall~~] acknowledge its responsibilities under this section by executing a statement that it will meet the notification requirements of subsections (a) and (c) of this section and filing it with the department.

(e) A group is required to maintain at all times the qualifications necessary to obtain a certificate of approval issued under [~~the~~] Labor Code Chapter 407A, concerning Group Self-Insurance Coverage [~~at all times~~].

§5.6405. Excess Insurance.

(a) Unless otherwise approved by the commissioner, a group must [~~shall~~] obtain excess insurance for losses that exceed a group's retention in an amount that will pay all benefits required under the Labor Code and rules adopted thereunder for a compensable claim.

(b) The group must [~~shall~~] obtain and maintain excess insurance coverage from an insurer that has a certificate of authority from the department [~~Texas Department of Insurance~~] or from an eligible surplus lines insurer in compliance with Insurance Code

Chapter 981, concerning Surplus Lines Insurance, [~~of the Texas Insurance Code~~] and related provisions of the Texas Administrative Code, provided that:

(1) the surplus lines insurer is also certified as a trusteed reinsurer by the department [~~Texas Department of Insurance~~], in accordance with [~~Insurance Code, Article 5.75-1(b)(3) (effective April 1, 2007, Article 5.75-1(b)(3) is repealed and re-adopted as~~] Insurance Code §§493.102, concerning Credit for Reinsurance Generally; 493.152, concerning Composition of Trust; 493.153, concerning Form of Trust; 493.154, concerning Terms of Trust; [~~,~~] 493.155, concerning Reports and Certification; and 493.157, concerning Authorized Reinsurance; Credit and Accounting [~~495.157)~~];

(2) the surplus lines insurer maintains a financial strength rating of "A-" or better, as determined by A.M. Best Company;

(3) the surplus lines insurer provides a clean, irrevocable, and unconditional letter of credit in favor of the group as beneficiary and held by the group, subject to withdrawal solely by and under the exclusive control of the group, to secure the payment of losses, including losses, loss adjustment expenses, incurred but not reported losses, and any other obligation of the surplus lines insurer under the terms and conditions of the excess insurance policy, whether paid or unpaid by the group:

(A) in no less than the greater of:

(i) the amount of actuarially projected losses to ultimate; or

(ii) the amount of actual losses to ultimate;

(B) issued by a qualified United States financial institution as defined in [~~Insurance Code, Article 5.75-1(e) (effective April 1, 2007, Article 5.75-1(e) is repealed and re-adopted as~~] Insurance Code §§493.002, concerning Applicability of Chapter; 493.102, concerning Credit for Reinsurance Generally, and 493.104, concerning Credit for Funds Securing Reinsurance Obligations [~~)~~]; and

(C) provided the letter of credit is in a form acceptable to the department [~~Texas Department of Insurance~~] and meets the requirements in 28 TAC §7.610 (relating to Letter of Credit Requirements), except for those requirements that apply solely to reinsurance agreements;

(4) the group timely collects recoverables and receivables from the surplus lines insurer, but in no event, later than 90 days, including, if needed, drawing down on the letter of credit;

(5) the group submits the surplus lines policy forms, renewal forms, certificates, endorsements and amendments applicable thereto, and any agreements between the surplus lines insurer and the group to the department [~~Texas Department of Insurance~~] for review prior to use and the group may not accept or enter into any agreement or arrangement with the surplus lines insurer that has not been reviewed by the department [~~Texas Department of Insurance~~];

(6) the group demonstrates to the satisfaction of the department [~~Texas Department of Insurance~~] that the group meets the requirements of subsection (b) of this section before obtaining and in order to maintain excess insurance coverage from an eligible surplus lines insurer; and

(7) the group notifies the commissioner [~~Commissioner~~] in writing no less than five calendar days after receiving notice of cancellation or nonrenewal of the excess insurance policy and no less than 30 calendar days before [~~prior to~~] the effective date of any proposed change in the excess insurance policy, by endorsement or otherwise.

(c) A group may petition the department to obtain excess insurance in an amount that is different than the amount required by subsection (a) of this section. In determining whether to grant a group's petition, the commissioner will [~~shall~~] consider the current market conditions; a group's size, types of employment, years in existence, and risk exposure; other forms, if any, of additional financial security available to the group; and any other relevant factor. In no event, however, may [~~shall~~] a group's excess insurance coverage be less than $10 million per occurrence.

(d) To assist the commissioner in making the determination under subsection (c) of this section, the group must [~~shall~~], at a minimum, submit an analysis prepared by an actuary of the appropriate level of specific excess insurance for the group.

§5.6406. Indemnity Agreement.

The indemnity agreement required by Labor Code §407A.051(c)(14), concerning Application for Initial Certificate of Approval; Approval Requirements, and §407A.056, concerning Indemnity Agreement Requirements, must be executed by all employers in the group and must [~~shall~~] contain the following provisions.[~~:~~]

(1) THIS IS A LEGAL DOCUMENT THAT BINDS THE SIGNATORIES TO SPECIFIC DUTIES AND RESPONSIBILITIES REGARDING GROUP FINANCIAL ARRANGEMENTS FOR COVERING WORKERS' COMPENSATION INJURIES AND OCCUPATIONAL DISEASE AND EMPLOYERS LIABILITY INSURANCE COVERAGE IN THE STATE OF TEXAS.

(2) JOINT AND SEVERAL LIABILITY: THIS PARAGRAPH REQUIRES THE EMPLOYER TO JOIN IN PAYING WORKERS' COMPENSATION LOSSES OF THE GROUP IN THE EVENT THE GROUP'S ASSETS ARE NOT SUFFICIENT TO COVER THE LIABILITIES. The Employer will be jointly and severally obligated with each other member of the group to meet the workers' compensation and employer's liability insurance coverage obligations of the group and to make any and all payments to the group, which may be necessary to meet the group's obligations under applicable Texas law and regulations and also in accordance with the group's Bylaws; including agreeing that if the assets of the group are at any time insufficient to enable the group to discharge the group's legal liabilities and other obligations and maintain the reserves required of it under applicable Texas statutes

and regulations, and the group is unable to otherwise make up the deficiency in accordance with Texas laws, regulations, and the group's Bylaws, then the Employer will be jointly and severally liable to pay an assessment by the group in an amount necessary to make up the deficiency.

(3) The Employer remains jointly and severally liable even if the Employer is cancelled by the group or elects to terminate membership in the group. The Employer will remain jointly and severally liable for the workers' compensation and employer's liability insurance coverage obligations for the group and its members that were incurred during the Employer's period of membership.

(4) The insolvency or bankruptcy of the Employer will not relieve the group, the Employer, or any member from liability for the payment of any benefits incurred during the insolvency or bankrupt member's period of membership.

(5) The Employer is not buying a policy of insurance. The employer is entering into an agreement which is evidence that the employer is a subscriber to the Texas workers' compensation system.

(6) Because the sums required to fulfill workers' compensation and employer's liability insurance coverage obligation of the group cannot be known precisely in advance, the premium and other assessments, reserve requirements, and other financial requirements for the group's operation will initially be established by estimates.

§5.6407. Acknowledgment [~~Acknowledgement~~] of Indemnity Agreement.

(a) Each member must [~~shall~~] execute the acknowledgment [~~acknowledgement~~] set forth in subsection (b) of this section. The acknowledgment [~~acknowledgement~~] must [~~shall~~] be printed in black ink on an 8-1/2-inch [~~8 1/2 inch~~] by 11-inch [~~11 inch~~] sheet of white paper in at least 11-point [~~11 point~~] type.

(b) The acknowledgment [~~acknowledgement~~] form is as follows:

Figure: 28 TAC §5.6407(b)

[No change.]

§5.6408. Fidelity and Performance Bonds.

(a) Fidelity bonds required of an administrator under [~~the~~] Labor Code §407A.051(c)(12), concerning Application for Initial Certificate of Approval; Approval Requirements, and §5.6403(c)(6) of this title [~~division~~] (relating to Application for Initial Certificate of Approval) and a service company under [~~the~~] Labor Code §407A.051(c)(13) and §5.6403(c)(7) of this title (relating to Acknowledgment of Indemnity Agreement) [~~division~~] must protect against loss caused directly by an act of fraud or dishonesty by the employees of the administrator or service company and such fidelity bond must [~~shall~~] include the group as a loss payee.

(b) A performance bond required under [~~the~~] Labor Code §407A.057(a), concerning Additional Performance Bond Requirements, and §5.6403(c)(8) of this title (relating to Fidelity and Performance Bonds) [~~division~~] for a service company providing claims services to or on behalf of a group must [~~shall~~] be in substantially the form set forth in subsection (c) of this section.

(c) A performance bond required under [~~the~~] Labor Code §407A.057(a) and §5.6403(c)(8) of this title must [~~division shall~~] contain the following text and must [~~shall~~] be in the following format:

Figure: 28 TAC §5.6408(c)

[No change.]

(d) Administrators and service companies may [~~only~~] obtain a fidelity or performance bond only from a surety company authorized to engage in business in this state as a surety or an eligible surplus lines insurer in compliance with [~~the~~] Insurance Code Chapter 981, concerning Surplus Lines Insurance, and regulations adopted under it [~~thereunder~~].

(e) An administrator or service company that has a fidelity or performance bond canceled [~~cancelled~~] or terminated and not replaced with new coverage that meets the requirements of [~~the~~] Labor Code Chapter 407A, concerning Group Self-Insurance Coverage, and this division and that is effective concurrently upon the date of the cancellation or termination must [~~shall~~]:

(1) immediately inform the commissioner in writing, which in no event may [~~shall~~] be later than five business days from the date the administrator or service company first becomes aware of the cancellation or termination; and

(2) immediately inform the group in writing, which in no event may [~~shall~~] be later than five business days from the date the administrator or service company first becomes aware of the cancellation or termination.

§5.6409. Books and Records.

(a) Except as otherwise provided in this division, this section applies to all books and records of a group, regardless of whether the books and records are located in [~~the State of Texas~~] or outside [~~the State~~] of Texas.

(b) A group's books and records must be located within the United States of America and its territories at all times, but may be located outside [~~the State~~] of Texas, provided that the group provides prior written notice to the department that:

(1) states [~~provides~~] the specific address outside [~~the State~~] of Texas where the group's books and records will be located;

(2) identifies the types of books and records that will be located outside [~~the State~~] of Texas, including those that will be maintained in an electronic format;

(3) if applicable, identifies the vendor of a leased or purchased software or electronic platform that [~~who~~] will provide services to the group related to the maintenance of the group's books and records; and

(4) if applicable, includes the group's continuity plan in the event of cancellation or termination of the arrangement with a vendor identified by the group under [~~pursuant to~~] paragraph (3) of this subsection.

(c) All books and records of a group must [~~shall~~] be:

(1) electronically or physically accessible to the department upon the department's request; and

(2) maintained in a manner that provides an audit trail between the group's general ledger and the group's source documents.

(d) A group's electronic books and records must be maintained with reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system and to prevent the deterioration of the electronic books and records.

(e) A group must ensure a weekly backup of its electronic books and records.

(f) A group must be able to access a complete and current set of its electronic books and records or a complete and current backup of its electronic books and records from a location in [~~the State of~~] Texas at all times.

(g) This section does not in any way limit the commissioner's authority under [~~the~~] Labor Code §407A.252, concerning Examination, and §407A.355, concerning Deficits; Insolvencies.

(h) To the extent of a conflict between this section and [~~the~~] Labor Code §407A.252 or §407A.355, [~~the~~] Labor Code §407A.252 or §407A.355 prevails.

(i) A group holding a certificate of approval issued before [~~prior to~~] the effective date of this section must [~~shall~~] comply with this section's provisions [~~the provisions of this section~~] no later than 30 days after this section's [~~the~~] effective date [~~of this section~~].

§5.6410. Investments.

(a) The board of trustees must [~~shall~~] maintain responsibility for all money collected or disbursed from the group.

(b) The board must [~~shall~~] annually adopt a written investment plan consistent with the requirements for the investments authorized under Insurance Code [~~Article 2.10 and~~] §822.204, concerning Form of Capital and Surplus, for minimum capital and surplus and reserves. The investment plan must [~~shall~~] meet the requirements of Insurance Code §822.204 [~~Article 2.10(a)~~].

(c) With the prior written approval of the commissioner [~~Commissioner~~], a group may invest up to 5% of its assets in a manner other than that authorized under this section.

(d) The group must [~~shall~~] hold all investments in accordance with [~~Texas~~] Insurance Code Chapter 422, concerning Asset Protection Act [~~Article 21.39B~~].

§5.6411. Contract Provisions.

(a) A group must [~~shall~~] execute a written agreement with a person identified under [~~pursuant to~~] §5.6403(c)(12)(A) or (B) of this title [~~division~~] (relating to Application for Initial Certificate of Approval) that meets the requirements of this section.

(b) If a person identified under [~~pursuant to~~] §5.6403(c)(12)(A) or (B) of this title [~~division~~] delegates any of the services that it has agreed to provide on behalf of a group to another person, the delegating person must [~~shall~~] execute a written agreement with the person to whom the services are delegated. The written agreement must meet the requirements of this section.

(c) A group retains ultimate accountability and responsibility for compliance with all statutory and regulatory requirements, and no written agreement may be construed to limit, in any way, the group's ultimate accountability and responsibility.

(d) A written agreement entered into under [~~pursuant to~~] subsection (a) or (b) of this section must [~~shall~~] include:

(1) a requirement that the administrator, service company, or third-party [~~third party~~] administrator must comply with the applicable requirements of the Insurance Code, [~~and the~~] Labor Code, and rules adopted under them [~~thereunder~~], including holding the appropriate licenses or certificates of authority under the Insurance Code or [~~the~~] Labor Code;

(2) a requirement that the administrator, service company, or third-party [~~third party~~] administrator must permit the commissioner or the group to examine at any time:

(A) its financial solvency; and

(B) its ability to perform its responsibilities under the written agreement;

(3) a description of the duties or services that the administrator, service company, or third-party [~~third party~~] administrator is expected to provide and any applicable instructions related to the performance of those services, including references to a group's claims handling practices or procedures; and

(4) a provision relating to continuity of services, including run-off [~~run off~~] fee schedules and the transfer of the books and records of a group from one administrator, service company, or third-party [~~third party~~] administrator to another administrator, service company, or third-party [~~third party~~] administrator.

(e) A written agreement entered into under [~~pursuant to~~] subsection (a) or (b) of this section must [~~shall~~] also ensure that the books and records of the group:

(1) remain the property of the group at all times;

(2) are available to the group or its designee at any time while in the custody of an administrator, service company, or third-party [~~third party~~] administrator; and

(3) will be timely transferred to the group or its designee:

(A) upon request of the group;

(B) at the termination or cancellation of a written agreement entered into by an administrator, service company, or third-party [~~third party~~] administrator under [~~pursuant to~~] subsection (a) or (b) of this section; and

(C) in compliance with all applicable statutory and rule requirements.

(f) A written agreement required under subsection (a) or (b) of this section must meet the requirements of this section no later than June 1, 2009.

§5.6413. Membership Cancellation or Termination.

(a) A group is required to notify the commissioner under [~~pursuant to the~~] Labor Code §407A.201(c), concerning Admission of Employer as Member, only if the group experiences a reduction in membership, caused by either cancellation or termination, resulting in a cumulative reduction of 10% [~~10 percent~~] or more of its annual written premium, not later than the 10th day after the date on which the cumulative reduction in membership takes effect.

(b) The notification required by subsection (a) of this section must include:

(1) an explanation of the reason for the cancellation or termination of each member of the group; and

(2) a statement indicating how the group anticipates addressing the membership loss, including whether [~~or not~~] assessments of the remaining members of the group will be necessary.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on July 14, 2026.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance