

**SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES**  
**28 TAC §1.414**

**INTRODUCTION.** The Commissioner of Insurance adopts amendments to 28 TAC §1.414, relating to the assessment of maintenance taxes and fees imposed by the Insurance Code. The department adopts the amendments to §1.414 with changes to the proposed text published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7970). The department revised §1.414(a) and (b) to remove the clarification of gross premiums to remain aligned with the Comptroller's rules.

**REASONED JUSTIFICATION.** The amendments provide for adjusting the rates of assessment for maintenance taxes and fees each year based on gross premium receipts from the previous calendar year.

Section 1.414 includes rates of assessment for life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bond insurance; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third-party administrators; and workers' compensation certified self-insurers.

The department adopts a standing rule that allows for the rates to be specified by order annually. This not only allows the Commissioner to maintain transparency on how the rates are calculated in the rule but also helps avoid delays that can result from the rulemaking process. The Commissioner can set the rates by order sooner than can be done by rule, which benefits stakeholders and preserves agency resources.

The amendments to the section are described in the following paragraphs:

**Section 1.414 Heading.** The department adopts an amendment to the section heading to reflect that the assessment of maintenance taxes and fees no longer applies to a specific year.

**Section 1.414(a) and (b).** The department removes amendments to §1.414(a) and (b), which clarified that gross premiums include direct written and assumed premiums. In collaboration with the Comptroller's Office, the department refers companies to the Comptroller's rules for clarification of gross premiums to avoid confusion. "Gross premiums," without the clarification, remains unchanged from the department's language before the proposed amendment. An amendment to §1.414(b) adds the words "of insurers" for consistency with subsection §1.414(a).

**Section 1.414(a)(1) - (9), (b), (c)(1) and (2), (d), (e), and (f).** The department adopts amendments to §1.414(a)(1) - (9), (b), (c)(1) and (2), (d), (e), and (f) to reflect that the Commissioner will set the rates by order each year rather than set rates by rule for a specific year. The amendments remove specific rates and reflect the method the department sets out in this rule. The department also amends subsection (c)(1) by breaking it down into subparagraphs (A) and (B), amends subsection (c)(2) to insert a hyphen in "third party," and restructures each subsection for consistency with agency style.

**Section 1.414(a)(9).** The department adopts an amendment to §1.414(a)(9) to change a reference to an Insurance Code section from §271.004 to §271.005 to accurately cite where in the Insurance Code the applicable maximum assessment rate is located.

**Section 1.414(g).** The department adopts an amendment to §1.414(g) to remove the reference to Senate Bill 14, 78th Legislature, 2003, relating to certain insurance rates, forms, and practices. After 17 years, the language from the enactment of SB 14 no longer needs to appear in the rule text. Additionally, §1.414(g) is amended to explain the method

the department will use to determine revenue need and how the maintenance tax rates and fees will be calculated each year in the Commissioner order.

**Section 1.414(h).** The department adopts an amendment to §1.414(h) to reflect that the payment due date to the Comptroller for the maintenance taxes and fees will be issued by Commissioner order each year instead of to a specific year.

The following paragraphs provide an explanation of the method the department uses to determine proposed rates of assessment for maintenance taxes and fees:

In general, the department determines its revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) by calculating the department's total cost need and subtracting from that number the funds resulting from fee revenue and the funds remaining from the previous fiscal year.

To determine total cost need, the department combines costs from the following: (i) appropriations set out in the current General Appropriations Act, which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the current fiscal year until the next assessment collection period in the next fiscal year. From

these combined costs, the department subtracts costs allocated to the Division of Workers' Compensation (DWC), including amounts to the Office of Injured Employee Counsel (OIEC), and the Workers' Compensation Research and Evaluation Group (WCREG).

The department determines how to allocate the remaining cost need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocates the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applies these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculates the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department uses this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculates the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduces the total cost need by subtracting the estimated ending fund balance for the previous fiscal year and estimated fee revenue collections for the current fiscal year. The resulting balance is the estimated revenue need that must be supported during the current fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described below.

If the cost allocated to a maintenance tax line exceeds the amount of revenue that can be collected at the maximum rate set by statute, the department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the maintenance tax line to the other maintenance tax or fee lines. The department allocates the shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the method to develop the proposed rates for the DWC and OIEC:

To determine the revenue need, the department considers the following factors applicable to costs for the DWC and OIEC: (i) the appropriations in the General Appropriations Act for the current fiscal year from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the current fiscal year until the assessment collection period in the next fiscal year. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at the end of the previous fiscal year, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in the current fiscal year. The resulting balance is the estimated revenue need from maintenance taxes. The department calculates the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the method the department uses to develop the proposed rates for the WCREG:

To determine the revenue need, the department considers the following factors that are applicable to the WCREG: (i) the appropriations in the current General Appropriations Act for the current fiscal year from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees;

(ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the current fiscal year until the assessment collection period in the next fiscal year. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at the end of the previous fiscal year. The resulting balance is the estimated revenue need from maintenance taxes. The department calculates the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

#### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** A commenter against the proposal was the Texas Association of Health Plans.

**Comment on §1.414.** A commenter appreciates the department's efforts to simplify its administrative processes, but opposes the adoption of a standing rule that allows for annual maintenance tax and fee assessment rates to be specified by Commissioner order, rather than through the rulemaking process governed by the Texas Administrative Procedures Act. The commenter opposes removing rulemaking protections from the annual rate setting process, and the commenter states that interested parties should have the opportunity to review and comment on proposed rates before they are adopted rather than being forced to file a lawsuit to challenge a rate after adoption.

**Agency Response to Comment on §1.414.** The department disagrees with the commenter and declines to make a change. The department has an annual stakeholder meeting to discuss the proposed rates, which gives the public a reasonable opportunity to participate in the process and submit comments before the rates are set. The

department will consider all comments received on a proposed rate before setting the rate. Furthermore, in the reasoned justification and the text of this rule, the department has provided transparency on how it calculates the rates, and under this rule this calculation process will apply to the rates set by Commissioner order. Finally, between 2006 and 2012 the rates were set by annual Commissioner order rather than within a rule and, to the department's knowledge, there were no issues.

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to 28 TAC §1.414 under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) provides that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) provides that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another

insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25% of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4% of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing

a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2% of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6% of the gross premiums subject to taxation under

Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04% of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed \$2 per enrollee. Section 258.003 also provides that the Commissioner annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health

care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third-party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1% of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount

the Commissioner determines is necessary to pay the expenses of regulating third-party administrators.

Insurance Code §259.004 requires a third-party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1% of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

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

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2% of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code §2053.202 (formerly Insurance Code Article 5.55C). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 provides that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and

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reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the WCREG, provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2% of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to

determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that, in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to the DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of the DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of the OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the

section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the Comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the Comptroller in the manner provided by Insurance Code Chapter 255.

**TEXT.****§1.414. Assessment of Maintenance Taxes and Fees.**

(a) Each calendar year by Commissioner order the department will assess rates for maintenance taxes and fees on the gross premiums of insurers for the following lines of insurance:

- (1) motor vehicle insurance, under Insurance Code §254.002;
- (2) casualty insurance and fidelity, guaranty, and surety bonds, under Insurance Code §253.002;
- (3) fire insurance and allied lines, including inland marine, under Insurance Code §252.002;

- (4) workers' compensation insurance, under Insurance Code §255.002;
- (5) workers' compensation insurance, under Labor Code §403.003;
- (6) workers' compensation insurance, under Labor Code §405.003;
- (7) workers' compensation insurance, under Labor Code §407A.301;
- (8) workers' compensation insurance, under Labor Code §407A.302; and
- (9) title insurance, under Insurance Code §271.005.

(b) Each calendar year by Commissioner order the department will assess the rate for the maintenance tax to be assessed on gross premiums of insurers for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, under Insurance Code §257.002.

(c) Each calendar year by Commissioner order the department will assess rates for maintenance taxes for the following entities:

- (1) under Insurance Code §258.003, an amount per enrollee for:
  - (A) single service health maintenance organizations;
  - (B) multiservice health maintenance organizations; and
  - (C) limited service health maintenance organizations; and

(2) under Insurance Code §259.003, a rate of the correctly reported gross amount of administrative or service fees for third-party administrators.

(d) Each calendar year by Commissioner order the department will assess a rate for maintenance tax under Labor Code §405.003 for each certified self-insurer, to fund the Workers' Compensation Research and Evaluation Group. The rate will be calculated under Labor Code §407.103(b), and it will be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Each calendar year by Commissioner order the department will assess a rate for maintenance tax under Labor Code §405.003 and §407A.301 for each workers'

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compensation self-insurance group, to fund the Workers' Compensation Research and Evaluation Group. The rate will be calculated under Labor Code §407.103(b).

(f) Each calendar year by Commissioner order the department will assess a rate for self-insurer maintenance tax under Labor Code §407.103 and §407.104 for each certified self-insurer. The rate will be calculated under Labor Code §407.103(b), and it will be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The maintenance tax revenue need is calculated as the amount of revenue needed to reach the targeted year-end fund balance, taking into account the beginning balance, expected non-maintenance tax revenues, and estimated expenditures. For each line of insurance:

(1) the assessment rate is calculated by dividing the revenue need by the estimated premium volume or assessment base; and

(2) if the calculated rate is above the statutory rate, the rate is set at the statutory maximum and any revenue shortfall is spread to the other maintenance tax lines, increasing the revenue need and tax rates for the remaining lines.

(h) The taxes and fees assessed by the Commissioner order issued under subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts on March 1 each year.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 9, 2020.

# 2020-6594

TITLE 28. INSURANCE  
Part I. Texas Department of Insurance  
Chapter 1. General Administration

Adopted Section  
Page 22 of 22

DocuSigned by:  
  
75578E954EFC48A...  
James Person, General Counsel  
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §1.414.

Commissioner of Insurance

DocuSigned by:  
  
C77A87C8C21B435...  
Doug Slape  
Chief Deputy Commissioner  
Tex. Gov't Code §601.002  
Commissioner's Order No. 2018-5528

Commissioner's Order No. 2020-6594