

SUBCHAPTER C. Assessment of Maintenance Taxes and Fees
28 TAC §1.414

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §1.414, concerning the 2013 assessment of maintenance taxes and fees imposed by the Insurance Code. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2013 on the basis of gross premium receipts for calendar year 2012 and following the methodology described below.

Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; 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; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also proposes amendments in subsections (a), (b), (c), (d), (e), (f), and (h) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsections (a)(1), (2), (3), (4), (6), (8), and (9); (c)(1), (2), and (3); (d); and (e) to update rates to reflect the methodology the department developed for 2013. This methodology is explained following the description of proposed amendments.

Finally, the department proposes amendments in subsections (d), (e), (f), and (h) that are grammatical in nature, for consistency with current department rule drafting style. In subsection (d), (e), and (f), every appearance of the word "shall" is changed to "must". In subsection (h), the word "shall" is changed to "will."

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2013:

In general, the department's 2013 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 the Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2012.

To determine total cost need, the department combined costs from the following:

- (i) appropriations set out in Chapter 1355 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the 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 the 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;
- (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 2013 fiscal year until the next assessment collection period in 2014. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

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

For each section within the department that provides services directly to the public or the insurance industry, the department allocated 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 applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used 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 calculated 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. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department includes an appropriation to the Texas Facilities Commission for building support costs in 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, 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 fiscal year 2012 (August 31, 2012) and estimated fee revenue collections for fiscal year 2013. The resulting balance is the estimated revenue need that must be supported during the 2013 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam 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.

The cost allocated to the life, accident, and health maintenance tax 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 life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocates the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines' 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 methodology to develop the proposed rates for the Division of Workers' Compensation (DWC) and the Office of Injured Employee Counsel (OIEC).

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2012 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No.

0036 costs from the end of the 2013 fiscal year until the next assessment collection period in 2014. 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 August 31, 2012, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2013. The resulting balance is the estimated revenue need from maintenance taxes. The department adjusted this balance by taking into consideration the balance of the Comptroller of Public Accounts tax allocation account for the Division of Workers' Compensation. The department calculated 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 methodology to develop the proposed rates for the workers' compensation research and evaluation group.

To determine the revenue need, the department considered the following factors that are applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2013 from Account No. 0036 and from General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from these two funds, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from these two funds from the end of

the 2013 fiscal year until the next assessment collection period in 2014. The department adds these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2012. The resulting balance is the estimated revenue need from maintenance taxes. The department adjusted the revenue need by taking into consideration the balance of the Comptroller of Public Accounts tax allocation account for the Division of Workers' Compensation. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

2. FISCAL NOTE. Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is estimated income of \$126,697,661 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Meyer also has determined that for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments.

The cost in 2013 to an insurer that receives premiums in 2012 will be: for motor vehicle insurance, .072 of 1 percent of those gross premiums; for casualty insurance,

fidelity, guaranty, and surety bonds, .151 of 1 percent of those gross premiums; for fire insurance and allied lines, including inland marine, .305 of 1 percent of those gross premiums; for workers' compensation insurance, .108 of 1 percent of those gross premiums; and for title insurance, .151 of 1 percent of those gross premiums.

An insurer that receives premiums for workers' compensation insurance in 2012 will also pay 1.669 percent of that premium for the operation of the department's Division of Workers' Compensation Insurance and the Office of Injured Employee Counsel and .017 of 1 percent of that premium to fund the Workers' Compensation Research and Evaluation Group's activities. A workers' compensation self-insurance group will pay 1.669 percent of its 2012 gross premium for the group's retention under the Labor Code §407A.301 and .108 of 1 percent of its 2012 gross premium for the group's retention under the Labor Code §407A.302.

The cost in 2013 for an insurer that receives premiums in 2012 for life, health, and accident insurance, will be .040 of 1 percent of those gross premiums. In 2013, a health maintenance organization will pay \$.41 per enrollee if it is a single service health maintenance organization or a limited service health maintenance organization, and \$1.23 per enrollee if it is a multi-service health maintenance organization. In 2013, a third party administrator will pay .035 of 1 percent of its correctly reported gross amount of administrative or service fees received in 2012. In 2013, for a nonprofit legal services corporation issuing prepaid legal service contracts, the cost will be .029 of 1 percent of correctly reported gross revenues for 2012.

In 2013, to fund the Workers' Compensation Research and Evaluation Group's activities, a workers' compensation certified self-insurer will pay .017 of 1 percent of the

tax base calculated pursuant to the Labor Code §407.103(b), and a workers' compensation self-insurance group will pay .017 of 1 percent of the tax base calculated pursuant to the Labor Code §407.103(b).

Finally, in 2013, a workers' compensation certified self-insurer will pay 1.669 percent of the tax base calculated pursuant to the Labor Code §407.103(b).

Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the maintenance tax or fee. Based on the information obtained by the department, the actual cost of gathering the information required to fill out the form, calculate the assessment, and complete the form will be the same for the same number of lines for micro, small, and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated between \$23 - \$34 an hour by small and large insurers. The actual time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take six hours to complete the form. In the case of a certified insurer, the Division of Workers' Compensation will calculate the maintenance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee

is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal. Rates of assessment proposed by the department are the same for micro, small, or large businesses. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small or micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the department has determined the proposal may have an adverse economic effect on approximately 56 to 188 insurance companies and HMOs and approximately 292 third party administrators that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from the costs of the maintenance taxes and fees. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit/cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses does not depend on the size of the business. For insurers in the following lines of insurance, the cost of compliance depends upon the amount of gross premiums in 2012: motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; and life, health, and accident insurance. For annuity and endowment contracts, the cost of compliance depends on

the amount of gross considerations in 2012. For HMOs, the cost of compliance depends on the number of enrollees in 2012. For third party administrators, the cost of compliance depends on the amount of correctly reported gross administrative or service fees in 2012. For nonprofit legal service corporations issuing prepaid legal service contracts, the cost of compliance depends on the correctly reported gross revenues. For workers' compensation certified self-insurers and workers' compensation self-insurance groups, the cost of compliance depends on the tax base calculated pursuant to the Labor Code §407.103(b).

In accord with the Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide the rates of assessment for maintenance taxes and fees for 2013 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different tax rates

for small and micro businesses, and (iii) exempting small and micro businesses from the tax requirements.

Not adopting the proposed rule. Pursuant to the Insurance Code §251.003, if the commissioner does not advise the comptroller of the applicable maintenance tax assessment rates, the comptroller must assess taxes based on the previous year's assessment. Because the department has less revenue need for 2013 than it did for 2012, this would result in the department collecting an estimated \$9.2 million more in funds than are needed. If no rule is adopted the department would burden companies with \$9.2 million of unneeded taxes. For this reason, this option has been rejected.

Adopting different taxes for small and micro businesses. The current methodology is already the most equitable methodology the department can develop. The department applies an assessment methodology that contemplates a smaller assessment for small or micro businesses because the assessment is determined based on number of enrollees, gross premiums, or gross amount of administrative or service fees. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has fewer enrollees, lower gross premiums, or a lower gross amount of administrative or service fees. However, based on the proposed rule, such a small or micro business would pay a smaller assessment, thereby reducing its risk of economic harm. For this reason, this option has been rejected.

Exemption of small and micro businesses from the tax requirements. As noted above, the current methodology is already the most equitable methodology the department can develop. The tax methodology currently used contemplates a small

business paying lower maintenance taxes because assessments are based on number of enrollees, gross premiums, or gross amount of administrative or service fees. A small or micro business that has fewer enrollees, has lower gross premiums, or receives fewer gross administrative or service fees would be assessed lower taxes. However, if the assessment were completely eliminated for small or micro businesses, TDI would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. For this reason, this option has been rejected.

5. TAKINGS IMPACT ASSESSMENT. The department 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, and so does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on December 30, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A,

of Insurance, P. O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

7. STATUTORY AUTHORITY. The amendments are proposed under the 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; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and the Labor Code §§403.002, 403.003, 403.005, 405.003(a) – (c), 407.103, 407.104(b), 407A.301, and 407A.302.

The Insurance Code §201.001(a)(1) states 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) states that the commissioner must 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) states 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.

The 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 must 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 must be used to reimburse the appropriate portion of the general revenue fund.

The 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.

The Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §252.003.

The Insurance Code §252.001 also specifies that the tax required by the Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 252.

The Insurance Code §252.002 provides that the rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under the Insurance Code §252.003. Section 252.002 also provides that the commissioner must 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: the 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; the Government Code §§417.007, 417.008, and 417.009; and the Occupations Code Chapter 2154.

The Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under the 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 the 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.

The Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §253.003. Section 253.001 also provides that the tax required by the Insurance Code Chapter 253

is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 253.

The Insurance Code §253.002 provides that the rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under the Insurance Code §253.003. Section 253.002 also provides that the commissioner must 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 the Insurance Code §253.003.

The Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under the Insurance Code Chapters 2008, 2251, and 2252; Chapter 5 Subchapter B; Chapter 1806 Subchapter C; Chapter 2301 Subchapter A; and Title 10 Subtitle B.

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

The Insurance Code §254.002 provides that the rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under the Insurance Code §254.003. Section 254.002 also provides that the

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

The Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the 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 the Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 255.

The Insurance Code §255.002 provides that the rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under the Insurance Code §255.003. Section 255.002 also provides that the commissioner must 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.

The Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 254 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 the Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

The 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 the 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 the Insurance Code Chapter 257.

The Insurance Code §257.002 provides that the rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under the Insurance Code §257.003. Section 257.002 also provides that the commissioner must 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. Section 257.003 specifies that an insurer must pay maintenance taxes under the 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 the Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 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.

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

The 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 must 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.

The Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under the 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 accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 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.

The Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under the Insurance Code §259.004. Section 259.002 also provides that the tax required by the Insurance Code chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the commissioner may not exceed one percent of the administrative or service fees subject to taxation under the Insurance Code §259.004. Section 259.003 also provides that the

commissioner must 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.

The Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to the Insurance Code Chapter 961 with gross revenues subject to taxation under the Insurance Code §260.003. Section 260.001 also provides that the tax required by the Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the commissioner may not exceed one percent of the corporation's gross revenues subject to taxation under the Insurance Code §260.003. Section 260.002 also provides that the commissioner must 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 nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation shall pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

The Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under the Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. Section 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. Section 271.004 provides that the commissioner must annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004 also provides that in determining the rate of assessment, the commissioner must consider the requirement to reimburse the appropriate portion of the general revenue fund under the Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the commissioner may not exceed one percent of the gross premiums subject to assessment under the Insurance Code §271.006. Section 271.005 also provides that the commissioner must 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. Section 271.006 requires an insurer to pay maintenance fees under the Insurance Code Chapter on the correctly reported gross premiums from writing title insurance in Texas.

The 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. The Labor Code §403.002 also provides that the assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under the Insurance Code Article 5.55C. The 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, the Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under the Labor Code §403.003, and that the tax must be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in the Insurance Code Chapter 255. Finally, the Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by the Labor Code Chapter 407 Subchapter F.

The 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 the division and the office of injured employee counsel to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by the 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, gifts, and penalties recovered under the Texas Workers' Compensation Act; and
- (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud.

The 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 the Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

The 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. The Labor Code §405.003(a) – (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the workers' compensation research and evaluation group, it 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 it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

The Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the Division of Workers' Compensation and the Office of Injured Employee Counsel and to support the prosecution of workers' compensation insurance fraud in Texas. The Labor Code §407.103 also provides that not more than two percent 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. The Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of the Labor Code Chapter 407, the department must 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. The 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 the Labor Code §403.002 and §403.003. Finally, the 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 the Labor Code Chapter 407.

Section 407.104(b) provides that the department must 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 Division of Workers' Compensation.

The 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. The Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of the Division of Workers' Compensation, 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 Office of Injured Employee Counsel under Labor Code Chapter 404. The 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 the Labor Code §§403.002 and 403.003. The 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 the Labor Code §405.003. Additionally, the Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, the Labor Code §407A.301 provides that the tax under the section must be collected by the comptroller as provided by the Insurance Code Chapter 255 and the Insurance Code §201.051.

The Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under the Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing the Labor Code Chapter 407A. The 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. The Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to the Insurance Code Chapter 255, and that it must be collected by the comptroller in the manner provided by the Insurance Code Chapter 255.

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

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

Rule	Statute
28 TAC §1.414	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; 260.001 - 260.003; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) – (c), 407.103, 407.104(b), 407A.301, and 407A.302

9. TEXT.

§1.414. Assessment of Maintenance Taxes and Fees, 2013 [~~2012~~].

(a) The department assesses the following rates for maintenance taxes and fees on gross premiums of insurers for calendar year 2012 [~~2011~~] for the lines of insurance specified in paragraphs (1) – (9) of this subsection:

(1) for motor vehicle insurance, pursuant to the Insurance Code §254.002, the rate is .072 [~~.077~~] of 1.0 percent;

(2) for casualty insurance, and fidelity, guaranty, and surety bonds, pursuant to the Insurance Code §253.002, the rate is .151 [~~.152~~] of 1.0 percent;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code §252.002, the rate is .305 [~~.334~~] of 1.0 percent;

(4) for workers' compensation insurance, pursuant to the Insurance Code §255.002, the rate is .108 [~~.154~~] of 1.0 percent;

(5) for workers' compensation insurance, pursuant to the Labor Code §403.003, the rate is 1.669 percent;

(6) for workers' compensation insurance, pursuant to the Labor Code §405.003, the rate is .017 [~~.016~~] of 1.0 percent;

(7) for workers' compensation insurance, pursuant to the Labor Code §407A.301, the rate is 1.669 percent;

(8) for workers' compensation insurance, pursuant to the Labor Code §407A.302, the rate is .108 [~~.151~~] of 1.0 percent; and

(9) for title insurance, pursuant to the Insurance Code §271.004, the rate is .151 [~~.401~~] of 1.0 percent.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2012 [~~2011~~] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, pursuant to the Insurance Code §257.002, is .040 of 1.0 percent.

(c) The department assesses rates for maintenance taxes for calendar year 2012 [~~2011~~] for the following entities as follows:

(1) pursuant to the Insurance Code §258.003, the rate is \$.41 [~~\$.50~~] per enrollee for single service health maintenance organizations, \$1.23 [~~\$1.50~~] per enrollee for multi-service health maintenance organizations, and \$.41 [~~\$.50~~] per enrollee for limited service health maintenance organizations;

(2) pursuant to the Insurance Code §259.003, the rate is .035 [~~.047~~] of 1.0 percent of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code §260.002, the rate is .029 [~~.030~~] of 1.0 percent of correctly reported gross revenues for nonprofit legal service corporations issuing prepaid legal service contracts.

(d) Pursuant to the Labor Code §405.003, each certified self-insurer must [~~shall~~] pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2013 [~~2012~~] at a rate of .017 [~~.016~~] of 1.0 percent of the tax base calculated pursuant to the Labor Code §407.103(b) which must [~~shall~~] be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Pursuant to the Labor Code §405.003 and §407A.301, each workers' compensation self-insurance group must [~~shall~~] pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2013 [~~2012~~] at a rate of .017 [~~.016~~] percent of 1.0 percent of the tax base calculated pursuant to the Labor Code §407.103(b).

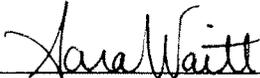
(f) Pursuant to the Labor Code §407.103 and §407.104, each certified self-insurer must [~~shall~~] pay a self-insurer maintenance tax in calendar year 2013 [~~2012~~] at a rate of 1.669 percent of the tax base calculated pursuant to the Labor Code §407.103(b) which must [~~shall~~] be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(h) The taxes assessed under subsections (a), (b), (c), and (e) of this section will ~~shall~~ be payable and due to the Comptroller of Public Accounts, P.O. Box 149356, Austin, TX 78714-9356 on March 1, 2013 [2012].

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

Issued at Austin, Texas, on November 15, 2012.



Sara Waitt, General Counsel
Texas Department of Insurance