

INSURANCE CODE

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE

CHAPTER 2212. SELF-INSURANCE TRUSTS FOR HEALTH CARE

LIABILITY CLAIMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2212.001. DEFINITIONS. In this chapter:

(1) "Charitable organization" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(2) "Dentist" means a person licensed to practice dentistry in this state.

(3) "Health care liability claim" means a cause of action against a physician or dentist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety that proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(4) "Physician" means a person licensed to practice medicine in this state.

(5) "Trust" means a self-insurance trust organized and operated under this chapter.

(6) "Volunteer health care provider" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.069(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.069(a), eff. September 1, 2007.

Sec. 2212.002. TRUST NOT ENGAGED IN BUSINESS OF INSURANCE. A trust is not engaged in the business of insurance under this code and other laws of this state, and this code, other than this chapter, does not apply to the trust, except as provided by Section

2212.052.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CREATION AND OPERATION OF TRUST

Sec. 2212.051. CREATION OF TRUST. (a) Subject to Subsection (b), an incorporated association, a purpose of which is to unite in one compact organization the entire profession licensed to practice medicine or dentistry in this state, or a portion of the members of the profession licensed to practice medicine who are practicing a particular specialty within the practice of medicine in the state or are practicing within a particular region of the state, may create a trust to self-insure physicians or dentists and agree, by contract or otherwise, to insure other members of the organization or association against health care liability claims and related risks.

(b) The organization or association must:

(1) have been in continuing existence for at least two years;

(2) have established a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employ appropriate professional staff and consultants for program management.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.052. MINIMUM REQUIREMENTS. (a) The department may require a trust to satisfy reasonable minimum requirements that ensure the trust is able to satisfy the trust's contractual obligations.

(b) On request, a trust shall provide books, records, and documents required by the department to fulfill the requirements of this section relating to the trust's solvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.053. FILING REQUIREMENTS.

(a) A trust shall file with the department:

(1) all rates and forms, for informational purposes only; and

(2) the trust's independently audited annual financial statement.

(b) An audited annual financial statement filed under this section may not be considered an examination document.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.05, eff. September 1, 2015.

Sec. 2212.054. POWERS OF TRUST. (a) A trust may:

(1) purchase, on behalf of the members of the association that created the trust, medical professional liability insurance, specific excess insurance, aggregate excess insurance, and reinsurance, as necessary in the opinion of the trustees;

(2) purchase required risk management services; and

(3) pay claims that arise under any deductible provisions.

(b) A trust's investment powers and limitations are the same as the investment powers and limitations of a state bank with trust powers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.055. GUARANTEE OF CERTAIN LIABILITIES. The trust shall adopt rules to guarantee all contingent liabilities in the event of dissolution.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.056. ADMINISTRATIVE SANCTIONS. If a trust is found to have violated this code or a rule adopted by the

commissioner that is declared applicable to the trust, the commissioner may order sanctions under Chapter 82 for the violation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

#### SUBCHAPTER C. INSURANCE CONTRACTS ISSUED BY TRUST

Sec. 2212.101. COVERAGE UNDER CONTRACT. A contract of professional liability insurance issued by a trust may include coverage of:

(1) a professional association or partnership of physicians, with respect to health care liability claims and related risks if a majority of the persons having a proprietary interest in the association or partnership are members of the association that created the trust;

(2) proprietary members, associates, stockholders, and executive officers and directors of an association or partnership described by Subdivision (1), with respect to potential vicarious liability for acts or omissions of others giving rise to health care liability claims and related risks;

(3) an insured physician and, as applicable, an insured professional association or partnership, including proprietary members, associates, stockholders, and executive officers and directors of the association or partnership, with respect to liability of an insured arising out of:

(A) injury to a patient related to ownership, maintenance, or use of premises for the practice of medicine, including necessary or incidental operations;

(B) service by an insured physician as a member of a committee, board, or similar group of a hospital medical staff or of a professional association or society with respect to medical staff privileges, accreditation, or disciplinary matters relating to competency or patient safety and risk reduction programs; or

(C) a health care liability claim or related risk based in whole or part on an act or omission occurring before the date a contract of professional insurance is issued by the trust; or

(4) an applicant for membership in the association that created the trust, pending final action on the application, with respect to health care liability claims and related risks, including coverage described by Subdivision (1), (2), or (3), as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.102. COVERAGE FOR VOLUNTEER HEALTH CARE PROVIDERS. (a) The trust, in accordance with Section 2212.054, may make available professional liability insurance covering a volunteer health care provider for an act or omission resulting in death, damage, or injury to a patient while the person is acting in the course and scope of the person's duties as a volunteer health care provider as described by Chapter 84, Civil Practice and Remedies Code.

(b) This section does not affect the liability of a volunteer health care provider who is serving as a direct service volunteer of a charitable organization. Section 84.004(c), Civil Practice and Remedies Code, applies to the volunteer health care provider without regard to whether the volunteer health care provider obtains liability insurance under this section.

(c) The trust may make professional liability insurance available under this section to a volunteer health care provider without regard to whether the volunteer health care provider is a physician or dentist.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.070(a), eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.070(a), eff. September 1, 2007.