



An ASO Must Comply with the Requirements of Chapter 172 in Order to be Eligible to Enjoy the Benefits of Chapter 172.

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Highlights of Requirements for Risk Pools under Chapter 172

Please consult your own legal counsel before attempting to set up a Chapter 172 Pool

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- ▶ • Political Subdivision may self-fund accident, health, dental, and long-term disability for employees/dependents/retirees. Section 172.004
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- ▶ • Pool may be for single entity or multiple units through Interlocal Agreement. Section 172.005
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- ▶ • Contributions to the Pool must be maintained in a separate fund. Section 172.005
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- ▶ • Must make thorough investigation of background, experience, and financial qualifications of any Third Party Administrator or other entity employed to administer benefits. Section 172.006
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- ▶ • Must be operated by a Board 'of Trustees, and it is highly recommended that a proper trust document be adopted. Section 172.006

- ▶ • Trustees must have 16 hours of training in specified areas dealing with establishment and operation of the Pool, within 180 days of appointment. Section 172.007
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- ▶ • Must either carry excess loss coverage or reinsurance, or notify each covered person that there is no coverage, or that it has been cancelled. Section 172.008
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- ▶ • Must invest according to the Public Funds Investment Act or the Texas Trust Code. Section 172.009
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- ▶ • Must have annual financial audit by CPA and file audit with Texas Department of Insurance (TDI). Section 172.010
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- ▶ • Trustees must declare insolvency if Pool is unable to pay claims within 60 days of verification. Section 172.011
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- ▶ • Special restrictions placed on counties. Section 172.012
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- ▶ • Pool coverage is not insurance and Pool is not subject to TDI regulation (entities operating outside of Chapter 172 may not enjoy this exemption). Section 172.014

Operating an ASO without forming under Chapter 172 may be selling insurance without a license to do so.

- ▶ Enacted in 1989 in response to bankruptcy of Educators Group Health Trust in 1988-Municipalities previously had no self-funding statutory authority. Under the Texas Insurance Code, contracting to reimburse employees for medical expenses would otherwise be “insurance.” Failure to comply with Chapter 172 requirements may result in selling insurance without a license to do so.

Advantages of Pooling

- ▶ **Q. What are some of the advantages of Chapter 172 for an ASO?**
- ▶ **A.** One benefit of forming an ASO under Chapter 172, as compared to purchasing insurance from a third party, is the fact that appointed boards serve as the regulatory authority. The Texas Insurance Code and other state laws relating to the provision or regulation of insurance generally do not apply to self-insurance funds for governmental units. As a result, an ASO formed under Chapter 172 generally is not subject to state regulation by the Texas Department of Insurance, and an ASO has greater control over operations. This allows local governments to solve problems by explicit agreement at a local level as opposed to having guidelines prescribed by a different entity.

Advantages of Pooling

- ▶ **Savings.** Additionally, an ASO formed under Chapter 172 often provides savings in comparison with traditional insurance options due to their non-profit and tax-exempt statuses. When governmental entities form an ASO under Chapter 172, they are also in a unique position to tailor their services to the specific needs of their population.

Maintain Governmental Immunity

- ▶ **Q. Is there increased liability for cities that self-insure through an ASO created under Chapter 172?**
- ▶ **A. Generally not. State law expressly provides that the establishment and maintenance of a self-insurance program by a governmental unit is not a waiver of immunity or of a defense of the governmental unit or its employees. TEX. GOV'T CODE § 2259.002.**

Competitive Bidding Requirements May Not Apply

- ▶ **Q. Must a city bid for health insurance coverage or public official liability insurance for its officials or employees?**
- ▶ **A. Cities must seek competitive bids or proposals when purchasing insurance that will cost more than \$50,000. TEX. LOC. GOV'T CODE § 252.021(b). Chapter 252 of the Local Government Code does not address the need to use competitive bidding or proposals if a city's liability coverage is gained through an ASO created under Chapter 172. As mentioned above, under state law, the coverage provided by ASO created under Chapter 172 is not considered to be insurance or subject to the traditional requirements applicable to insurance policies. Therefore, most ASO created under Chapter 172 take the position that statutory procurement requirements do not apply. A governmental entity should consult its legal counsel if it wants to acquire coverage in this manner without participating in competitive bidding or proposals.**

Subrogation under Chapter 140

- ▶ Pool is subrogated to the employee's right of recovery for personal injury caused by tortious conduct of third parties. Subrogation is governed by Chapter 140 of the Texas Civil Practices and Remedies Code. IEBP's In-House Counsel may provide subrogation services to ASO's.

Trustee Requirements under Chapter 172

- ▶ Trustees must have 16 hours of training in specified areas dealing with establishment and operation of the Pool, within 180 days of appointment. The areas are as follows:
- ▶ law governing the establishment and operation of risk pools by political subdivisions;
- ▶ principles of self-insurance and risk pools, including actuarial and underwriting principles and investment principles;
- ▶ principles relating to reading and understanding financial statements; and
- ▶ the general fiduciary duties of Trustees

Fiduciary Responsibilities of Trustees

- ▶ A fiduciary relationship exists when parties are under a duty to act for or give advice for the benefit of another upon matters within the scope of the relationship. It exists where a special confidence is placed in another who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one placing confidence. Breach of fiduciary duty is an actionable tort. A Trustee can exercise his or her fiduciary duty in such a negligent manner that lack of diligence will result in a breach of fiduciary duty

Fiduciary Responsibilities of Trustees

- ▶ A trustee's fiduciary responsibilities include:
 - The Duty of Care: Competence in the performance of trustee functions. A trustee is required to use the care that an ordinarily prudent person would exercise in a like position and under similar circumstances
 - The Duty of Loyalty: Faithful pursuit of the interests of the beneficiaries rather than the financial or other interests of the trustee or another. Trustees must avoid conflicts of interest
 - The Duty of Obedience: Adherence to the organization's mission as expressed in its bylaws and other governing documents

Fiduciary Responsibilities of Trustees

- ▶ A trustee also is charged with the duty of preserving the property of the trust. This requires strict adherence to the terms of the trust and diligence in preventing impairment of trust property. A trustee is under a duty to the beneficiaries to distribute risk of loss by reasonable diversification of investments, unless under the circumstances it is prudent not to do so

- ▶ Chapter 172 lays out the requirements for properly forming and operating an ASO. If you have any question please feel free to contact IEBP directly or have your legal counsel contact the IEBP In-House Counsel.



Have a Great Day!

Your Time is Appreciated