



Texas Insurance News

REGULATORY NEWS PUBLISHED BY THE TEXAS DEPARTMENT OF INSURANCE

Market Conduct Exams an Essential Tool for Texas Insurance Regulators

By Larry Jackson, Assistant Chief Examiner, Market Conduct Examinations

INSIDE

Compliance Workshop Slated 2

Federal Court Tells Providers Not to Dun Employers Mutual Customers 3

Karina Casari Named Executive Deputy Commissioner 3

Texas Insurance News

is published each month. For a one-year subscription (12 issues), contact TDI's Publications Division at:

Texas Department of Insurance
Texas Insurance News/MC-9999
 P.O.Box 149104
 Austin, TX 78714-9104

Enclose a check for \$30 made out to the Texas Department of Insurance.

If you have questions about subscribing, call Publications at **(512) 322-4283**.

Direct questions or suggestions about content to **(512) 463-6425** or write:

Texas Insurance News, MC-113-1A,
 P.O.Box 149104
 Austin, TX 78714-9104

The staff that prepares this newsletter has no role in proposing, drafting, editing, or approving TDI rules or policies or interpreting statutes. **Texas Insurance News** should not be construed to represent the policy, endorsement or opinion of the Commissioner of Insurance or the Texas Department of Insurance.

By necessity, summaries of proposed and adopted rules cannot explain their full complexity. Readers interested in complete information about administrative rules should consult the versions published in the Texas Register.

To the best of the staff's ability, information presented in this newsletter is correct as of the publication date, but scheduled dates and proposed rules and amendments may change as the adoption process goes forward.

WHEN QUESTIONS ARISE about an insurer's or HMO's treatment of its customers, the answers may come from a market conduct examination.

"Market conduct" includes claim handling, rate and form issues, underwriting, advertising, agent sales practices and overall compliance with consumer protection laws and TDI rules contained in the *Texas Insurance Code* and Title 28 of the *Texas Administrative Code*.

Every insurer and HMO is routinely checked for market conduct violations when it undergoes a financial examination every three to five years. TDI's financial examiners are trained to look for such problems in addition to reviewing a company's books and accounting records.

But in-depth market conduct examinations occur only on a targeted basis and in response to such red flags as consumer complaints.

Current or recent market conduct examinations include:

- An in-depth look into two companies' very large homeowners insurance rate increases. Even though neither company is subject to rate regulation, Commissioner Jose Montemayor wanted to verify that the increases were not applied in an unfairly discriminatory manner that might violate *Texas Insurance Code* Articles 21.21-6 or 21.21-8. He also asked that the examination produce information on each company's use of credit scoring in determining an individual's homeowners insurance premium. We want to be sure that the entities are not using credit scoring as a means to engage in unfairly discriminatory or deceptive acts.
- Review of the restitution paid to health care providers under consent orders for alleged violation of Texas' law requiring HMOs and preferred provider carriers to pay clean claims within 45 days. Several companies whose total payments were lower than expected are being examined to determine if they fully paid the restitution required by the orders.

- Examinations of seven company groups by contract examiners to determine whether they or companies acquired by them had priced small face amount life insurance policies differently for African-Americans than for whites. The examination is part of a nationwide effort coordinated by the NAIC to eradicate all vestiges of race-based life insurance pricing, a common industry practice until the 1960s.

Other current concerns include complaints about slow payment of claims by MGAs in the nonstandard auto insurance market.

In addition, TDI examiners will participate with examiners from federal agencies in a pioneering special examination to verify compliance with state and federal privacy laws by a large Texas-based entity that offers insurance, banking and investment services. The examination will look into such things as whether the entity has the necessary procedures to protect non-public personal financial information, makes the required disclosures to consumers and is complying with customers' "opt out" requests. TDI has built such privacy compliance reviews into its routine financial examination procedures as well.

TDI has been doing market conduct examinations since 1988. The function moved from Consumer Protection to Financial, where it could be coordinated with routine financial exams, in 1993.

Structure and workload

The Market Conduct Examinations Section consists of a manager and five examiners. In addition to market conduct examinations, the examiners perform routine examinations of premium finance companies. The examiners average more than 25 examinations per year. On average, insurance company examinations require about two months. Premium finance company examinations take approximately one month.

As with financial examinations, the entity examined—whether an insurance company, HMO,

NewsBriefs

TDI Plans Life/Health Compliance Workshop

THE DEPARTMENT will hold its Spring 2002 Life, Health and Managed Care Compliance Workshop on April 16–17 in the Joe C. Thompson Conference Center on the University of Texas campus in Austin.

The workshop will provide information about filing requirements, recent legislative changes and planned revisions in TDI regulations. It also will serve as a forum for discussion of regulatory issues with TDI staff.

Licensing Division staff will make two presentations on April 17, from 10 a.m. to 11 a.m. and from 1:30 p.m. to 2:30 p.m. Licensing will provide updates on the new licensing law and other pertinent information.

Registration information may be obtained from Deputy Commissioner Angelia Johnson, 512 322-4211 or through TDI's Web site at the following link: https://www.tdi.state.tx.us/apps/perlroot/s_cp_02sprwshop/02sprwshop.html ★

Committee to Analyze “Upside Down” Policies

A LEGISLATIVELY MANDATED advisory committee has begun its analysis of “upside down” small-amount life insurance policies that cost more than they ultimately will pay in death benefits.

House Bill 2415 of the 77th Texas Legislature directed the Commissioner of Insurance to conduct a marketplace study concerning small face-amount life insurance policies, analyze whether insurers' experience supports the pricing of these policies and evaluate whether there is a need for changes in Texas insurance laws.

The advisory committee held its first meeting February 1 in Austin and will meet next on April 17 in Houston. Montemayor plans to issue his final report and recommendations to the Legislature in December 2002.

Advisory committee members are Rod Bordelon, Austin, Office of Public Insurance Counsel; Rob Schneider, Austin, Consumers Union; David Hawkins, Dallas, Texas Association of Insurance Officials; Paul Herrera, Austin, Texas Association of Insurance and Financial Advisors; Cynthia Postell, DeSoto, Singing Hills Funeral Home; Jermaine Thomas, Houston, Thomas, Barnes & Turner law firm; Mark France, Austin, Funeral

Directors Life Insurance Co.; Brenda Nation, Alexandria, Virginia, American Council of Life Insurers; Dain Eric Moran, San Antonio, League of United Latin American Citizens; and William Paul Thomas, Houston, Rainbow Push Coalition.

The committee also includes four Texas Department of Insurance staff members: Mike Boerner, managing actuary, Actuarial Division; Associate Commissioner David Durden, Government Relations; Deputy Commissioner Ana Smith-Daley, Life Health Division; and William O. Goodman, special litigation counsel, Legal and Compliance Division.

★

Montemayor Hears Title Rate Recommendations

COMMISSIONER JOSE MONTEMAYOR received three different sets of recommendations during his February 5–6 hearing on new title insurance rates.

Recommended rate changes presented by the parties were as follows:

- Texas Land Title Association—a 5.2 percent increase.
- Office of Public Insurance Counsel—an 8.4 percent reduction.
- Consulting actuary Mark Crawshaw on behalf of TDI staff—reductions ranging from 0.5 percent to 1.6 percent, based on various assumptions.

Montemayor set a March 20 deadline for post-hearing briefs, with reply briefs due April 1. ★

Fraud Unit Prosecutions

Indictments

Jackson, Tonet Monique, indicted in Austin on charges of making a false statement in a written instrument, a third-degree felony.

La Font, Linda Neil, indicted in Galveston on charges of forgery, a third-degree felony.

Case Dispositions

Palmer, Travis, received five years' deferred adjudication and was ordered by a Belton district court to pay \$450 restitution pertaining to a charge of insurance fraud, a state jail felony.

Hickman, Joyce, convicted of health care fraud by the U.S. District Court for the Southern District of Texas, Houston, which sentenced her to 17½ years in prison and payment of restitution totaling \$9,348,654.

Agents' Corner

By **Matt Ray**, Deputy Commissioner,
Licensing Division

NAIC Antifraud Task Force

The 1994 Federal Anti-Crime Omnibus Act (the Act), 18 U.S.C. § 1033 (e) (1) (A), prohibits persons convicted of certain types of felonies from willfully engaging in the business of insurance or participating in such business when the activities affect interstate commerce. However, 18 U.S.C. § 1033 (e) (2) allows TDI to grant a written consent to engage in the business of insurance or participate in such business as the term is defined in (f) (1) of the Act.

The NAIC Antifraud Task Force is charged with addressing issues involving 18 U.S.C. § 1033. At the Winter 2001 NAIC National Meeting, the task force recommended the use of a new and simplified Special Activities Database (SAD) form for submission of “1033” application information and decisions.

Upon receiving a “1033” application from a person seeking the Commissioner's consent to engage in the business of insurance (and again upon receiving the Commissioner's decision), TDI will forward this information to SAD. Other participating regulatory departments will share this information. TDI can then send an inquiry to NAIC and elicit consent information about applicants for licensure from around the country.

Certification Letter Changes

Licensing will discontinue the use of self-addressed and overnight envelopes when mailing letters of certification, effective March 1, 2002. All letters of certification will be machine folded and eventually, machine stuffed. Multiple certifications will be mailed in separate envelopes to the same address.

In addition, we have developed a letter of certification order form, which can be downloaded from our web site at www.tdi.state.tx.us/general/forms/agentforms.html. ★

Data Call Reminder

Disallowed Expense Call

The call was mailed February 19 and will be due April 1, 2002. The forms may be downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/company/indexpc.html> TDI contact is Julie Jones, 512 475-3030. E-mail address: julie.jones@tdi.state.tx.us ★

PersonalNotes



Nevada Injunction Protects Employers Mutual Consumers

CONSUMERS FORMERLY enrolled in an unlicensed health insurance operation, including approximately 7,200 in Texas, have gained important protections from a Nevada federal court ruling.

The U.S. District Court for the District of Nevada entered a preliminary injunction on February 1, 2002, in the U.S. Department of Labor's action against Employers Mutual, L.L.C., and other entities and individuals.

The injunction prohibits all hospitals, physicians, pharmacists, and other health care providers or their representatives—including those in Texas—from commencing or continuing any proceeding against any Employers Mutual consumer to collect payment for medical and health care services. The order also prohibits these entities from providing, or threatening to provide, negative reports to any credit rating or reporting agency about any such consumer.

Sara Waitt, TDI's senior associate commissioner for Legal and Compliance, said the order would remain in effect until final resolution of the case, including appeals.

Commissioner Jose Montemayor issued an emergency cease-and-desist order on October 4, 2001, to stop Employers Mutual from selling health insurance policies or collecting premiums in Texas.

On September 14, 2001, TDI attorneys filed a hearing notice seeking minimum fines of \$1 million each and a cease-and-desist order against Employers Mutual, 18 other entities and two individuals involved in the unlicensed health insurance scheme. ★

Casari Named Executive Deputy Commissioner

COMMISSIONER JOSE MONTEMAYOR has appointed Karina Casari as TDI's executive deputy commissioner. In this position, she will assist Montemayor with the day-to-day demands of agency regulatory matters and operations, freeing him to intensify his focus on policy and statewide, national and international insurance issues affecting Texas.

She also will be charged with formulating strategies and developing policy issues for the next legislative session and will lead the agency in developing plans for TDI's sunset review, which will take place in 2005.

Casari was chief of staff to State Senator David Sibley of Waco, who recently declined to seek reelection and resigned from the Senate. She also served as committee director of the Senate Business and Commerce Committee, which Sibley chaired.

"I'm very pleased that TDI could obtain the services of someone as talented and experienced as Karina Casari," Montemayor said. "She is widely recognized at the state Capitol for her energy, efficiency and knowledge of state government. At TDI, she will make a huge contribution to our

goal to be not only the best insurance regulator in the world but also the best regulatory agency of any type."

While working for the Senate and Business Commerce Committee, Casari gained policy expertise in rate-regulated industries, including electric utilities, telecommunications and insurance. She also worked closely with the committee on sunset legislation for various economic development and banking agencies.

Casari has worked on various projects involving insurance and financial institutions, particularly health insurance issues. She served as committee director of the Senate Interim Committee on Managed Care and Consumer Protections in 1996 and as the primary staff contact for the 1997 legislative package that led to improved regulation of the managed care industry in Texas.

Casari spent three years as office manager for a family-owned business in Houston before attending Texas A&M University, where she received a bachelor of arts degree in political science in 1991. She joined Sibley's Senate staff as a legislative assistant in 1992 and became chief of staff in 1998. ★

Betts Appointed as TDI's New Chief of Staff

ALBERT BETTS JR., TDI's deputy commissioner for human resources since 1999, has been named the agency's new chief of staff and senior associate commissioner for administration.

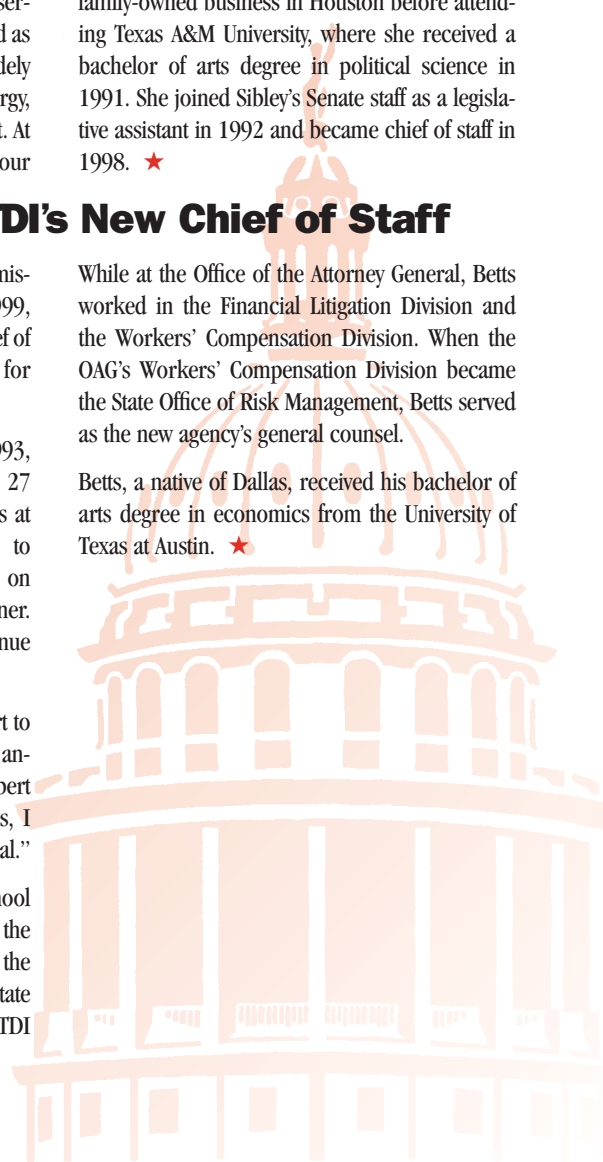
He succeeds Stan Wedel, chief of staff since 1993, who is retiring on October 21, 2002, after 27 years in state government. In his final months at TDI, Wedel will serve as special assistant to Commissioner Jose Montemayor and work on special projects important to the Commissioner. TDI's Information Services Division will continue reporting to Wedel pending his retirement.

"I feel privileged to call on someone like Albert to take Stan's place," Montemayor said in announcing Betts' selection as chief of staff. "Albert and I have worked together on many issues, I trust him implicitly, and he is a true professional."

Betts, a graduate of the University of Texas School of Law, served in various legal staff positions at the Texas Workers' Compensation Commission, the Office of the Attorney General (OAG) and the State Office of Risk Management before coming to TDI as assistant general counsel in 1998.

While at the Office of the Attorney General, Betts worked in the Financial Litigation Division and the Workers' Compensation Division. When the OAG's Workers' Compensation Division became the State Office of Risk Management, Betts served as the new agency's general counsel.

Betts, a native of Dallas, received his bachelor of arts degree in economics from the University of Texas at Austin. ★



RuleMaking

AUTOMOBILE

Exempt Adoption

Mileage-Based Auto Rating

■ Commissioner Jose Montemayor has amended the *Texas Automobile Rules and Rating Manual* by adding Rule 82 and Endorsement 505 to provide for an optional mile-based rating plan that insurers may use with the Texas Personal Auto Policy. The Commissioner's action implements House Bill 45 of the 77th Legislature, codified as *Texas Insurance Code* Article 5.01-4.

House Bill 45 and the new rule and endorsement establish a pilot project to test mile-based auto insurance rating as a way for some drivers to reduce their premiums. The mile-based rating option will expire on September 1, 2005, unless the Legislature extends it.

The new rule authorizes, but does not require, insurance companies to offer mile-based rating through Endorsement 505. An insurer using a mile-based rating plan may monitor a covered automobile's mileage at any time by checking its odometer or using some other method.

Under the rule, a policy with mile-based rates must have both an expiration date and a specified number of miles for which the coverage is in force for each covered automobile. The policy is valid during the policy period shown on its Declarations page, and coverage is in effect within the mileage specified for each covered auto. For example, a driver with a six-month policy might buy coverage good for 3,000 miles. Coverage terminates on the expiration date shown in the Declarations or upon the covered auto or autos exceeding the specified mileage, whichever comes first. The policyholder may buy additional mileage during the current policy period. An insurer may require a customer to use the same rating plan—either time-based or mile-based—for all autos covered by a policy. If the policyholder has mileage left at the end of a policy period, the insurer may give either a refund of unearned premium or a credit toward the premium of the renewal policy.

The new rule requires insurance companies that offer mile-based rating plans to file their mile-based rates annually for TDI's approval.

Publication: 27TexReg771, February 1, 2002
Reference Number A-1201-21-I
Further information: 512 463-6327

FINANCIAL

APA Adoption

2001 Annual and Quarterly Statement Blanks

■ Commissioner Jose Montemayor has adopted amendments to 28 TAC § 7.71 concerning the requirements for filing annual and quarterly statements and other reporting forms for 2001. The amendments add updated 2001 forms to be filed with the 2001 annual statement due on or before March 1, 2002.

The forms are substantially the same as those filed with the 2000 annual statements except for one new form called the "Texas Supplemental Form—Number of Persons Covered Under Texas Health Policies." This new form would require insurance companies and HMOs to report the number of lives in Texas covered under health indemnity plans, preferred provider health benefit plans or other health benefit plans as of December 31, 2001.

The other Texas forms are the Overhead Assessment Form; Analysis of Surplus; Supplemental Investment Income; Supplement for County Mutuals; Texas Supplemental A for County Mutuals; HMO Supplement 2001 Health Data; Annual Statement for Farm Mutuals; Annual Statement for Statewide Mutual Assessment Companies, Local Mutual Aid Associations, Mutual Aid Associations and Exempt Companies; Release of Contributions Form, $3\frac{1}{2}\%$ Chamberlain Reserve Table, Reserve Summary, Inventory of Insurance in Force and Summary of Inventory of Insurance in Force; and the Annual Statement for Non-Profit Legal Service Corporations.

Publication: 27TexReg939, February 8, 2002
Effective date: February 17, 2002
Further information: 512 463-6327

APA Proposals

Holding Company Regulations

■ The Department has proposed amendments to 28 TAC §§ 7.201–7.205 and 7.209–7.213, concerning administrative regulation under the Insurance Holding Company System Regulatory Act (*Texas Insurance Code* Article 21.49-1). The amendments are intended to implement provisions of Senate Bill 605 of the 77th Legislature, improve administrative efficiency and promote compliance.

Substantive changes would include requirements that:

- Affiliate transactions involving participation in investment pools by property and casualty insurers be reported to and reviewed by TDI. Investment activities of an investment pool and transactions between pools and participants would have to be reported on Form Bs submitted to TDI.
- Proposed contracts, agreements or memoranda of understanding with affiliates provide for settlement within 90 days.
- Form As include affirmative statements of compliance with 28 *Texas Administrative Code* Chapter 22, concerning privacy, by both the applicant and the domestic insurer. If an applicant proposes to change the domestic insurer's privacy policy, it would need to describe the changes in detail.
- Form As include fingerprint cards for an individual applicant or, in the case of an applicant other than an individual, the entity's board chairman, chief executive officer, president, chief financial officer, treasurer and controller. Each fingerprint card would have to include the full name, address, telephone number and fax number of the law enforcement agency or agent testing center that conducted the fingerprinting and the name of the individual who actually took the fingerprints.

In its preamble to the proposed rules, TDI said the fingerprinting requirement was necessary to facilitate background checks through the FBI and the Texas Department of Public Safety. A similar fingerprinting requirement has been in effect for agent license applicants since 1996.

"Background checks will provide another tool for the Department, in its efforts to protect policyholders by identifying persons who have a criminal background, so that the Department can consider the potential for problems such as illegal use of company funds, non-compliance with federal statutes and fitness and competency of management," the preamble said. "Additionally, the requirement for background checks is consistent with other states whose statutes or regulations require fingerprints."

Publication: 27TexReg565, January 25, 2002
Earliest possible adoption: February 24, 2002
Further information: 512 463-6327

Insurer Notice to HMOs

- The Department has proposed an amendment to 28 TAC § 11.204(15)(A), concerning the notice that an insurer must provide to

RuleMaking

an HMO and to TDI before terminating or reducing the coverage provided to the HMO under a reinsurance agreement or any other agreement covering excess of loss, stop-loss and/or catastrophes. The amendment would correct the rules reference to the *Texas Insurance Code* article that prescribes such notice. The correct citation is Article 20A.05(a)(4)(C).

Publication: 27TexReg868, February 8, 2002
Earliest possible adoption: March 10, 2002
Further information: 512 463-6425

HEALTH CARE

APA Proposal Compensation for Women's Health Care

■ The Department has proposed new 28 TAC §§ 21.3301–21.3305 concerning discrimination in compensation to providers of women's health services. The proposed rules would implement Senate Bill 8 of the 77th Legislature, codified as *Texas Insurance Code* Article 21.53N.

The proposed rules would clarify that health plans must pay for women's covered reproductive health and reproductive oncology services at an amount not less than the annual average compensation per hour or unit that the plans would pay for the same or comparable services provided exclusively to men or to the general population. Relative value units (RVUs) published by the Centers for Medicare and Medicaid Services and other methodologies for comparing reimbursements would be considered when determining appropriate reimbursements. The statute provides an administrative penalty of up to \$25,000 for violating the equal reimbursement requirement. In addition, the statute requires TDI to act within 120 days after receiving a complaint.

The proposed rules would specify the information that complaints of alleged violations of Article 21.53N must include. In addition to such basics as names and addresses and a description of the alleged violation, a complaint would be required to include documentation from the physician or provider that:

- Identifies the amount reimbursed by the health plan issuer for a covered reproductive health or reproductive oncology service provided to a woman.

- Identifies the amount of time and resources spent in providing the covered reproductive health or reproductive oncology service.
- Using objective criteria, identifies the same or comparable covered service that is offered by the health plan and provided exclusively to men or to the general population.
- Identifies the difference, if any, in the amount of time and resources spent in providing the covered reproductive health or reproductive oncology service and the same or comparable covered service using objective criteria.
- Identifies the level of expertise needed to provide the covered reproductive health or reproductive oncology service and the same or comparable covered service provided by the health plan exclusively to men or the general population.
- Compares the difference in reimbursements for the covered reproductive health or reproductive oncology service and the same or comparable service provided by the health plan to men and the general population within the same geographic service area.

The 120 days for TDI to act would run from the date TDI receives a complaint containing all the required information.

Publication: 27TexReg1262, February 22, 2002
Earliest possible adoption: March 24, 2002
Further information: 512 463-6327

MEDICARE SUPPLEMENT INSURANCE

APA Proposals Minimum Standards for "Medigap" Policies

■ The Department has proposed amendments to 28 TAC §§ 3.3306, 3.3308 and 3.3312 concerning minimum benefit standards for Medicare supplement ("Medigap") policies and guaranteed issue of such policies to eligible beneficiaries. Among other things, the amendments would implement changes in applicable federal laws and subsequent amendments to the NAIC model regulation on Medicare supplement insurance.

Proposed substantive changes in the rules would:

- Require Medigap policies and certificates to include provisions that allow benefits and premiums to be suspended at the re-

quest of the consumer for any period that may be provided by federal regulations.

- Clarify that the copayment amount for hospital outpatient services paid under the prospective payment system is a basic core benefit.
- Reflect the change in the name of the federal agency that administers Medicare from the Health Care Financing Administration to the Centers for Medicare and Medicaid Services.
- Provide greater protection by delaying the start of the guaranteed issue period to the later of the date when coverage ends or the date when an individual receives a coverage termination notice. If the individual does not receive a termination notice, the guaranteed issue period would begin on the date when the individual receives notice that a claim was denied because coverage was terminated.
- Explain the guaranteed issue rights of individuals whose enrollment in Medicare+Choice, PACE and Medicare Select is terminated involuntarily within the first 12 months in one of those plans.

Publication: 27TexReg562, January 25, 2002
Earliest possible adoption: February 24, 2002
Further information: 512-463-6327

Mandatory Benefit Notice Requirements

■ The Department has proposed amendments to 28 TAC § 21.2107 requiring notification of eligible beneficiaries that they have the right to guaranteed issue of a Medicare supplement policy following termination of coverage, under certain circumstances, within their first 12 months as members of a Medicare+Choice, PACE or Medicare Select plan.

The amendments would implement changes made to the applicable federal laws and subsequent amendments to the NAIC model regulation on Medicare supplement insurance.

Individuals who lose coverage through circumstances such as contract terminations would be entitled to notice of their guaranteed issue rights when they receive notification that their coverage will end. Individuals who cease enrollment for any other reason would be entitled to such a notice issued within 10 days after the entity providing coverage received notification of disenrollment.

Publication: 27TexReg570, January 25, 2002
Earliest possible adoption: February 24, 2002
Further information: 512-463-6327 ★

Conduct Exams... *from page 1*

premium finance company or agent—pays the expenses of a market conduct examination.

Market conduct examinations are authorized by several statutes, including *Texas Insurance Code* Article 1.15, the general examination article. In addition, the code empowers TDI to “examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by” Article 21.21, the general consumer protection statute. Separate statutes authorize market conduct examinations of MGAs.

Market Conduct Examinations, 1997–2001

YEAR	EXAMINATIONS COMPLETED
1997	19
1998	28
1999	22
2000	33
2001	26

Examination triggers

A market conduct examination can be triggered by any number of indicators that a company may be out of compliance with Texas’ consumer protection requirements. Historically, market conduct examinations have been initiated because of such things as:

- High complaint volume relative to policy count.
- Serious complaints, even though few in number, that were supported by sufficient information to indicate a need for an examination.
- Recommendations of financial examiners based on problems they identified in financial examinations.
- Reports from consumer advocates.
- Data developed internally by TDI from market trend analyses.
- Information obtained in other market conduct examinations. For example, an examination of a premium finance company might produce evidence of serious violations by MGAs and/or local recording agents.

We receive considerable help in prioritizing exams from a working group consisting of the managers of Consumer Protection, Legal and Compliance, Market Conduct Examinations and other operating divisions of TDI. This group meets every two weeks to discuss market conduct issues, complaints and specific licensees. Recommendations to examine particular licensees sometimes result from these meetings, which include discussions of trends and approaches for handling market conduct issues.

A market conduct examination need not be traumatic nor unduly interrupt a company’s day-to-day operation. The remainder of this article describes our examination procedure, the kinds of information we need and ways to expedite an examination.

Before the exam...

A licensee identified for a market conduct exam receives three weeks’ advance written notice. This notice requests lists and files relevant to the focus of the market conduct exam.

If, for example, an examination were prompted by automobile claim complaints, we would ask for:

- A list of all auto claims over a specific period such as the preceding 12 months.
- Separate listings of auto claims denied or closed without payment, claims currently pending and claims currently in litigation.
- Manuals, forms and form letters used by claims personnel.

Similarly, if unfair discrimination in underwriting were at issue, we would tell the company to have ready its underwriting guidelines and procedures for the affected lines, its rates (separated and identified by line and policy type) and the following listings:

- Policies issued, by line and policy type, including policy number, name of insured, effective date and policy count total.
- Cancelled policies.
- Policies not taken.
- Non-renewed policies.
- Rejected applicants.
- Rescinded policies.

When an exam addresses sales practices and advertising, we normally will request listings of:

- Advertising and marketing aids.
- Appointed agents (including name, date appointed and identifying number).
- Terminated agents, including date terminated and the reason (or reason code) for termination.
- MGAs and/or TPAs, including address, phone number, date appointed and premium volume produced during the period covered by the exam.

In every instance, regardless of the issue that targeted the licensee for examination, we will want to look at the licensee’s complaint register.

During the exam...

An examiner will start with the listings generated in response to our examination notice and decide on a sample size and the tests to be performed. If

the issue is claim handling, the examiner will request a representative sample of individual claim files chosen from the list provided by the company. The examiner then will subject these files to detailed review. The test most likely would be: Did the company pay the correct amount within the time frame prescribed by *Texas Insurance Code* Article 21.55?

When complaints about sales practices trigger an examination, the examiner will want to see advertising files, training and promotional videos, agent training manuals and procedures to control advertising by agents.

Examinations generally are guided by the *Texas Policy and Procedures Manual*. When that manual has insufficient guidance on a particular subject, our examiners look to the NAIC market conduct examinations manual.

Smoothing the way

Here are some tips to make an examination run smoothly and leave the examiner with a positive impression.

- Make sure you have all the requested information together when the examiner arrives.
- Respond promptly to requests for additional documentation. Delays create a bad impression and might suggest you have problems.
- Conduct your own internal analysis of complaints and take independent action to correct the problems they bring to light. Showing that you’re trying to correct these problems can mitigate the comments made in the examiner’s report.

Examination outcomes

If a market conduct exam results in findings that a licensee violated the *Texas Insurance Code*, one outcome can be revocation of the licensee’s authority to do business in Texas. That has happened in a handful of cases, including an MGA who cut claim payment checks but then waited two or three months—or until an insured complained—to mail them.

A number of licensees have been fined and ordered to clean up certain problems following a market conduct exam. In some cases where market conduct violations proved to be symptoms of serious cash flow problems, the companies were placed in supervision or conservation.

And in some instances, market conduct exams have cleared insurers of potential violations of consumer protection laws.

By law in Texas, market conduct exam reports are confidential and not subject to disclosure. ★

Disciplinary Actions

Editor's Note: Copies of individual orders may be obtained by calling TDI's Public Information Office, 512 463-6425.

AGENTS & AGENCIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	Collum, Eric	Friendswood	County Mutual Agent's License Revoked	Felony Conviction; Misappropriation or Conversion	01-1210	12/18/01
	Cortez, Alice	South Houston	\$1,500 Fine; \$3,000 Restitution; Probated Suspension of Motor Vehicle Only Agent's License	Misappropriation	02-0029	1/14/02
	Ellis, Carl Presley	Rowlett	Escrow Officer's License Revoked	Material Misstatement on License Application	02-0013	1/7/02
	Gates, Larry Alan	Deer Park	\$2,500 Fine	Misappropriation or Conversion (with Full Restitution)	02-0056	1/22/02
	Goodman, Michael L.	Dallas	Life, Accident, Health and HMO Agent's License Revoked	Felony Conviction	01-1233	12/21/01
	Ledbetter, Charles E. III	San Antonio	Prepaid Legal Services Agent's License Revoked	Misappropriation or Conversion	02-0030	1/14/02
	Murphy, Joseph Edward	Garland	Revocation of Life, Health, Accident and HMO; Local Recording Agent; and Prepaid Legal Services Agent Licenses	Fraudulent and Dishonest Practices; Rebating; Payment of Commissions to Unlicensed Persons	01-1159	12/7/01
	Richardson, La Tonya	Corsicana	Prepaid Legal Services Agent's License Denied	Prior License Denials; Four Misdemeanor Convictions for Crimes of Moral Turpitude	02-0032	1/14/02
	Shipman, Terry Glen	Beaumont	\$1,500 Fine and Probated Suspension of Qualified Inspector's Appointment	Failure to Provide Substantiating Information	02-0012	1/7/02
	Southern Texas Title Co.	Brownsville	\$14,000 Fine	Payment to Non-Employee for Referring Title Insurance Business; Payment of Unauthorized Fees to Other Licensed Title Agents; Escrow Violations	02-0108	1/31/02
	Terry, Jesse D.	Whitesboro	Prepaid Legal Services Agent's License Denied	Material Misstatements on License Application	02-0015	1/7/02
	Vielma, Deborah Rene	Garland	Adjuster's License Denied	Fraudulent or Dishonest Acts	02-0014	1/7/02
COMPANIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	American Standard Lloyds Insurance Co.	Dallas	\$3,000 Fine	Failure to Provide Information Required by TDI	02-0055	1/22/02
	Amil International Insurance Company Inc.	Austin	\$10,000 Fine, Plus Order Requiring Offer of Coverage for Certain Children Born to Health Plan Members	Denial of Enrollment to Some Insureds' Newborn Children, Based on Certificate of Insurance Not Approved by TDI	02-0087	1/25/02
	Empire Lloyds Insurance Co.	Houston	\$7,500 Fine, Plus Restitution	Failure to Make Required Refunds of Workers' Compensation Maintenance Tax Surcharge	02-0057	1/22/02
	Federal Insurance Co.	Indianapolis, IN	\$3,000 Fine	Failure to Provide Commercial Auto Experience Rating Data	02-0011	1/7/02
	Hanover Insurance Co.	Worcester, MA	\$3,000 fine	Failure to Provide Commercial Auto Experience Rating Data	02-0109	1/31/02
	Jefferson Insurance Company of New York	New York, NY	\$3,000 Fine	Failure to Provide Information Required by TDI	02-0010	1/7/02
	Royal Insurance Company of America	Naperville, IL	\$3,000 Fine	Failure to Provide Commercial Auto Experience Rating Data	02-0028	1/14/02
	Safeguard Insurance Co.	Glastonbury, CT	\$3,000 Fine	Failure to Provide Commercial Auto Experience Rating Data	02-0027	1/14/02
	Trustmark Insurance Co.	Lake Forest, IL	\$40,000 Fine	Consent Order; Alleged Misrepresentations by Agents in the Sale of Certain Life Insurance Products	02-0088	1/25/02

Company Licensing

Applications Pending

For admission to do business in Texas

	COMPANY NAME	LINE	HOME OFFICE
	Mutual Savings Life Insurance Co.	TPA	Decatur, AL

For incorporation

	COMPANY NAME	LINE	HOME OFFICE
	Baker Benefits Administrators Inc.	TPA	Houston, TX
	Compendium Life Insurance Co.	Life, Accident and/or Health	Dallas, TX

For name change in Texas

FROM	TO	LINE	LOCATION
American Surety & Casualty Co.	Encompass Indemnity Co.	Fire and/or Casualty	St. Petersburg, FL
Conseco Direct Life Insurance Co.	Colonial Penn Life Insurance Co.	Life, Accident and/or Health	Philadelphia, PA
CU Lloyds of Texas	Onebeacon Lloyds of Texas	Fire & Casualty	Dallas, TX
Employers Health Insurance Co.	Humana Insurance Co.	Life, Accident and/or Health	De Pere, WI
Western Family Insurance Co.	Anchor General Insurance Co.	Fire & Casualty	San Diego, CA

Applications Approved

For admission to do business in Texas

	COMPANY NAME	LINE	HOME OFFICE
	GLI Corporate Risk Solutions, Inc	TPA	Wilmington, DE
	Hartford Steam Boiler Inspection and Insurance Company of Connecticut, The	Fire & Casualty	Hartford, CT
	Herbert V. Friedman Inc.	TPA	Rockville Centre, NY

For incorporation

	COMPANY NAME	LINE	HOME OFFICE
	Citifinancial Administrative Services Inc.	TPA	Fort Worth, TX

For name change in Texas

FROM	TO	LINE	LOCATION
Benefit Land Title Insurance Co.	Commercial Title Insurance Co.	Title	Santa Ana, CA
Cedar Hill Assurance Co.	Aardwolf Reinsurance Co.	Fire & Casualty	Austin, TX
Gary E. Ringler Inc., dba AAGI	Gary E. Ringler Inc. dba Nexcaliber	TPA	Dallas, TX
Pharmacy Benefit Management, L.L.C., dba Scriptnet	Pharmacy Benefit Management, L.L.C., dba Scriptnet	TPA	Las Vegas, NV



Texas Department of Insurance

P. O. Box 149104
Austin, Texas 78714-9104

Presorted Standard
U. S. Postage Paid
Austin, Texas
Permit No. 1613