



Texas Insurance News

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Farmers' Rates Prompt State Action

IN MEASURES based largely on evidence from a comprehensive market conduct investigation, TDI has acted on two fronts to stop Farmers from engaging in homeowners insurance rating practices deemed violations of Texas consumer protection laws.

On August 5, 2002, Attorney General John Cornyn sued Farmers on behalf of Commissioner Jose Montemayor and the State of Texas for alleged deceptive, misleading and unfairly discriminatory practices in its homeowners insurance business.

Eight days later, Montemayor issued an emergency cease-and-desist order that effectively froze Farmers' homeowners rates and gave the insurer 90 days to purge its rates and rating practices of elements that violate the *Texas Insurance Code* and TDI rules. During the 90-day period, which extends to mid-November, Farmers may continue issuing and renewing policies under the challenged rates but cannot raise them based on elements prohibited by the order. Farmers also faces possible enforcement action, including restitution and administrative penalties of up to \$25,000 per violation, for alleged unfair rating practices.

"TDI will continue to investigate the rating practices of Texas insurance companies and if additional illegality or improper behavior is uncovered, additional appropriate and decisive action will be undertaken on behalf of Texas consumers," Montemayor said.

TDI is performing additional investigations to determine if significant homeowners rate increases by Allstate and State Farm violated state laws.

The Lawsuit

The lawsuit, filed in a state district court in Austin, names as defendants Farmers Group Inc., Farmers Insurance Exchange, Fire Insurance Exchange and the attorneys-in-fact for the two reciprocal exchanges. It alleges violations of *Texas Insurance Code* Articles 21.21, 21.21-6 and 21.21-8 and Section 17.46 of the state's Deceptive Trade Practices Act.

The suit seeks a permanent injunction and restitution to policyholders whose homeowners premiums were inflated by Farmers' allegedly illegal

practices. It also seeks civil penalties of \$25,000 for each Texan harmed by the alleged violations of Article 21.21-8 and up to \$10,000 for each violation of Article 21.21 and TDI rules issued under that statute.

In addition to evidence from TDI's investigations, the lawsuit is based on evidence obtained in a separate investigation conducted by the Attorney General's Consumer Protection Division.

The Farmers lawsuit, announced at a Houston news conference by Cornyn, Montemayor and Governor Rick Perry, seeks to enjoin the following practices:

- Failure to disclose to policyholders that Farmers' homeowners rates include an "unfunded catastrophe load" that subsidizes Farmers' rate shortfalls in other states where natural disasters occurred.
- Failing to consistently provide the credit history discounts indicated by Farmers' own data. The state's lawsuit contends that policyholders in Farmers' categories "I" and "N" receive different discounts from those in categories "H," "J" and "K" even though Farmers' data shows their claim histories are essentially the same.
- Using the age of policyholders' homes in calculating premiums in an illegally discriminatory way. For example, the lawsuit alleges, Farmers' own data indicates a seven-year-old house should get a 28.9 percent discount, but Farmers gives it only 15 percent.
- Failing to adequately notify customers in writing that their credit histories affect their premiums and their ability to renew their policies.
- Calculating premiums throughout the state with the same multiplier to reflect the difference in coverage between the Texas standard HO-B and the HO-A, the only policy now sold by Farmers in Texas. Mold and water damage claims paid under the HO-B vary widely from one geographic area of Texas to another.
- Switching policyholders from Farmers Insurance Exchange to Fire Insurance Exchange without disclosing premium increases resulting from the switch. According to the lawsuit, policyholders who were switched at policy renewal

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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.

NewsBriefs

New Agent Licensing Test Contractor Chosen

TDI HAS SELECTED Computer Adaptive Technologies/Assessment Systems Inc. (CAT*ASI) of Bala Cynwyd, Pennsylvania, as the Department's external agent licensing testing vendor for Fiscal Year 2003.

As part of the transition to the new testing vendor, the current vendor, Experior Assessments LLC, (Experior) will continue to provide service through September 30, 2002. Deadlines for Experior exam registrations and applications can be found on the company's Web site, www.experioronline.com.

CAT*ASI will begin administering agent license examinations on October 1, 2002. The vendor will begin taking reservations on September 9, 2002. CAT*ASI's toll-free number for Texas exam reservations is **1-888-204-6244**. Updated information will be provided on TDI's Web site, www.tdi.state.tx.us. ★

TWIA Rate Meeting Set for September 6

COMMISSIONER JOSE MONTEMAYOR will hold an open meeting on September 6, 2002, to consider the Texas Windstorm Insurance Association's request for increases in its rates for wind and hail coverage of both commercial and residential risks.

The meeting will be at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

TWIA's board of directors is requesting a 10 percent rate increase, the statutory maximum, for both commercial and residential risks.

The association is the residual market for wind and hail insurance in the 14 Texas counties touching the Gulf of Mexico and for portions of Harris County on Galveston Bay.

A state law passed in 2001 requires TWIA to file its proposed rates by August 15 of each year. The proposed rates may be approved, disapproved or modified by the Commissioner following a public meeting.

In its petition, TWIA discussed a private entity's modeling of Hurricane Alicia, which damaged Galveston in 1983 and was the last major hurricane to strike an urban area in Texas. TWIA said it paid about \$157 million in Alicia losses. The association's petition said that modeling entity

concluded that TWIA's losses for the same type of storm today would exceed \$561 million. ★

Nesenholtz Moves to Life/Health/Licensing

LYNDA NESENHOLTZ, TDI's general counsel and chief clerk since June 1998, has been appointed special advisor to the Life, Health and Licensing Program. The change takes effect September 1, 2002.

Nesenholtz' new duties include assisting with rulemaking, monitoring and implementing legislation, prompt payment of providers, privacy, HIPAA and overall administrative functions.

Gene Jarmon, assistant general counsel since February 1999, will serve as acting general counsel and chief clerk.

"Lynda will be a great addition to the Life, Health and Licensing management team," said Kim Stokes, senior associate commissioner of the program. "Her knowledge and experience will ensure that the program will continue to operate effectively, particularly with the recent loss of senior personnel."

Nesenholtz served as a staff attorney in the Legal and Compliance Division from 1988 to 1992, served as an appeals judge for the Texas Workers' Compensation Commission, then returned to TDI as assistant general counsel in September 1997.

Jarmon, a University of Texas Law School graduate with more than 29 years of legal experience in both private and public sectors, joined TDI in 1991 in the Liquidation Division and later served in the Conservation of Companies Section and in the Financial Section of Legal and Compliance. ★

Fraud Unit Prosecutions

Indictments

Hernandez, Yolanda, indicted in Austin on charges of making a false statement in a written instrument, a third-degree felony.

Leake, Kathy D., indicted in Austin on charges of misapplication of fiduciary property and theft, both second-degree felonies.

Amosun, Paul O., indicted in Austin on charges of making a false statement in a written instrument, a third-degree felony.

Dixon, Terry Lynn, indicted in Fort Worth on charges of insurance fraud, a state jail felony.

Everett, Dan, indicted in Dallas on charges of insurance fraud, a state jail felony.

Jones, Harold James, indicted in Lavaca County on charges of theft, a state jail felony.

Ngole, Emmanuel, indicted in Houston on charges of insurance fraud, a state jail felony.

Odunugu, Adesola, indicted in Houston on charges of insurance fraud, a state jail felony.

Singleton, Richard, indicted in Fort Worth on charges of insurance fraud, a state jail felony.

Staples, Johnny Duane; Martha Staples, Billy Staples, Teresa Staples, Don Mitchell, Ramnath Ramcharan and Daniel Terry, indicted in U.S. District Court, Southern District of Texas (Houston), on charges of mail fraud, money laundering, and conspiracy.

Case Dispositions

Bautista, Marie Abigail, found guilty of mail fraud in U.S. District Court, Southern District of Texas (Houston). Sentenced to three years' probation and ordered to pay \$100 in criminal assessments.

Bautista, Ofelia, found guilty of mail fraud in U.S. District Court, Southern District of Texas (Houston). Sentenced to 366 days' confinement, a \$15,000 fine and \$300 in criminal assessments.

Closs, Jana, sentenced in Houston to five years' deferred adjudication and 400 hours of community service for insurance fraud, a state jail felony.

Diosdado, Jorge I., sentenced in Dallas to two years' deferred adjudication and a \$1,500 fine for insurance fraud, a Class A Misdemeanor.

McKinney, Yvonne Thomas, sentenced in Dallas to five years' deferred adjudication, 120 hours of community service and a \$1,500 fine for insurance fraud, a state jail felony.

Shelton, Julius Jr., sentenced in Houston to four years' deferred adjudication, 250 hours of community service, a \$500 fine and payment of \$1,525 in restitution for insurance fraud, a state jail felony.

Williams, Tony, sentenced in Dallas to two years' deferred adjudication and a \$100 fine for insurance fraud, a Class A Misdemeanor.

Sill, Jeffrey, sentenced in U.S. District Court, Western District of Texas (San Antonio), to 60 months' probation and restitution of \$80,000 for mail fraud.

Villegas, Michelle, sentenced in Austin to 48 months' deferred adjudication, 120 hours of community service and restitution of \$6,368.68 for theft, a state jail felony. ★

TDI update

Residential Stat Plan Amendments Sought

TDI STAFF HAVE ASKED Commissioner Jose Montemayor to amend the Texas Statistical Plan for Residential Risks to better reflect the coverages available in today's homeowners insurance market.

Notice of the proposal to change the statistical plan was published in the August 9, 2002, issue of the *Texas Register*. No public hearing is planned on the proposal unless TDI receives a request for one by the September 9, 2002, comment deadline.

If adopted, the proposal would add options to the Policy Forms field to capture data on national residential property insurance policy forms adopted by Montemayor earlier this year. These are the State Farm, USAA and ISO forms. Staff also requested authorization to add new options to this field without holding a hearing as new policy forms are approved for use in Texas.

Other proposed amendments would:

- Add fields for reporting the actual dollar amount of the deductible associated with a particular policy. The current deductible field would remain in place, however, for companies unable to make the system changes necessary to report the actual dollar amount of a deductible.
- Indicate whether a policy written in coastal territories 8, 9 and 10 excludes wind coverage.
- Allow for reporting of "buy-back" endorsements for foundation, mold, water and other specified coverages and for reporting the purchased amount of any such coverage.
- Eliminate the obsolete Protection Key Rate field.
- Delete deductible type codes that are no longer valid. ★

Montemayor to Consider Nationwide Forms

COMMISSIONER JOSE MONTEMAYOR is considering a request by Nationwide Lloyds Insurance Co. to use in Texas substantially the same homeowners, tenants and condominium policy forms that the Nationwide companies sell to customers in other states.

No public hearing will be held unless a separate request for one is submitted to the Office of the Chief Clerk by the September 9, 2002, comment deadline. Notice of the Nationwide petition was published in the August 9, 2002, *Texas Register*.

Earlier this year, Montemayor adopted the State Farm, USAA and ISO residential policy forms. As in those cases, Nationwide has agreed to provide customers an explanatory letter and coverage summary and to furnish TDI with rate information and loss cost analyses for its policies for the two years following implementation.

Nationwide said it plans to offer only its own forms to new customers and will replace existing policyholders' Texas standard forms with Nationwide's own forms at renewal time.

As with the standard Texas HO-B policy form, Nationwide's basic policy would cover the cost of cleaning up any mold on surfaces damaged by a covered water discharge but would not pay for mold "remediation," including testing and decontamination, beyond the damaged area.

Significant differences between the Nationwide forms and the Texas standard HO-B homeowners policy form include:

- Nationwide's basic policy covers damage from sudden and accidental water discharges but

not for the continuous or repeated seepage or leakage covered by the HO-B.

- The Nationwide policy does not cover losses from water that backs up through sewers or drains, while the HO-B does.
- The Nationwide basic policy excludes losses from settling, cracking, shrinking, bulging or expansion of foundations, pavements, etc., while the HO-B covers them as an ensuing loss related to a covered water claim.
- Nationwide's policy places a 12-month limit on the time allowable for payment of additional living expenses and fair rental value. The HO-B does not have a time limitation.
- Nationwide provides up to \$500 for removal of debris from live trees downed or damaged by a covered peril when the fallen tree has not caused damage to a covered structure. The HO-B does not provide this coverage.
- Nationwide places limits of \$1,000 on coverage of stolen firearms and \$2,500 on coverage of stolen silverware and goldware. The HO-B covers such losses up to the limits of liability for Coverage B (Personal Property).

As with the carriers whose national policies have been approved, Nationwide proposes to offer endorsements that would add coverage for mold remediation, damage to slabs or foundations from water discharges and direct physical loss of property due to continuous or repeated seepage or leakage of water or steam. The slab or foundation coverage would be limited to 15 percent of the limit of liability for Coverage A (Dwelling). There would be an additional premium for each endorsement selected. ★

Withdrawal Plan Must Precede Non-Renewals

By **Godwin Ohaechesi**, Director, Company Licensing and Registration Division

TO PROTECT the interests of consumers, Texas law requires any insurer or HMO wishing to withdraw from a line of insurance to obtain TDI's approval of its "plan of orderly withdrawal" before sending non-renewal notices to policyholders or enrollees.

A company that withdraws from a line of coverage without submitting a plan of orderly withdrawal is subject to disciplinary action. Commissioner Jose Montemayor recently fined an insurer \$10,000 for violating this requirement.

Withdrawal plans are required by *Texas Insurance Code* Article 21.49-2C and TDI rules codified as 28 TAC §§ 7.1801-7.1808. The statute

and rules recently were amended to include HMOs and to add certain new requirements. (The rule amendments were summarized on page 4 of the February issue of *TexasInsuranceNews*.)

A withdrawal is any initiative taken by an insurer or HMO that results in one or more of the following:

- Cessation of writing a line or lines of insurance in this state.
- Reduction of annual premium in a line or lines of insurance by 75 percent or more.
- Reduction of annual premium in a personal line of motor vehicle comprehensive or residential property insurance by 50 percent or more in a rating territory.

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RuleMaking

AGENTS

APA Proposals

Agent License Fees

■ The Department has proposed amendments to 28 TAC §§ 19.801 and 19.802, plus the addition of new 28 TAC § 19.803, concerning licensing, registration, examination and appointment fees for agents, adjusters, full-time home office salaried employees, insurance service representatives, risk managers, life and health insurance counselors and reinsurance intermediaries.

The proposed rules would establish a uniform \$50 fee for original applications and license renewals. The fee for additional appointments would be a uniform \$10. Fees would be the same for residents and nonresidents. The new renewal fees would apply only to licenses with renewal dates on or after November 1, 2002.

A specialty license holder would need to have a separate license and pay a separate renewal fee for each specialty license authority held by that licensee. There are five such authorities.

The proposed uniform fees would replace a structure in which most original application fees were \$50 but renewal fees were \$18 or \$48 and additional appointment fees were either \$10 or \$16, depending on the type of license held.

“Setting original application and renewal fees for these license types at the same \$50 amount will simplify the administration and collection of licensing fees and reduce confusion created by having different fees for different license types as well as different fees for application and renewal of the same licenses,” TDI said in its rule proposal.

The \$50 renewal fee for license types renewable online would include a \$3 “subscription fee” that TDI would remit to the Texas OnLine Authority to fund the TexasOnLine Project. The project provides licensees and the public with access to state government over the Internet. TDI expects to transfer about \$300,000 annually to the authority.

Original application fees would be remitted to TDI’s designated testing service for licenses requiring an examination by the service and to TDI directly for licenses that do not require such an examination. Insurers using registered home office salaried employees would

submit the employees’ \$50 registration fees to TDI when filing their applications.

The proposed rules specify that a general lines agent appointed as a subagent by another general lines agent is not a separate license type. Only general lines agents may appoint subagents, who also must be licensed as general lines agents. Appointment fees for general lines agents appointed as subagents are the same as fees for those appointed by insurance companies.

*Publication: 27TexReg6623, July 26, 2002
Earliest possible adoption: August 25, 2002
Further information: 512 463-6327*

Surplus Lines Agents

■ The Department has proposed amendments to 28 TAC §§ 15.2–15.5 concerning the regulation of surplus lines agents. The proposed rule changes would clarify statutory requirements enacted in Senate Bill 414 of the 77th Legislature.

Among other things, the amendments would provide guidance on what constitutes an insurance activity that must be performed only by a licensed surplus lines agent and how agents are to meet their financial responsibility requirements. Prior law and practice allowed qualified individuals to be associated with a surplus lines agency but did not specifically require those persons to obtain a license for the acts they performed through that agency. However, Senate Bill 414 requires all persons performing the activities of a surplus lines agent to be licensed. The proposed rule changes are designed to help agents and applicants determine whether an individual must have a surplus lines license. The amendments also clarify that surplus lines agents employed by a surplus lines agency can meet their financial responsibility requirements through that agency.

Under the proposed rules, persons performing any of the following surplus lines insurance activities would be required to have a surplus lines agent’s license:

- Overall supervision of a surplus lines agency and its unlicensed staff.
- Negotiating, soliciting, effecting, procuring or binding surplus lines insurance contracts for clients.
- Offering advice, counsel, opinions or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts. The

proposed rules make an exception for a general lines property and casualty agent referring business to a surplus lines agent or agency that subsequently completes the surplus lines transaction.

- Receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting or procuring surplus lines policies, contracts or coverages. Again, there is an exception for general lines property and casualty agents referring business to a surplus lines agent or agency.

The proposed rules list activities in a surplus lines agency that would not require licensure if the employee does not receive direct commissions and/or the employee’s compensation does not vary by the volume of premiums taken and received. Those activities are:

- Full-time clerical and administrative services, including the incidental taking of information from clients, receipt of premiums in the office of a licensed surplus lines agent or transmitting information, including invoices and evidences of coverage, to clients as directed by such an agent.
- Contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license is required.
- Performing the task of underwriting and/or pricing an insurance policy, contract or coverage.
- Contacting clients, insureds, agents, insurers or other persons to gather and transmit information about claims and losses, to the extent that such contact does not require an adjuster’s license.

A surplus lines agency would remain free to distribute agency profits to unlicensed persons, including shareholders, partners and employees.

Individual surplus lines agents could demonstrate proof of financial responsibility by either obtaining a separate surety bond or by relying on the bonds of the surplus lines agencies that employ them. The amount of the required bond would remain \$50,000 as in the past. The Commissioner could waive the bond requirement in part or in whole as necessary to comply with federal laws that promote

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licensing uniformity and reciprocity among the states.

An entity licensed as a surplus lines agency would be required to obtain a separate bond and could not rely on the bond of any other individual or agency to prove financial responsibility.

The proposed rules would add a new requirement that licensed surplus lines agencies, both resident and nonresident, notify TDI of the name and Texas surplus lines agent license number of each individual agent they employ. Notification would be required within 30 days after such an agent is employed. Likewise, an agency would have to notify TDI within 30 days after an individual surplus lines agent leaves its employ. That individual then would have to demonstrate proof of financial responsibility independently of the agency.

Publication: 27TexReg7363

Earliest possible adoption: September 15, 2002

Further information: 512 463-6327

AUTOMOBILE

Exempt Adoption

Truckers Intermodal Interchange Endorsement

- Commissioner Jose Montemayor has amended the *Texas Automobile Rules and Rating Manual* by revising Endorsement TE 23 17, "Truckers-Intermodal Interchange Uniform Endorsement (Form UIIE-1)."

The amendment modifies and clarifies a motor carrier's responsibilities with regard to third-party liability and renames the endorsement "TE 23 17A, Truckers Uniform Intermodal Interchange Endorsement (IANA Form UIIE-1)."

The Intermodal Association of North America (IANA), which administers the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), revised the standard agreement effective September 1, 2000. The new auto manual amendment conforms the endorsement to the revised agreement.

According to IANA, the standard agreement applies to about 5,100 truckers/drymen and 55 ocean and rail carriers and sets forth responsibilities of both the carrier providing equipment and the carrier receiving that equipment.

Under the previous Texas endorsement, the "User" (i.e., the motor carrier), "while in possession of interchange equipment, releases and agrees to defend, indemnify and hold harmless the Owner" from loss arising from the use of that equipment "except loss or damage to such interchange equipment, or cargo being transported therein or cargo being loaded or unloaded or held at terminal or transit points, incident to transportation."

The newly adopted amendment removes that exception from liability. Instead, the motor carrier accessing the premises of an intermodal facility to pick up or drop off intermodal equipment will assume liability for its own activity at the time it enters the facility's property. The time frame for this liability would be that of the motor carrier's "use or maintenance of the equipment during an interchange period; the performance of this Agreement; and/or presence on the Facility Operator's premises."

Publication: 27TexReg7198, August 9, 2002

Effective date: September 8, 2002

Further information: 512 463-6327

FINANCIAL

APA Adoptions

Auto Insurance Assumptions

- Commissioner Jose Montemayor has amended 28 TAC § 5.11, concerning assumption certificates related to automobile insurance policies.

The change deletes the strict requirement that an assumption certificate may be attached only when the ceding carrier is in receivership or conservatorship and only when a court has approved a reinsurance agreement. Instead, a certificate may now be attached to an auto policy when a reinsurance assumption agreement has been approved by a Commissioner's order.

TDI believes assumption reinsurance agreements can be advantageous to policyholders in limited situations other than conservatorship or receivership. These situations may include dissolution or sale of a company or a determination that a company is in a hazardous financial condition. Each situation will be determined on a case-by-case review.

Publication: 27TexReg6859, August 2, 2002

Effective date: August 7, 2002

Further information: 512 463-6327

2002 Annual and Quarterly Statements

- Commissioner Jose Montemayor has adopted new 28 TAC § 7.65 concerning the requirements for filing 2002 annual and quarterly statements.

The new rule incorporates annual and quarterly filing updates from the prior period. The instructions and forms required are essentially the same as they were for the 2001 annual and any quarterly statement filings except for the addition of:

- A new NAIC form for life companies to file a Worker's Compensation Carve-out Supplement. This form reflects information on reinsurance assumed by life and health insurers on certain business originally written as workers' compensation. The applicable exposures are occupational illness and accident but not employers liability.
- A "Supplemental Investment Risks Interrogatories" supplement. This supplement is designed to improve disclosures regarding diversification and valuation of assets.

Publication: 27TexReg7536, August 16, 2002

Effective date: August 20, 2002

Further information: 512 463-6327

HEALTH CARE

APA Adoption

Coverage for Acquired Brain Injury

- Commissioner Jose Montemayor has adopted new 28 TAC §§ 21.3101–21.3105 (Subchapter W), concerning coverage for acquired brain injury. The rules implement provisions of House Bill 1676 of the 77th Legislature, codified as *Texas Insurance Code* Article 21.53Q, and apply to all health benefit plans delivered, issued for delivery or renewed on or after January 1, 2002.

The rules prohibit health plans from excluding coverage for certain services that are medically necessary as a result of and related to acquired brain injury. These services are cognitive rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and rehabilitation, neurobehavioral, neurophysiological, neuropsychological and psychophysiological testing or treatment, neurofeedback therapy, remediation, post-acute transition services and community reintegration services.

Under the new rules, treatment goals for these services may include the maintenance of

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functioning or the prevention of or slowing of further deterioration.

Health plan issuers must develop written pre-authorization and utilization review policies and procedures to identify covered services. These policies and procedures must include:

- Identification of Common Procedural Terminology (CPT) codes associated with services for acquired brain injury and
- A means to identify an enrollee initially diagnosed with an acquired brain injury.

Each health plan issuer is required to assure that all staff or other individuals performing preauthorization or utilization review receive training to prevent wrongful denial of coverage and to avoid confusion of medical/surgical benefits with mental/behavioral health benefits. This training must, at minimum, consist of:

- Identification of services likely to be requested in treating an enrollee with an acquired brain injury.
- Identification of specific therapies currently used in treating an enrollee with an acquired brain injury.
- Instruction relating to correctly evaluating requests for services to differentiate between covered medical/surgical benefits versus covered benefits for mental/behavioral health.
- Instruction relating to the requirements of *Texas Insurance Code* Article 21.53Q and these rules.

At minimum, training may be accomplished by attendance at an initial orientation, in-service training or continuing education program. Health plan issuers must maintain documentation and verification of this training for each person required to take it. Documentation and verification must be provided to TDI upon request.

The training requirements apply to contracted entities to the extent they are responsible for preauthorization or utilization review.

Health plan issuers subject to *Texas Insurance Code* Article 21.53Q are required to submit to TDI, upon request, the list of CPT codes identified by the issuer as applicable to acquired brain injury cases.

Projected publication date: August 23, 2002
Effective date: August 26, 2002
Further information: 512-463-6327

APA Proposal

Mandated Benefit Data Collection

■ The Department has proposed new 28 TAC §§ 21.3401–21.3409 (Subchapter Z), which would require certain health benefit plan issuers to collect and report data on mandated benefits and mandated offers. The rules would implement House Bill 1610 of the 77th Legislature, codified as *Texas Insurance Code* Articles 38.251–38.254.

The requirements would apply to:

- Health benefit plan issuers whose most recent annual statements show \$10 million or more in direct premiums earned in Texas for group accident and health insurance policies.
- Issuers whose most recent annual statements show \$2 million or more in direct premiums earned in Texas for individual A&H policies.
- Basic service HMOs that reported direct commercial premiums totaling \$10 million on Texas business in their latest annual statements.
- Licensed third party administrators that perform claim payments services for any health benefit plan issuer that meets any of the three criteria listed above.

An HMO would be exempt from reporting data for a particular benefit or coverage if **1**) the HMO does not directly process the claim because the services are prepaid under a capitated payment arrangement or **2**) the HMO does not receive complete and accurate encounter data. The HMO's report would have to include an addendum explaining these circumstances.

A health plan issuer would not be required to report data that could reasonably be used to identify a specific enrollee or that would violate state or federal confidentiality requirements applicable to an enrollee. In this instance, the issuer would have to describe the omitted data, cite the law or regulation requiring its omission and certify that the data could not be identified in a way that would allow it to be reported.

For each reporting year, a health plan issuer would have to report the following information for each mandate:

- Number of claims paid.
- Dollar amount paid on the claims.
- Number of policies, contracts or certificates about which the information is being reported.

- Total dollar amount of administrative costs incurred.

The reports would be required to show the average annual premium per policy, contract or certificate attributable to each of the listed mandates.

In addition, each health plan issuer would be required to provide the total number of individual policies and group certificates issued or renewed, plus the total number in force, during the reporting year, along with the total number of policies and certificates providing individual and family coverage. Reports also would have to show the total number of lives covered under these policies and certificates.

Health plan issuers would be required to submit the required data electronically by accessing a link provided on TDI's Web site, www.tdi.state.tx.us.

The proposed rule lists 21 group and 10 individual mandated benefits or mandated offers for which information would have to be reported. They are:

Group

- In vitro fertilization.
- HIV or AIDS-related illnesses (standards for exceptions, exclusions and reductions).
- Chemical dependency.
- Serious mental illnesses (two separate provisions).
- Psychiatric day treatment.
- Loss or impairment of speech or hearing.
- Low-dose mammography.
- Phenylketonuria (PKU).
- Prescription contraceptive drugs and devices and related services.
- Temporomandibular Joint (TMJ) procedures.
- Detection and prevention of osteoporosis.
- Immunizations.
- Prostate cancer testing.
- Diabetes self-management training.
- Hearing screening for children.
- Telemedicine and telehealth.
- Reconstructive surgery after a mastectomy.
- Benefits related to acquired brain injury.
- Reconstructive surgery for craniofacial abnormalities in children.
- Oral contraceptives in plans providing prescription drug coverage.

Individual

- HIV or AIDS-related illnesses.
- Immunizations.

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- Prostate cancer testing.
- Diabetes self-management training.
- Hearing screening for children.
- Telemedicine/telehealth.
- Reconstructive surgery after a mastectomy.
- Benefits related to acquired brain injury.
- Reconstructive surgery for craniofacial abnormalities in children.
- Low-dose mammography.
- Oral contraceptives in plans providing prescription drug coverage.

TDI's Web site will provide suggested procedure and diagnosis codes that may be used in capturing the data required for the report. Each issuer would have to maintain for five years information and documentation supporting the accuracy and completeness of its data and its report. This information and documentation would have to include a list of the procedural and diagnosis codes used in collecting the data. The supporting information would have to be made available to the Department upon request.

Publication: 27TexReg6798, August 2, 2002
 Earliest possible adoption: September 1, 2002
 Further information: 512 463-6327

PROPERTY

APA Proposal

Texas Windstorm Insurance Association Policies

■ Commissioner Jose Montemayor will hold a September 17, 2002, hearing on proposed amendments to 28 TAC § 5.4001, the plan of operation of the Texas Windstorm Insurance Association, and 5.4501, concerning the adoption by reference of the rule manual governing the writing of windstorm and hail insurance by TWIA. The hearing (Docket No. 2526) will be at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin.

The changes were requested by the TWIA Board of Directors to clarify when the acceptance of new or increased coverage will be suspended due to an imminent storm. TWIA's plan of operation has long contained a provision that applications will not be accepted when a hurricane is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude. However, the provision is not date- or time-specific.

Under the proposal, no applications for new or increased coverage would be accepted on or after 12:01 a.m. of the day when a named hurricane is in the Gulf or is within the 80-20 boundary. The moratorium on accepting applications would remain in effect until TWIA's general manager determines that the storm no longer threatens property within the TWIA designated catastrophe area.

This exception would not apply, however, if an application meeting underwriting criteria is:

- Hand-delivered to TWIA headquarters in Austin during normal business hours before the hurricane is in the Gulf or is within the 80-20 boundary. The application would become effective on the date of delivery or on a later date if stipulated in the application.
- Mailed prior to the first day the storm is in the Gulf or within the 80-20 boundary by registered, certified or express mail or by regular mail that is hand-cancelled by the U. S. Postal Service or by any other mailing procedure approved by the TWIA board of directors. The application would become effective on the date mailed, or on a later date if stipulated in the application.

Publication: 27TexReg7038, August 9, 2002
 Earliest possible adoption: September 8, 2002
 Further information: 512 463-6327 ★

Data Call Reminders

(Failure to comply with TDI's reporting requirements may result in disciplinary action)

2001 Annual Aggregate Closed Claim Report and 2001 Closed Claim Reconciliation Form

This call was mailed July 19, 2002, and is due September 10, 2002. The bulletin and forms may be downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/company/indexpc.html>. TDI contact is Vicky Knox, **512 475-1879**. E-mail address: vicky.knox@tdi.state.tx.us.

Quarterly Closed Claim Reports

Reports (Long/Short Forms) for claims closed during the third quarter of 2002 are due October 10, 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 Vicky Knox, **512 475-1879**. E-mail address: vicky.knox@tdi.state.tx.us.

Call for Quarterly Experience

The Call for Second Quarter 2002 Experience was due August 15, 2002. TDI contact is Julie Jones, **512 475-3030**. E-mail address: julie.jones@tdi.state.tx.us.

Call for Quarterly Experience, Workers' Compensation Deductible Plans

The Call for First Quarter 2002 Experience was due August 15, 2002. TDI contact is Julie Jones, **512 475-3030**. E-mail address: julie.jones@tdi.state.tx.us.

Community Investments

The call for 2001 Report on Community Investments in the State of Texas is due October 1, 2002. The bulletin and forms may be downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/commish/b-0045-2.html>. TDI contact is Melissa Mallett, **512 305-7201**. E-mail address: melissa.mallett@tdi.state.tx.us. ★

Withdrawals from page 3

The statute makes certain exceptions to this requirement and does not require a withdrawal plan when:

- An insurer or HMO transfers business to another Texas-licensed insurer or HMO in the same insurance holding company system. However, the insurer or HMO must notify TDI and obtain a determination that the transfer complies with the *Texas Insurance Code*.

- The business is assumptively reinsured by another insurer or HMO licensed in Texas.
- The withdrawal is made to comply with a TDI disciplinary or administrative order or a directive of a supervisor, conservator or receiver. In these instances, an insurer or HMO will be deemed not to have acted on its own initiative.

An insurer or HMO with questions about the applicability of the plan of orderly withdrawal requirement may contact TDI's Company Licensing

and Registration Division at 512 322-4370. In addition, *Texas Insurance Code*, Article 21.49-2C, and 28 TAC §§ 7.1801-7.1808 may be accessed through TDI's Web site, www.tdi.state.tx.us. ★



LegalNotes

Texas Supreme Court Rules on Liability Insurer's Duty to Defend

By Ann Bright, Section Chief, Agency Counsel Section, Legal and Compliance Division.

(Editor's note: Ann Bright left TDI in late August to become General Counsel of the Texas Parks and Wildlife Department.)

THE TEXAS SUPREME COURT recently ruled on an insurer's obligation to provide a defense under a commercial general liability policy. For more information about this case, please consult the opinion of the court.

King v. Dallas Fire Insurance Co.

Carlyle King (King), the owner of Tiedown Construct Co. (Tiedown), had purchased a general liability insurance policy from Dallas Fire Insurance Co. (Dallas Fire). The policy stated,

We [Dallas Fire] will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any suit seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result.

The policy defined an "occurrence" as an "accident, including continuous or repeated exposure to substantially the same general harmful conditions."

Carlos Lopez (Lopez) was an employee of Tiedown. Greg Jankowiak (Jankowiak) was an employee of another company who was working at the same location as Lopez. Jankowiak alleged that he was attacked, kicked in the face, and seriously injured by Lopez after Jankowiak confronted Lopez about some missing and damaged wiring. Jankowiak sued King. Jankowiak alleged, among other things, that King was negligent in hiring, supervising and training Lopez.

King requested that Dallas Fire defend him in the lawsuit. Dallas Fire refused. Dallas Fire argued that the events described in the lawsuit were not considered an "occurrence" under the policy. King sued Dallas Fire.

The trial court ruled that Dallas Fire was not obligated to defend King. King appealed. The Houston Court of Appeals (1st District) agreed and ruled in favor of Dallas Fire. King appealed to the Texas Supreme Court.

King argued that Lopez, not King, caused Jankowiak's injuries. King argued that his only potential involvement in Lopez's alleged actions was hiring, training, and supervising Lopez. King argued that, from his perspective, Jankowiak's alleged injuries were the result of an accident.

Dallas Fire, on the other hand, argued that the court should look to Lopez's intent, not King's intent. Dallas Fire argued that the alleged actions by Lopez were intentional, not accidental, and therefore, not an "occurrence" under the policy.

The Texas Supreme Court (the court) began by noting that an "insurer's duty to defend is determined solely by the allegations in the pleadings and the language of the insurance policy." The court then reviewed the separation-of-insureds provision of the policy. This provision stated, in part,

[T]his insurance applies:
a. As if each Named Insured were the only Named Insured; and
b. Separately to each insured against whom claim is made or "suit" is brought.

The court noted that the separation-of-insureds provision "expressly creates separate insurance

policies for King and King's employee, Lopez." Also, the court must construe the policy as if King were the only named insured.

Therefore, the allegations in Jankowiak's lawsuit must be viewed from King's perspective. The court stated that "the insured's standpoint controls in determining whether there has been 'occurrence' that triggers the duty to defend."

The court determined that from King's perspective, Jankowiak's alleged injuries were not intentional. As a result, from King's perspective, Jankowiak's alleged injuries were the result of an "occurrence" under the policy.

The court therefore ruled in favor of King. The court determined that Dallas Fire was obligated to defend King in the lawsuit filed by Jankowiak. For more information about this case, please consult the opinion of the Court. *King v. Dallas Fire Insurance Co.*, 2002 WL 1118438 (Tex. 2002). ★

Types&Totals

Entities Holding a Certificate of Authority in Texas

	JULY 31, 2002			DECEMBER 31, 2001		
	TEXAS	FOREIGN	TOTAL	TEXAS	FOREIGN	TOTAL
Stock Life Insurance Companies	133	536	669	135	547	682
Mutual Life Insurance Companies	3	43	46	3	43	46
Stipulated Premium Companies	40	0	40	41	0	41
Non-Profit Life Companies	0	1	1	0	1	1
Stock Fire Insurance Companies	1	6	7	1	4	5
Stock Fire & Casualty Companies	101	679	780	104	675	779
Mutual Fire & Casualty Companies	7	57	64	7	59	66
Stock Casualty Companies	7	121	128	7	119	126
Mexican Casualty Companies	0	9	9	0	9	9
Lloyds	69	0	69	68	0	68
Reciprocal Exchanges	11	15	26	11	15	26
Fraternal Benefit Societies	10	25	35	10	26	36
Title Insurance Companies	4	23	27	4	22	26
Non-Profit Legal Services Corps.	2	0	2	2	0	2
Health Maintenance Organizations	53	3	56	54	3	57
Risk Retention Groups	1	0	1	1	0	1
Third Party Administrators	293	432	725	295	434	729
Joint Underwriting Associations	0	3	3	0	6	6
Multiple Employer Welfare Assoc.	6	3	9	6	4	10
Continuing Care Retirement	19	2	21	19	2	21
Statewide Mutual Assessment Life,						
Accident and Health Companies	1	0	1	1	0	1
Local Mutual Aid Associations	4	0	4	5	0	5
Local Mutual Burial Associations	2	0	2	2	0	2
Exempt Associations	10	0	10	10	0	10
Non-Profit Hospital Service Corps.	5	0	5	5	0	5
County Mutual Fire Companies	24	0	24	24	0	24
Farm Mutual Fire Companies	17	0	17	17	0	17
Total	823	1958	2781	832	1969	2801

KEY TELEPHONE LISTAll numbers are in area code **512**.

DIVISION	NAME	PHONE	MAIL CODE
Commissioner of Insurance	Jose Montemayor	463-6468	113-1C
Executive Deputy Commissioner	Karina Casari	463-6464	113-1C
Acting General Counsel & Chief Clerk	Gene Jarmon	305-7351	113-2A
Office of Chief Clerk		463-6326	113-2A
Government Relations	David Durden	463-6651	113-3A
Public Information Office	Robert Black	463-6425	113-1A
Senior Associate Commissioner & Chief of Staff	Albert Betts Jr.	305-7249	113-1C
Information Services (Data Processing)–Director	Andy Robinson	463-0819	102-4S
Legal & Compliance –Senior Associate Commissioner	Sara Shiplet Waitt	463-6119	110-1A
Insurance Fraud Program –Acting Associate Commissioner	Dennis Pompa	305-8159	109-3A
Life, Health & Licensing –Senior Associate Commissioner	Kim Stokes	305-7342	107-2A
Licensing –Deputy Commissioner	Matt Ray	463-8917	107-1A
TPA/Premium Finance	Chuck Waits	322-3412	107-5A
Agents Licensing		322-3503	107-1A
Life/Health Division –Deputy Commissioner	Ana Smith-Daley	322-3401	106-1A
Accident & Health	Cindy Carpenter	322-3409	106-1D
Life, Annuity & Credit	Jackie Murphy-Robinson	322-3406	106-1E
HMO/URA Division –Deputy Commissioner	Kevin Brady	322-4266	103-6A
Filings Intake –Deputy Commissioner	Angelia Johnson	322-3575	104-3B
Life/Health & HMO Intake	Belinda Reveles	322-4245	106-1E
Property & Casualty Intake	Cindy Grimm	322-3575	104-3B
Property & Casualty –Senior Associate Commissioner	C. H. Mah	322-3587	105-5G
Associate Commissioner	Marilyn Hamilton	322-2265	104-PC
Data Services	Clare Pramuk	475-1878	105-5D
Market Assistance Program	Kathy Graf	322-2290	105-5D
Property & Casualty Actuarial	Philip Presley	475-3017	105-5F
Personal and Commercial Lines –Director	David Nardecchia	305-7544	104-PC
Automobile/Homeowners –Manager	Grover Corum	322-3430	104-1A
Commercial Automobile	Leslie Hurley	305-7435	104-1C
Personal Automobile	Leslie Hurley	322-3471	104-1A
Homeowners	Gary Julian	322-2266	104-1F
Commercial Property/Casualty –Manager	Mark Worman	305-7544	104-PC
Bond, Crime & Glass	Irwin Thomas	322-3475	104-PC
General Liability	Melvin Smith	322-3460	104-PC
Commercial Property	Georgia Keysor	322-2243	104-PC
Professional Liability	Kenneth McDaniel	322-3445	104-PC
Workers' Compensation –Deputy Commissioner	Nancy Moore	322-3486	105-2A
Classification	Joel Isgrig	322-3493	105-2A
Oversight Group	Pat Brabham	322-3495	105-2A
Group Insurance/Deductible/Retrospective Rating	Vicki Martinka	322-3459	105-2A
Employee Leasing	Jerry Schwab	322-3495	105-2A
Inspections –Deputy Commissioner	Alexis Dick	322-2235	103-1A
Commercial Property Oversight	Richard Baker	322-2259	103-1D
Engineering	Billy Ray Guerin	322-2212	103-3A
Windstorm Inspection	Welch V. Watt	322-2203	103-1E
Loss Control	Richard Baker	322-3435	103-9A
Title Division –Deputy Commissioner	Robert Carter	322-3482	106-2T
Title Examinations	Robert York	322-5027	106-2T
Financial –Senior Associate Commissioner	Betty Patterson	322-5040	305-2A
Actuarial	Mike Boerner	322-5067	305-3A
Company Licensing and Registration –Director	Godwin Ohaechesi	322-3507	305-2C
Licensing–Admitted Companies & HMOs–Director	Jeff Hunt	322-4370	305-2C
Registration–Surplus Lines/Foreign RRGs/Purchasing Groups	Kathy Wilcox	322-3535	305-2C
Statutory Deposits	Tina Martinez-Saucedo	322-4124	305-2C
Early Warning Group	Scott Kyle	322-3467	305-2C
Contract Administration	Jim Helfrich	475-1867	305-2C
Financial Analysis/Examinations	Danny Saenz	322-5002	303-1A
Conservation	Neal Rockhold	322-4162	305-1C
Liquidation Oversight	Evelyn Jenkins	322-4352	305-1D
Consumer Protection –Senior Associate Commissioner	Audrey Selden	322-4309	111-1A
Complaints Resolution	Valerie Brown	305-8199	111-1A
Advertising Unit	Jack Evins	475-1949	111-2A
State Fire Marshal	G. Mike Davis	305-7900	112-FM

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
	Clement, Billy J.	Dallas	\$2,500 Fine	Consent Order; Alleged Acceptance of Commissions from Unlicensed Entity; Alleged Advertising Violations	02-0759	7/23/02
	Gauthier, John Robert	Shreveport, LA	Adjuster's License Application Denied	Material Misstatement on License Application	02-0635	6/18/02
	Harmel, Don Glenn	Houston	General Life, Accident, Health and HMO License, General Property and Casualty License and County Mutual License Revoked	Consent Order; Alleged Misappropriation or Conversion; Alleged Fraudulent or Dishonest Acts	02-0724	7/15/02
	Moore, Charles	Mesquite	\$2,000 Fine	Advertising Violation	02-0697	7/2/02
	New Frontier General Agency Inc.	Houston	\$1,000 Fine	Late Filing of Annual Operations Report and Assessment Fee	02-0758	7/22/02
	Pitman, Kobey A.	Conroe	Denial of Group Life, Accident, Health and HMO Insurance Agent's License	Guilty Plea to Felony and Three Serious Misdemeanors	02-0656	6/21/02
	Smith-Munderloh, Stacey Lynn	The Colony	\$2,300 Fine	Accepting Commissions from Unlicensed Entity; Advertising Violations	02-0706	7/8/02
INSURANCE COMPANIES						
	American States Insurance Company of Texas	Richardson	\$5,000 Fine	Consent Order; Alleged Violation of Rules and Statutes Governing Custodial Agreements	02-0725	7/15/02
	American States Lloyds Insurance Co.	Richardson	\$7,000 Fine	Consent Order; Alleged Violation of Rules and Statutes Governing Custodial Agreements	02-0726	7/15/02
	Indiana Lumbermen's Mutual Insurance Co.	Indianapolis, IN	\$10,000 Fine	Failure to Timely Refund Workers' Compensation Maintenance Tax Surcharge	02-0704	7/8/02
	Safeco Lloyds Insurance Co.	Richardson	\$8,000 Fine	Consent Order; Alleged Violation of Rules and Statutes Governing Custodial Agreements; Maintaining Books and Records Outside of Texas Without Notifying TDI	02-0728	7/15/02
	St. Paul Fire & Marine Insurance Co.	St. Paul, MN	\$3,000 Fine	Late Filing of Commercial Auto Experience Rating Data; Late Response to TDI Inquiry	02-0705	7/8/02
	St. Paul Fire & Marine Insurance Co.	St. Paul, MN	\$3,000 Fine	Late Filing of Commercial Auto Experience Rating Data; Late Response to TDI Inquiry	02-0707	7/8/02
PREMIUM FINANCE COMPANIES						
	Liberty Premium Finance Inc.	Cerritos, CA	\$750 Fine	Late Filing of Annual Operations Report	02-0730	7/15/02
	Masters Premium Finance Co.	Houston	\$1,500 Fine	Late Filing of Annual Operations Report and Assessment Fee	02-0757	7/22/02
	Prime Premium Finance LLC	Alvin	\$1,000 Fine	Late Filing of Annual Operations Report and Assessment Fee	02-0727	7/15/02
	UW General Agency Inc. dba Western Security Premium Funding	Waco	\$1,000 Fine	Late Filing of Annual Operations Report and Assessment Fee	02-0729	7/15/02

Company Licensing

Applications Pending

For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
American Millennium Insurance Co.	Fire and/or Casualty	Hoboken, NJ
Columbian National Title Insurance Co.	Title	Topeka, KS
Foresight Inc.	TPA	Norman, OK
MedSolutions of Texas Inc., (doing business under the assumed name of RAD MSO of Texas)	TPA	Franklin, TN
Professional Benefit Consultants Inc.	TPA	Wilmington, DE
United National Casualty Insurance Co.	Fire & Casualty	Hammond, IN

For incorporation

COMPANY NAME	LINE	HOME OFFICE
ERN Holdings Inc.	TPA	Fort Worth, TX
Summit Administrators Inc.	TPA	Houston, TX
Texas Transplant Institute	TPA	San Antonio, TX
U.S. Auto Insurance Co.	Fire and/or Casualty	Dallas, TX

For name change in Texas

FROM	TO	LINE	LOCATION
American Risk Funding Insurance Co.	ACIG Insurance Co.	Fire and/or Casualty	Barrington, IL
Prudential Dental Maintenance Organization Inc.	Aetna Dental Maintenance Organization Inc.	HMO	Houston, TX
Safeco Insurance Company of Pennsylvania	Safeco Insurance Company of Indiana	Fire and/or Casualty	Indianapolis, IN

Applications Approved

For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
Acadia Insurance Co.	Fire & Casualty	Westbrook, ME
Ceridian Benefits Services Inc.	TPA	St. Petersburg, FL
Encompass Home and Auto Insurance Co.	Fire & Casualty	Chicago, IL
Encompass Independent Insurance Co.	Fire & Casualty	Chicago, IL
Farmers and Traders Life Insurance Co.	Life	Syracuse, NY
FBD Consulting Inc.	TPA	Kansas City, MO
Group Practice Affiliates LLC	TPA	Rancho Cordova, CA
Integrated Disability Resources Inc.	TPA	Bloomfield, CT
Synergence Group Inc.	TPA	Chicago, IL
United Life Agency Services LLC <i>dba</i> Paylogix	TPA	Garden City, NY
Usplate Glass Insurance Co.	Casualty	Westchester, IL

For incorporation

COMPANY NAME	LINE	HOME OFFICE
Texas Agricultural Cooperative Trust	MEWA	Lubbock, TX

For name change in Texas

FROM	TO	LINE	LOCATION
Aid Association for Lutherans	Thrivent Financial for Lutherans	Fraternal	Appleton, WI
Asset Guaranty Insurance Co.	Radian Asset Assurance Inc.	Casualty	New York, NY
Colonial Penn Franklin Insurance Co.	GE Casualty Insurance Co.	Fire & Casualty	Norristown, PA
Colonial Penn Insurance Co.	GE Property & Casualty Insurance Co.	Fire & Casualty	Fort Washington, PA
Colonial Penn Madison Insurance Co.	GE Indemnity Insurance Co.	Fire & Casualty	Fort Washington, PA
CU Lloyd's of Texas	Onebeacon Lloyd's of Texas	Fire & Casualty	Dallas, TX
Memorial Hermann Healthnet Providers Inc.	Memorial Hermann Health Network Providers Inc.	TPA	Houston, TX
Richards Hogg Lindley Inc. <i>dba</i> Richards Hogg Services	Richards Insurance Services	TPA	New York, NY

Farmers Action *from page 1*

time early in 2002 received increases averaging 35 percent.

The Emergency Cease-and-Desist Order

Texas Insurance Code Article 83.051 empowers the Commissioner to issue an emergency cease-and-desist order without a prior hearing to stop a company from committing unfair acts that are causing, or are expected to cause, injury to the public.

Montemayor issued the order to Farmers Insurance Exchange and Fire Insurance Exchange on August 13, 2002. It alleges violations of *Texas Insurance Code* Article 21.21, §§ 3 and 5, and TDI rules codified as 28 TAC §§ 21.1–21.5.

The order addresses rates charged by the two Farmers companies for the Texas standard HO-A homeowners policy, which is the only policy that Farmers sells in Texas. Farmers offers endorsements that enhance the policy by adding replacement cost coverage and, among other things, cov-

erage for sudden and accidental water discharges from appliances and plumbing.

Montemayor's order prohibits Farmers from engaging in the following rating practices to change existing rates or to determine rates for new and renewal HO-A policies that become effective later than 90 days after the date of the order:

- Using data that primarily reflects claims under the standard Texas HO-B "replacement cost" homeowners policy that Farmers no longer issues. The HO-A is an "actual cash value" policy unless a customer adds Farmers' replacement cost endorsement, for an additional premium.
- Incorporating an "unfunded catastrophe load" into its rates. The order contends that this load causes Texans to subsidize Farmers' rate shortfalls in other states.
- Failing to consistently provide the discounts indicated by Farmers' own data for policyholders in 15 of the company's 26 credit scoring categories. Montemayor states in the order that policyholders who received less than the indi-

cated discounts were overcharged for their insurance.

- Inconsistently giving discounts based on the age of one's home, resulting in overcharges for customers who got less than the discount indicated by Farmers' own data.
- Using excessive trend factors, resulting in rates higher than justified by Farmers' foreseeable claim experience under the HO-A policy.
- Using too long of a trending period because Farmers' rate revisions for HO-A coverage are more frequent than yearly.
- Using an excessive target profit. The order asserts that Farmers Insurance Exchange and Fire Insurance Exchange charge rates with a target after-tax return on net worth of more than 25 percent, including a "management fee" paid to Farmers Group Inc. By comparison, homeowners benchmark rates approved by the Commissioner for use by rate-regulated companies envision a return of 11.5 percent to 12.5 percent. ★

**Texas Department of Insurance**

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