



Texas Insurance News

REGULATORY NEWS PUBLISHED BY THE TEXAS DEPARTMENT OF INSURANCE

Limit Sought on HO Coverage Denials

COMMISSIONER JOSE MONTEMAYOR will hold a public hearing October 22, 2002, on a proposed rule that would limit the ability of insurers to deny or up-rate new residential property coverage because of a prior claim for water damage.

The hearing will be at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe, Austin. The proposed rule was published at 27TexReg8893 on September 20, 2002.

Department staff proposed the rule to Montemayor. TDI also received a petition from the Office of Public Insurance Counsel requesting a similar rule.

If adopted, the proposed rule (28 TAC § 21.1007) would prohibit an insurer from using an underwriting guideline or rate based on a previous claim for water damage in making a decision regarding the writing of residential property insurance.

An insurer, however, could rate or decline to cover a residence based on a previous claim for water damage if the insurer inspected the property, "using specific and objective criteria to evaluate the repair," and ascertained that the water damage had not been repaired.

There would be no exceptions to the rule against denying coverage to an individual based on prior water claims at residences other than the one sought to be insured.

If the rule is adopted, non-compliance would be considered an unfair trade practice in violation of *Texas Insurance Code* Article 21.21.

In their introduction to the rule proposal, Department staff asserted that the rule's purpose is to eliminate unfair competition and unfair discrimination and to promote the availability and affordability of residential property insurance.

"The proposed section is necessary as it has come to the attention of the Department that certain insurance companies are rating and declining to write residential property insurance policies based on the existence of a prior water damage claim," the Department said. "The apparent

motivation for the use of water damage claim history to rate policies or as an underwriting guideline is to offset losses resulting from and to avoid future claims for mold damage.

"The Department believes that the decision to increase the premium on a policy or decline to write a policy based on water damage claim history rather than ascertaining the condition of the property through an inspection is unfair and should be prohibited. The denial or rating of insurance based on a prior water damage claim is based on the unsubstantiated assumption that a previous water damage claim resulted in improper repair of the damaged property. Whether or not prior water damage has been repaired can only be determined by an inspection of the property."

TDI staff noted that the Department already has rules prohibiting underwriting guidelines based on the age and value of homes. Those rules were issued "because of the unfair nature of guidelines that broadly deny coverage to a class of homes instead of underwriting each home based on the actual condition of the property."

"At the present time, although several insurers are using water damage claim history as an underwriting guideline, none have provided the data or actuarial analysis that shows the use of this guideline is actuarially sound," the introduction to the rules said.

Department staff also observed that underwriting guidelines based on water claim history without a provision for inspection of individual properties undermine a consumer's right to use the state's voluntary inspection program (VIP) to qualify for a residential property insurance policy.

The VIP program enables a property owner to obtain an inspection by a qualified inspector who is licensed by TDI and follows standards issued by the Department. One standard is a plumbing system free of leaks. A house that receives a certificate of insurability is deemed insurable for the next three years unless an insurer determines otherwise through its own inspection. ★

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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

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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

TDI Holds Small Employer Health Insurance Fairs

SMALL EMPLOYER CARRIERS are encouraged to participate in a series of eight health insurance fairs that TDI will conduct during October and November as a way to increase the number of Texans with health care coverage. Ten carriers participated in the first fair, held in Austin on September 18, 2002.

Fairs scheduled for October and November are:

- October 2 - Lubbock
- October 8 - San Antonio
- October 16 - Harlingen
- October 17 - Corpus Christi
- October 22 - Dallas
- October 23 - Ft. Worth
- October 29 - Houston
- November 13 - El Paso

Insurers and HMOs interested in participating should contact Dianne Longley of the Life, Health and Licensing Program at **512 305-7298** or at dianne.longley@tdi.state.tx.us. Agents who would like carriers they represent to participate in the health insurance fairs should ask those carriers to contact Longley. ★

Carriers May Use ISO's HO Policies

TDI HAS ISSUED a bulletin spelling out the conditions under which insurers may use Insurance Services Office (ISO) residential property insurance forms in place of the Texas standard forms.

Commissioner Jose Montemayor approved the ISO forms effective August 17, 2002. The forms include the HO-2, HO-3, HO-4, HO-5, HO-6 and HO-8 policies and 93 endorsements.

In Commissioner's Bulletin No. B-0048-02, Associate Commissioner Marilyn Hamilton notified the industry that the forms are available and what companies must do prior to using them.

An insurer wishing to use the forms and endorsements must file for TDI approval and agree to abide by the conditions and requirements established by the Commissioner. These conditions include:

- Filing rate information on the policies with TDI for the first two-year period after the insurer begins using the ISO forms.
- Providing consumers with written summaries and explanations of differences between the coverage afforded by the applicable ISO form

and the Texas standard form the insurer previously had used.

- Giving customers the opportunity to purchase by endorsement water, foundation and mold coverages similar to those contained in the Texas standard forms but not provided by the basic ISO form the company is offering.

TDI also requires companies switching from the standard forms to insurer national forms, including ISO's, to show how the changes in coverage will affect policyholder premiums for basic coverage. ★

Montemayor Advises Carriers On Credit Scoring Disclosures

COMMISSIONER JOSE MONTEMAYOR has advised insurers that they must inform customers when "adverse actions"—such as higher premiums or denial of coverage—result from information in their credit histories.

Montemayor issued a bulletin (B-0049-02) on August 23, 2002, saying the Department will enforce disclosure provisions of the federal Fair Credit Reporting Act (FCRA) that apply to insurance companies.

Montemayor said insurers are subject to the FCRA and, therefore, must make certain disclosures to customers when taking adverse actions based in whole or in part on information taken from credit reports. These actions include denial or cancellation of coverage, premium increases and coverage reductions.

Among other things, the required notice must include the right to a free copy of the report on which the action was based and the right to dispute the completeness and accuracy of the report.

Montemayor noted that the Texas Insurance Code prohibits placing before the public any information which is untrue, deceptive, or misleading, and also prohibits misrepresentation of an insurance policy by failing to disclose any matter required by law to be disclosed.

"As such, the Department considers noncompliance with FCRA requirements to also be a violation of state law," the Commissioner said. "Insurers who use credit reports in rating or underwriting of insurance, or use credit reports to determine credit scores that are used in rating or underwriting insurance, whether new or renewal policies, should review their procedures for providing the required notice and, if necessary, take immediate steps to ensure compliance." ★

Fraud Unit Prosecutions

Indictments

Copple, Robert Harding II, indicted in U.S. District Court (Fort Worth), on charges of mail fraud and money laundering.

Robertson, James Henry, indicted in Austin on charges of theft, a second-degree felony.

Terry, Jesse David, indicted in Austin on charges of making a false statement in a written instrument, a third-degree felony.

Treat, Jay Osborne, indicted in Austin on charges of misapplication of fiduciary property and theft, a first-degree felony.

Laymond, Andrew, indicted in Dallas on charges of insurance fraud, a third-degree felony.

Murphy, Rhonda Lynn, indicted in Dallas on charges of insurance fraud, a state jail felony.

Case Dispositions

Coffman, Glenda P., sentenced in Galveston to five years' deferred adjudication, 120 hours of community service and restitution of \$5,195.78 for insurance fraud, a state jail felony.

Gordon, Anthony Ray, sentenced in Houston to four years' probation, 350 hours of community service, a \$500 fine and restitution of \$2,505 for insurance fraud, a state jail felony.

Porter, Sharon E., sentenced in Dallas to five years' probation, 160 hours of community service, a \$2,000 fine and restitution of \$3,238.37 for insurance fraud, a third-degree felony.

Gordon, Chandrelle White, sentenced in Houston to four years' probation, 350 hours of community service, a \$500 fine and restitution of \$2,505 for insurance fraud, a state jail felony.

Cleveland, Eric Richardo, sentenced in Austin to 24 months' probation for making a false statement in a written instrument, a third-degree felony.

Garrett, Laura Jeanine, sentenced in Houston to 96 months' deferred adjudication, 160 hours of community service and restitution of \$20,519.76 for theft, a second-degree felony.

Massengale, Lyndell, sentenced in U.S. District Court (Atlanta, Georgia) to 21 months in prison, 36 months' probation and restitution of \$158,600 for mail fraud.

Valdez, Juan Manuel, sentenced in Edinburg to 24 months' confinement (suspended), 60 months' probation, 120 hours of community service and a \$750 fine for theft and misapplication of fiduciary property, both state jail felonies.

TDI update

HMOs Show Profit In Second Quarter

BASIC SERVICE HMOs reported an aggregate after-tax profit of \$15,670,496 on their Texas-only business in the second quarter of 2002.

The quarter that ended June 30, 2002, was the second consecutive quarter in which basic service HMOs showed an industrywide profit. Prior to this year, they lost money for 23 consecutive quarters starting in 1996.

In the second quarter, 23 of the 33 active basic service HMOs—including one Provider Sponsored Organization—were profitable while 10 showed a loss on Texas-only business. This is an improvement over the 20 profitable HMOs in the first quarter.

“It’s good news that the industry as a whole was profitable in the second quarter and it appears that the HMOs are moving toward a better balance of revenue with expenses,” said Commissioner Jose Montemayor. “But we can’t be sure the HMOs have turned the corner until we see several more quarters of profitability. Medical expenses continue to rise, and it’s important for HMOs to continue to seek every possible economy while promptly meeting all their obligations to members, physicians and providers.”

The basic service HMOs reported that their total ending enrollment on June 30 was 3,319,546, a decline from their first-quarter enrollment of 3,343,287.

The 16 single service HMOs reported after-tax net income of \$5,323,367 in the second quarter ★

TDI Launches Helpinsure.com

TDI HAS LAUNCHED a new program designed to help consumers find homeowners insurance. The program includes a web site, www.helpinsure.com, and a toll-free telephone number, **1-866-695-6873**.

Governor Rick Perry directed TDI in August to find new ways for consumers and insurance companies to connect in the existing marketplace. The **Helpinsure.com** program is the result of that directive. TDI is promoting **Helpinsure.com** to consumers through a marketing campaign that includes both print and radio advertisements.

“Home ownership is the American dream and finding homeowners insurance should not be a nightmare. This new program will be a great resource for current and prospective home owners as they shop for the best policy to fit their needs,” said Commissioner Jose Montemayor. “**Helpinsure.com** will save time and effort for consumers and will give insurers an opportunity to review many applicants in a short time.”

TDI is encouraging insurers to participate in the new program. Insurers may apply their own un-

derwriting standards and are not required to accept applicants. Information provided by consumers will be secure and can be accessed only by agents and insurers.

The **Helpinsure.com** program will provide Texans with three levels of assistance:

- Consumers may sign up by completing an application that includes information about the homes they wish to insure. **Helpinsure.com** furnishes this information over the Internet to insurance companies and independent agents that sell homeowners policies;
- The **Helpinsure.com** Web site includes a list of active home insurers, including contact information so that consumers can call them directly.
- An extensive Learning Center on the Web site answers consumer questions about homeowners insurance. The Learning Center includes a link to TDI’s 2002 rate guide, which was refreshed at the end of August, along with shopping tips, homeowners insurance advice and information columns and complaint information.



Nationwide’s HO Forms Adopted for Texas

COMMISSIONER JOSE MONTEMAYOR has approved Nationwide’s request to use in Texas substantially the same residential property forms it uses in other states. He approved a filing by Nationwide Lloyds after the company made changes in the forms to meet specific Texas requirements.

Nationwide is the fourth company or trade organization to receive approval this year to use its national residential property forms in Texas. Earlier this year, Montemayor adopted the State Farm, USAA and ISO residential policy forms.

As in those cases, Nationwide agreed to provide customers an explanatory letter and coverage summary and to file its initial rates and any subsequent rate changes/reductions with TDI for a two-year period beginning on the date the policies are first sold.

Preliminary numbers from Nationwide indicate the company’s average rate for a brick veneer house insured for \$80,000 will drop from \$1,549 for a Texas standard HO-B policy with full mold remediation coverage to \$1,025 for the basic Nationwide policy, a 33.8 percent reduction. The average premium would be \$1,431, a 7.6 percent reduction, if a homeowner buys optional water

and mold coverage similar to that provided by the HO-B policy with full mold remediation.

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 when their policies come up for renewal.

As with the basic Texas HO-B policy form promulgated by TDI, Nationwide’s basic policy covers the cost of cleaning up mold on surfaces damaged by a covered water discharge but does not pay for mold “remediation,” including testing and decontamination, beyond the damaged area.

Significant differences between the Nationwide forms and the standard Texas HO-B 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 basic 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.,

Continued on page 6

RuleMaking

AGENTS AND ADJUSTERS

APA Proposal

Adjuster Licensing; Agent and Adjuster Continuing Education

■ TDI has proposed amendments to 28 TAC §§ 19.602 and 19.1001–19.1006 and the addition of new §§ 19.1007–19.1019, concerning the licensing of adjusters; continuing education for agents, adjusters and full-time home office salaried employees; and adjuster preclicensing education program requirements. The Department simultaneously proposed the repeal of 28 TAC §§ 19.1007 - 19.1013 and 19.3006.

Under the proposed amendments, adjusters could be issued an original license only within 12 months after completing a TDI-administered examination or a certified preclicensing education course and examination. The rules would prescribe requirements for adjuster preclicensing courses and examinations. The proposal also would clarify that adjuster licensing renewal requirements are the same as those for agents.

Continuing education rules would be changed to meet the statutory requirement that all licensees complete at least 50 percent of their required CE hours in classroom or classroom-equivalent courses. The proposed amendments would establish flexible guidelines that would allow for classroom courses to be developed or delivered in small agencies and remote locations as well as by traditional methods. The rules would set standards for the development of meaningful classroom-equivalent CE courses that could be delivered to licensees at any time over the Internet or by other computer-based methods.

The proposed rule changes would implement the two statutory continuing education longevity exemptions:

- Agents licensed by TDI for 20 years before January 1, 2003, are exempt from continuing education upon confirmation by the Department.
- All licensees achieving their twentieth year of licensure must have been licensed for 20 continuous years to be exempt from the CE requirement. The rule change would define "continuous" as having no period longer than 90 days in which the individual was not licensed or failed to renew a license.

The proposed rules would set out a table of automatic fines for violation of continuing education statutes and rules that are consistent with the current fines for these offenses. The fines are as follows:

- Failure to obtain the required number of continuing education hours—\$50 per credit hour not completed.
- Failure of a course provider to issue a properly completed certificate of completion within 30 days following completion of a course—\$100 per certificate.
- Providing a course to students prior to course certification—\$200 per student per instance.
- Providing a course to students after course certification has expired—\$200 per student per instance.
- Providing an assigned course to students prior to approval of the assignment—\$200 per student per instance.
- Providing an assigned course to students after the assignment has expired—\$200 per student per instance.

Publication: 27TexReg8704, September 13, 2002

Earliest possible adoption: October 14, 2002

Further information: 512 463-6327

APA Adoption

Agent License Fees

■ Commissioner Jose Montemayor has adopted amendments to 28 TAC §§ 19.801 and 19.802, and added 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 rule changes establish a uniform \$50 fee for original applications and license renewals. The fee for additional appointments is a uniform \$10. Fees are the same for residents and nonresidents. The new renewal fees apply only to licenses with renewal dates on or after November 1, 2002.

A specialty license holder will 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 uniform fees 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 any confusion created by having different fees for different license types as well as different fees for application and renewal of the same licenses.

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

Original application fees must 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 must submit the employees' \$50 registration fees to TDI when filing their applications.

The new 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 the fees for agents appointed by insurance companies.

Publication: 27TexReg8948, September 20, 2002

Effective date: September 26, 2002

Further information: 512 463-6327

FINANCIAL

APA Proposals

Ownership of Securities

■ The Department has proposed amendments to 28 TAC § 7.86, regarding an insurer's or HMO's demonstration of ownership of its certificated and uncertificated securities.

Texas Insurance Code Article 21.39-B requires insurance companies to have their securities registered in their names except for securities held under custodial agreements. The article directs the Commissioner to adopt rules authorizing domestic insurers to demonstrate ownership of an uncertificated security consistent with the common practices of securities exchanges and markets. The existing rule requires custodians to meet certain

requirements and requires custodial agreements to contain specified provisions.

The proposed changes would apply the rule to HMOs as well as to insurance companies. In addition, they would:

- Change the definition of “qualified broker/dealer” by raising a securities firm’s tangible net worth requirement from \$100 million to \$250 million.
- Require an insurer or HMO to maintain evidence that the custodian meets the requirements to be a qualified bank or a qualified broker/dealer as defined in the rules.
- Remove the provision that allowed an insurer to demonstrate ownership by having its securities registered in the insurer’s name on the books of the securities issuer and/or the securities issuer’s transfer agent.
- Change the standard of care for a custodian from a fiduciary standard to the reasonable commercial standards of the custodial business.
- Clarify that the records of clearing corporations or the Federal Reserve Book Entry System relating to the custodied securities are not subject to examination by an insurer or HMO.
- Delete an obsolete requirement that TDI may require a custodian to supply an affidavit certifying the custodian’s safekeeping responsibilities relative to the custodied securities.
- Clarify that a custodian holding securities for an insurance company or HMO must maintain the “usual and customary insurance coverage for custodial banking risks.”
- Require a custodian to notify TDI when an insurer or HMO withdraws all securities held by the custodian.

*Publication: 27TexReg8407, September 6, 2002
Earliest possible adoption: October 6, 2002
Further information: 512 463-6327*

HMO Investments

- The Department has proposed an amendment to 28 TAC § 11.803, concerning loans, investments and other assets of HMOs. The amendment would make uniform the requirements for custodial agreements for both insurers and HMOs by deleting the language in that section concerning custodial agreement requirements for HMOs and incorporating the requirements of 28 TAC § 7.86 for HMO custodial agreements.

*Publication: 27TexReg8410, September 6, 2002
Earliest possible adoption: October 6, 2002
Further information: 512 463-6327*

HEALTH CARE

APA Adoptions

Fee Schedule Disclosures to Contract Physicians and Providers

- Commissioner Jose Montemayor has adopted amendments to 28 TAC § 3.3703 concerning required disclosure provisions in preferred provider plan contracts with physicians and providers and to 28 TAC § 11.901 concerning such provisions in HMO contracts.

Under the rules, an HMO or insurance company must furnish fee schedule and coding information when a contracting physician or provider requests it in writing. The information must be in sufficient detail that a skilled, reasonable person can determine the payment to be made according to the terms of the physician’s or provider’s contract. Under existing contracts, an HMO or insurer will have 30 days after receiving a written request to furnish the information. When negotiating new contracts or renewing old ones, an HMO or insurer must furnish the information, upon request, along with other contractual materials.

To allow carriers time to meet these requirements, the earliest date the carriers will have to provide the information is 90 days from the date these rules become effective.

Specifically required are a provider-specific summary and explanation of all methodologies used to pay claims, including a fee schedule, any applicable coding methodologies, bundling processes and downcoding policies.

In addition, an insurer or HMO must provide any addendum, schedule, exhibit or policy necessary to provide a reasonable understanding of the information that is being disclosed. For example, if a fee schedule indicates reimbursement of certain claims at a “usual and customary” rate, then the HMO or insurance company must explain how it determines that rate.

An insurer or HMO may provide the required information using any reasonable method that is accessible by the physician or provider, including e-mail, computer disks, paper or access to an electronic database. If information is held by an outside source and is not within the control of the insurer, such as state Medicaid or federal Medicare fee schedules,

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the insurer or HMO must explain the procedure by which the physician or provider may access the outside source.

An insurer or HMO that cannot provide the required information because of copyright laws or a licensing agreement may supply a summary of the information. The summary must be sufficient to allow the physician or provider to determine the payment to be made under the contract.

*Projected publication date: October 4, 2002
Effective date: October 9, 2002
Further information: 512 463-6327*

PROPERTY

Exempt Adoption

Residential Property Insurance Statistical Plan Amendments

- Commissioner Jose Montemayor has adopted changes in the Texas Statistical Plan for Residential Risks.

TDI staff recommended the changes to provide a more realistic reflection of the homeowners insurance coverages currently available.

The statistical plan amendments add options to the Policy Forms field to capture data on the State Farm, USAA and ISO national residential property insurance policy forms adopted by Montemayor earlier this year. The changes also enable TDI staff to add new options to this field without holding a hearing as new policy forms are approved for use in Texas.

Other adopted amendments do the following:

- Add fields for reporting the actual dollar amount of the deductible associated with a particular policy. The current deductible field remains 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.

*Projected publication date: September 27, 2002
Effective: October 12, 2002
Further information: 512 463-6327 ★*

LegalNotes

U. S. Supreme Court Upholds Independent Review System

By Norma Garcia, Deputy Commissioner, Legal and Compliance Division.

THE UNITED STATES SUPREME COURT recently ruled on an HMO's duty to provide an independent medical review of certain denials of benefits. For more information about this case, please consult the opinion of the court.

Rush Prudential HMO, Inc. v. Debra C. Moran, et al.

Rush Prudential HMO Inc. is an HMO that contracts to provide medical services for employee welfare benefit plans covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.* (1999). Debra C. Moran was a plan beneficiary in Illinois. Rush denied her request to have a special type of surgery performed by an unaffiliated specialist, contending that the surgery was not medically necessary. Rush proposed that Moran undergo standard surgery with an affiliated physician.

Moran demanded an independent medical review of her claim as guaranteed by § 4-10 of the Illinois HMO Act, 215 Ill. Comp. Stat., ch. 125, § 4-10 *et seq.* (2000). The Illinois statute provided that "[i]n the event that the reviewing physician determines the covered service to be medically necessary, the [HMO] shall provide the covered service." Rush did not provide the independent review, and Moran sued in Illinois State District Court. Rush removed the suit to federal district court. Moran had the surgery with the unaffiliated specialist while the suit was pending and submitted a reimbursement claim to Rush. Meanwhile, the federal court remanded the case back to state court. The state court ordered the independent review, which found the treatment medically necessary, but Rush still denied the claim.

Moran amended her state court suit to seek reimbursement. Rush again removed the suit to federal court, arguing that the suit stated a claim for ERISA benefits. The federal district court treated Moran's claim as a suit under ERISA and denied the claim on the ground that ERISA preempted the independent review statute. The Seventh Circuit Court of Appeals reversed. It found Moran's reimbursement claim preempted by ERISA so as to place the case in federal court, but it concluded that the Illinois statute was not preempted as a state law that "relates to" an employee benefit plan, 29 U.S.C. § 1144(a), because it also "regulates insurance" under ERISA's saving clause, § 144(b)(2)(a). The United States Supreme Court affirmed the decision of the Seventh Circuit and

held that ERISA does not preempt the Illinois statute.

The Supreme Court started its decision with a common-sense view of the matter which requires a law to be "specifically directed toward" the insurance industry. The Court then tested the results of its inquiry by using the three McCarran-Ferguson Act factors to point to insurance laws spared from federal preemption. The common-sense inquiry focused on the primary elements of an insurance contract, which are the spreading and underwriting of a policyholder's risk. The Illinois statute satisfied this by defining an HMO by reference to the risk it bears. Rush's providing of health care services in addition to being an insurer does not mean that HMO regulation is different from insurance regulation within the meaning of ERISA.

The McCarran-Ferguson factors confirm the conclusion. The independent review requirement satisfied the factor that a provision regulates an integral part of the policy relationship between the insurer and the insured. The independent review translates the relationship under the HMO agreement into concrete terms of specific obligation or freedom from duty. The factor that the law is aimed at a practice limited to entities within the insurance industry is satisfied because the Illinois statute regulated the application of HMO contracts and provides for review of claim denials, and the HMO contracts are contracts for insurance.

The court then addressed Rush's argument that the Illinois statute was preempted because the congressional intent was to override ERISA's saving clause. Rush argued that the independent review should be preempted because it created an alternative remedy that is rejected in ERISA. The court reasoned that the Illinois statute may settle a claim, but it does not enlarge a claim beyond the benefits authorized by ERISA. Thus, the statute is not preempted. Further, the Illinois statute does not interfere unreasonably with Congress' intention to provide a uniform federal regime of rights and obligations under ERISA and, therefore, is not pre-empted. The Illinois statute is significantly different from common arbitration because the independent reviewer is limited to determining whether a treatment is medically necessary.

The court therefore affirmed the Seventh Circuit ruling that the Illinois independent medical review is not preempted by ERISA.

The Moran case raised issues virtually identical to those in a case where a U. S. District Court judge in Houston and the U. S. Court of Appeals for the Fifth Circuit found that Texas' independent review law was preempted by ERISA. Following its Moran ruling, the Supreme Court granted Attorney General John Cornyn's petition for a writ of certiorari and remanded the Texas case (*Montemayor vs. Corporate Health*) to the Fifth Circuit for reconsideration in light of Moran.

For more information about this case, please consult the opinion of the Court. *Rush Prudential HMO, Inc. v. Moran*, 122 S.Ct. 2151 (2002). ★

NationWide... *from page 3*

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, even if there is no damage to covered property or structures. 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).

Adoption of the Nationwide forms makes them available to other insurers as well. Companies must obtain TDI approval prior to using national forms in lieu of the Texas standard forms.

As with the other carriers whose national policies have been approved, Nationwide will offer endorsements that 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 from an appliance or plumbing system. The slab or foundation coverage is limited to 15 percent of the limit of liability for Coverage A (Dwelling). There will be an additional premium for each endorsement selected. ★

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
	Alaniz, Albert C. III	Corpus Christi	\$6,000 Fine; One-Year Probated Suspension of Qualified Inspector's Appointment	Failure to Provide Substantiating Information for Inspection Certificates	02-0842	8/12/02
	Bassinger, Jeffrey	Corinth	General Property and Casualty Agent's License Denied	Felony Offenses	02-0850	8/14/02
	Colston, Yolanda M.	Missouri City	General Life, Accident, Health and HMO Agent's License and General Property and Casualty Agent's License Revoked	Misappropriation and Conversion	02-0839	8/12/02
	Figueroa, Cirildo B., aka Cirildo Figueros	Pearsall	General Life, Accident, Health and HMO Agent's License Revoked; \$5,000 Fine	Fraudulent or Dishonest Acts or Practices	02-0841	8/12/02
	Harrison, Robert S.	Richmond	General Life, Accident, Health and HMO Agent's License and General Property and Casualty Agent's License Revoked	Misappropriation and Conversion	02-0829	8/8/02
	Lott, Jim D.	Fairfield	General Life, Accident, Health and HMO License and General Property and Casualty Agent's License Revoked	Misappropriation and Conversion; Fraudulent and Dishonest Practices	02-0767	7/23/02

INSURANCE COMPANY

	Gramercy Insurance Co.	Dallas	\$35,000 Fine	Consent Order; Alleged Use of Inadmissible Asset; Failure to File Reinsurance Agreement; Failure to Maintain Minimum Capital and Surplus; Other Violations	02-0837	8/12/02
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PREMIUM FINANCE COMPANIES

	Gulf Coast Credit Inc.	Harlingen	\$1,000 Fine	Late Filing of Premium Finance Co. Annual Operations Report	02-0847	8/14/02
	Wincorp Inc.	Bellevue, WA	\$1,500 Fine	Late Filing of Premium Finance Co. Annual Operations Report	02-0838	8/12/02

UNAUTHORIZED INSURANCE

	OTR Truckers Association and Jones, Rusk LaGrande	Cumming, GA	\$1,000 Fine; Cease-and-Desist Order	Unauthorized Insurance	02-0881	8/20/02
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Company Licensing

Applications Pending

For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
ACN Group Inc.	TPA	Minnetonka, MN
Fidelity National Insurance Co.	Fire and/or Casualty	Santa Barbara, CA

For incorporation

COMPANY NAME	LINE	HOME OFFICE
America First Lloyd's Insurance Co.	Fire & Casualty	Dallas, TX
Educators Employment Protection Corp.	Pre-paid Legal	Austin, TX
Highlands P&C Insurance Co.	Fire and/or Casualty	Houston, TX
Worklife Solutions Inc.	TPA	Austin, TX

For name change in Texas

FROM	TO	LINE	LOCATION
Anthem Alliance Health Insurance Co.	Oonation Insurance Co.	Fire and/or Casualty	Dallas, TX
First American Insurance Co.	Arch Insurance Co.	Fire and/or Casualty	Kansas City, MO

Continued on back page

Company Licensing

Applications Pending

For name change in Texas

FROM	TO	LINE	LOCATION
Gainsco County Mutual Insurance Co.	Liberty County Mutual Insurance Co.	Fire and/or Casualty	Irving, TX
Industrial County Mutual Insurance Co.	AAA Texas County Mutual Insurance Co.	Fire and/or Casualty	Irving, TX

Applications Approved

For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
Encompass Insurance Company of America	Fire & Casualty	Chicago, IL
Encompass Property and Casualty Co.	Fire & Casualty	Chicago, IL
Family Financial Life Insurance Co.	Life	Columbus, IN
National Title Insurance of New York Inc.	Title	Ronkonkoma, NY
Platinum Underwriters Reinsurance Inc.	Fire & Casualty	Baltimore, MD
Usable Corporation	TPA	Little Rock, AR

For incorporation

COMPANY NAME	LINE	HOME OFFICE
Insurors Indemnity Lloyds	Fire & Casualty	Waco, TX
PSO Health Services LLC	HMO	San Antonio, TX
Stonington Lloyds Insurance Co.	Fire & Casualty	Dallas, TX

For name change in Texas

FROM	TO	LINE	LOCATION
American Risk Funding Insurance Co.	ACIG Insurance Co.	Fire & Casualty	Barrington, IL
KCS Management Services Inc.	Cadent Underwriters Inc.	TPA	Dover, DE
NCM Americas Inc.	Gerling NCM Credit Insurance Inc.	Casualty	Baltimore, MD
PRO-Mark Holdings Inc.	Script Solutions Inc.	TPA	Wilmington, DE
Selectcare, P.L.L.C.	Healthvelocity, P.L.L.C.	TPA	Houston, TX
Yasuda Fire & Marine Insurance Company of America, The	Sompo Japan Insurance Company of America	Fire & Casualty	New York, NY



Texas Department of Insurance

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Austin, Texas 78714-9104

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