



# Texas Insurance News

Regulatory News Published by the Texas Department of Insurance

## Montemayor Seeks Oversight of Homeowners and Personal Auto Rates

**C**OMMISSIONER JOSE MONTEMAYOR has recommended that the residential property and personal auto rates of all admitted carriers be brought under some form of TDI regulation. At minimum, the rate oversight system should be file and use, he said.

At the same time, Montemayor recommended that any insurer be allowed to file its own residential property forms for use in Texas. Currently, only national companies and trade associations may file forms for TDI adoption or approval.

Montemayor presented his recommendations in the *Biennial Report of the Texas Department of Insurance to the 78th Legislature*, required by *Texas Insurance Code* Section 32.022. In all, the report addresses 14 issues that Montemayor said need attention from the Legislature.

Lawmakers convened on January 14 for a 140-day regular session. Insurance regulation is expected to be a priority topic.

The Commissioner's recommendation of a common system of residential property and private passenger auto rate regulation would apply to all admitted carriers. Such a system would replace the present flex-rating requirement for rate-regulated companies. It also would repeal the exemption of Lloyds carriers and reciprocal exchanges from regulation of their residential property rates and of county mutuals from regulation of their auto rates.

Montemayor noted that 95 percent of the residential property insurance market and about 28 percent of the private passenger auto market are written by companies exempt from rate regulation.

Under the proposed rate oversight system, TDI would review filed rates to assure that they are just, adequate, reasonable, not excessive and not unfairly discriminatory. The Commissioner could disapprove rates that do not meet this standard. He also could initiate alternative forms of rate regulation, such as prior approval, when necessary to address problems occurring in the market. Insurers would be free to develop their own rating manuals and classification systems.

Following is a summary of the other recommendations contained in the Commissioner's report, in the order of their appearance in the report:

- Amend *Texas Insurance Code* Article 21.55 to require insurers to acknowledge water damage claims within 24 hours after receiving them and to send adjusters or other representatives to a claimant's home with 72 hours.
- Require the licensing of public adjusters and persons engaged in mold remediation and testing. Public adjusters would be required to undergo continuing education and comply with other consumer protection requirements.
- Apply *Texas Insurance Code* Article 21.49-2C, the orderly withdrawal statute, to Lloyds carriers, reciprocal exchanges and county mutual insurers, which are currently exempt. Montemayor also recommended making the orderly withdrawal requirement applicable when an insurer withdraws from a significant coverage, such as the discontinuance of homeowners HO-B coverage. Finally, the Commissioner recommended authorization for TDI to disapprove or modify a withdrawal plan if the proposed withdrawal would make a line of insurance unavailable to a substantial number of consumers.
- Amend *Texas Insurance Code* Article 21.49-4 to require that rates of the Texas Medical Liability Trust (TMLT) be just, reasonable, adequate, not excessive and not unfairly discriminatory. In addition, the TMLT would become subject to the examination authority of *Texas Insurance Code* Article 1.15.
- Remove the requirement that commercial auto coverage be written on promulgated forms and that rates be subject to the benchmark system. Commercial auto rates would become file-and-use and forms would be subject to prior approval by TDI.
- Change rate regulation for fidelity and surety bonds, personal umbrella, personal liability, GAP, involuntary unemployment, financial guaranty and inland marine insurance from prior approval to file and use by bringing these lines under *Texas Insurance Code* Article 5.13-2, which already applies to most other

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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

## FAIR Plan Opens Its Doors

**T**EXAS' NEW FAIR Plan officially opened its doors in early January as the state's residual market for residential property insurance.

Consumers may access the plan only through licensed property and casualty agents. Commissions are 12.5 percent on new business. The plan initially is limited to approximately 450 independent agencies but intends to expand to all general lines P&C agents in the future. Its Web site, [www.texasfairplan.org](http://www.texasfairplan.org), includes an "Agent Access and Signup" button.

The plan is available only to consumers who have been denied residential property coverage by at least two licensed insurance companies and who have not received a valid offer of comparable insurance from any other licensed insurance company. The two denials must be from companies in different insurance groups. Additionally, the consumer's home must be insurable and is subject to inspection if necessary to establish that it meets the plan's standards for insurability.

FAIR Plan underwriting standards enable it to deny coverage for a number of reasons. These include, but are not limited to, vacancy; disrepair; existing damage; excessive or unusual liability exposure; an owner's prior conviction for arson, fraud or other insurance-related offenses; or eight or more paid claims (excluding glass) in the past three years.

The plan offers only the Texas standard HO-A, which may be enhanced to provide replacement cost instead of actual cash value coverage of the structure and its components. Replacement cost coverage also is available for contents.

FAIR Plan policyholders are required to reapply for coverage in the voluntary market every two years and must again have two denials and no valid offer of comparable coverage in order to qualify for a policy from the Fair Plan.

All licensed property and casualty insurers writing residential property insurance are required to participate in the FAIR Plan. Participation consists mainly of paying assessments as needed if the plan's claims and other expenses exceed the premiums paid for coverage. ★

## Montemayor Reappointed

**G**OVERNOR RICK PERRY has announced that he will reappoint Commissioner Jose Montemayor for another two-year term, subject to confirmation by the Texas Senate. The Com-

missioner's new term would extend to February 1, 2005.

"Commissioner Montemayor has taken strong steps to ensure that adequate insurance coverage is available and affordable in our state," Perry said.

Montemayor was first appointed Commissioner in 1999 by former Governor, now President, George W. Bush. Perry reappointed him in 2001. ★

## Montemayor Issues Bulletin on Coverage of Terrorism

**C**OMMISSIONER JOSE MONTEMAYOR has issued a bulletin (B-0074-02) outlining how the Terrorism Risk Insurance Act of 2002 affects commercial P&C coverages and the Department's regulation of those coverages.

The federal Terrorism Risk Insurance Act requires all insurers to make available coverage for losses resulting from acts of terrorism, as defined in the act, in all of their covered commercial lines policies. Such coverage may not differ materially from the terms, amounts and other coverage limitations applicable to other losses.

In addition, the act voids any terrorism exclusions in contracts that were in force when it was enacted on November 26, 2002, to the extent that they exclude coverage now provided by the federal program.

The act preserves TDI's jurisdiction and regulatory authority over rates and forms for commercial coverages. However, for the period between enactment and December 31, 2003, rates and forms for certain terrorism coverage are not subject to prior approval or a waiting period. This temporary exception applies only to coverage for losses covered under the federal program.

As a means of providing policyholders with an option respecting the coverage made available under the federal act, TDI will consider endorsements excluding coverage for acts of terrorism as defined by that law. The federal act preserves TDI's authority to disapprove any rates pertaining to such losses if TDI finds the rates to be excessive, inadequate or unfairly discriminatory.

Proposed rate changes filed in Texas should reflect the reduction in ultimate exposure provided by the new federal program. Supporting documentation for such filings must be sufficient for TDI to determine if the rates are excessive, inadequate or unfairly discriminatory.

For details, see the full text of the Commissioner's bulletin on TDI's Web site at [www.tdi.state.tx.us/commish/b-0074-2.html](http://www.tdi.state.tx.us/commish/b-0074-2.html). ★

## TIN Available Online

**P**AID SUBSCRIBERS can now access **Texas InsuranceNews** on-line and obtain the information they need several days before the newsletter arrives by mail.

The link to TIN on the Department's Web site is: [http://www.tdi.state.tx.us/apps/perl/root/u\\_pio\\_tin/tinlogin.cgi](http://www.tdi.state.tx.us/apps/perl/root/u_pio_tin/tinlogin.cgi). Back issues starting with the January 2002 issue also are available at this address.

Subscribers must enter their subscription identification numbers to gain access to the on-line version of TIN. This number can be found on their TIN mailing labels. ★

## Fraud Unit Prosecutions

### Indictments

**Accera, Stephen Joseph**, was indicted in Edinburg on charges of theft, a state jail felony.

**Christie, Jimmy**, indicted in Wichita Falls on one third-degree felony and two state jail felony counts of insurance fraud.

**Tesseyman, John**, indicted in Austin on six counts of unauthorized insurance, a third-degree felony.

**Toliver, Shemise**, indicted in Houston on charges of insurance fraud, a state jail felony.

### Case Dispositions

**Baze, Charles Randall**, sentenced in Sherman to four years' deferred adjudication and 240 hours of community service for conspiracy to commit the securing of the execution of a document by deception, a first-degree felony.

**Catland, Barbara E.**, sentenced in Austin to 36 months' probation, 160 hours of community service and a \$1,000 fine making a false statement in a written instrument, a third-degree felony.

**Hernandez, Yolanda**, sentenced in Austin to 36 months' probation and a \$1,000 fine for making a false statement in a written instrument, a third-degree felony.

**Miller, Ina Crow**, sentenced in Sherman to 10 years' deferred adjudication and 240 hours of community service for conspiracy to commit the securing of the execution of a document by deception, a first-degree felony. ★

# TDI update

## SDR Named for AmCare

**C**OMMISSIONER Jose Montemayor has designated Jean Johnson of Dallas as special deputy receiver (SDR) of AmCare Health Plans of Texas Inc. and AmCare Management Inc.

Johnson is the president of Administrative Insurance Management Services (AIMS) Inc. and has handled claim processing for the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association. Her mailing address is:

3767 Forest Lane  
Suite 124-425  
Dallas, TX 75244-7100

Johnson's contact person for inquiries about the AmCare receivership is Cynthia Akin at 713-293-3737.

The 200th State District Court in Austin, with Visiting Judge Charles Campbell presiding, placed AmCare into receivership on December 16, 2002. In its petition for receivership, the state alleged that AmCare Health Plans of Texas was insolvent by \$17 million and that AmCare Management Inc. was insolvent by \$15 million.

The SDR is providing a notice of receivership to potential claimants identified in AmCare's books and records. She also is providing a proof of claim form, instructions for filling out the form and a deadline for returning the form to the SDR.

Judge Campbell's receivership order explicitly enjoins physicians and providers against balance billing AmCare members. Statutorily required hold-harmless provisions in the physicians' and providers' contracts prohibit the billing of enrollees for payment of the cost of covered health care services in the event the HMO fails to pay. ★

## Mike Geeslin Joins TDI as Deputy for Policy

**C**OMMISSIONER JOSE MONTEMAYOR has appointed Mike Geeslin as TDI's new deputy commissioner for policy. Geeslin joined the TDI staff on January 21, 2003.

Until his appointment as deputy commissioner, Geeslin served as policy and budget advisor on insurance issues in the governor's office. Prior to that, he was special assistant on regulatory and business issues in the lieutenant governor's office.

A native of Red Oak, near Dallas, Geeslin is a graduate of Texas A&M University where he was a member of the Corps of Cadets.

In his new position, Geeslin will report directly to the Commissioner. Montemayor said that Geeslin

will advise him and TDI executive management on various regulatory issues and legislative policy and will work with them to develop and communicate TDI regulatory policy.

"Over the past few years Mike has worked closely with TDI staff on various insurance regulatory issues and has a keen understanding of insurance regulation and the issues facing the agency," Montemayor said. "Mike's background includes nearly 10 years' experience in both the executive and legislative branches of Texas state government, where he has extensive experience in policy development and analysis and project management... Mike will be a great asset to the agency and the TDI management team." ★

## Montemayor Proposes SALI Reforms

**C**OMMISSIONER JOSE MONTEMAYOR has recommended that the Legislature seriously consider capping the ratio of cumulative premiums to death benefits of small amount life insurance (SALI) policies—those with initial face amounts of \$15,000 or less.

House Bill 2415 of the 77th Legislature, which met in 2001, required the Commissioner to study the SALI marketplace in Texas and report his findings to the 78th Legislature, which convened January 14.

The bill also required Montemayor to appoint an advisory committee to assist him with the study. Montemayor noted that the committee reached consensus on only one issue: the need for disclosure, coupled with a "free look" period and a right to cancel.

Based on the advisory committee's report of proceedings and the testimony of witnesses, the Commissioner found, among other things, that the relationship between the pricing of SALI policies and the value that many Texans receive is not reasonable. He said the Legislature should seriously consider imposing caps on the ratio of premiums to death benefits. He offered two alternatives for doing so:

- Prohibit insurers from collecting premiums (minus dividends paid in cash) in excess of 250 percent of the death benefit, or
- Prohibit the collection of premiums (minus dividends paid in cash) in excess of specific ratios to death benefits for various issue ages.

Examples of such premium-to-benefit ratios would include 150 percent at issue age 0-20 and 350 percent at issue age 65-85.

Montemayor also recommended requiring insurers to offer the option of shorter premium paying periods for SALI policies whose premiums could exceed 150 percent of death benefits. "By shortening the premium paying period, dramatic reductions in multiples can be achieved in exchange for relatively modest increases in premium," he said.

He further recommended legislation to improve disclosure to consumers and to discourage the sale of multiple small policies to the same individual.

Another issue that arose was the failure of some companies, when notified of a policyholder's death by one beneficiary, to conduct a diligent search for all other policies on that individual's life and notify the beneficiaries. Montemayor recommended legislation requiring the Commissioner to adopt rules defining minimum standards for an insurer's duty of due diligence with respect to unclaimed benefits on multiple life policies.

The full text of Montemayor's recommendations may be found on TDI's Web site at [www.tdi.state.tx.us/general/word/saliltr.doc](http://www.tdi.state.tx.us/general/word/saliltr.doc). The report of the advisory committee's proceedings is at [www.tdi.state.tx.us/company/salirpt.html](http://www.tdi.state.tx.us/company/salirpt.html). ★



# RuleMaking

## AGENTS AND ADJUSTERS

### APA Adoption

#### Licensing and CE Requirements

■ Commissioner Jose Montemayor has amended 28 TAC §§ 19.602 and 19.1001–19.1006 and added new §§ 19.1007–19.1019, concerning the licensing of adjusters; continuing education for agents, adjusters and full-time home office salaried employees; and adjuster prelicensing education program requirements. He simultaneously repealed prior 28 TAC §§ 19.1007–19.1013 and 19.3006.

Under the new amendments, adjusters may be issued an original license only within 12 months after completing a TDI-administered examination or a certified prelicensing education course and examination. The rules prescribe requirements for adjuster prelicensing courses and examinations. In addition, the new rules clarify that adjuster license renewal requirements are the same as those for agents.

The rule changes conform TDI's continuing education rules to the statutory requirement that all licensees complete at least 50 percent of their required CE hours in classroom or classroom-equivalent courses. The amendments establish flexible guidelines that allow for classroom courses to be developed or delivered in small agencies and remote locations as well as by traditional methods. The rules also set standards for the development of meaningful classroom-equivalent CE courses that can be delivered to licensees at any time over the Internet or by other computer based methods.

In addition, the amendments 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 from the Department.
- All licensees achieving their twentieth year of licensure after January 1, 2003, must have been licensed for 20 continuous years to be exempt from the CE requirement. The rule change defines "continuous" as having no period longer than 90 days in which the individual was not licensed or failed to renew a license.

The amendments establish 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: 28TexReg77, January 3, 2003*

*Effective date: January 7, 2003*

*Further information: 512 463-6327*

## FINANCIAL

### APA Adoption

#### Accounting Practices Manual

■ Commissioner Jose Montemayor has adopted an amendment to 28 TAC § 7.18 concerning the adoption by reference of Statements of Statutory Accounting Principles (SSAPs). The SSAPs provide guidance to independent accountants, industry accountants and department analysts and examiners for the proper recording of business transactions. The amendment is necessary to adopt by reference the March 2002 version of the Accounting Practices and Procedures Manual published by the NAIC. The March 2002 version is the latest version published by the NAIC.

In addition to the SSAPs in the manual, Montemayor adopted SSAP No. 85, concerning claim adjustment expenses; SSAP No. 86, concerning accounting for derivatives and hedging activities; and SSAP No. 87, which amends SSAPs Nos. 4, 19, 29, 73, 79 and 82 to provide specific predefined thresholds to be established for capitalization. These SSAPs have been adopted by the NAIC but have not been published in the manual.

*Publication: 27TexReg12281, December 27, 2003*

*Effective date: January 1, 2003*

*Further information: 512 463-6327*

## HEALTH CARE

### APA Adoption

#### Mandated Benefit Data Collection

■ Commissioner Jose Montemayor has adopted new 28 TAC §§ 21.3401–21.3409 (Subchapter Z), which requires certain health benefit plan issuers to collect and report data on mandated benefits and mandated offers. The rules implement House Bill 1610 of the 77th Legislature, codified as *Texas Insurance Code* Articles 38.251–38.254. The first reporting deadline is March 1, 2004, for data from 2003.

The requirements 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 payment services for any health benefit plan issuer that meets any of the three criteria listed above.

An HMO is 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 must include an addendum explaining these circumstances.

A health plan issuer is not 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 must 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 must report the following information for each mandate:

- Number of claims paid.
- Dollar amount paid on the claims.

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- Number of policies, contracts or certificates about which the information is being reported.
- Total dollar amount of administrative costs incurred.

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

In addition, each health plan issuer must 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 must show the total number of lives covered under these policies and certificates.

Health plan issuers are required to submit the required data electronically by accessing a link provided on TDI's Web site, [www.tdi.state.tx.us](http://www.tdi.state.tx.us).

The new rule lists 22 group and 12 individual mandated benefits or mandated offers for which information must 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 care, supplies and services.
- Hearing screening for children.
- Telemedicine and telehealth.
- Reconstructive surgery after a mastectomy.
- Benefits related to acquired brain injury.
- Certain tests for detecting colorectal cancer.
- Reconstructive surgery for craniofacial abnormalities in children.
- Oral contraceptives in plans providing prescription drug coverage.

## Individual

- HIV or AIDS-related illnesses.
- Immunizations.
- Prostate cancer testing.
- Diabetes care, supplies and services.
- Hearing screening for children.
- Telemedicine/telehealth.
- Reconstructive surgery after a mastectomy.
- Benefits related to acquired brain injury.
- Certain tests for detecting colorectal cancer.
- Reconstructive surgery for craniofacial abnormalities in children.
- Low-dose mammography.
- Oral contraceptives in plans providing prescription drug coverage.

TDI's Web site will provide procedure and diagnosis codes that may be used in capturing the data required for the report. Each issuer must maintain information and documentation supporting the accuracy and completeness of its data and its report for five years.

*Publication: 27TexReg11990, December 20, 2002*

*Effective date: December 29, 2002*

*Further information: 512 463-6327*

## APA Proposal Diabetes Coverage

- The Department has proposed amendments to 28 TAC §§ 21.2601, 21.2602, 21.2604 and 21.2606, concerning standards for benefits provided to health plan members with diabetes. The Department also proposed the repeal of 28 TAC § 21.2607, whose statutory authority has expired.

The proposed amendments would:

- Apply the coverage requirements for diabetes equipment and supplies and diabetes self-management training to health insurance risk pools created by political subdivisions for their employees under Chapter 172 of the *Local Government Code*.
- Define "nutrition counseling" in conformity with Section 701.002 of the *Texas Occupations Code*, which governs dietitians. "Nutrition counseling" means advising and assisting an individual or group on appropriate nutritional intake by integrating information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.
- Establish that a person may not provide a component of diabetes self-management training unless the subject matter of the

component is within the scope of the person's practice and he or she meets the education requirements of his or her licensing agency in consultation with the Texas Commissioner of Health.

*Publication: 28TexReg430, January 10, 2003*

*Earliest possible adoption: February 10, 2003*

*Further information: 512 463-6327*

## PRIVACY

### APA Proposal

#### Personal Health Information

- The Department has proposed an amendment to 28 TAC § 22.51 and new §§ 22.58–22.59 concerning the privacy of nonpublic personal health information provided by consumers to insurers, HMOs and other entities regulated by TDI ("covered entities"). The proposal would complete TDI's implementation of Senate Bill 11 of the 78th Legislature.

The rule changes would prohibit a covered entity from disclosing, using or selling protected health information, including prescription information or prescription patterns, for marketing purposes without an authorization from the person who is the subject of that information.

Covered entities would be forbidden to coerce or encourage the coercion of a person to consent to or authorize the disclosure, use or sale of protected health information for marketing purposes.

Written marketing communications sent by or on behalf of a covered entity would have to:

- Be sent in an envelope showing only the sender's address and the name and address of the recipient.
- State the name and toll-free number of the sender and, if different, the name and toll-free number of the covered entity on whose behalf the communication was sent.
- Explain the recipient's right to have his or her name removed from the sender's mailing list. A recipient's name would have to come off of a mailing list within five days after the sender receives the request.

A covered entity would be prohibited from reidentifying, or attempting to reidentify, an individual who is the subject of any protected health information without obtaining his or her authorization, if required by federal law.

*Continued on page 6*

# RuleMaking

Publication: 28TexReg435, January 10, 2003  
 Earliest possible adoption: February 10, 2003  
 Further information: 512 463-6327

## PROPERTY

### APA Adoption

#### Windstorm Resistant Construction

■ Commissioner Jose Montemayor has adopted new 28 TAC § 5.4009 and amendments to 28 TAC §§ 5.4008 and 5.4603 concerning the building codes to be applied in inspections to qualify newly constructed, remodeled or repaired buildings for wind and hail coverage by the Texas Windstorm Insurance Association (TWIA).

The amendments are authorized by Senate Bill 365 of the 77th Legislature, codified as *Texas Insurance Code* Article 21.49, Section 6A. They were recommended by the state's Advisory Committee on Building Code Specifications and Maintenance. The stated objective of the changes is better coordination between the building specifications in the TWIA plan of operation and the building code requirements enforced by coastal cities so as to achieve consistent standards for wind-resistant construction in similarly located catastrophe areas. The revisions apply to construction and repairs starting on and after February 1, 2003.

The amendments adopt the *International Residential Code* (IRC) and, for structures outside the scope of the IRC, the *International Building Code* (IBC). In addition, Montemayor adopted, as "Texas Revisions" to the two codes, special provisions concerning protection of openings and attachment of asphalt shingles.

The codes are published by the International Code Council, Falls Church, VA.

Specific wind speed requirements are included in the rules.

- Structures seaward of the Intracoastal Canal must be designed and constructed to resist a three-second gust of 130 miles per hour.
- Between the Intracoastal Canal and a line drawn 25 miles to the east, plus a portion of Harris County on Galveston Bay, construction must be able to resist a three-second gust of 120 miles per hour.
- Inland and west of the 25-mile boundary line, structures must be designed and built to resist a three-second gust of 110 miles per hour.

The newly adopted rule changes include new inspection forms for certifying that construction meets the requirements of the IRC and the IBC.

In addition to prescribing the use of new building codes, the new rules exempt historic buildings from the general requirement that TWIA may cover only structures built to certain codes. A structure will qualify for the exemption if it meets at least one of the following conditions:

- It is listed or is eligible for listing on the National Register of Historic Places.
- It is a Recorded Texas Historic Landmark.
- It has been specifically designated by official action of a city or county authority as having historical or architectural significance, is at least 50 years old and is subject to municipal or county requirements for construction, alternation or repair to maintain its historical designation.

Projected publication date: January 24, 2003  
 Effective date: January 2, 2003  
 Further information: 512 463-6327

## TAXES, ASSESSMENTS AND FEES

### APA Adoptions

#### Examination Expenses

■ Commissioner Jose Montemayor has adopted an amendment to 28 TAC § 7.1012, revising domestic insurance company assessments to cover TDI administrative expenses attributable to the examination of insurers during 2003.

Each company undergoing an examination will continue paying examiners' actual salaries and expenses allocable to the examination.

All domestic companies will pay a 2003 overhead assessment computed as follows, with the 2002 rates shown in brackets for comparison:

- .00503 [.00577] of 1 percent of the company's admitted assets as of Dec. 31, 2002, taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts and
- .01190 [.01383] of 1 percent of the company's gross premium receipts for 2002, taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts.

In addition to paying examiners' direct salaries and expenses, foreign companies un-

dergoing examination will pay an assessment of 33 percent of the gross salary of each examiner for each month or partial month, the same as in 2002.

Publication: 28TexReg75, January 3, 2003  
 Effective date: January 8, 2003  
 Further information: 512 463-6327

### Maintenance Taxes and Fees

■ Commissioner Jose Montemayor has amended 28 TAC §1.414 to establish the rates for maintenance taxes and fees that insurers, HMOs and TPAs will pay in 2003. The new maintenance tax and fee rates will be assessed on gross premiums for 2002.

The proposed rates, with 2002 rates shown in brackets, are:

- .053 [.060] of 1 percent for motor vehicle insurance.
- .180 [.210] of 1 percent for casualty insurance and fidelity, guaranty and surety bonds.
- .330 [.401] of 1 percent for fire insurance and allied lines, including inland marine
- .051 [.069] of 1 percent for workers' compensation insurance
- 0.73 [.111] of 1 percent for title insurance
- .040 [.040] of 1 percent for life, health and accident insurance
- \$.44 [\$.37] per enrollee for single service HMOs
- \$1.32 [\$1.10] per enrollee for multi-service HMOs
- \$.44 [\$.37] per enrollee for limited service HMOs.
- .265 [.330] of 1 percent of the correctly reported gross amount of administrative or service fees for third party administrators
- .022 [.03] of 1 percent for corporations insuring prepaid legal service contracts.

Publication: 28TexReg74, January 3, 2003  
 Effective date: January 8, 2003  
 Further information: 512 463-6327

### Premium Finance Assessment

■ Commissioner Jose Montemayor has amended 28 TAC § 25.88 to establish the general administrative expense assessment of premium finance companies for 2003. The assessment is .00787 of 1 percent of a company's total loan dollar volume for 2002, with a minimum assessment of \$250. The previous assessment rate is .00135 of 1 percent.

Publication: 28TexReg81, January 3, 2003  
 Effective date: January 8, 2003  
 Further information: 512 463-6327 ★

# Disciplinary Actions

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

<b>AGENTS &amp; AGENCIES</b>	<b>NAME</b>	<b>CITY</b>	<b>ACTION TAKEN</b>	<b>VIOLATION</b>	<b>ORDER</b>	<b>DATE</b>
	Hudson, Janet A.	Seabrook	Adjuster's License Denied	Fraudulent or Dishonest Acts	02-1293	12/12/02
	Lindamood, Charles David	Arlington	Agent's License Denied	Fraudulent and Dishonest Acts or Practices	02-1297	12/13/02
	Mackey, Shelton Lawrence	San Antonio	\$500 Fine	Failure to Meet Continuing Education Requirements	02-1294	12/12/02
	Young, Wayne Walter	San Antonio	Funeral Prearrangement Life Insurance Agent's License Denied	Material Misstatement in License Application	02-1238	11/26/02

## INSURANCE COMPANIES

Republic-Vanguard Life Insurance Co.	Addison	\$5,000 Fine	Failure to Submit Reports on Small Employer Health Plans	02-1296	12/13/02
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## TITLE COMPANIES

<b>NAME</b>	<b>CITY</b>	<b>ACTION TAKEN</b>	<b>VIOLATION</b>	<b>ORDER</b>	<b>DATE</b>
First American Title Insurance Company of Texas-Fort Worth	Fort Worth	\$108,984 Fine	Consent Order; Alleged Rebating or Discounting; Misappropriating, Converting or Illegally Withholding Money; Other Violations Found in Compliance Audits	02-1291	12/12/02
SPH Title Inc.	Flower Mound	\$51,240 Fine	Consent Order; Alleged Rebating and Premium Splitting; Other Violations Identified in Compliance Audits	02-1290	12/12/02

# Company Licensing

## Applications Pending

**For admission to do business in Texas**

<b>COMPANY NAME</b>	<b>LINE</b>	<b>HOME OFFICE</b>
Paychex Agency Inc.	TPA	Rochester, NY
Peerless Indemnity Insurance Co.	Fire and/or Casualty	Lisle, IL
Professional Solutions Insurance Co.	Fire and/or Casualty	Des Moines, IA

**For incorporation**

<b>COMPANY NAME</b>	<b>LINE</b>	<b>HOME OFFICE</b>
Encompass Texas Lloyd's	Fire & Casualty	Irving, TX
Virtue Physician Services, P.L.L.C	TPA	Kingwood, TX

**For name change in Texas**

<b>FROM</b>	<b>TO</b>	<b>LINE</b>	<b>LOCATION</b>
Lyndon Life Insurance Co.	XL Life Insurance & Annuity Co.	Life, Accident and/or Casualty	Schaumburg, IL
The Ministers Life Insurance Co.	Securian Life Insurance Co.	Life, Accident and/or Health	St. Paul, MN

## Applications Approved

**For admission to do business in Texas**

<b>COMPANY NAME</b>	<b>LINE</b>	<b>HOME OFFICE</b>
CNL/Insurance America Inc.	Fire & Casualty	Macon, GA
Fidelity National Insurance Co.	Fire & Casualty	Santa Barbara, CA
Scripnet Inc.	TPA	Las Vegas, NV
Waterstone Benefit Administrators Inc.	TPA	Oklahoma City, OK

**For incorporation**

<b>COMPANY NAME</b>	<b>LINE</b>	<b>HOME OFFICE</b>
Texas FAIR Plan Association	Fire and/or Casualty	Austin, TX

*Continued on back page*



# Company Licensing

## Applications Approved

### For name change in Texas

FROM	TO	LINE	LOCATION
Ace Guaranty Re Inc.	Ace Guaranty Corp.	Casualty	Baltimore, MD
Gainsco County Mutual Insurance Co.	Liberty County Mutual Insurance Co.	Fire & Casualty	Fort Worth, TX
Lincoln National Health & Casualty Insurance Co.	Fort Wayne Health & Casualty Insurance Co.	Fire & Casualty	Fort Wayne, IN
Western Security Life Insurance Co.	Provantis Insurance Co.	Life	Phoenix, AZ
Winterthur International America Underwriters Insurance Co.	XL Select Insurance Co.	Fire & Casualty	Oklahoma City, OK

### Legislative Report... from page 1

- commercial lines. Forms would remain subject to TDI's approval prior to use.
- Amend the prompt payment/clean claim statutes to:
    - Authorize the Commissioner to develop an exclusive set of clean claim elements and repeal the statutes that allow carriers to add or change the elements by contract.
    - Clarify the Commissioner's authority to enact rules concerning fee schedules and coding procedures.
    - Establish deadlines for the filing of claims by physicians and providers.
    - Establish time limits for carriers to request refund of overpayments to providers and for the actual repayment of those amounts.
    - Amend penalty provisions to require substantial compliance, such as a 98 percent compliance standard, and to establish a method for determining a reasonable penalty when claims are not paid promptly.
  - Lower the Texas Health Insurance Risk Pool's maximum rate from the present 200 percent of the average rate charged by major Texas health insurers for individual health coverage.

While Montemayor did not recommend a specific new cap, federal grants to help pools pay their losses are available only when a state's cap is no greater than 150 percent.

- Strengthen the Commissioner's rulemaking authority, including the granting of authority to adopt interim rules to comply with federal requirements.
- Establish limitations on the use of credit scoring in underwriting and rating by:
  - Requiring insurers to file their credit scoring models, along with actuarial justifications, prior to use.
  - Prohibiting the use of credit scoring in a way that is harmful to people with no credit history or whose history reflects a deterioration because of a catastrophic event such as unemployment or medical bankruptcy.
  - Prohibiting the use of credit scoring as the sole factor in determining a consumer's rate.
  - Providing a means for consumers to appeal adverse determinations based on their credit scores.
  - Require insurers to re-rate a policy in the event of an erroneous credit score or cred-

it report.

- Enable the Commissioner to add categories of health care providers to the list of those eligible for the medical liability JUA. Alternatively, amend the JUA statute to include assisted living facilities and surgical centers as providers that may be deemed eligible for the JUA.
- Remove provisions of *Texas Insurance Code* Article 21.49A that make establishment of the FAIR plan contingent on activity in the residential property Market Assistance Program. The Commissioner then could activate the FAIR plan if he finds that residential property insurance is not reasonably available in the voluntary market to a substantial number of insurable risks. The recommendation also includes authorization for the state to issue revenue bonds, if needed, to fund costs associated with operation of the FAIR Plan.
- Amend *Texas Insurance Code* Article 3.44b to change the minimum non-forfeiture rate of interest from 3 percent to 1.5 percent per annum. The proposal includes authorization for the Commissioner to issue rules providing a permanent solution based on an appropriate index that reflects prevailing market rates. ★



**Texas Department of Insurance**

P. O. Box 149104

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