



Texas Insurance News

Regulatory News Published by the Texas Department of Insurance

Mortality Table Adoption Should Help Consumers, Agents and Companies

By Mike Boerner, *Managing Actuary, Actuarial Division*

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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.

TDI IS ONE OF the first state insurance departments—possibly the first—to approve the 2001 Commissioners Standard Ordinary (CSO) mortality table for use by life insurers following its adoption by the NAIC in December 2002.

We expedited our adoption of the new mortality table because it will benefit consumers, insurance companies and agents by encouraging lower prices and more competition in the life insurance market.

Companies may begin using the new table at any time. Its earliest possible use was for new policies issued on or after May 1, 2003.

Each company must decide for itself when to convert to the new table. The latest possible date is January 1, 2009, when TDI's new rules mandate the use of the 2001 CSO table by all life insurers. The mandatory effective date was recommended by the NAIC.

TDI was heavily involved in the development of the new mortality table and model regulation as a member of the NAIC's Life and Health Actuarial Task Force. NAIC adoption of the table was the culmination of a four-year project that also involved the Society of Actuaries and the American Academy of Actuaries.

The new mortality table reflects the increased longevity of the American people since the development of the 1980 CSO mortality table, which it will replace. The maximum life span—or "omega"—contemplated by the 2001 table is 120, compared to 99 in the 1980 table.

In the table, the mortality factors for men generally improved more than those for women. Not surprisingly, non-smokers came off better than smokers. In fact, some female smoker mortality deteriorated from what it was under the 1980 CSO table.

The new mortality table will affect policy valuation and nonforfeiture amounts. It also will have an impact on taxation by reducing funding limits in many cases for life insurance policies to maintain favorable federal income tax treatment. Its greatest effect, however, will be through the reduction of reserves required for various life insurance products.

As TDI said in the preamble to its *Texas Register* publication of the rules adopting the 2001 CSO table, we expect the change will reduce term life reserves by 30 percent in the aggregate, whole life reserves by 10 percent to 15 percent and universal life and variable life reserves by 5 percent or less.

Here are some questions and answers about the 2001 CSO table and TDI's decision to adopt it.

What will be the practical effect of a company's making the switch from the 1980 CSO table to the new one?

If the reduction in reserves is appropriate for the risks, then there is less money tied up. That means a company will be able, if it wishes, to compete for a greater market share by reducing premiums for the products affected by the reserve changes. We anticipate that the overall premium reduction for certain term policies could be between two percent and 10 percent. Some companies also will be able to extend maximum issue ages of their term policies. For whole life, we expect premium reductions in the range of 5 percent to 10 percent. Guaranteed cost of insurance for both universal life and variable universal life could be lower as well. Of course, not all insureds will benefit. Rates for female smokers are expected to go up for a number of life insurance products. Obviously, a company has other options besides rate reductions. Foremost among them will be adding to assets and surplus.

Please see **Help** on page 8

Agents' Corner

By Matt Ray, Deputy Commissioner, Licensing Division

CERTAIN TYPES of agents licensed before January 1, 2001, have only a few months in which to pass an examination that is required to keep their licenses.

Some exams may be given by individual insurance companies. Others require an examination administered by TDI's testing contractor, Promissor.

TDI also has communicated the testing requirement by means of letters sent to agents in May and Commissioner's Bulletin B-0034-01 issued in August 2001.

Senate Bill 414 of the 77th (2001) Legislature, which revamped Texas' agent licensing system, requires that agents holding certain license types that previously did not require an examination pass an exam by September 1, 2003, in order to remain licensed.

The accompanying table lists the old license types, new license types and the entities that will give the required examinations.

TDI records indicate that 5,812 licensees need to be examined by September 1, 2003. Of these, 5,289 hold licenses that were rolled into the

IF, BEFORE JANUARY 1, 2001, YOU WERE ISSUED A LICENSE FOR...	... WHICH IS NOW CALLED LICENSE TYPE...	... YOU MUST, BY SEPTEMBER 1, 2003, TAKE AN EXAM ADMINISTERED BY...
Stipulated Premium Life Under \$15,000 (02-91)	Life Insurance Not Exceeding \$15,000 Agent	An insurance company
County Mutual (02-06)	County Mutual Agent	An insurance company
Credit Insurance (02-05)	Limited Lines Agent	Promissor
Ticket Agent Selling Accident and Health (02-07)	Limited Lines Agent	Promissor
Job Protection (02-10)	Limited Lines Agent	Promissor
Agricultural Agent (03-00)	Limited Lines Agent	Promissor

Limited Lines Agent license, 373 hold County Mutual Agent licenses and 150 hold the Stipulated Premium Life Under \$15,000 license.

Agents should contact their appointing insurance companies to schedule exams for the Life Insurance Not Exceeding \$15,000 license or the County Mutual Agent's license. Agents needing to take the exam for the Limited Lines Agent license can call **Promissor** at **1-888-204-6244** to schedule their examinations. Promissor has 15 testing centers in Texas and also has test centers in other states.

After passing the necessary examination, an agent should mail or fax a copy of his or her passing score report with a copy of the current applicable license to TDI's Agent Licensing Division. The fax number is 512 475-1819. The mailing address is:

**Texas Department of Insurance
Licensing Division** (MC 107-1A)
P. O. Box 149104
Austin, TX 78714-9104

Agents may verify their license status online at www.texasonline.state.tx.us/NASApp/TdiARManager ★

NewsBriefs

TDI Web Site Becomes More Customer Friendly

TDI CUSTOMERS may have noticed a change or two in the Department's Web site, www.tdi.state.tx.us, in the past month.

The Web site's new look is aimed at improving site navigation, and making it friendlier for those confused by the old "dynamic" menus, link-heavy design and growing content. As a start, the redesign reduces the number of major links on most pages from more than 100 to just a few dozen major categories.

"It's much more intuitive now," says Robert Black, director of TDI's Public Information Office. "If you have a question about auto insurance, you start by clicking on the auto button. It wasn't that simple before."

More updates and improvements are expected in the coming weeks. Suggestions for improvements should be sent to webmaster@tdi.state.tx.us. ★

Data Call Reminders

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

Quarterly Closed Claim Reports

Reports (Long/Short Forms) for claims closed during the second quarter of 2003 are due June 10, 2003. 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 addresses: vicky.knox@tdi.state.tx.us

Call for Quarterly Experience

The Call for Second Quarter 2003 Experience was due May 15, 2003. The bulletin and forms may be downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/general/download/b-0013-3.exe> 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 Second Quarter 2003 Experience was due May 15, 2003. The bulletin and forms may be

downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/general/download/b-0013-3.exe> TDI contact is Julie Jones, **512 475-3030**. E-mail address: julie.jones@tdi.state.tx.us

Texas Title Insurance Agent Statistical Report

The call was due May 15, 2003 for hard copy reports and May 29, 2003 for electronic submissions. The bulletin and forms may be downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/commish/bulletins/b-0012-3.html> TDI contact is Michael Davis, **512 322-5029**. E-mail address: michael.davis@tdi.state.tx.us

2003 Texas Disallowed Expense Call for Calendar Year 2002 Experience

was due by April 15, 2003. The bulletin and forms may be downloaded from TDI's Web site located at <http://www.tdi.state.tx.us/commish/bulletins/b-0008-3.html> TDI contact is Michael Davis, **512 322-5029**. E-mail address: michael.davis@tdi.state.tx.us ★

TDI update

FAIR Plan Customers Exceed 17,000 Mark

TEXAS' FAIR PLAN for homeowners insurance continues to grow at a rate of more than 120 new policies per day.

The plan, which sold its first policy on December 31, 2002, had issued 17,383 policies as of May 11, 2003.

The FAIR ("Fair Access to Insurance Requirements") plan is available to consumers who have been declined by at least two licensed insurance companies and who have received no offers of comparable coverage. The plan offers only the standard Texas HO-A policy, usually with replacement cost endorsements for structure and contents.

As of mid-May, the average dwelling limit was \$128,543, and the average premium was \$972. Eleven homes were insured for the plan's maximum limit of \$1 million.

In its almost five months of operation, the plan has received more than 200 claims, with an expected payout of more than \$325,000, or an average of just over \$1,600 per claim.

After initially limiting the number of agencies appointed to sell its policies, the FAIR plan began accepting any willing agent in mid-March. The authorized sales force has increased from 450 agencies in early January to 10,000 agents in approximately 3,400 agencies in May. ★



Enforcement Actions

Unlicensed Insurance May Have Cost Apartment Owners Millions of Dollars

COMMISSIONER JOSE MONTEMAYOR has issued an emergency cease-and-desist order against an alleged unauthorized insurance scheme that may have cost apartment owners and condominium associations millions of dollars in premiums for bogus property and liability coverage.

Montemayor's order, issued April 30, 2003, names the following entities and individuals as respondents:

- International Property Owners Association Ltd. (IPOA), Mandaluyong, Philippines.
- UAC Ltd., Managua, Nicaragua.
- Christopher Purser, 9749 Longpoint, Houston.
- Dennis Ray Hamann, 830 S. Mason Road, Suite A-1, Katy.

The order directs the respondents to immediately stop conducting an unlicensed insurance business in Texas. It also orders them to refrain from using the premium money they collected from Texas customers, except as TDI might direct.

Victims were concentrated primarily in the Houston area and in counties along the Gulf coast. Many had recently lost their coverage with other insurers. Texas Department of Insurance investigators identified about 50 properties whose owners or managers bought general liability, umbrella and/or commercial property insurance from the unlicensed operation.

TDI investigators said that while the coverage was sold at below-market rates, the premiums collect-

ed were substantial and could approach millions of lost dollars to the victims.

IPOA used a Web site and agents to seek customers. One such agent was Purser, who represented himself as an officer of IPOA. Purser's agent licenses were revoked in April for "fraudulent and dishonest acts and practices" involving the sale of non-existent liability insurance to nursing homes. The state also has a court judgment against Purser for \$1.9 million in unpaid insurance premium taxes, penalties and interest.

Hamann is a licensed agent allegedly recruited by Purser to sell the IPOA plan to apartment and condo owners.

IPOA claimed that its insurance plan was backed by coverage from several legitimate insurers. TDI investigators said in their application for the cease-and-desist order that each of those companies denied that it provided insurance coverage for the IPOA plan.

"It's important for businesses as well as consumers to understand that when you buy coverage from an unauthorized insurer, your chance of getting claims paid is a gamble at best," Montemayor said.

Montemayor's order is enforceable in Texas courts. Those named in the order have the right to request a hearing contesting it. ★

RuleMaking

ADMINISTRATION

APA Adoption

Summary Procedures for Routine Matters

■ Commissioner Jose Montemayor has amended 28 TAC §§ 1.702–1.705, regarding summary procedures for handling routine matters. The rules identify activities designated by the Commissioner as routine because they are voluminous, repetitive, believed to be non-controversial or of limited interest to persons other than those immediately involved or affected. Authority to act on such matters is delegated to designated associate and deputy commissioners.

The amendments adopted by Montemayor add the following to the list of routine matters for which summary procedures are appropriate:

- Viatical and life settlement certificates of registration.
- Utilization review and independent review organization certificates.
- Third-party administrator certificates of authority.

Other changes reflect organizational changes at TDI by redesignating the deputy and associate commissioners to whom the Commissioner has granted authority to sign off on routine matters. The amendments provide that in the event of future reorganizations, the delegation of authority to act on routine matters will follow the appropriate associate or deputy commissioner assuming responsibility for those matters.

The amendments eliminate a number of outdated references from the list of routine matters. These include so-called “a” rates for commercial general liability and certain other casualty lines; rates for excess rate or umbrella coverages; and cessation of acceptance of small premium workers’ compensation policies. Due to statutory changes, “a” rates are no longer accepted; personal umbrella rates are subject to prior approval; and commercial umbrella rates are submitted to TDI on a file-and-use basis. Statutory provisions concerning small premium workers’ compensation policies were repealed in 1993.

Finally, the changes add electronic transmission as a means for notifying a person of an action on a matter requiring final disposition by TDI.

Publication: 28TexReg3952, May 16, 2002
Effective date: June 1, 2003
Further information: 512 463-6327

FINANCIAL

APA Proposal

Surplus Lines Stamping Office Fee

■ The Department has proposed an amendment to 28 TAC § 15.101 concerning the procedure for calculating the stamping fee that funds operations of the Surplus Lines Stamping Office of Texas.

Currently, the fee is based on the one-year projection method for estimating the necessary revenue. The proposed amendment would change this to a method using the previous five-year period.

Projected reserves could not exceed twice the average of audited operating expenses for the five years immediately preceding the budget year. If the reserve balance is projected to exceed this limit in an upcoming year, the SLSOT board would give TDI a written plan for reducing actual reserves within a reasonable time, given the market conditions existing at the time.

In proposing the rule change, TDI said it would provide for more flexibility and stability in the setting of the stamping fee, resulting in less disruption and more efficiency in the surplus lines market.

Publication: 28TexReg3798, May 9, 2003
Earliest possible adoption: June 8, 2003
Further information: 512 463-6327

APA Adoptions

Payment of Regulatory Fees

■ Commissioner Jose Montemayor has amended 28 TAC § 7.1301 and adopted new 28 TAC § 7.1302, authorizing a billing system for certain filings by life, health and accident insurers and HMOs. A companion rule for HMO filings, adopted as an amendment to 28 TAC § 11.301 is summarized in this section under the HEALTH CARE heading.

The new system will largely replace the present system that requires regulated entities to pay the necessary fees when they make their filings. Under the new system, TDI will send invoices itemizing all filings for which processing has been completed and specifying the fee for each filing.

Regulated entities will be required to notify TDI in writing, which may include e-mail, if

they change their addresses or billing contact persons.

Invoices will be due and payable upon receipt. If an invoice becomes past due by 120 days or more, TDI will place a hold on the regulated entity’s filing fee account. Filings received after a hold goes on the account will not be accepted until all filing fee amounts have been paid.

Upon completion of the development and design of the billing system, TDI will issue a bulletin providing the implementation date and appropriate instructions.

Publication: 28TexReg3961, May 16, 2003
Effective date: June 1, 2003
Further information: 512 463-6327

Reinsurance Agreements

■ Commissioner Jose Montemayor has repealed 28 TAC § 7.28 concerning the regulation of accounting for reinsurance agreements by insurers. The repeal was necessary to eliminate redundant regulations. The section’s requirements are also contained in the NAIC Accounting Practices and Procedures Manual, which TDI adopted under 28 TAC § 7.18. Repeal was consistent with TDI’s objective of codifying statutory accounting guidance into a single source (the manual).

Publication: 28TexReg3960, May 16, 2002
Effective date: May 25, 2003
Further information: 512 463-6327

HEALTH CARE

APA Adoption

Billing for HMO Filing Fees

■ Commissioner Jose Montemayor has amended 28 TAC § 11.301 concerning certain filings made by HMOs. The rule, along with newly adopted 28 TAC § 7.1302, moves TDI toward a new system of billing regulated entities for required fees and away from the old system in which fees are submitted with filings.

TDI expects the new billing system to reduce the need for issuing refunds when payments exceed actual fee amounts. The new system also should eliminate the rejection of filings due to insufficient fee payments. It also will enable HMOs to submit a single payment for numerous filings instead of a separate payment for each filing.

Under the adopted rule, TDI can bill HMOs for the fees associated with the following types of filings:

RuleMaking

Filings Requiring Approval

- Evidence of coverage and related forms as described in 28 TAC §§11.501
- Descriptions and maps of service areas.
- Material changes in emergency care procedures.

Filings for Information

- Formula or method for calculating the schedule of charges.
- Physician and provider contract forms and substantive changes of previously filed contract forms.
- Written descriptions of health care plan terms and conditions made available to current and prospective group contract holders and enrollees.
- Material changes in network configurations.
- Descriptions of quality assurance programs.

The new rules also provide for TDI to issue electronic notices of incomplete HMO filings.

Publication: 28TexReg3963, May 16, 2002

Effective date: June 1, 2003

Further information: 512 463-6327

LIFE AND HEALTH

APA Adoptions

Form Filing Requirements

■ Commissioner Jose Montemayor has adopted new 28 TAC §§ 3.1–3.8, a complete revision of the requirements for filing policy forms, certificates, riders, amendments and endorsements for life, accident and health insurance (including credit products), prepaid legal plans and annuities. Montemayor simultaneously repealed the previous requirements, codified as 28 TAC §§ 3.1–3.21.

The new filing system applies to any form received by TDI on or after June 1, 2003.

The new rules specifically authorize insurers to file electronically, using a form and format determined by TDI. This form and format currently is the NAIC-supported System for Electronic Rate and Form Filing (SERFF). TDI will begin accepting SERFF filings for individual and group annuity products on August 1, 2003, and anticipates adding other lines of insurance in the near future.

The newly adopted rules enable TDI to notify companies of the Department's decisions by letter in lieu of stamping a duplicate copy of the forms submitted. This will eliminate the need to file duplicate copies.

In addition, the rules combine the filing requirements for regular, general and expedited review into a single filing process by consolidating the information into a single transmittal checklist with a transmittal form for miscellaneous documents. This will eliminate the need for separate transmittal checklists for regular, general and expedited review.

The rules specify the information that must be submitted, including contact person, form specifications, specimen language, variable material, matrix and insert page filings, limited/partial refilings, outlines of coverage, supplemental coverage, policy or contract forms and rates/actuarial information.

The new rules clarify that actuarial support is required when the cumulative increase in an individual A&H premium rate is 50 percent or more during any 12-month period.

Another change raises from \$50 to \$100 the filing fee for rates that are subject to TDI review and approval when filed separately from the applicable policies or contracts. TDI currently assesses a \$100 fee for other rates filed for review.

For matrix filings, the new rules require a filing fee of \$50 for each form, with a maximum fee of \$500. Matrix filings can be used to create multiple contracts or policies through the combination of various matrix provisions.

Implementation of the new billing system will eliminate the requirement to submit a check for payment of filing fees along with the filing. Under the billing system that TDI is developing, the Department will bill a company submitting a filing by itemized invoice. Companies should continue to submit fees with their filings until notification of the billing system implementation date.

Publication: 28TexReg3954, May 16, 2002

Effective date: June 1, 2003

Further information: 512 463-6425

PROPERTY

APA Proposals

TWIA Inspections

■ The Department has proposed new 28 TAC § 5.4605, which would exempt 18 types of repairs from the general requirement of an inspection to remain eligible for coverage by the Texas Windstorm Insurance Association. The TWIA is the residual market for wind and

hail coverage in the 14 coastal counties and portions of Harris County on Galveston Bay.

The exemption from inspections would apply only if the repairs are made with materials, fasteners and craftsmanship of like kind and quality to those in the building before repair and as compared to the parts of the building that were not repaired. In addition, the initial installation or replacement of the listed items could be made without an inspection if no structural change is made.

The items are

- roof repairs of less than 100 square feet (one square),
- gutter repairs or replacement,
- replacement of decorative shutters,
- repairs to breakaway walls,
- fascia repairs,
- repairs to porch and balcony railings,
- repairs to stairways/steps and wheelchair ramps,
- protective measures before a storm,
- temporary repairs after a storm,
- leveling and repairs to an existing slab on grade foundation, unless wall and/or foundation anchorage is altered or repaired,
- fence repair,
- painting, carpeting, and refinishing,
- plumbing and electrical repairs,
- repairs to slabs poured on the ground for patios (including slabs under homes on pilings),
- repairs or replacement of soffits less than 24 inches in width,
- repairs or replacement of non-structural interior fixtures, cabinets, partitions (non-loadbearing), surfaces, trims or equipment,
- replacement of glass in windows or glass doors or replacement of exterior doors not involving the frames provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure, and
- replacement of exterior siding provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure.

Publication: 28TexReg4070, May 23, 2003

Earliest possible adoption: June 22, 2003

Further information: 512 463-6327

TWIA Premium Discounts

■ The Department has proposed amendments to 28 TAC §§ 5.4501 and 5.4700 concerning

Continued on page 6

RuleMaking

Texas Windstorm Insurance Association premium discounts for homes built to specified codes. Discounts have been in effect since 1999 for homes built to the TWIA *Building Code for Windstorm-Resistant Construction*. The proposed amendments would add discounts for homes built to the 2000 International Residential Code (IRC) and the 2000 International Building Code (IBC) with Texas revisions.

The IRC and IBC, with Texas revisions, replaced the TWIA Building Code for Windstorm-Resistant Construction effective February 1, 2003, as the standard that new construction must meet to qualify for TWIA coverage. TWIA is the residual market for wind and hail insurance in the 14 coastal counties and part of Harris County on Galveston Bay.

Code requirements are most stringent for homes seaward of the Intracoastal Canal. They are somewhat less stringent in the **Inland I** area between the Intracoastal Canal and 25 miles inland. Code requirements are least stringent in the **Inland II** area more than 25 miles west of the canal.

TWIA petitioned TDI for the new schedule of credits. The proposed credits would be slightly greater than those currently in place for homes built to the TWIA *Building Code for Windstorm-Resistant Construction*. Credits are mandatory. There are additional credits when a house is built to a higher standard than required for its area, e.g., a home in the Inland I area built to the Seaward standard.

The table below compares the proposed discounts for homes built to the newly adopted IRC and IBC codes with those in place for homes built to the TWIA *Building Code for Windstorm-Resistant Construction*.

The annual average saving from the discount is estimated at \$158 per policy.

As with the TWIA *Building Code for Windstorm-Resistant Construction*, a 10 percent rate reduction would be available for older homes retro-fitted with exterior opening protection that meet the IRC/IBC requirements.

Publication: 28TexReg4065, May 23, 2003
 Earliest possible adoption: June 22, 2003
 Further information: 512 463-6327

FAIR Plan's Plan of Operation

■ Commissioner Jose Montemayor has approved new 28 TAC §§ 5.9910–5.9929, adopting the plan of operation of the state's new FAIR (Fair Access to Insurance Requirements) Plan for residential property insurance. The plan of operation already was in effect by virtue of an emergency rule adopted by Montemayor on December 6, 2002. However, emergency rules expire, and a permanent rule was necessary.

Highlights of the plan of operation include:

- FAIR plan coverage is available only when at least two licensed insurance companies have refused to insure a home and the consumer has not received a valid offer of comparable coverage from any other licensed insurance company.
- Coverage may be obtained only through licensed agents who have signed up with the FAIR plan. Agents receive commissions on FAIR plan business written.
- To be eligible for coverage, a home must be insurable. A home may be subject to inspection by the FAIR plan to establish that it meets the plan's standards for insurability.
- Property owners insured by the FAIR plan must seek coverage in the voluntary market every two years. To remain in the plan, a property owner must again be refused by at least two licensed companies and no other valid offer of coverage has been received.

- FAIR plan maximum coverage limits are \$1 million for the structure and \$500,000 for the contents of an insured home.
- All licensed property and casualty insurers writing residential property insurance must participate in the FAIR plan. Participation includes paying assessments as needed if the plan's claims and other expenses exceed the premiums paid for coverage.

Publication date: 28TexReg4154, May 23, 2003
 Effective date: May 28, 2003
 Further information: 512 463-6327

UTILIZATION REVIEW AGENTS

APA Adoption Utilization Review of Workers' Compensation Cases

■ Commissioner Jose Montemayor has adopted amendments to 28 TAC §§ 19.2001, 19.2003–19.2006, 19.2010, 19.2012, 19.2015, 19.2017, 19.2019 and 19.2020 concerning utilization review for medical benefits provided under workers' compensation policies. The amendments implement changes made by House Bill 2600 of the 77th Legislature and are necessary to conform to other statutory changes and to rules adopted by the Texas Workers' Compensation Commission (TWCC).

Among other things, the rule changes:

- Make the definition of utilization review (UR) consistent with House Bill 2600, which added the concept of concurrent review and subjected requests for spinal surgery to preauthorization.
- Add a requirement that utilization review plans for workers' compensation benefits include written procedures for ensuring that doctors who perform reviews for the UR agent are on TWCC's list of approved doctors.
- Allow a UR agent to use doctors licensed in other states to perform reviews. Out-of-state doctors must either be on the TWCC approved doctors list or be licensed in their own state and perform utilization review under the direction of a Texas-licensed doctor who is on the TWCC list. Reviews must comply with TWCC requirements.
- Add a requirement that a UR agent's notification of an adverse determination include a plain-language notification informing the employee of the right to timely request reconsideration pursuant to TWCC rules.

LOCATION OF RISK	TWIA BUILDING CODE FOR WINDSTORM-RESISTANT CONSTRUCTION		INTERNATIONAL RESIDENTIAL CODE AND INTERNATIONAL BUILDING CODE		
	BUILDING CODE STANDARD MET	DWELLING DISCOUNT	PERSONAL PROPERTY DISCOUNT	DWELLING DISCOUNT	PERSONAL PROPERTY DISCOUNT
Seaward	Seaward	26%	20%	28%	23%
Inland I	Inland I	24%	19%	26%	21%
Inland I	Seaward	29%	23%	31%	25%
Inland II	Inland II	0%	0%	26%	20%
Inland II	Inland I	27%	21%	28%	23%
Inland II	Seaward	32%	25%	33%	28%

RuleMaking

Publication: 28TexReg3965, May 16, 2002
Effective date: June 1, 2003
Further information: 512 463-6425

WORKERS' COMPENSATION

Exempt Adoptions Terrorism Coverage

■ Commissioner Jose Montemayor has adopted amendments to the *Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance* that establish guidelines for implementation of the federal Terrorism Insurance Act of 2002.

The changes, which were proposed by TDI staff, amend manual rules as follows:

Rule III E—Calculation of Total Estimated Policy Cost—to include the terrorism premium, if applicable in the calculation of the total estimated policy cost.

Rule VI E—Minimum Premium—Number 5, Adjustment Upon Audit—to indicate that if a policy is written on an "if any" basis, no terrorism premium will be charged unless the policy develops premium during the policy period or an audit.

Rule VI I—Schedule Rating—to provide that premium for the Terrorism Insurance Act of 2002 is not subject to schedule rating.

Rule VI to add Section J—Terrorism Premium—to provide that premium charged for losses covered under the Terrorism Insurance Act of 2002 is based on the policy's total payroll as defined by Rule V B, Remuneration-Payroll. The amendment would further describe how the terrorism premium should be determined. It states that terrorism premium is not subject to modifications, that terrorism premium is not included in standard premium, that terrorism premium does not apply to Code 0913 and that no terrorism premium will be charged if a policy is written on an "if any" basis unless the policy develops premium during the policy period or at audit.

Rule VII B—Premium Discount Number 1—to indicate that terrorism premium is excluded from the determination of the standard premium.

Rule XV D—Domestic Workers-Residences Number 2c—to indicate that terrorism premium does not apply to Code 0913.

Rule XVII—Premium Incentives for Small Employers—to indicate that terrorism premium is not subject to the premium incentive for small employers.

Montemayor also amended Procedures A—Policy Issuance Number 6—to include terrorism premium, if applicable, as an item to be indicated on the information page of the pol-

icy. He further added a new Section XIV—Terrorism Premium—to the experience rating plan to indicate that the terrorism premium is not subject to experience rating.

Publication: 28TexReg3529, April 25, 2003
Reference No. W-0203-05-I
Further information: 512 463-6327

Workers' Comp Statistical Plan

■ Commissioner Jose Montemayor has amended the Texas Workers' Compensation Statistical Plan to incorporate the reporting of terrorism premium into the plan.

The amendments:

- Create a new statistical code 9740 for terrorism premiums.
- Add Item 16 to the Exposure and Premium Reporting instructions to explain how terrorism premiums are to be reported using statistical code 9740.
- Remove references to statistical code 0020 for the "Texas Old Program" from the Exposure and Premium Reporting Instructions.

Publication: 28TexReg3529, April 25, 2003
Reference No. W-0203-06-I
Further information: 512 463-6327 ★

Fraud Unit Prosecutions Indictments

Balderas, Brizeida V., was indicted in Houston on charges of insurance fraud, a first-degree felony.

Balderas, Nathan I., was indicted in Houston on charges of insurance fraud, a first-degree felony.

Davis, Jimmy Phay, was indicted in U.S. District Court, Eastern District, in Marshall on charges of insurance fraud.

Evans, Paul T., was indicted in San Antonio on charges of securing the execution of a document by deception, a third-degree felony.

Helman, Karen R., was indicted in Austin on charges of making a false statement in a written instrument, a third-degree felony.

Lloyd, Scott, was indicted in San Angelo on charges of insurance fraud, a state jail felony.

McKinney, Gary Jr., was indicted in San Antonio on charges of insurance fraud and theft, both state jail Felonies.

McQueen, Judy, was indicted in Canton on charges of insurance fraud, a state jail felony.

Wayne, David Eugene, was indicted in Austin on charges of making a false statement in a written instrument, a third-degree felony.

Waters, Herman R., was indicted in Austin on charges of unauthorized insurance, a third-degree felony.

Case Dispositions

Brown, Christopher, was sentenced in Houston to two years' probation, 240 hours of community service, and a \$2,000 fine for insurance fraud, a state jail felony.

Carter, Lee A., was sentenced in Austin to 60 months' probation and 500 hours of community service for making a false statement in a written instrument, a third-degree felony.

Eze, Ebuomwan A., was sentenced in U.S. District Court, Northern District, in Dallas to 40 months' confinement (time served), a \$100 fine and restitution of \$1,438,500.62 for conspiracy to commit mail fraud.

Mitchell, Van A., was sentenced in Dallas to three years' probation and 120 hours of community service for insurance fraud, a state jail felony.

Rice, Kevin D., was sentenced in Dallas to one year's confinement and a \$500 fine for theft, a Class A misdemeanor. ★

LegalNotes

Insolvency Laws Focus on Policyholder Protection

By James Kennedy, *Special Counsel to the Receiver*

WITH THE DOWNTURN in the economy, insurance insolvencies are once again on the rise nationwide. Every state has a process for handling the rehabilitation and liquidation of financially troubled insurance companies. In Texas, the initial phases in this process are usually supervision and conservation, whose statutory objective is to restore a company to financial health. If these steps are not successful, the company is placed in receivership and liquidated.

While supervision and conservation are administrative remedies, a receivership is a judicial remedy. An insurance receivership is similar in concept to a bankruptcy proceeding, which is not available to insurance companies. However, an insurance receivership differs from a bankruptcy in many respects, which reflect the interests of protecting policyholders.

A receivership is initiated when the Texas Attorney General files a petition in a Travis County (Austin) district court. The court appoints the Commissioner of Insurance as the receiver of the insurer, and the Commissioner usually appoints a special deputy receiver (SDR) to administer the receivership.

The SDR's first priority is to take over the operations of the insurer and identify and secure the insurer's assets and records. The SDR then proceeds to liquidate the insurer's assets, and collect any funds that are owed to the company, such as reinsurance payments and premiums due from agents. The SDR also investigates the liability of any parties responsible for the insurer's insolvency and identifies any preferential transfers or improper payments.

Court approval is required for numerous matters, such as providing notice of the receivership and setting a claims filing deadline, settling certain lawsuits and claims and, ultimately, distributing assets. The receivership court typically appoints a special master, who makes recommendations to the court. In addition to hearing motions and making recommendations, the special master conducts conferences to determine the status of the receivership.

In a receivership of a licensed insurer, covered policy claims are usually paid by a guaranty association, subject to statutory limits. There are three guaranty associations: the Texas Life Accident Health and Hospital Service Insurance Guaranty Association, the Texas Property and Casualty Insurance Guaranty Association and the Texas Title Insurance Guaranty Association.

Insurers licensed in Texas are required to be members of the guaranty association covering the types of policies they sell. Guaranty associations have two sources of funding—the distribution of assets from the receivership and assessments paid by the member insurers. Insurers are entitled to state premium tax credits for the assessments paid to guaranty associations.

Guaranty association coverage is triggered by the Commissioner's designation of an insurance company as an "impaired insurer." While guaranty acts are intended to afford protection for most policyholders, each guaranty act has specific limitations and exclusions. Guaranty associations do not cover some types of insurers, such as surplus lines insurers and unauthorized insurers. Certain types

of policies are excluded from coverage, including mortgage guaranty insurance, ocean marine insurance, insurance protecting creditors' interests and federally guaranteed insurance (e.g., flood insurance). The acts also exclude warranties, surety bonds and service contracts. Multiple employer welfare arrangements, fraternal benefit societies, risk retention groups, risk purchasing groups and health maintenance organizations are not members of any guaranty association.

Claims that are not covered by a guaranty association must be filed with the SDR and are payable from the assets of the receivership estate of the insurer. The Texas Insurance Code contains a priority scheme for the distribution of assets of the estate. Class 1 consists of expenses and secured claims, and Class 2 includes policy claims and claims payments made by the guaranty associations. Other claims are paid only after Class 2 claims are paid in full. This priority scheme maximizes distributions on policy claims and minimizes the need for assessments by the guaranty associations.

An insurance receivership requires the participation of state agencies, guaranty associations, private individuals and the Court. TDI determines the insolvency of the insurer, the Attorney General prosecutes the case against the insurer, the guaranty association pays the covered policy claims, the SDR collects and distributes the assets, and the Court oversees the proceeding and resolves any disputes that arise. The process acts as a safety net in the event of insolvency by mitigating the harm to policyholders and claimants. ★

Help... *from page 1*

Will the effect be greater on term or cash-value products?

The greatest impact will be on term products. Ten-, 20- and 30-year term products should be affected more than shorter term products and whole life. Reductions generally will be greater for males than for females.

How is the change likely to affect the overall life insurance market in Texas?

The life insurance market is very competitive now, and the new mortality table, with its impact on reserves and rates, should make it even more so

with respect to the sale of products whose risks are appropriate for the table. It stands to reason that companies moving the fastest to exploit the change will have the competitive edge over those that choose to wait.

Why did TDI put adoption of the 2001 CSO mortality table on a fast track?

A number of companies were ready and eager to embrace the new table in order to lower their reserves and drop their premiums to more competitive levels. TDI believes lower premiums, which could increase sales, will be good for all concerned—so much so that we're offering expedited review when insurers seek to amend their

policy forms to recognize the new mortality table.

If quick adoption of the 2001 CSO mortality table was so important, why is TDI delaying mandatory implementation until January 1, 2009?

First, reserve conservatism. As regulators, you don't want to rush companies to become less conservative on their reserves. Some companies will need considerable time to recalculate reserves and cash values, re-price their products and file revised forms with TDI. Secondly, the NAIC recommended a common 2009 effective date in all states, and we support uniformity of regulation whenever we can. ★

Status of TDI Recommendations to the 78th Legislature

FOLLOWING IS the status, as of **Texas InsuranceNews'** printer deadline, of bills carrying out TDI's legislative recommendations.* Updated information on the status of individual bills is available on the Texas Legislature Online Web site, www.capitol.state.tx.us.

The regular legislative session adjourned on June 2, 2003, after **TN's** printer deadline. The July issue will summarize all enacted bills that amend the *Texas Insurance Code*.

Water Damage Claims and Public Adjusters

SB 127, by Senator Troy Fraser, Marble Falls, requiring insurers to acknowledge water damage claims within 24 hours after receiving them and to send adjusters or other representatives to a claimant's home within 72 hours; requiring state licensure of public adjusters.

Status: Passed by Senate. House passed with amendments.

Personal Lines Rates, Commercial Auto, Credit Scoring, FAIR Plan and Orderly Withdrawal

SB 14, by Fraser, establishing TDI regulation of all homeowners and auto insurance rates; removing the requirement that commercial auto coverage be written on promulgated forms and that rates be subject to the benchmark system; placing limitations on the use of credit scoring in underwriting and rating; authorizing the issuance of state bonds, if needed, to fund costs associated with operation of the FAIR Plan; and applying *Texas Insurance Code* Article 21.49-2C, the orderly withdrawal statute, to Lloyds carriers, reciprocal exchanges and county mutual insurers.

Status: Passed by Senate. House passed with amendments.

Medical Malpractice

HB 2787, by Representative Craig Eiland, Galveston, requiring rates of the Texas Medical Liability Trust (TMLT) to be just, reasonable, adequate, not excessive and not unfairly discriminatory and bringing the TMLT under TDI's examination authority.

Status: Pending in House Insurance Committee and dead for this session.

Miscellaneous Lines

HB 3031, by Representative Corbin Van Arsdale, Houston, changing 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.

Status: Approved by House Insurance Committee. Pending floor action at deadline for consideration of House bills. Dead for this session.

Prompt Payment to Providers

SB 418, by Senator Jane Nelson, Flower Mound, amending the prompt payment/clean claim statutes to, among other things, authorize the Commissioner to develop an exclusive set of clean claim elements. Statutory provisions allowing carriers to add or change the elements by contract would be repealed.

Status: Passed by Senate and House in different versions. Conference committee appointed.

Health Insurance Risk Pool

SB 467, by Senator Kip Averitt, Waco, lowering the Texas Health Insurance Risk Pool's maximum premium rate from 200 percent to 150 percent of the average rate charged by major Texas health insurers for individual health coverage (the "Standard Rate.")

Status: Passed by Senate. Approved by House Insurance Committee.

Rulemaking Authority

SB 1281, by Fraser, strengthening the Commissioner's rulemaking authority, including the granting of authority to adopt interim rules to comply with federal requirements.

Status: Passed by Senate and approved by House Insurance Committee.

JUA Eligibility

SB 421, by Senator John Carona, Dallas, adding assisted living facilities to the list of providers eligible for the medical professional liability JUA.

Status: Passed by Senate and House and sent to Governor for signature.

FAIR ("Fair Access to Insurance Requirements") Plan

SB 1606, by Senator Rodney Ellis, Houston, removing 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.

Status: Passed by Senate and House and sent to Governor for signature.

Annuity Non-forfeiture Interest Rates

SB 681, by Averitt, reducing the minimum non-forfeiture rate of interest for individual deferred annuities from the present 3 percent to an amount more reflective of market interest rates.

Status: Passed by Senate. Approved by House Insurance Committee. ★

* On some issues, such as personal lines rate regulation and credit scoring, sponsors were developing or had filed their own bills prior to the submission of TDI's biennial legislative report on December 31, 2002. In those cases, the bills listed in the status report are those that most closely correspond to the TDI recommendations. In addition, some bills include additional provisions beyond those recommended by TDI.

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
	Angeli, Steven D.	Austin	General Life, Accident, Health and HMO Agent's License Revoked; Restitution to Victims	Acted as Agent for Unauthorized Health Plan; Failure to Respond to TDI Inquiry	03-0245	4/8/03
	Ballard, Pete F.	San Antonio	General Life, Accident, Health and HMO License and General Property and Casualty Agent's License Revoked	Unauthorized Insurance	03-0311	4/25/03
	Cotton, Kenneth Lawayne	Van	General Life, Accident, Health and HMO Agent's License Denied	Fraudulent or Dishonest Acts or Practices; Material Misstatement in License Application	03-0229	4/1/03
	Daniels, Teresa H.	Longview	General Life, Accident, Health and HMO Agent's License Revoked	Fraudulent or Dishonest Acts or Practices	03-0227	4/1/03
	Feliciano, Jose Anselmo Jr.	Tyler	\$7,500 Fine, Subject to Dollar-for-Dollar Reduction by Restitution Down to a Minimum Fine of \$2,500	Acted as Agent for Unauthorized Health Plan	03-0224	4/1/03
	Garst, Paula	Amarillo	General Life, Accident, Health and HMO Agent's License Revoked; \$75,000 Fine; Restitution of at least \$114,903	Unauthorized Insurance; Misappropriation or Conversion; Fraudulent or Dishonest Acts or Practices	03-0218	3/31/03
	Hancock, Amanda	Longview	\$750 Fine	Material Misrepresentation on License Application	03-0278	4/17/03
	Hubbard Preowned Ltd.	Midland	\$1,750 Fine	Material Misrepresentation on Agent License Application	03-0225	4/1/03
	Kern, Nancy	San Antonio	\$750 Fine	Material Misrepresentation on License Application	03-0337	4/30/03
	Miller, Lawrence E.	Friendswood	\$1,500 Fine and One-Year Probated Suspension of Qualified Inspector's Appointment	Failure to Provide Substantiating Information Requested by TDI	03-0338	4/30/03
	Restrepo, Louis Carlos	Houston	General Property and Casualty Agent's License Revoked	Consent Order; Alleged Misappropriation and Conversion of Premiums	03-0235	4/2/03
	Root, James Lawrence	Pleasanton	\$750 Fine	Failure to Meet Continuing Education Requirements	03-0267	4/15/03
	Stump, Ricky Lee	Fort Worth	Adjuster's License Revoked	Felony Conviction; Fraudulent or Dishonest Acts or Practices	03-0247	4/8/03
	Till, Phillip Raymond	Plantersville	Prepaid Legal Services License Denied	Criminal Conviction; Fraudulent and Dishonest Acts and Practices	03-0248	4/8/03
	Wiggins, Jamal K.	Houston	One-Year Probation of Adjuster's License	Fraudulent or Dishonest Acts or Practices	03-0339	4/30/03
	Williams, Barney Noble III	Spring	\$7,000 Fine, Subject to Dollar-for-Dollar Reduction by Restitution Down to a Minimum Fine of \$3,500	Acted as Agent for Unauthorized Health Plan	03-0268	4/15/03
	Zogob, Theodore Basil	Irvine, CA	Revocation of Non-Resident General Life, Accident, Health and HMO Agent's License and Non-Resident General Property and Casualty License	Misappropriation and Conversion; Fraudulent or Dishonest Acts or Practices; Use of Unlicensed Agent	03-0109	2/14/03
INSURANCE COMPANIES						
	Humana Insurance Co. and Humana Health Plan of Texas Inc.	Louisville, KY	\$50,000 Fine	Consent Order; Alleged Use of Compensation Schedule Based on Average Size of Employer Groups	03-0310	4/25/03

Disciplinary Actions

INSURANCE COMPANIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
Liberty Lloyds of Texas Insurance Co.		Irving	\$2,900 Fine, Plus Restitution of Improperly Implemented Claim-Related Surcharges	Homeowners Premium Surcharges In Excess of 10 Percent	03-0301	4/22/03
PacifiCare Life Assurance Co.		Santa Ana, CA	\$17,000 Fine	Consent Order; Alleged Use of Unapproved Policy Forms	03-0246	4/8/03

HMO

ECCA Managed Vision Care Inc.		San Antonio	\$5,000 Fine	Consent Order; Alleged Notification to Members of Intent to Withdraw from Market Prior to Filing Withdrawal Plan with TDI	03-0303	4/24/03
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UNAUTHORIZED INSURANCE

Corporate Benefit Services of America Inc.		Minnetonka, MN	\$20,000 Fine	Consent Order; Alleged Assistance to an Unauthorized Health Plan in CBSA's Capacity as a Third-Party Administrator	03-0336	4/30/03
International Property Owners Association Ltd. Christopher Purser Dennis Ray Hamann UAC Ltd.		Madaluyong, Philippines Houston Katy Managua, Nicaragua	Emergency Cease-and-Desist Order	Unauthorized Insurance	03-0340	4/30/03

Company Licensing

Applications Pending

For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
AFIC Administrators Inc.	TPA	Jackson, MS
C.L. Frates and Co.	TPA	Oklahoma City, OK
Delta Dental Plan of California	TPA	San Francisco, CA
MedPayExpress, L.L.C.	TPA	Lake Charles, LA
Metropolitana Compania De Seguros, S.A.	Casualty	Los Morales, Mexico
National Grange Mutual Insurance Co.	Fire and/or Casualty	Keene, NH

For incorporation

COMPANY NAME	LINE	HOME OFFICE
2003 Healthplan Texas Inc.	TPA	Laredo, TX
NAFTA Insurance Co.	Fire and/or Casualty	McAllen, TX
PacifiCare of Texas Inc. (dba) PacifiCare Signature Value a Select Group of Physicians	HMO	Austin, TX

For name change in Texas

FROM	TO	LINE	LOCATION
Northbrook Property and Casualty	St. Paul Protective Insurance Co.	Fire and/or Casualty	Chicago, IL
Women's Life Insurance Company of America	Lone Star Life Insurance Co.	Life, Accident and/or Health	Richardson, TX
Worldwide Direct Auto Insurance Co.	Response Worldwide Direct Auto Insurance Co.	Fire and/or Casualty	Columbia, OH

Applications Approved

For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
Business Administrators & Consultants, Inc.	TPA	Columbus, OH
Eastern Alliance Insurance Co.	Casualty	Lancaster, PA
Peerless Indemnity Insurance Co. (new company from redomestication of Atlas Assurance Company of America)	Fire & Casualty	Lisle, IL
Utilmed Inc. dba American Imaging	TPA	Northbrook, IL

Continued on back page...

Company Licensing

Applications Approved

For incorporation

COMPANY NAME	LINE	HOME OFFICE
Educators Employment Protection Corp.	Non-Profit Legal Services Corporation	Austin, TX
Nations Bonding Co.	Casualty	Austin, TX
Texas Healthspring I, LLC	HMO	Houston, TX
Virture Physician Services, P.L.L.C.	TPA	Kingwood, TX

For name change in Texas

FROM	TO	LINE	LOCATION
CGU Life Insurance Company of America	Aviva Life Insurance Co.	Life	Wilmington, DE
Joseph R. Halow Company Inc. <i>dba</i> Assured Benefits Administrators	Assured Benefits Administrators Inc.	TPA	El Paso, TX
Homeplus Insurance Co.	Securian Casualty Co.	Fire & Casualty	St. Paul, MN
Underwriters Indemnity Co.	Lexon Insurance Co.	Fire & Casualty	Houston, TX
Winterthur International America Insurance Co.	XL Insurance America Inc.	Fire & Casualty	Wilmington, DE



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