

Taking on the Issue of the Uninsured in Texas ...Together

ON MAY 11, 2004 the Texas Department of Insurance will host a day-long forum to discuss ways to reduce the number of Texans without health insurance.

Texas continues to reside near the top of the list of states with the highest percentage of residents without health coverage. It's a problem that impacts everyone in the state, from local taxpayers footing the bill for emergency room visits by the indigent, to business owners faced with lost productivity because of sick workers—yet unable to afford to provide health benefits to their employees. These serious impacts are in addition to the human toll extracted because of individuals and families not having access to quality health care services. Having no access to regular care can often lead to more serious—and more expensive—health problems.

None of these realities are exactly news to anyone, but the new approach to seeking solutions, envisioned by TDI and the State Planning Grant, may be. TDI's stakeholder forum this May is an attempt to rally those working in different fields, on various fronts to address the issue of the uninsured together, to seek common ground and develop a more focused plan of attack.

The stakeholder forum is the latest offshoot of Working Together for a Healthy Texas, the ongoing effort that began more than three years ago with a Federal State Planning Grant awarded to TDI to study the problem of Texans without health insurance and to develop options for expanding coverage. The study, headed by TDI's Dianne Longley, took a comprehensive look at the problem and gathered data defining who the uninsured are and why Texas has so many. Several of the ideas developed

under the study have been implemented, including legislative initiatives passed by the 78th Texas Legislature. These initiatives are helping but there are still too many Texans living without the protection of health insurance.

Longley said this forum is designed to develop solutions.

“There won't be a lot of presentations or speeches. What there will be is a lot of dialogue and discussion. Ideally we'd like to see a variety of proposals brought forward by the various stakeholders that could be further explored and developed; at a minimum we think we can establish a good dialogue among the different groups.”

Among the stakeholders invited to attend the forum are representatives from the insurance industry such as the Texas Association of Health Plans, the Texas Association of Health and Life Underwriters and the Texas Association of Business, medical service providers including the Texas Hospital Association and the Texas Medical Association, consumer advocacy groups including the Office of Public Insurance Counsel, various state agencies and legislative staffers. “All the people that have been asked to attend this forum are very familiar with the extent of the problem,” said TDI Senior Associate Commissioner of Life, Health and Licensing, Kim Stokes. “What we're trying to do now is take the next steps toward finding solutions.” During a one-day forum, with several different groups representing several different perspectives, it's an admittedly ambitious goal. Stokes said if two or three areas for further investigation or development could be identified, it would be a successful effort.



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Commissioner's InSight

By **Jose Montemayor**,
Texas Insurance Commissioner

Proposition 12: It's Working!

DON'T BE FOOLED by recent suggestions that Proposition 12 has not lived up to its billing. The truth is that in six short months, Prop 12 reforms have provided great relief to Texas physicians and have reversed the trend of annual medical malpractice insurance rate increases.

To realize just how great the gains have been since September 2003, look at our recent history.

From 1999–2003, the number of malpractice insurance carriers writing policies in Texas dwindled from 17 to 3. That statistic really hits home for many Texans when it is their doctor who leaves the profession because they couldn't afford to insure their practice. Under those market conditions, it was impossible for Texas to attract or retain medical malpractice insurance companies.

Many have likened reversing that downward spiral to changing the direction of a battleship—you simply can't reverse course on a dime. However, passage of Prop 12 was the impetus for change and we are now entering into a much more stable climate.

Since Prop 12 passed last September, the Texas Department of Insurance has been contacted by more than 20 other companies wanting start-up and licensing information. Eight of these new companies have taken concrete steps to begin selling malpractice insurance in Texas in the near future. Additionally, another company is now expanding and writing new business in Texas as a result of Prop 12, reversing its earlier decision to wind down Texas operations and pull out of the market.

Another positive change is that the largest carrier in Texas, the Texas Medical Liability Trust, reduced its medical malpractice insurance rates by 12 percent across the board on January 1, 2004. This means relief for more than one-third of Texas physicians only four months after the passage of Prop 12.

TDI has also taken action to deny rate increases that did not take into account the reduced exposure to frivolous claims. One insurer has cancelled a scheduled rate increase and is revising rates to reflect the savings. All companies doing business in Texas now know that their rates must reflect the effects of Prop 12, and that those savings must be passed on to doctors and their patients.

However, the true, full benefits of Prop 12 will take time to realize partly due to actions by those who have long worked against real medical malpractice reform: trial lawyers.

Lawsuits against medical providers increased dramatically across the entire state last year as the legislature was acting to limit frivolous lawsuits and immediately proceeding voter approval of Prop 12 in September. For instance, in Harris County alone, 1,154 medical malpractice lawsuits were filed between January 1 and August 31, 2003. That nine-month total is an increase of more than 300% compared to the number of malpractice suits filed during all of 2002. Other Texas counties experienced similar exponential increases in malpractice claims.

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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.

Special Dallas County Prosecutor to Focus on Insurance Fraud

A MAJOR NEW ANTI-FRAUD initiative was announced at TDI's Fraud Conference in January. A memorandum of understanding has been signed between TDI and the Dallas County District Attorney's Office to fund a special prosecutor focusing exclusively on insurance fraud cases. This initiative represents the first such

partnership between state and local enforcement authorities to address the major problem of insurance fraud. The prosecutor will be a TDI employee but will only prosecute fraud cases in Dallas County. The position is expected to be filled in May or June of this year. 🌟

InBrief

Agent Loses License, Ordered to Pay Restitution and Penalty

ON MARCH 1, 2004, Commissioner Jose Montemayor took disciplinary action against Scott David Rutherford of Houston, revoking his license and ordering restitution and fines totaling \$300,000. Rutherford served as an agent and recruited licensed agents for several unauthorized health plans, including Ajax Health Benefit Plan, American Benefit Society, Employers Mutual, L.L.C, and Privilege Care,

Inc. (and related organizations). Texas residents to whom Rutherford marketed and sold these health plans ended up with unpaid health claims.

The Commissioner's order requires that full restitution to victims be paid within 30 days, and the \$300,000 penalty within 60 days. 🌟

Texas Arson Awareness Week

MAY 2-8, 2004 has been designated "Texas Arson Awareness Week." This year the focus is on youth-caused fires, juvenile arson, and child firesetting behavior.

Texas State Fire Marshal G. Mike Davis says, "Arson is a national problem that can only be solved locally. Child fireplay and juvenile arson fires can often be prevented through community based intervention programs. But the best way to prevent these fires is through responsible parenting."

Davis suggests the following:

Control Access: Keep matches and lighters in a safe place, high and out of reach of young children, who can climb to reach things. Lock them up if necessary.

Adult Modeling: Set a good example. Most kids learn how to use fire by watching the adults around them (most often parents). Emphasize to your children that fire is a tool that is just as dangerous as power tools or guns.

Parental Awareness: Take notice of your children and their surroundings. If they are in possession of matches or lighters, or if you find

signs of extinguished fires (burned matches, burnt paper, burns on carpet), talk with them.

Straight Talk: Talk to kids about the cruel realities of fires and the law. Fire can destroy property, injure others, or take lives. An intentionally set fire could lead to the felony charge of Arson. Children age 10 and above can be charged for breaking the law in Texas. Parents of children under the age of 17 may be liable for paying for damages caused by a fire started by their child.

Intervention: Don't ignore obvious warning signals. When kids use fire in unsupervised or inappropriate ways, serious problems can occur. Seek the appropriate help before a large, destructive fire occurs.

Find Help: Your local fire department is often the best point of first contact when you need help with a child who is misusing fire or fire tools. Dozens of Texas communities have established Juvenile Firesetter Intervention Programs (JFIPs) with the help of the State Fire Marshal's Office, which provides information, material and technical assistance to new and existing local programs. 🌟

Insurance Commissioner Testifies Before U.S. Senate on Bogus Health Plans

TEXAS INSURANCE COMMISSIONER Jose Montemayor testified before the U.S. Senate Committee on Finance on March 3, 2004, about the serious problems posed by health insurance scams around the country.

Montemayor stressed to senators that the problem is the states' inability to shut down illegal health plans, most often presented to unwary buyers as federally exempt ERISA plans. The problem is that the shield of a potential exemption from state regulation claimed by these plans creates the opportunity for scams to operate for lengthy periods of time before they are identified as illegal.

"In Texas, we have the authority to shut down these scams," Montemayor said. "And we do stop them but we normally cannot do so until after they have done a great deal of damage to the public."

Montemayor testified that the Texas Department of Insurance (TDI) has issued numerous cease-and-desist orders against many of these plans, even putting one based in Texas into receivership. TDI has also ordered millions of dollars in penalties against the scam operators and taken strong actions against those who sold the plans. For instance, Montemayor noted that in 2003, he issued more than 100 orders against licensed insurance agents who sold unauthorized plans, ordering them to pay the unpaid claims and often revoking their licenses.

Montemayor offered the following actions Congress could take to help states address the problem of bogus health plans:

- Expand the powers of the U.S. Department of Labor (DOL) to take action against illegal ERISA plans. Currently, the DOL must generally prove a breach of fiduciary duty or fraud in order to take civil or criminal action. This is a far cry from the resources the states have

in regulating the rest of the insurance industry. Expanding DOL authority would allow federal regulators to take quick action to either rehabilitate or stop plans that are in financial trouble.

- The DOL should be given the authority to issue preliminary cease-and-desist orders against plans that are in financially hazardous positions or otherwise violating federal law. Such action would, at a minimum, prevent such plans from continuing to enroll new victims.
- Establish specific federal criminal and civil penalties for falsely representing a plan to be exempt from state regulatory authority. Currently, there are no clear penalties for making false representations about health plans.
- Require ERISA plans to make a preliminary filing, disclosing who will be operating the plan, who will be insured by the plan, and what back insurance the plan will have. Such a filing would allow employers and consumers to check on the legality of the plans in which they are being enrolled.
- Give the states explicit authority to subpoena jurisdictional information from ERISA plans. Currently, purported ERISA plans that states seek to investigate often refuse to provide any information on the basis that even the authority to investigate whether states have the authority to investigate jurisdictional issues is pre-empted by ERISA. ☹️



In Texas, we have the authority to shut down these scams.
Commissioner Jose Montemayor

Eight Indicted in Multi-Million Dollar Insurance Fraud Scheme

TDI Joins with Federal Agencies to Stop Health Care Insurance Fraud Scam

UNITED STATES ATTORNEY Michael Shelby recently announced the indictment of eight men from Texas, Florida, Tennessee and the United Kingdom for their roles in a scheme to allegedly defraud millions of dollars of premium payments from health care benefits programs established for employees by their employers throughout the United States. The indictment came as a result of joint investigative efforts by TDI's Fraud Unit, the FBI, IRS, and Department of Labor.

"This is the first case of this type to be prosecuted in Texas," said Associate Commissioner Dennis Pompa, head of TDI's Fraud Unit. "We're proud to have played a key role in this successful operation."

Jack Ferguson of China Spring, Texas and Milt Wilkinson of Houston are among the eight charged in a 54 count indictment with conspiracy, mail fraud and money laundering. Between 1995 and 2003 Ferguson and Wilkinson operated in Houston as a Third Party Administrator known as American Heartland Healthcare Administrators (AHHA), and later as Southern Plan Administrators (SPA). The indictment alleges that between 1996 and September 2003, the eight individuals fraudulently obtained more than \$45 million in premium payments from employees and their employers by representing to them that all their healthcare claims would be paid under "Reinsurance Agreements" with more than six offshore reinsurance companies, and that the AHHA program was not subject to state insurance regulations because it was a "Single Employer Self Insured ERISA Plan." In the end, more than \$13 million in claims were not paid, leaving thousands of American employees without health care insurance.

According to the indictment, the charged individuals and their agents targeted small business employers and professional employee organi-

zations throughout the United States, including Texas, Oklahoma, Mississippi, Florida, Tennessee, North Carolina, South Carolina, Colorado, Arkansas and Alabama. Employers were told that they were paying premiums for an employee health insurance plan that was "just like regular insurance," that would assume all the risk of the employer, and would be "100%" or "first dollar" coverage. The defendants represented to employers that since the offshore reinsurance companies did not have to comply with expensive state regulations, the health care premiums would be lower than the premiums required by insurance companies based in the United States.

However, those offshore insurance companies were not authorized to engage in the insurance business in any state and were either fraudulently or insufficiently capitalized. Ultimately, thousands of American employees of small businesses had millions in unpaid health care claims and were left without health insurance.

TDI staff, led by fraud investigator Joe Morales, assisted in the investigation by executing search warrants, collecting evidence, and providing financial analysis of bank records. In fact, just before the indictment, TDI's criminal financial analyst Carolyn Rodriguez determined that additional premiums taken in, originally thought to be \$20 million, was actually in excess of \$45 million.

The case will be tried in the federal court of the Southern District of Texas by Assistant United States Attorney Mary Jane (Suzie) Harmon, who has successfully prosecuted insurance fraud cases in the past. 🔄

Thousands of American employees of small businesses had millions in unpaid health care claims and were left without health insurance.



Healthcare

APA Proposal

Dental Care Benefits

- ▶ The Texas Department of Insurance has proposed new rules concerning dental care benefits in health insurance policies.

The proposed rules are necessary to clarify the allowable standards for the payment of benefits or reimbursement for the cost of dental care services provided by contracting and non-contracting dentists.

The department is aware that some insurers are contracting with dentists for reduced fees when providing dental care services to insureds. The practice has caused confusion regarding the requirement that health insurance policies pay or reimburse non-contracting dentists using the same standard as contracting dentists. The proposed rules clarify that a payment or reimbursement standard expressed as a percentage of a contracting or non-contacting dentist's charges is acceptable if it is uniformly applied to contracting and non-contracting dentists.

The proposed rules prohibit a health insurance policy from containing a different level of payment of benefits for covered dental care services based on whether the services were provided by a contracting or non-contracting dentist. The proposed section makes clear that the payment or reimbursement percentage must not vary based on whether the services were performed by a contracting or non-contracting dentist. This results in a single standard for payment to all dentists under the health insurance policy.

The proposed rules would apply to health insurance policies containing benefits for dental care services issued or renewed on or after May 1, 2004.

*Publication: March 12, 2004
Earliest adoption: April 12, 2004
Additional information: 512 463-6326*

Licensing

APA Adoption

Effect of Criminal Conduct on Licenses

- ▶ The Texas Department of Insurance has adopted new rules concerning the effect of criminal conduct on persons seeking or holding licenses.

The new sections address the consequences that prior criminal conduct or fraudulent and dishonest activity have on persons seeking or holding licenses, registrations, or authorizations issued by the department, including agents, adjusters and those persons regulated by the State Fire Marshal's Office. The new rules also apply to the officers, directors, partners, and controlling shareholders of licensed insurance agencies and entities engaging in licensed and authorized activities; and to the officers and directors of insurance companies subject to *Insurance Code* Chapter 801.

The new sections are needed to maintain effective regulation of the insurance industry. The new rules identify to whom the provisions apply, the types of criminal offenses that the department considers to be of such a serious nature as to be of prime importance in determining a person's fitness for licensure or authorization and the standards the department will use in evaluating criminal histories; as well as the procedures that apply to persons affected by these criteria.

The new rule identifies the special relationship that persons engaging in licensed and authorized insurance and related activities have with the public. The new sections will help ensure that those persons are honest, trustworthy, reliable, and fit to hold those positions.

*Publication: February 27, 2004
Effective date: May 2, 2004
Additional information: 512 463-6326*

Title Insurance

APA Adoption

Home Equity Lines of Credit

- ▶ The Commissioner of Insurance has adopted amendments to rules relating to home equity in the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. The changes were needed because of recent amendments to the Texas Constitution.

The 78th Legislature, Regular Session, adopted Senate Joint Resolution 42 proposing a constitutional amendment authorizing home equity lines of credit, adding requirements for one-day advance disclosure of all fees, and revising technical procedures regarding home equity loans on Texas homestead property. By voter approval on September 13, 2003, Section 50, Article XVI of the Texas Constitution was amended to provide for home equity lines of credit.

The modifications to the existing title insurance forms provide insurance for future advances under home equity lines of credit, and insure disclosure of fees by title insurance companies or title insurance agents who close home equity loans.

The amended endorsements and procedural rules will enable title insurance companies to write additional title insurance coverages regarding home equity lending in Texas. The amendments will also provide both lenders and borrowers more certainty regarding the meaning of the law and a clear means of resolving origination problems.

The effective date of the section as published in the proposal was March 15, 2004; the effective date of the section has been changed to April 1, 2004.

Publication: 29 TexReg 448, January 16, 2004
Effective date: April 1, 2004
Additional information: 512 463-6326

Workers' Compensation

APA Proposal


Self-Insurance Groups

- ▶ The Texas Department of Insurance has proposed new rules concerning the provision of workers' compensation insurance through a self-insurance group.

These new sections are necessary to implement HB 2095, 78th Legislature, which added Chapter 407A to the *Labor Code*. The new chapter allows employers in the same or similar type of business who are members of a trade association in Texas to join together and, with the approval of the commissioner of insurance, self-insure as a group for workers' compensation.

Many employers in Texas report that they cannot afford to provide workers' compensation coverage offered by insurance companies nor can they qualify as certified self-insurers. Because employers are more familiar with their industry, group self-insurance provides a more targeted approach to loss prevention, rehabilitation, and other preventive and corrective measures to reduce injuries covered by workers' compensation and related costs.

Group self-insurance is intended to provide an affordable option for small and mid-size employers to make the benefits of workers' compensation coverage available to their employees. Employees would enjoy the same protection as they would with workers' compensation provided through an insurance company or certified self-insurer since all provisions of the Texas workers' compensation law will apply to a self-insurance group approved by the commissioner under *Labor Code* Chapter 407A.

Publication: March 26, 2004
Earliest adoption: April 26, 2004
Additional information: 512 463-6326 

All proposed and adopted rules are available on the TDI website at www.tdi.state.tx.us under Regulation.



Taking on the Issue of the Uninsured in Texas

...Together ... from page 1

On the topic of developing consensus and identifying areas where compromise may be needed, an “Interactive Audience Polling Activity” will continue the work of gathering input from those who will be developing the solutions. During one of the forum sessions attendees will have an opportunity to offer their opinions on various aspects of the uninsured issue, with just a press of a button.

“It’s sort of like polling the audience on Who Wants to be a Millionaire,” Longley said. “Instead it will be ‘Who Wants to Help the Uninsured?’”

Participants in the interactive activity will be asked whether they agree or disagree with a variety of statements and be able to respond on their own remote keypad. They’ll see their cumulative answers in real time, and be able to identify areas of agreement as well as where there are splits in motivation that may require compromise in order to move forward. Along with the immediate feedback, the data collected from the anonymous poll will also be analyzed to produce a more detailed picture of how the various stakeholder groups view the problem of the uninsured and how each segment may look at solving the same problem in different ways.

Both the insurance industry and the Texas Medical Association have identified the issue of the uninsured in Texas as a top priority, and TDI is taking the lead in the search for lasting solutions with efforts such as this forum and the work initiated by the State Planning Grant Committee. TDI recently applied for and received a supplemental State Planning Grant to continue the work on the issue of the uninsured.

TDI’s stakeholder forum will be held in Austin at the University of Texas J.J. Pickle Research Campus. The meeting will begin with an overview of the issue followed by discussion groups and the interactive audience polling activity. Proposals that look promising for further development may be revisited at a follow-up meeting later in the year.

Attendees will be asked to gauge their approval of various possible solutions, tactics and plans to address the question of how to get more people covered by health insurance. They’ll also be polled on their willingness to participate in various solutions and their opinions about underlying causes of the problem. Longley states, “we think it could be a real eye-opener.” 🌟

Did you know?



26% of Texans live without health coverage.



42% of young adults between 18 and 24 are uninsured.



66% of uninsured adults work. Their employer may not offer health benefits or the employee can’t afford to participate.



One-third of uninsured Texans work for businesses with fewer than 10 employees.



59% of Texas small employers say they can only afford to spend about \$600 per year on an employee’s health benefits.



Since 1997, the average annual cost to insure a small business employee has nearly doubled from \$2,172 to \$4,235.

Notice to Texas Insurance Professionals Regarding Unregistered Security Products

ATTENTION INSURANCE AGENTS: the Texas Department of Insurance (TDI) is cautioning agents to be on the lookout for offers to sell unregistered securities (i.e., investment products) to the public. Such sales may violate state and federal law and can result in fines, jail time, and loss of the agent's license to sell insurance in Texas. The notice is being sent at the request of the State Securities Board, which has noted a significant increase in the size and scope of fraudulent and unregistered securities offerings marketed to the public in Texas.

Licensed insurance professionals may receive solicitations seeking their participation in the offer and sale of various investment products that are not subject to the regulatory oversight of TDI. Promoters of these schemes often specifically represent that the products are not securities, or are not otherwise regulated by state or federal law. Many times these products are represented to be "safe" or "guaranteed." Typically, lucrative sales incentives or commissions are offered.

According to the State Securities Board, licensed insurance professionals have been recruited to sell promissory notes issued or guaranteed by offshore entities, brokered certificates of deposit, equipment leaseback schemes involving pay telephones and ATM machines, and resort timeshare investments which have collectively resulted in losses to investors of hundreds of millions of dollars. Unfortunately, many of the victims of these fraud schemes have been elderly Texans. As a result, a number of criminal and civil enforcement actions have been taken nationwide by state and federal securities regulators. In Texas, these actions have included a number of agents formerly licensed with TDI.

As under the federal securities law, the Texas Securities Act defines the term "security" broadly to encompass virtually any instrument that might be sold as an investment. The Texas Securities Act requires that securities and the

persons offering securities for sale in Texas must be registered with the Securities Commissioner unless a specific exemption from registration applies, pursuant to a statute or rule.

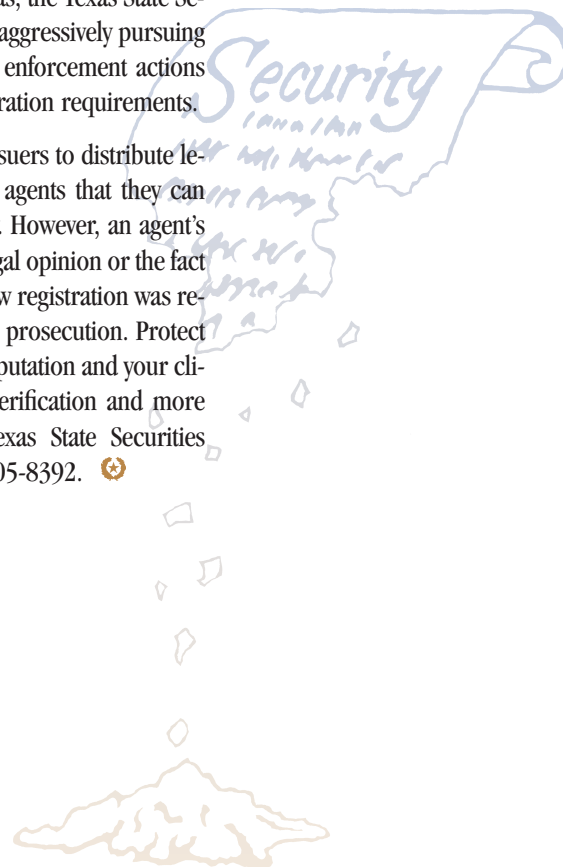
Sanctions for violations of the registration requirements include administrative fines, orders for injunction and restitution, and criminal prosecution.

It is a third degree felony for any person to offer for sale a security in Texas without the security being registered or without the person being registered as a securities dealer or agent.

Upon conviction, the person may be sentenced to a two to ten year prison term and up to a \$5,000 fine.

Because of the extent of sales of unregistered securities offerings in Texas, the Texas State Securities Board has begun aggressively pursuing criminal cases and other enforcement actions for violations of the registration requirements.

It is not uncommon for issuers to distribute legal opinions to convince agents that they can sell the investments safely. However, an agent's reliance on the issuer's legal opinion or the fact that the agent did not know registration was required is not a defense to prosecution. Protect yourself, your business reputation and your clients. Seek independent verification and more information from the Texas State Securities Board by calling (512) 305-8392. ☎



New Rule Addresses Rebating in the Title Insurance Industry

A **NEW RULE** goes into effect April 1, 2004 that will profoundly impact the way title insurance is marketed to lenders, realtors, construction companies and other 'producers' that steer consumers to a particular title agent or underwriter. Article 9.30 of the *Texas Insurance Code* prohibits the giving or receiving of a thing of value contingent upon the referral of title insurance business. New Procedural Rule P-53 in the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in Texas* should make the prohibitions clearer and enforcement actions easier to prosecute.

Title insurance in Texas is completely regulated by TDI; forms and premiums are established by TDI and are uniform throughout the state. Because title agents and underwriters cannot compete for business based on price, some have, in the past, looked to 'producers' such as lenders, realtors and construction companies to refer customers to a particular title company. Title companies have often felt pressure to provide incentives to those producers, in the form of printing services, advertising, open houses, trips and other "things of value." The expenses generated by these incentives and enticements served to inflate their operating expenses which, in turn, are used to set the rates for title insurance premiums.

New Procedural Rule P-53 provides that no person doing title insurance business shall, directly or indirectly, pay for or subsidize advertising or promotional materials or activities of any producer in a position to make a referral of title insurance business. A title company will not be allowed to advertise any particular piece of real property or group of properties in either traditional or electronic media.

Title companies may not conduct, sponsor, promote or pay for events benefiting a producer, including open houses, holiday parties, receptions and convention events for the businesses that drive customers to title companies. Title companies may not provide or furnish prizes,

food, beverages, gifts, decorations, entertainment or professional services. Depending on the facts, it may be allowable to sponsor a booth or table at a convention of realtors, for example, if the booth or table is only advertising the services of the title agent or insurer (as opposed to a producer) and if the agent/insurer is paying no more than the going market rate for the booth or table. Simply donating money to sponsor the convention will not be allowed.

Title companies may not provide producers with furnishings, postage, office supplies, electronic or hard copy documents or media, computer hardware or software, telephones, telephone systems, copiers, fax machines, office equipment, vehicles, administrative, management or staff services, rental space or office facilities. Companies are expected to maintain auditable records reflecting compliance with the rule.

Article 9.30(B)(6) of the *Texas Insurance Code* provides an exception for legal educational and promotional activities not contingent upon the referral of title business. New Procedural Rule P-53 incorporates this exception, provided the title company prominently sets out its name and business symbol on the cover and first page of such materials, provided the materials do not use the name or symbol of a producer, and provided the producer pays the going market rate for any continuing education offerings.

A title agent/insurer may conduct a seminar about title insurance, loans and mortgages, laws and legislation, and related matters and may invite producers. However, an agent/insurer should not underwrite or sponsor general education seminars for realtors or any seminar designed to meet a realtor's Continuing Education (CE) requirements, unless the title agent/insurer charges the going market rate for that sort of seminar, and, if a meal is provided, the cost of the meal is reflected in the admission price charged to the attendees.

Continued on next page

Title... continued

On the issue of small items such as a pen or coffee mug, or taking a producer to lunch to describe an agent/insurer's services, the following language from the adoption order applies:

“While the department has accepted the suggestion to delete paragraph six (the \$50 safe harbor) in favor of a common sense policy to direct enforcement actions at substantively significant violations rather than matters of *de minimis* importance, the department notes that the reaction of title agents and title companies is illustrative of the pervasiveness of rebating activity and the necessity of clear prohibitions of such activity with little room for exceptions. Thus, the department urges title agents and title companies to comply with the rule and not attempt to circumvent it.”

A pen or a coffee mug or a reasonable meal with a realtor may not justify the expense of an enforcement action, but TDI will be on the lookout for abuses.

The new rule also addresses “blended” rates in multistate transactions involving Texas property. If the title insurance premium for the property outside Texas is deeply discounted to attract the Texas piece of the title insurance business, TDI will treat that as a prohibited rebate.

Penalties are stiff: up to \$10,000 for each violation and for each day of violation. TDI has the option of penalizing each party up to three times the value of the rebate where that will be a more effective deterrent. Penalties apply to the giver and the recipient of the rebate and TDI intends to focus on both the supply and demand. A producer receiving a rebate has engaged in the authorized business of insurance and has committed a third degree felony. 🙄

Proposition 12 from page 2

It gets worse. Each of these lawsuits must now be defended by doctors, regardless if they are legitimate or frivolous. And consumers ultimately pay the price in the form of increased fees and less medical availability. In fact, history has shown us that 80 percent of medical malpractice lawsuits are either dropped, dismissed, or result in judgments for the physicians. These frivolous claims clog the already crowded legal dockets, causing justified claims to be delayed.

Ultimately, this means the complete picture of Prop 12's effectiveness will be delayed until the majority of these lawsuits have been resolved.

However, as I have noted, many positive results are already being seen. For many doctors, Prop 12 means rates will return to previous years' levels or lower. For others, rates will be less than what they would have paid without the reforms of Prop 12.

The Texas Department of Insurance is working to ensure that all Texans benefit from the effects of Proposition 12. In the coming months and throughout 2004, I fully expect to see even greater stability return to the Texas medical malpractice insurance market. Insurance companies are moving back to Texas offering competitive prices and expanded choices, doctors are beginning to see benefits and, as the lawsuits decrease, we will continue to see positive results. Proposition 12... it's working! 🙄

Data Shows Improvement in Homeowners Market

AFTER BACK-TO-BACK YEARS of massive instability, the Texas homeowners insurance market has turned the corner and is regaining momentum to be more competitive, according to year-end reports that carriers file with the Texas Department of Insurance.

The top homeowners insurance companies reported a loss ratio of 58 percent for the year 2003. Loss ratios reflect losses on claims as a percentage of total earned premium. The loss ratio does not reflect agent commissions, overhead, and other administrative costs, which could add 30 to 35 percentage points to this number. This compares with a loss ratio of 108.6 percent in 2002 and 118 percent in 2001.

Because the homeowners rate reductions, ordered in August 2003, occurred fairly late in the year, there was minimal impact on the 2003 loss ratios. If the full reductions were factored in, the loss ratios would have been slightly higher but would still show significant improvement over recent years.

While these loss ratios are not predictors of rates, they do demonstrate that the homeowners market has finally gotten past the upheavals of recent years. The 58 percent figure is within a percentage point of the figure that the Texas Department of Insurance has used in setting the benchmark rates in the past. ☺

FAIR Plan Update

IN JANUARY 2003, Texas Insurance Commissioner Jose Montemayor announced that the Texas FAIR (Fair Access to Insurance Requirements) Plan Association officially launched a homeowners insurance market-of-last-resort in Texas. The FAIR Plan provides those consumers who are having difficulty finding a licensed insurance company to insure their property with another opportunity to seek residential property insurance.

In thirteen months the FAIR Plan wrote approximately 89,000 homeowners policies. In addition, the FAIR Plan wrote approximately 12,000 dwelling policies, 2,000 condominium policies, and 5,000 renters policies. As of February 28, 2004, there were 113,109 policies in force.

In November 2003 the FAIR Plan requested a 12.5 percent statewide average rate increase after determining that rates were low compared to other insurers in the market. However, after discussions with TDI, the request was withdrawn. Texas law requires rate requests from the FAIR Plan to be based on an amount sufficient to carry all claims to maturity and meet the expenses incurred in the writing and servicing of the business, and not market comparisons.

To ensure that the FAIR Plan is operating efficiently and effectively as a residential property insurance market-of-last-resort in today's residential property insurance market, TDI is seek-

ing public input relating to issues involving operation of the FAIR Plan. The department is particularly interested in input regarding:

- **Underserved Designations by Region or Other Attribute:** Criteria for designating certain geographic regions or the entire state as underserved; criteria for designating markets that are common to multiple regions of the state and served by certain niche insurers.
- **Applicant Eligibility:** Number of required rejections for coverage by licensed insurers; definition of a rejection, including status of licensed insurers with regard to acceptance of new or accommodation business and cost of coverage through licensed insurers; underwriting, i.e., condition of property, value of property, claims history.
- **Coverage:** Amounts, types, and options.

Comments can be sent electronically via e-mail or fax, or by regular mail to:

Personal & Commercial Lines Division

Fax: (512) 490-1014

E-mail: CommercialPC@tdi.state.tx.us

Texas Department of Insurance

Personal & Commercial Lines

MC 104-PC

ATTN: FAIR Plan

P. O. Box 149104

Austin, TX 78714-9104 ☺

JANUARY

NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
Bentz, Alvin W.	Houston	General Life, Accident, Health and HMO License application denied	Misappropriated or converted money belonging to an insurer or insured; Engaged in fraudulent or dishonest acts	40012	1/6/04
Blue Cross and Blue Shield of Texas a Division of Health Care Service Corp.	Chicago IL	\$5,000 fine	Use of a previously disapproved enrollment application	40014	1/6/04
Davis, Shawn Dixon	Sweetwater	\$750 fine	Failed to timely file required annual report	40087	1/29/04
Dean, Kenneth	Richardson	\$375 fine	Failed to complete 15 classroom and two ethics continuing education hours	40069	1/23/04
Dwyer, Julian Michael	Dallas	\$2,500 fine subject to a dollar-for-dollar reduction by restitution	Acted as an agent for unauthorized entities	40071	1/23/04
Falgout, Charles, Jr.	Beaumont	Adjuster Property and Casualty License application denied	Felony conviction; Engaged in fraudulent or dishonest acts or practices	40010	1/6/04
Frazier, Kenneth L.	Richardson	General Property & Casualty License and the County Mutual License revoked	Engaged in fraudulent or dishonest acts; Misappropriated or converted money belonging to an insurer or insured	40088	1/29/04
Garcia, Jose A.	El Paso	County Mutual Agent License revoked	Engaged in fraudulent or dishonest acts; Misappropriated or converted money belonging to an insurer or insured	40046	1/15/04
Gill, Robert Michael	Bacliff	\$10,000 fine subject to a dollar-for-dollar reduction by restitution to \$5,000	Acted as an agent for unauthorized entities; Failed to register assumed name	40032	1/12/04
Haverda, Randy Kip	San Marcos	\$500 fine	Misappropriated or converted money belonging to an insurer or insured	40013	1/6/04
Higdon, Scott Wayne	Odessa	Restitution, \$10,000 fine, General Life, Accident, Health and HMO License revoked. Cease and desist order	Acted as an agent for unauthorized entities; Engaged in fraudulent or dishonest acts	40066	1/23/04
Holbert, Booker T.	Missouri City	General Life, Accident, Health and HMO License denied	Engaged in fraudulent or dishonest acts or practices	40050	1/15/04
Jenkins, Keon Greg	Killeen	General Life, Accident, Health and HMO License revoked	Misappropriated or converted money belonging to an insurer or insured; Engaged in fraudulent or dishonest acts	40045	1/15/04
Jones-Gloria, Cheryl Lynn	Abilene	Adjuster Property and Casualty License revoked	Failed to comply with continuing education requirements	40072	1/23/04
Langston, Herman Lynn	Granbury	\$1,400 fine	Acted as an agent for unauthorized entities	40033	1/12/04
Lewis, Vickie Lorene	Weatherford	General Life, Accident, Health and HMO License denied	Engaged in fraudulent or dishonest acts or practices; Felony conviction; Attempted to obtain a license by fraud or misrepresentation	40035	1/12/04
Lloyd, James Barker	Plano	\$2,500 fine	Acted as an agent for unauthorized entities	40070	1/23/04
McGehee, Christie Littlejohn	Burleson	General Life, Accident, Health, and HMO License revoked	Engaged in fraudulent or dishonest acts or practices; Felony conviction	40047	1/15/04
Mendoza, Juan Carlos	El Paso	License issued; Probated suspension of General Life, Accident, Health and HMO License	Felony offense for crime of moral turpitude	40051	1/15/04
Oliver, Gary Wayne	Red Oak	\$1,500 fine	Acted as an agent for unauthorized entities	40090	1/29/04

Continued on page 14

JANUARY

NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
Pacificare of Texas, Inc.	Dallas	\$5,000 fine	Made contract changes without required 60 day notice	40015	1/6/04
Saenz, Luis Eduardo	Brownsville	Probated suspension of Insurance Service Representative License	Made a material misrepresentation on a license application	40016	1/6/04
Smith, Tamu Ynia	Killeen	General Life, Accident, Health and HMO License application denied	Attempted to obtain a license by fraud or misrepresentation; Misdemeanor conviction	40064	1/23/04
Widick, Charles R.	Amarillo	General Life, Accident, Health and HMO License denied	Engaged in fraudulent or dishonest acts or practices; Attempted to obtain a license by fraud or misrepresentation	40034	1/12/04
Wise, William Wade	San Antonio	\$1,500 fine	Failed to comply with continuing education requirements	40031	1/12/04

FEBRUARY

Adair, Jarett Chance	Lubbock	General Life, Accident, Health and HMO License Application denied	Attempted to obtain a license by fraud or misrepresentation; Engaged in fraudulent or dishonest acts or practices	40135	2/6/04
Bell, Michael T.	Dallas	\$750 fine	Failed to comply with continuing education requirements	40149	2/12/04
Brown, James R.	Irving	Adjuster All Lines License revoked	Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured	40093	1/29/04
Carter, Justine Goodland	San Antonio	\$450 fine	Failed to comply with continuing education requirements	40173	2/20/04
Choate, Lindy	Rowlett	\$250 fine	Failed to comply with continuing education requirements	40162	2/19/04
Coats, Charles Casey	Houston	\$1,000 fine and restitution	Acted as an agent for unauthorized entities	40110	1/30/04
Coats, Russell T.	Houston	\$1,000 fine and restitution	Acted as an agent for unauthorized entities	40108	3/3/04
Coats, Russell T. Jr.	Houston	\$1,000 fine and restitution	Acted as an agent for unauthorized entities	40109	1/30/04
Commonwealth Mortgage Assurance Company of Texas	Dallas	\$10,000 fine	Failed to submit a request for approval of investments; overstated policyholder surplus	40148	2/12/04
Cook, Edward Lile	Abilene	General Life, Accident, Health and HMO License Application denied	Engaged in fraudulent or dishonest acts or practices	40111	1/30/04
Cortez, Benito Eduardo	San Benito	General Life, Accident, Health and HMO License denied	Felony conviction directly related to the business of insurance; Engaged in fraudulent or dishonest acts or practices	40092	1/29/04
Courtney, David Lee	Houston	General Life, Accident, Health and HMO License application denied	Felony conviction; Engaged in fraudulent or dishonest acts or practices	40058	1/20/04
Crawford, Eric	Bluffdale	\$375 fine	Failed to comply with continuing education requirements	40163	2/19/04
Gage, Robert Allen	Waxahachie	General Life, Accident, Health and HMO License Application denied	Engaged in fraudulent or dishonest acts or practices	40113	1/30/04
Gilmore, Michael Demetrious	Garland	Cease and Desist order	Unauthorized insurance; Engaged in unfair and deceptive acts or practices	40059	1/20/04

FEBRUARY

NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
Granado, Gilbert Faustino	Garland	\$300 fine	Failed to comply with continuing education requirements	40164	2/19/04
Hawkins, Charles D.	Rowlett	General lines and Limited Lines Agent License revoked	Felony conviction; Engaged in fraudulent or dishonest acts	40152	2/12/04
Hensley, Gary	Duncanville	\$350 fine	Failed to comply with continuing education requirements	40165	2/19/04
Hodson, Michael G.	Austin	\$10,000 fine; Cease and Desist order	Allegedly failed to register assumed name; alleged advertising violations	40166	2/19/04
Howard, Charles F.	Irving	Adjuster License—All Lines revoked	Attempted to obtain a license by fraud or misrepresentation; Misappropriated or converted money belonging to an insurer or insured; Felony conviction	40114	1/30/04
Johnson, Cheryl Renee	Missouri City	Insurance Service Representative License revoked and restitution	Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured	40153	2/12/04
Mackey, Morris Murry	Frisco	General Life, Accident, Health and HMO License and the General Property and Casualty License revoked	Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured; Felony conviction	40094	1/29/04
Nippon Life Insurance Company of America	New York NY	\$22,000 fine and restitution	Sold and issued unapproved group policies	40150	2/12/04
Oujesky, Rita W.	Hurst	\$500 fine	Failed to comply with continuing education requirements	40151	2/12/04
Realm National Insurance Company	New York NY	Ordered to cease writing new or renewal business in Texas	Alleged unauthorized insurance related to a failed change of control by an external entity; Hazardous financial condition	40189	2/26/04
Reynolds, Thomas Edward	Houston	Restitution, \$85,000 fine, Cease and Desist, and General Life, Accident, Health and HMO License revoked	Acted as agent for unauthorized entities; Engaged in fraudulent or dishonest acts; Failed to register assumed name	40089	1/29/04
White, Frances Lee	Houston	General Property & Casualty License revoked	Misappropriated or converted money belonging to an insurer or insured; engaged in fraudulent or dishonest acts or practices	40091	1/29/04
Winsett, Rodger	Lewisville	Limited Lines License Application denied	Attempted to obtain a license by fraud or misrepresentation; Felony conviction directly related to the business of insurance	40085	1/27/04

InLicensing

NEW COMPANIES

COMPANY NAME	LOCATION	DATE LICENSED
Peachtree Casualty Insurance Company	Longwood FL	1/15/04
Cigna Dental Health, Inc.-TPA	Plantation FL	1/16/04
Delta Dental Plan of Michigan, Inc., dba Renaissance Benefit Administrators-TPA	Okemos MI	1/16/04
Higginbotham Insurance Agency, Inc., dba Higginbotham & Associates-TPA	Fort Worth	1/16/04
Wasdom Benefits Group, Inc.-TPA	Wilmington DE	1/16/04

Continued on back page

InLicensing

NEW COMPANIES

COMPANY NAME	LOCATION	DATE LICENSED
Pacific Select Property Insurance Company	Fairfield CA	1/21/04
PacificCare Southwest Operations, Inc.-TPA	Wilmington DE	1/30/04
Professional Claim Services, Inc., dba WellPoint Pharmacy Management-TPA	Buffalo NY	1/30/04
XL Lloyds Insurance Company	Dallas	2/12/04
Mendakota Insurance Company	Mendota Heights MN	2/19/04
Novus Management Systems, Inc.-TPA	Houston	2/20/04
United Group Programs, Inc.-TPA	Boca Raton FL	2/20/04

NAME CHANGES

COMPANY NAME	LOCATION	CHANGED TO	DATE LICENSED
Golden American Life Insurance Company	Des Moines IA	ING USA Annuity and Life Insurance Company	1/2/04
Kemper Auto & Home Insurance Company	Chicago IL	Unitrin Direct Property & Casualty Company	1/8/04
American Guaranty Title Company	Oklahoma City OK	American Guaranty Title Insurance Company	2/6/04
Kemper Employers Insurance Company	Long Grove IL	Seabright Insurance Company, Chicago, Illinois	2/6/04
Clarica Life Reinsurance Company	Lansing MI	Generali USA Life Reassurance Company	2/12/04
HighMark Services Company-TPA	Pittsburgh PA	HM Benefits Administrators, Inc., Harrisburg, Pennsylvania	2/23/04
World Access Service Corp., dba Access America Service Corporation-TPA	Richmond VA	World Access Service Corp.- Removed dba Name	2/23/04
National Farmers Union Standard Insurance Company	Aurora CO	Quanta Indemnity Company, Denver, Colorado	2/24/04
Women's Life Insurance Company of America	San Antonio	Lone Star Life Insurance Company, Richardson, Texas	2/24/04
Gerling Global Life Reinsurance Company	Los Angeles CA	Revios Reinsurance U.S. Inc.	2/26/04



Texas Department of Insurance

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