SUBCHAPTER M. Mandatory Benefit Notice Requirements
28 TAC §§21.2101, 21.2102, 21.2103, 21.2105, and 21.2106

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to §§21.2101, 21.2102, 21.2103, 21.2105 and 21.2106 concerning mandatory notice of coverage of certain tests for the detection of human papillomavirus and cervical cancer. The 79th Texas Legislature enacted House Bill 1485 which added new Chapter 1370 to the Texas Insurance Code, mandating certain benefits related to the detection of human papillomavirus and cervical cancer. Chapter 1370 also contains mandatory notice requirements. The department proposes the amendments to the notice provisions in subchapter M to implement the statutory notice requirement in §1370.004. The proposal also updates Insurance Code references which were changed by the Texas Legislature's enactment of nonsubstantive code revision.

The proposed changes to §21.2101 expand the scope of the subchapter to include the notice requirements for coverage of benefits related to the detection of human papillomavirus and cervical cancer and set an effective date for the notice requirements. The proposed amendments to §21.2102 revise the definitions of "carrier" and "health benefit plan" to implement the provisions of HB 1485. The proposed amendments to §21.2103 require a carrier to issue the notice related to the detection of human papillomavirus and cervical cancer and revise subsection (d) to provide that if the mandated notice is issued prior to the effective date of these amendments, the notice is deemed compliant with the subchapter's notice requirements. The proposed

amendments to §21.2105 recognize statutory changes permitting electronic distribution of notices and address requirements relating to delivery of the notice. The amendment to §21.2106 proposes a new form, number LHL391, which carriers may use to satisfy the notice requirement. Proposed amendments to the subchapter also include editorial or grammatical changes for clarity as well as updates to statutory references.

2. FISCAL NOTE. Ana Smith-Daley, Acting Associate Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIC/COST NOTE. Ms. Smith-Daley has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be that affected enrollees are notified on a timely basis of available benefits related to tests for the detection of human papillomavirus and cervical cancer. The costs to comply with the proposed amendments are the result of the 79th Legislature's (Regular Session) enactment of HB 1485, which created Chapter 1370, and are not a result of the adoption, enforcement, or administration of the proposed amendments. As such, the amendments, if adopted, will not have an adverse economic effect on small and micro businesses. Additionally, Chapter 1370 specifies which plans are subject to

the chapter and which plans are not subject to the chapter. The required notice is subject to the same cost-saving provisions, regardless of the size of the business or the plan, as the other notices this subchapter requires; §21.2103(c) permits a carrier required under this subchapter to provide other notices to combine the language of the required notices into one notice; §21.2105(a)(3) authorizes a carrier to deliver the required notice along with other plan documents rather than in a separate mailing. Even if the proposed sections did result in economic cost, it would be neither legal nor feasible for the department to waive the provisions of the proposed subchapter for small or micro businesses, as the notice requirement is statutory.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 12, 2005, to Gene Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Bill Bingham, Deputy for Regulatory Matters, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The department will consider the adoption of the proposed amendments in a public hearing under Docket Number 2626, scheduled for 9:30 a.m., on December 1, 2005, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

5. STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§1370.004, 1251.201, 1251.008, 1271.002, 843.151, and 36.001. Section 1370.004 requires that the written notice of coverage be provided in accordance with rules adopted by the commissioner. Section 1251.201 authorizes an insurer, by agreement between the insurer and the policyholder, to deliver certificates of insurance electronically. Section 1251.008 authorizes the commissioner to adopt rules necessary to administer Chapter 1251. Section 1271.002 authorizes an insurer, group hospital service corporation, or health maintenance organization, by agreement between it and the subscriber or other person entitled to receive the policy, contract, or evidence of coverage, to deliver evidences of coverage electronically. Section 843.151 authorizes the commissioner to adopt reasonable rules as necessary and proper to implement Chapter 1271. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapters 1251, 1271, and 1370.

7. TEXT.

§21.2101. Scope. The purpose of this subchapter is:

(1) to require notice to enrollees in a health benefit plan of coverage and/or benefits for prostate cancer examinations; minimum inpatient stays for maternity

and childbirth; minimum inpatient stays for mastectomy or lymph node dissection; reconstructive surgery after mastectomy; certain diagnostic screening tests for early detection of human papillomavirus and cervical cancer, and certain tests for the detection of colorectal cancer. With the exception of notice for reconstructive surgery after mastectomy, notice for certain diagnostic screening tests for early detection of human papillomavirus and cervical cancer, and notice for colorectal cancer detection, §§21.2102 - [~~through~~] 21.2106 of this subchapter apply to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter as of January 1, 1998. For state notice requirements pertaining to reconstructive surgery after mastectomy, §§21.2102 - 21.2106 of this subchapter apply to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter as of June 18, 1999. For notice requirements pertaining to tests for colorectal cancer detection, §§21.2102 - 21.2106 of this subchapter apply to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter as of January 1, 2002. For notice requirements pertaining to diagnostic screening tests for early detection of human papillomavirus and cervical cancer, §§21.2102 - 21.2106 of this subchapter apply on or after January 1, 2006, to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter.

(2) (No change.)

§21.2102. Definitions. The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Carrier--An insurance company, a group hospital service corporation, a fraternal benefit society, a stipulated premium insurance company, a health maintenance organization, a multiple employer welfare arrangement that holds a certificate of authority under Insurance Code Chapter 846 [~~Article 3.95-2~~], or an approved nonprofit health corporation that holds a certificate of authority issued by the commissioner under Insurance Code Chapter 844 [~~Article 21.52F~~]. In addition, for the purposes of paragraph (3)(B) and (F) of this section, the term also includes a reciprocal exchange operating under Insurance Code Chapter 942; [~~19 and~~] for purposes of paragraph (3)(E) and (F) of this section, the term also includes a Lloyd´s plan operating under Insurance Code, Chapter 941; [~~18~~] and for purposes of paragraph (3)(E) of this section, the term also includes a risk pool created under Chapter 172, Local Government Code.

(2) Enrollee--A person enrolled in and entitled to coverage under a health benefit plan, including covered dependents.

(3) Health benefit plan--Subject to subparagraphs (A), (B), (C), (D), [~~and~~] (E), and (F) of this paragraph, a plan that is offered by a carrier and provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness including an individual, group, blanket or franchise insurance policy or insurance agreement, a group hospital service contract, an individual or group evidence of coverage, or any similar coverage document. The term does not include a plan that provides coverage only for accidental death or dismemberment, disability income, supplement to liability insurance, Medicare supplement, workers´ compensation,

medical payment insurance issued as a part of a motor vehicle insurance policy or a long-term care policy.

(A) For the inpatient mastectomy coverage notice required by subsection (a)(1) of §21.2103 of this title (relating to Mandatory Benefit Notices), the definition of health benefit plan includes a plan that provides coverage only for a specific disease or condition for the treatment of breast cancer or for hospitalization. The term does not include a small employer health benefit plan issued under the Insurance Code Chapter 1501 [~~26~~], Subchapters A - H [~~A-G~~].

(B) For the reconstructive surgery after mastectomy notices required by subsection (a)(2) of §21.2103 of this title, the definition of health benefit plan does not include a plan that provides coverage for a specified disease or other limited benefit except for cancer, a plan that provides only credit insurance, a plan that provides coverage only for dental or vision care, or only for indemnity for hospital confinement.

(C) For the prostate cancer examination notice required by subsection (a)(3) of §21.2103 of this title, the definition of health benefit plan does not include a small employer health benefit plan written under the Insurance Code Chapter 1501 [~~26~~], Subchapters A - H [~~A-G~~], a plan that provides coverage only for a specified disease or other limited benefit, or only for indemnity for hospital confinement.

(D) For the inpatient maternity and childbirth coverage notice required by subsection [~~subsections~~] (a)(4) and (5) of §21.2103 of this title, the definition of health benefit plan does not include a plan that provides only credit insurance, a plan

that provides coverage only for a specified disease or other limited benefit, only for dental or vision care, or only for indemnity for hospital confinement.

(E) For the detection of colorectal cancer screening coverage notice required by subsection (a)(6) of §21.2103 of this title, the definition of health benefit plan does not include a small employer health benefit plan written under the Insurance Code Chapter 1501 [~~26~~], Subchapters A - H [~~A-G~~], or a plan that provides coverage only for a specified disease or other limited benefit or only for indemnity for hospital confinement.

(F) For the detection of human papillomavirus and cervical cancer screening notice required by subsection (a)(7) of §21.2103 of this title, the definition of "health benefit plan" includes a small employer health benefit plan written under Insurance Code Chapter 1501, but does not include:

(i) a plan that provides coverage only for a specified disease or other limited benefit, other than a plan that provides benefits for cancer treatment or similar services;

(ii) a plan that provides coverage only for dental or vision care;

(iii) a plan that provides coverage only for indemnity or hospital confinement;

(iv) a credit insurance policy; or

(v) a limited benefit policy that does not provide coverage for physical examinations or wellness exams.

(4) – (5) (No change.)

§21.2103. Mandatory Benefit Notices.

(a) Prescribed mandatory benefit notices consist of the following:

(1) - (5) (No change.)

(6) For a health benefit plan that provides coverage and/or benefits for medical screening [~~medical~~] procedures, a carrier shall issue a notice which includes the language provided in Figure 6 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number 1467 Colorectal Cancer Screening).

(7) For a health benefit plan that provides coverage and/or benefits for medical screening procedures, a carrier shall issue a notice which includes the language provided in Figure 7 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number LHL391 Human Papillomavirus and Cervical Cancer Screening).

(b) - (c) (No change.)

(d) If, before the effective date of the amendments to this subchapter relating to a notice listed in paragraphs (1) – (3) of this subsection, [~~reconstructive surgery after mastectomy,~~] a carrier has provided to its enrollees notice(s) that contains the information concerning the required coverage or benefit [~~reconstructive surgery after mastectomy as required by §21.2103(a)(2) or (b) of this subchapter~~], such notice(s) shall be deemed to comply with the requirements of this subchapter as to those enrollees;

(1) reconstructive surgery after mastectomy as required by subsection (a)(2) or (b) of this section;

(2) tests for detection of colorectal cancer as required by subsection (a)(6) or (b) of this section; and

(3) tests for detection of human papillomavirus and cervical cancer as required by subsection (a)(7) or (b) of this section.

[~~(e) If, before the effective date of the amendments to this subchapter relating to tests for the detection of colorectal cancer, a carrier has provided to its enrollees a notice that contains the information concerning colorectal cancer screening tests as required by §21.2103(a)(6) or (b) of this subchapter, such notice shall be deemed to comply with the requirements of this subchapter as to those enrollees.~~]

§21.2105. Delivery of Mandatory Benefit Notices.

(a) The notices required by §21.2103(a)(1), (3) and (4) of this title (relating to Mandatory Benefit Notices) shall be issued to enrollees of a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 1998, and shall be provided according to the following paragraphs:

(1) The notice shall be provided:

(A) within 60 days of March 29, 1998 to enrollees whose plans were renewed or issued between January 1, 1998 and March 29, 1998;

(B) within 60 days of enrollment to new enrollees, whether in a newly issued or newly delivered health benefit plan, or an existing plan which is renewed after March 29, 1998; or

(C) within 60 days of renewal date to existing enrollees of an existing plan which is renewed after March 29, 1998.

(2) Except as specified in paragraph (6) of this subsection, a carrier shall deliver the notices [~~shall be delivered~~] to enrollees through the U.S. Postal Service or, as permitted by state law, electronically.

(3) The notice may be delivered with other health benefit plan documents as long as the time frames set forth in paragraph (1) of this subsection are met. For example, the notice may be delivered with the policy, certificate, evidence of coverage, or enrollment/insurance card.

(4) If the notices are provided to the primary enrollee's last known address, the requirements of this section are satisfied with respect to all enrollees residing at that address.

(5) If a covered spouse or dependent's last known address is different than the primary enrollee, separate notices are required to be provided to the spouse or the dependent at the spouse's or dependent's last known address.

(6) For group health benefit plans, the notice may be provided to the group master contract holder for distribution to enrollees if the carrier has an agreement with the group master contract holder that the notice will be delivered in accordance

with the timelines specified in paragraph (1) of this subsection; however, the carrier will be held responsible for ensuring that notice is provided to the enrollees.

(b) (No change.)

(c) A carrier shall issue the notices [~~The notice~~] required by §21.2103(a)(6) and (7) of this title [~~shall be issued~~] to enrollees of a health benefit plan, and subsections (a)(2) - (6) of this section shall also apply to the notices [~~notice~~], except for the timeline requirements of subsection (a)(1) of this section.

§21.2106. Forms.

(a) The forms identified in §21.2103 of this title (relating to Mandatory Benefit Notices) for notices of mandatory benefits are included in subsection (b) of this section in their entirety and have been filed with the Office of the Secretary of State. The forms can be obtained from the Texas Department of Insurance, Life/Health Division, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104, or from the department's Web site, www.tdi.state.tx.us.

(b) The forms referenced in this chapter are as follow:

(1) - (6) (No change.)

(7) Figure Number 7: Form Number LHL391 Human Papillomavirus and Cervical Cancer Screening:

FIGURE: 28 TAC §21.2106(b)(7):

NOTICE OF CERTAIN MANDATORY BENEFITS

This notice is to advise you of certain coverage and/or benefits provided by your contract with [name of carrier].

Coverage of Tests for Detection of Human Papillomavirus and Cervical Cancer

Coverage is provided, for each woman enrolled in the plan who is 18 years of age or older, for expenses incurred for an annual medically recognized diagnostic examination for the early detection of cervical cancer. Coverage required under this section includes at a minimum a conventional Pap smear screening or a screening using liquid-based cytology methods, as approved by the United States Food and Drug Administration, alone or in combination with a test approved by the United States Food and Drug Administration for the detection of the human papillomavirus.

If any person covered by this plan has questions concerning the above, please call [name of carrier] at [customer service or related department phone number], or write us at [carrier's customer service or related department address]. Form Number LHL391 Human Papillomavirus and Cervical Cancer Screening

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk