SUBCHAPTER B. INSURANCE ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION
28 TAC §§21.102 - 21.104, 21.106 - 21.109, 21.113 - 21.116, and 21.119 - 21.122

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to §§21.102 - 21.104, 21.106 - 21.109, 21.113 - 21.116, 21.119, 21.120, and 21.122, and new §21.121 concerning insurance advertising, certain trade practices, and solicitation. The proposed amendments are necessary to implement HB 2251 and HB 2252, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007, and May 17, 2007, respectively. HB 2251 defines *institutional advertisements* on Internet websites. HB 2251 also provides that an insurer must include all appropriate disclosures and information on an Internet web page when the page describes specific policies or coverage or includes an opportunity to apply for coverage or obtain a quote. HB 2251 also provides that advertisements may be permitted by Commissioner's rule to comply with the applicable rules relating to advertising by including a link to a web page that provides the necessary information to comply with the advertising rules. Additionally, HB 2251 allows insurers to advertise to the general public policies or coverages available only to members of an association; prohibits the use of an advertisement for an insurance product relating to Medicare coverage unless the advertisement includes the prominently displayed language "Not connected with or endorsed by the United States government or the federal Medicare program;" allows the term "PPO plan" to be used in advertisements when referring to a preferred provider benefit plan; requires that an advertisement for a guaranteed renewable accident and

health insurance policy must include in a prominent place a statement indicating that the rates may change if the advertisement implies that the rates will not change and that the statement must generally identify the manner in which the rates may change; and provides that an advertisement subject to the Department's filing requirements that is the "same as substantially similar" to an advertisement previously reviewed and accepted by the Department is not required to be filed for review. HB 2252 concerns certain advertising practices that may be used in the marketing of accident and health insurance that are not considered discrimination or inducement.

The proposed amendments and new §21.121 are also necessary to revise existing rules to promote efficient and effective regulation of current advertising practices in the insurance market. The amendments also update statutory references resulting from the nonsubstantive revision of the Insurance Code and internal references.

§21.102 Definitions. The proposed amendments to §21.102(1)(F) change the defined term *lead card solicitation* to *lead solicitation* to better reflect the fact that some lead-generating strategies do not rely on reply cards to assemble prospective leads and deletes the word *hereby* which is superfluous. The proposed amendments also revise the definition of *policy* in §21.102(3) to include viatical or life settlement contracts, premium finance agreements, and any other product offered by an insurer and regulated by the Department. The proposal also amends the definitions of *insurer* and *agent* in §21.102(4) and (5), respectively, to reference viatical and life settlement providers and viatical and life settlement brokers and provider representatives,

respectively. Section 3.1710 of this title (relating to Prohibited Practices Relating to Advertising and Solicitation; Applications and Contracts) subject viatical and life settlement contract advertising to the requirements in Chapter 21 Subchapter B of this title (relating to Insurance Advertising, Certain Trade Practices, and Solicitation). Viatical and life settlement providers, brokers and provider representatives are not licensed or registered as insurers or agents, nor is a viatical or a life settlement contract an insurance policy. However, the proposed amendment to the term *agent* clarifies how the requirements of Subchapter B are to be applied to parties advertising such contracts.

The proposed amendment to §21.102(6) changes the definition of *institutional advertisement* to reflect the changes mandated by HB 2251, codified as Insurance Code §541.082(b), (d) and (e). HB 2251, codified as Insurance Code §541.082 (e), mandates that a web page or navigational aid within an insurer's website that provides a link to another webpage that includes content which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote is classified as an *institution*al *advertisement*, provided that the webpage or navigational aid containing the link does not itself include such content. The proposed amendments incorporate HB 2251's Internet advertising provision into the definition of *institutional advertisement*, and with the purpose of promoting uniformity in classifying advertisements, apply the standard relating to the absence of the specified content to advertisements appearing in any media. However, advertisements in media other than the Internet that do not refer to a

specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be *institutional advertisements*. The proposed amendments also correct the reference to the Texas Department of Insurance to reflect its current name and delete a reference to the Insurance Code Chapter 5, which is no longer accurate as a result of the non-substantive Insurance Code revisions. The deletion of the reference to Chapter 5 clarifies that communications regarding any line of insurance that insurers use only to explain legislatively mandated or Department-mandated changes, amendments, additions or innovations relative to forms, rules or rates subject to the Insurance Code, are *institutional advertisements*.

The proposed amendments add new paragraph (7) to §21.102 which establishes *invitation to inquire* as a defined term that would be generally applicable to all advertising. This definition will replace the existing definition of *invitation to inquire* in §21.113(a) and (b) (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising) which specifically concerns accident and health insurance advertising. The proposed amendments further add new paragraph (8) to §21.102 which establish *invitation to contract* as a defined term that would be generally applicable to all advertising. This definition will replace the existing definition of *invitation to contract* in §21.114(1) and (2) (relating to Rules Pertaining Specifically to Life Insurance Advertising) which specifically concerns life insurance advertising. The proposed definitions of *invitation to inquire* and *invitation to contract* establish a single new definition for each term and harmonize

these new definitions with the definition of *institutional* advertising derived from HB 2251, and make the definitions applicable to the advertising of all products subject to the Department's regulation.

§21.103. Required Form and Content of Advertisements. The proposed amendment to §21.103(b) corrects the reference to the Texas Department of Insurance to reflect its current name. The proposed amendment to §21.103(c) is necessary to implement the provision of HB 2251, codified as Insurance Code §541.082(c), which allows the Commissioner of Insurance to permit specified disclosures required in Internet advertising to be made through links to web pages containing the required disclosures. The proposed amendment is also necessary to require that such a link be clearly labeled, and conspicuously placed near the relevant information to which it relates. The proposed amendment also identifies the specific disclosures in new §21.103 (c)(1) - (5) which may be satisfied through such links.

§21.104. Requirement of Identification of Policy or Insurer. The proposed amendments to §21.104(a) provide that an advertisement must reflect the identity of the person or entity responsible for it. The amendments also redefine the current requirement to display an insurer's full name to apply only to invitation to inquire and invitation to contract advertisements, and to apply the requirement uniformly to all lines of insurance. The amendments further require that, in institutional advertisements, the requirement may be satisfied by stating an agent's licensed name, registered assumed name, or Texas license number.

The proposed amendments to §21.104(d) are necessary to clarify that the requirements for identification of the products advertised must include viatical and life settlement contracts. The amendments also permit the requirement to identify the product advertised to be satisfied if the advertised product is identified in the manner in which it is classified or addressed by rule or as filed with the Department. The amendments are also necessary to conform the existing §21.104(d) to provisions of HB 2251, codified as Insurance Code §541.085, by specifically permitting preferred provider benefit plans to be identified in advertisements as *PPO plans*.

The proposed addition of new §21.104(i) is necessary to regulate advertisements that promote multiple insurers' products, a practice sometimes referenced as *co-branding*. The proposed subsection requires that such advertising clearly identify which insurer issues each product advertised, and that each insurer has sole financial responsibility for the products it issues.

§21.106. Premiums. The proposed amendment to §21.106(c) is necessary to clarify that advertisements referencing optional endorsements, riders, or other benefits that are available at an additional cost, must disclose that such additional cost is required. The proposed amendment to §21.106(c) also deletes the existing rule pertaining to invitation to contract advertisements of endorsements or riders because proposed new §21.106(d) addresses such advertisements. Proposed new §21.106(d) requires that, with respect to an invitation to contract, advertisements that provide premiums and advertise an endorsement, rider or other optional benefit must separately disclose the additional premium required for any optional benefit advertised. Existing §21.106(d),

requiring that advertisements dealing with the availability of credit card billing of premiums must disclose that such billing is clearly optional, is proposed to be redesignated as §21.106(e).

The proposed addition of new subsection (f) to §21.106 is necessary to add the requirement that, if an invitation to contract advertisement provides a premium or range of premiums that are subject to change during the term of the coverage offered, the advertisement must disclose the possibility of such rate change. This is necessary because consumers may be harmed by advertising that may state or imply that the premiums provided in the advertising would be in effect through the offered policy's term.

§21.107. Testimonials, Appraisals or Analyses. The proposed amendments to §21.107(a), which add new paragraphs (1) – (4), provide that a person or entity making a testimonial, recommendation, or endorsement is deemed to be a *spokesperson* for an insurer or agent if the person or entity has certain proprietary or other financial relationships with the insurer or agent, or is compensated for making the testimonial, recommendation or endorsement. This is necessary for the purposes of defining possible conflicts of interest among persons making testimonials, recommendations, or endorsements. The proposed amendments also delete existing subsection (a) relating to testimonials, appraisals, and analyses used in advertisements by persons who are not spokespersons because it is addressed in the proposed amendments to §21.107(e). The proposed amendment to §21.107(b) corrects the reference to the Texas Department of Insurance to reflect its current name.

The proposed amendments to §21.107(d) are necessary to conform the advertising rules to HB 2251, codified as Insurance Code §541.083, to permit an insurer or agent to advertise to the general public policies available only to members of associations described by Insurance Code §1251.052. The amendments also require that, if such associations' boards of directors are not elected by the association's members, the advertisement, unless it relates only to long-term care insurance, must disclose this fact, and the fact that the directors may agree to rate increases for those policies. The reason for this proposed amendment is to provide consumers with notice of the degree of control they have over rate changes. This subsection is also proposed to be amended to reference the relationships described in the proposed amendments to subsection (a) defining a *spokesperson*, and to require prominent disclosure in an advertisement when the fact of such a relationship exists. The reason for this proposed amendment is to identify potential conflicts of interest involving spokespersons. The part of subsection (d) relating to the relationships that require disclosure of a person making a testimonial, an endorsement, or an appraisal is proposed to be deleted because the provision is addressed in the proposed amendments to subsection (a).

The proposed amendments to §21.107(e) require that a person making a testimonial or recommendation who is not a spokesperson must represent the current opinion of the author and must reflect the author's opinions or experiences with the insurer or its products. This requirement is necessary to assure truthful representation by such persons. The part of subsection (e) regulating certain advertisements containing testimonials, endorsements, recommendations, or similar announcements is

proposed to be deleted because the prohibition is unnecessary for effective regulation of such advertisements by the Department. The language is unnecessary because other provisions in §21.107 will adequately protect consumers regarding testimonials, endorsements, and recommendations.

The proposed amendments to §21.107(f) require that a testimonial, endorsement or recommendation be applicable to the policy advertised or, if no specific policy is advertised, to the insurer. The amendments further require that any such testimonial, endorsement or recommendation be accurately reproduced. The part of existing subsection (f) relating to limitations on certain testimonials, recommendations, or endorsements is proposed to be deleted because the regulation is not necessary for effective regulation of such testimonials, endorsements, or recommendations. The language is unnecessary because other provisions in §21.107 will adequately protect consumers regarding testimonials, endorsements, and recommendations.

Proposed new §21.107(h) prohibits a testimonial, recommendation or endorsement by a party other than the insurer issuing the policy or the insurer's agent from making representations or promises of future policy outcomes. This is necessary to assure truthful representations by such parties.

§21.108. Use of Statistics and Citations. The proposed amendment that adds "Citations" to the title of §21.108 is necessary to more accurately reflect the range of advertising content addressed within that section. The proposed amendments to §21.108(a) clarify that statistics may not imply that they are derived from the type of product advertised, rather than "from the policy advertised" as provided in the existing

rule, unless such is the fact, and that if statistics apply to other types of products, the advertisement must specifically so state. These amendments are necessary because the existing rule can be read as unnecessarily restricting such statistics to a specific policy form.

The proposed amendments to §21.108(b) clarify that sources must be given for citations used in advertisements, in addition to sources for statistics. The amendments also require that the advertisement include the source's publication name and date, and that, absent the advertiser's certification that the source is the most recent available, a source may not be more than five years old. These proposed amendments are necessary because consumers should be able to readily identify and access the original source of statistics and citations. Proposed new §21.108(c) requires that, where an advertisement contains a reference to *average* costs or savings, the advertisement must indicate whether such costs or savings reflect a national or regional *average*; if a regional *average*, the advertisement must identify the region. This new requirement is necessary because the absence of such clarification can produce mistaken understandings among consumers regarding savings or costs prevailing in their region.

§21.109. Unlawful Inducement. The proposed amendments to §21.109 (a) implement the requirements of HB 2252, codified as Insurance Code §541.058, relating to certain advertising practices that may be used in the marketing of accident and health insurance that are not considered prohibited discrimination or inducement. The amendments permit advertising for health and accident coverages to include the availability of health-related services or health-related information. Such advertising

must disclose any separate charge required to access such services or information. The proposed amendments define *health-related services* and *health-related information* in accordance with Insurance Code §541.058. That statute defines *health-related services* as services directed to an individual's health improvement or maintenance. The statute also defines *health-related information* as information directed to an individual's health improvement or maintenance, or to costs associated with options available to a covered person under the accident and health coverage. The proposed amendments also require that an advertisement referencing noncontractual health-related services or information to disclose that the services or information are not a part of the policy, may be discontinued at any time and, if applicable, may be subject to geographic availability. This new requirement is necessary to prevent consumers from obtaining a false expectation of contractual rights to or the cost or availability of such services or information.

Proposed new §21.109(c) requires that an advertisement may offer an incentive to inquire about a policy if the advertisement clearly and conspicuously discloses that purchase of the policy is not required in order to receive the incentive. This will permit, for example, the offer in an advertisement of an incentive for requesting a quote, so long as the advertisement contains a clear and conspicuous statement such as "no purchase required." This new requirement is necessary to help prevent consumers from feeling obligated to purchase a policy to obtain the advertised incentives.

§21.113. Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising. The proposed

amendments to subsection (a) of §21.113 move the current provision in subsection (a)(2), relating to required notice for certain invitation to inquire advertisements, to subsection (a). The amendments also propose to delete the definition of *invitation to inquire* in existing §21.113(a) because of the proposed new definition added in §21.102(7).

The proposed amendments to §21.113(b), relating to illustration of rates, essentially restate and renumber the requirements in existing §21.113(a)(3) and (4), and update a statutory reference based on the nonsubstantive revision of Article 21.21 of the Insurance Code. The proposed amendments also delete the definition of *invitation to contract* in existing §21.113(b) because of the proposed new definition in §21.102(8).

The proposed amendments to §21.113(c)(3) clarify that the prohibition that an advertisement may not use the word *plan* without identifying the subject as an insurance plan also applies to an HMO plan, as appropriate. The proposed amendments also clarify that the identification of the type of plan is required to be done only once, at or before the first appearance of the word “plan.”

The amendment to §21.113(d)(4)(B) proposes to delete the current prohibition on certain advertisements relating to pre-existing conditions because it is not necessary for effective regulation of such advertisements by the Department. Other proposed advertising rule requirements, such as the proposed amendments to §21.113(f), also protect consumers with regard to the potential effects of pre-existing conditions upon coverage under a policy, and, therefore the retention of this prohibition is redundant.

The proposed amendment to §21.113(d)(6) restates in clearer and more grammatically correct language the existing requirement that an invitation to contract must clearly and conspicuously disclose the fact that any covered benefits are, by the terms of the policy, limited to a certain age group or are reduced at a certain age.

The proposed deletion of §21.113(d)(9) is necessary to remove a provision relating to certain disclosure requirements intended to disclose the potential effects upon premium costs when the consumer selects different coverage options because this regulation is addressed in proposed §21.106(c) and is therefore, no longer necessary for effective regulation by the Department. Existing §21.113(d)(10) - (20) are renumbered as paragraphs (9) - (19) respectively due to the proposed deletion of paragraph (9) of this subsection.

Additionally, the proposed amendments to existing §21.113(d)(12), renumbered as new paragraph (11), require in Medicare-related advertisements the prominent disclosure of a notice that is the same as or substantially similar to “Not connected with or endorsed by the United States government or the federal Medicare program.” The proposed amendments to existing §21.113(d)(12), renumbered as new paragraph (11), also eliminate the requirement that the name of the insurer appear in the disclosure statement in Medicare-related advertisements. The proposed amendments and deletion are necessary to implement the requirements of HB 2251, codified as Insurance Code §541.084.

The proposed amendments to existing §21.113(d)(14), renumbered as paragraph (13), extend the regulation that requires the presumption that advertisements

referenced as being “Important Notices” and directed primarily at Medicare recipients or senior citizens are misleading to include these same type of advertisements that use “similar language” to the language “Important Notices.”

The proposed amendments to existing §21.113(d)(17), renumbered as paragraph (16), propose to delete the interpretative language pertaining to certain U.S. Internal Revenue Service rules. This deletion is necessary because the Department is not the most appropriate authority to render such interpretations.

The proposed amendments to existing §21.113(d)(18), renumbered as paragraph (17), are necessary to recognize the exception to the prohibition against advertising noncontractual goods and services added in proposed §21.109(a)(1) for consistency with the provisions of HB 2252, codified as Insurance Code §541.058.

The proposed amendments to §21.113(e) delete paragraph (2) because it is no longer necessary for effective regulation by the Department as a result of the new requirements, such as §21.113(f), that are proposed to regulate advertisements of health and accident coverage that contain pre-existing condition exclusions. Existing §21.113(e)(3) is renumbered as paragraph (2) due to the proposed deletion of paragraph (2) of this subsection.

The proposed amendments to §21.113(f) are necessary to delete existing subsection (f) and add new paragraphs (1) and (2) to reorganize the existing requirements and more clearly state that any advertisement indicating or implying that pre-existing conditions may apply must define the applicable pre-existing conditions. The amendments also require invitation to contract advertisements to accurately

disclose the extent to which losses may not be covered due to conditions existing prior to the effective date of the advertised policy. This amendment is necessary because the current rule text creates ambiguity as to the proper scope of application.

The proposed amendments to §21.113(g) are necessary to revise the requirements in that subsection to conform to the provisions of HB 2251, codified as Insurance Code §541.086. The new requirements mandate that an accident or health advertisement stating or implying that the advertised policy is “guaranteed renewable” clearly and conspicuously disclose that coverage may terminate at certain ages, if such is a fact. However, under the proposal, the requirement that such an advertisement indicate that rates may change is only imposed if the advertisement suggests or implies that rates will actually not change. In such a case, the advertisement must indicate the manner in which the rates may change, such as by age, health status, or class.

The proposed amendment to §21.113(h)(2) restricts the disclosure requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges, to apply only to invitation to contract advertisements. The amendments propose to delete §21.113(h)(7) because it is not necessary for effective regulation by the Department due to the fact that an endowment or coupon benefit in an accident or health policy has not been a feature of policies in the insurance market for many years. Existing §21.113(h)(8) and (9) are renumbered as paragraphs (7) and (8) respectively due to the proposed deletion of paragraph (7) of this subsection.

The proposed amendments to §21.113(k)(3)(A) delete the reference to "on an individual basis" in order to apply the requirements of the subsections to association group members. The amendments apply the current restriction on the enrollment period during which a particular insurance product may be purchased and the requirement that advertisements must indicate the date by which the applicant must mail the application to include advertising soliciting members of association groups that otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise accident or health coverages. This is necessary to reduce the potential for consumers to obtain a false sense of limited opportunity to enroll in association-based group coverages that actually have rolling "back-to-back" enrollment periods. Proposed new §21.113(k)(3)(C) requires that an invitation to contract Medicare supplement advertising must either describe complete information regarding all “open enrollment” opportunities or prominently disclose a means of obtaining complete information regarding such opportunities. This requirement is necessary because the failure to provide access to complete information regarding required open enrollment opportunities could deprive affected consumers of knowledge of their rights to obtain coverage.

The proposed amendments to §21.113(l)(2) are necessary to correct the reference to the Texas Department of Insurance to reflect its current name and update the mailing address for the Department’s Market Conduct Division. The proposed amendments are also necessary to correct the references to the Texas Department of

Insurance in Figures §21.113(l)(6) and (7) to reflect its current name. The amendments also correct spelling and punctuation errors.

§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising.

The proposed amendment adding "and Annuity" to the section's caption is necessary to better reflect the scope of application of the section's requirements. The proposed amendment in the opening paragraph of §21.114 corrects an internal reference for consistency with the proposed changes in the paragraphs following that introduction. The proposed amendments delete existing §21.114(1), which defines the term *invitation to inquire,* because the definition is proposed to be included in §21.102(7). The proposed amendments also delete existing §21.114(2), which defines the term *invitation to contract*, because the definition is proposed to be included in §21.102(7). Therefore, it is necessary to renumber existing §21.114(3) – (9) as §21.114(1) – (7).

Additionally, the proposed amendments to existing §21.114(4), renumbered as §21.114(2), are also necessary to add a requirement in §21.114(2)(C)(ii) that an advertisement that uses “non-medical,” “no medical examination required,” or similar language where the advertised policy’s issuance is not guaranteed must provide an equally prominent disclosure, in close conjunction to such language, that issuance of the policy may depend upon the answers to questions set forth in the application. The amendments also propose to delete the existing language in §21.114(2)(C)(ii), requiring disclosures relating to the impact of pre-existing conditions on an applicant's eligibility and statements to the effect that "no medical examination" is necessary to qualify for coverage because the provision is no longer necessary for effective regulation by the

Department. The text to be deleted is no longer necessary because the proposed new text serves a similar effect, but better addresses exceptions to prevailing underwriting practices.

The proposed amendment to §21.114(3)(B) restricts the requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges paid by the group members be disclosed only in invitation to contract advertisements rather than imposing the requirement in all advertisements as provided in the existing rule. The required disclosure is not needed in institutional or invitation to inquire advertisements to adequately protect consumers.

§21.115. Rules Pertaining Specifically to Property and Casualty Insurance Advertising. The proposed amendment to §21.115(b) corrects the reference to the Texas Department of Insurance to reflect its current name.

§21.116. Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance. The proposed amendments to §21.116(a) and (b) correct references to the Texas Department of Insurance to reflect its current name

§21.119. Savings Clause. The proposed amendments to §21.119 correct the reference to the Texas Department of Insurance to reflect its current name and delete references to outdated citations to Department rules that existed before the creation of the Texas Administrative Code and that are no longer relevant.

§21.120. Filing for Review. The proposed amendments to §21.120(a) correct the reference to the Texas Department of Insurance to reflect its current name and update

the mailing address for the Department's Advertising Unit. The amendments also propose more detailed requirements for information that must be contained in transmittal letters that are required to accompany advertising material submitted to the Department for review. The proposed requirements in §21.120(a)(1) clarify that separate identifying form numbers must be provided for each distinct Internet web page and "pop-up," and in §21.120(a)(3) clarify that the transmittal letter identify the form number or numbers of the approved policy and/or rider forms advertised. The amendments also propose a new requirement in §21.120(a)(5) to require that the transmittal letter identify the form numbers of all other advertising material to be used with the advertisements being submitted. This requirement is necessary to facilitate Department staff's ability to confirm that all required disclosures are delivered to recipients of the submitted advertisements. A new requirement is proposed in §21.120(a)(6) to require that any variable content in the advertisement be bracketed, and that an explanation of how this material may vary be explained in an attachment to the transmittal letter. This requirement is necessary to facilitate Department staff's ability to discern how content may vary and to minimize the need for insurers and agents to separately submit substantially similar forms.

The proposed amendments to §21.120(d) delete as unnecessary the requirement that advertisements be filed in final printed form following the Department's acceptance. The Department has the statutory authority under Insurance Code §38.001 to require insurers to provide a copy of any insurance-related advertising material upon request. The amendments also replace the deleted text in subsection (d)

with provisions necessary to implement HB 2251, codified as Insurance Code §541.087, which specifies advertisements that are exempt from filing requirements. The proposed amendments specify a procedure under which advertisements that are the same or substantially similar to advertisements previously reviewed and accepted by the Department may be introduced without the necessity of filing the revised advertisements. The proposed amendments define *substantially similar* to mean that the revised advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content that satisfies required disclosures or that render the advertisement noncompliant with §21.112 (relating to General Prohibition). Under the proposal, to introduce a "substantially similar" advertisement without being required to file it with the Department, the advertiser must file a signed written statement with the Department's Advertising Unit identifying or illustrating the changes to be introduced. Such written statement must list the previously reviewed forms in which the changes appear, including the form numbers and the Department's filing number under which the forms were previously reviewed and accepted. Proposed new §21.120(e) lists the Department's rules that require that advertisements be filed with the Department for review at or prior to use. This new section is needed to assist regulated entities to comply with advertisement filing requirements by providing a single comprehensive listing of all rules pertaining to such filing requirements.

§21.121. Lead Solicitations. Proposed new §21.121 imposes requirements on the use of lead solicitations, as defined in §21.102(1)(F). It is the Department's position that lead solicitations that have the ultimate objective of resulting in the eventual sale or

solicitation of a policy are *advertisements* as defined in §21.102(1), and are therefore subject to applicable advertising rules. However, some individuals and entities that perform lead solicitations are unlicensed, primarily because of the exemption from agent licensing requirements under Insurance Code §4001.051(d) for parties engaging in a "referral" business. Further, it is the Department's experience that many lead-generating strategies fail to disclose to consumers that a purpose of the advertisement is to develop leads for the potential solicitation and sale of insurance. The Department believes that licensees that receive the benefit of leads generated by such unlicensed parties have a responsibility to exercise due diligence to confirm that lead-generating advertisements are compliant with applicable requirements, as stated in proposed §21.121(a). In addition, proposed §21.121(b) requires that lead solicitations prominently disclose that the recipient of the solicitation may be contacted by an insurer or agent, if such is the case. Further, that subsection requires that any insurer or agent contacting a person after acquiring the person's name through a lead solicitation must disclose that fact upon initially contacting such person. Proposed §21.121(c) addresses advertisements for group meetings where information regarding insurance products are disseminated, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products. This subsection prohibits such advertisements from characterizing the meetings with terms such as *seminar*, *class*, *informational meeting*, *retirement*, *estate planning*, *financial planning* or *living trust* without including the words *insurance sales presentation* with equal prominence.

§21.122. System of Control and Home Office Approval of Advertising Material Naming an Insurer. The proposed amendment to §21.122(a)(1) revises the definition of *advertisement* for the purposes of the section to exclude institutional advertisements. This is necessary because the Department does not believe insurers should be required to issue written home-office approval for institutional advertisements developed by its agents. However, insurers would not be prohibited from requiring agents to file institutional advertisements for such approval.

Section 21.122(b) currently provides that the section applies only to accident and/or health coverages, life insurance and annuities. However, the increase in the number of differing property and casualty forms has resulted in an insurance market where inaccurate descriptions or unfair comparisons of such products in agent-produced advertisements are more likely to occur. The Department believes that both the insurance industry and consumers benefit by insurers exercising oversight of all advertisements promoting their specific products by assuring that accurate descriptions of products appear in advertisements. Therefore, the proposed amendment to §21.122(b) requires all insurers, regardless of the products they offer, to maintain home office oversight of their advertising intended for presentation, distribution, or dissemination in Texas.

2. FISCAL NOTE. Audrey Selden, Senior Associate Commissioner for the Consumer Protection Division, has determined that for each year of the first five years the proposed amendments and new section 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 proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Selden has further determined that for each year of the first five years the proposed amendments and new section are in effect, there are several public benefits anticipated as a result of the proposal. The proposed amendment to §21.102(1)(F) changes the defined term *lead card solicitation* to *lead solicitation*. There are no costs required for insurers as a result of this amendment because it does not impose any new requirements or duties on insurers or agents. The anticipated public benefit is to clarify that some lead-generating strategies do not rely on reply cards to assemble prospective leads so that the Department is able to conduct a more efficient and thorough review of these trade practices. The proposed amendments to §21.102(4) and (5) add viatical and life settlement providers to the definitions of *insurer* and *agent*. There are no costs required for insurers as a result of this amendment because it does not impose any new requirements or duties on viatical or life settlement providers. The anticipated public benefit is to clarify that the requirements of Subchapter B are to be applied to the advertising of such contracts so that the Department is able to conduct a more efficient and thorough review of these trade practices. The proposed amendment to §21.102(6) changes the definition of *institutional advertisement* to reflect the changes mandated by HB 2251, codified as Insurance Code §541.082(b), (d) and (e). Those changes mandated by HB 2251 and

implemented through the proposed amendments to §21.102(6) impose new requirements on insurers when advertising on the Internet. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251 and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit resulting from the proposed amendment is that it will standardize the requirements insurers must comply with when advertising on the Internet enabling the Department to conduct a more efficient and thorough review of these advertising practices. The proposed amendments to §21.102 add new paragraph (7) which would establish *invitation to inquire* as a defined term and add new paragraph (8) which would establish *invitation to contract* as a defined term, both of which would be generally applicable to all advertising. Additionally, the proposed amendments harmonize these proposed definitions with the new definition of *institutional advertisement* derived from HB 2251. There is no additional cost to insurers required to comply with these amendments because the amendments are consistent with statutory provisions with which insurers must already comply. The anticipated public benefit resulting from the proposed amendments would be to clarify the general application of *invitation to inquire* and *invitation to contract* advertisements which would allow the Department to conduct a more efficient and thorough review of such advertisements. The proposed amendment to §21.103(c) implements the provision of HB 2251, codified as Insurance Code §541.082(c), which allows the Commissioner of Insurance to permit specified disclosures required in Internet advertising to be made through links to web pages

containing the required disclosures. Those changes mandated by HB 2251 and implemented through the proposed amendments to §21.103(c) establish new requirements for insurers when advertising on the Internet. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply results directly from the enactment of HB 2251. The anticipated public benefit resulting from the proposed amendment is that it will standardize the requirements insurers must comply with when advertising on the Internet enabling the Department to conduct more efficient and thorough regulation of these advertising practices. The proposed amendment to §21.104(a) imposes new requirements on agents and revises the requirements on insurers concerning the content that is required and procedures that must be followed for agents and insurers to properly identify themselves in advertising materials that they disseminate. There is no additional cost to insurers required to comply with this amendment because the amendment is consistent with current statutory provisions with which the insurer must already comply. Any additional cost to agents should be negligible because the additional disclosure, when required, is capable of being presented briefly and should not result in increased production costs for the affected advertisement. The anticipated public benefit resulting from the proposed amendment is that it will increase the efficiency of the enforcement of statutory and rule requirements. The proposed amendments to §21.104(d) clarify that the requirements for identification of the products advertised shall include viatical and life settlement contracts, permit product identification requirements to be satisfied through a filing with

the Department, and permit preferred provider benefit plans to be identified as *PPO plans* in accordance with provisions of HB 2251, codified as Insurance Code §541.085.

There are no costs required as a result of these amendments because no new requirements or duties are imposed on insurers or viatical or life settlement providers. In addition, because the amendment relating to the use of the term *PPO plan* is the result of the legislative enactment of HB 2251, any cost to comply results directly from the enactment of HB 2251. The anticipated public benefit resulting from the proposed amendments will be the ability of the Department to conduct a more efficient and thorough review of product identification requirements, and it will allow insurers to use the generally understood acronym PPO in their advertisements. The proposed addition of §21.104(i) concerns advertisements that promote multiple insurers' products and the new provision specifies new disclosure requirements regarding the business arrangements and financial responsibility of the multiple insurers represented in the advertisement. There are no costs required as a result of this amendment because the sale of multiple insurers' products is voluntary; thus insurers may choose whether or not to promote multiple insurers' products in the same advertisement and whether they want to incur any necessary expenses to market these products. If an insurer chooses to promote multiple insurers' products in the same advertisement, any additional cost should be negligible because the required disclosure is brief and can be included in the advertisement with little or no increased production costs. The anticipated public benefit resulting from the proposed amendments will be that consumers will be more fully informed about the products that are under consideration and about the business

relationship of the insurers who are advertising and will be able to make informed decisions regarding the purchase of such products. The proposed amendments to §21.106 amends subsection (c) to require that optional benefits which are only available at an additional cost must disclose that such additional cost is required and adds new subsection (d) which requires that invitation to contract advertisements, which provide premiums and advertise an optional benefit, must separately disclose the additional premium required for any optional benefit advertised. There is no additional cost to insurers required to comply with this amendment because the amendment is consistent with current statutory provisions with which the insurer must already comply. The anticipated public benefit resulting from the proposed amendment will be that consumers will be more fully informed about the additional cost of optional benefits that might be under consideration and will be able to make more informed decisions regarding the purchase of optional benefits. Additionally, the proposed amendments to §21.106 adds new subsection (e) which requires that advertisements dealing with the availability of credit card billing must disclose that such billing is optional and new subsection (f) which requires that if invitation to contract advertisements provide a premium or range of premiums which are subject to change, the advertisement must disclose the possibility of such rate change. There are no costs required as a result of this amendment because the additional disclosure, when required, is capable of being stated briefly and should not result in increased production costs for the affected advertisement. The anticipated public benefit resulting from these proposed amendments will be that consumers will be more fully informed about billing options and

possible premium changes which will enable them to make more informed decisions regarding the purchase of insurance.

The proposed amendments to §21.107(a) add a definition of *spokesperson* as a person or entity that has certain proprietary or other financial relationships with an insurer or agent, or is compensated for making a testimonial, recommendation or endorsement. There are no costs to insurers required to comply with these amendments because they do not impose any new requirements or duties on insurers. The anticipated public benefit resulting from the proposed amendments is that it will clarify the definition of a *spokesperson*, thus enabling the Department to conduct more efficient and thorough regulation of advertising practices involving a *spokesperson*. The proposed amendments to §21.107(d), in part, conform the advertising rules to requirements of HB 2251, codified as Insurance Code §541.083, and permit an insurer or agent to advertise to the general public the availability of policies available only to members of associations. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit will be to remove restrictions on insurers advertising policies to the general public that have previously only been available to members of an association. The amendments to §21.107(d) also require that, if such associations' boards of directors are not elected by the association's members, an invitation to contract advertisement, unless it relates only to long-term care insurance, must disclose this fact, and that the directors may approve group insurance rate increases for those

policies. Section 21.107(d) is also amended to refer to the relationships described in defining a *spokesperson*, and requires prominent disclosure in an advertisement when the fact of such a relationship exists. The anticipated public benefit resulting from these proposed amendments will be that consumers will be more fully informed about how the association is controlled, will have notice of possible premium rate increases, and will be informed of a spokesperson's relationship to the association. The proposed amendments to §21.107 add a new provision to subsection (e) requiring that a person making a testimonial or recommendation and who is not a spokesperson must represent the current opinion of the author and must reflect the author's opinions or experiences with the insurer or its products. The amendments also propose a new provision in subsection (f) to require that a testimonial, endorsement or recommendation be applicable to the policy advertised or, if no specific policy is advertised, to the insurer and further to require that any such testimonial, endorsement or recommendation be accurately reproduced. Additionally, proposed new §21.107(h) prohibits a testimonial, recommendation or endorsements by a party other than the insurer issuing the policy or the insurer's agent from making representations or promises of future policy outcomes. There are no costs to insurers required to comply with these amendments because they do not impose any new requirements or duties on insurers. The anticipated public benefit resulting from the proposed amendments is that they will clarify the parameters of the use of a testimonial or endorsement in an advertisement made by a person or entity that is not a *spokesperson*, thus enabling the Department to conduct more efficient and thorough regulation of advertising practices concerning testimonials.

The proposed amendments to §21.108 amend subsection (a) to clarify that statistics may not imply that they are derived from the type of product advertised unless such is the fact, and that if statistics apply to other types of products, the advertisements must specifically so state. The proposed amendments to §21.108 also amend subsection (b) to clarify that sources must be given for citations used in advertisements, in addition to statistics and to require that advertisements include a source's publication name and date, and to provide that, absent the advertiser's certification that the source is the most recent available, that a source may not be more than five years old. Additionally, proposed new §21.108(c) requires that, where an advertisement contains a reference to "average" costs or savings, the advertisement must indicate whether such costs or savings reflect a national or regional "average"; if a regional "average," the advertisement must identify the region. There are no costs to insurers required to comply with these amendments because they do not impose any new requirements or duties on insurers. Additionally, there are no costs required as a result of new §21.108(c) because insurers may choose whether or not to include references to "average" costs or savings in an advertisement, and thus individual insurers will determine whether they want to incur any necessary expenses associated with this marketing practice. If an insurer chooses to advertise "average" costs or savings, any additional cost should be negligible because the required disclosure is brief and can be included in the advertisement with little or no increased production costs. The anticipated public benefit resulting from the proposed amendments is that they will clarify the parameters of the use of statistics and citations in an advertisement, thus

enabling the Department to conduct more efficient and thorough regulation of advertisements that employ statistics and citations.

The proposed amendments to §21.109(a) implement the requirements of HB 2252, codified as Insurance Code §541.058. The proposed amendments to §21.109(a) permit advertising for health and accident coverages to include the availability of health-related services or health-related information. Such advertising must disclose any separate charge required to access such services or information. Additionally, the proposed amendments define *health-related services* and *health-related information* in accordance with Insurance Code §541.058. That statute defines *health-related services* as services directed to an individual's health improvement or maintenance. The statute also defines *health-related information* as information directed to an individual's health improvement or maintenance, or to costs associated with options available to a covered person under the accident and health coverage. The amendments also require that an advertisement referencing noncontractual health-related services or information disclose that the services or information are not a part of the policy, may be discontinued at any time and, if applicable, may be subject to geographic availability. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2252, and any cost to comply result directly from the enactment of HB 2252. The anticipated public benefit resulting from the proposed amendment is that consumers will be provided information to enable them to discern whether other possible advantages may exist in purchasing the offered policy, in addition to those benefits guaranteed under the policy. Proposed

new §21.109(c) provides that an advertisement may offer an incentive to inquire about a policy if the advertisement clearly and conspicuously discloses that purchase of the policy is not required in order to receive the incentive. There are no costs to insurers required to comply with this new subsection because they do not impose any new requirements or duties on insurers. The anticipated public benefit resulting from the proposed new provision is that consumers will be specifically informed that they may take advantage of an offered incentive without being required to purchase a policy.

The proposed amendments to existing §21.113(d)(12), renumbered as paragraph (11), requires in Medicare-related advertisements the prominent disclosure of the same or substantially similar language to “Not connected with or endorsed by the United States government or the federal Medicare program.” The proposed amendments also eliminate the requirement for the name of the insurer to appear in the disclosure statement. There is no additional cost to insurers required to comply with these amendments because the amendments implement the requirements of HB 2251, codified as Insurance Code §541.084 and are therefore the result of the legislative enactment of HB 2251, and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit resulting from these proposed amendments will be that consumers will be less likely to be misled or confused by Medicare-related advertisements which will enable them to make more informed decisions regarding the purchase of such insurance.

The proposed amendments to existing §21.113(d)(14), renumbered as paragraph (13), extend the regulation that requires the presumption that advertisements

referenced as being “Important Notices” and directed primarily at Medicare recipients or senior citizens are misleading to include these same type of advertisements that use “similar language” to the language “Important Notices.” There is no additional cost to insurers required to comply with this amendment because the new requirement of not including terms similar to "Important Notices" incurs no expenses in the production of an advertisement. The anticipated public benefit resulting from these proposed amendments will be that Medicare recipients or senior citizens will not be receiving such prohibited advertisements, thus they will be less likely to be misled or confused by such advertisements which will enable them to make more informed decisions regarding the purchase of Medicare-related insurance.

The proposed amendment to existing §21.113(d)(17), renumbered as paragraph (16), deletes a provision that interprets certain U.S. Internal Revenue Service rules. There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from these proposed amendments is the removal of outdated information that is currently considered to be inappropriate for inclusion in Department rules.

The proposed amendments to §21.113(g) mandate that an accident or health insurance advertisement stating or implying that the advertised policy is “guaranteed renewable” clearly and conspicuously disclose that coverage may terminate at certain ages, if such is a fact. The requirement that such an advertisement indicate that rates may change is only imposed if the advertisement suggests or implies that rates will actually not change. In such a case, the advertisement must indicate the manner in

which the rates may change, such as by age, health status, or class. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit resulting from these proposed amendments will be to ensure consumers are fully and fairly informed of possible rate increases when purchasing “guaranteed renewable” policies.

The proposed amendment to §21.113(h)(2) restricts the disclosure requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges paid by group members, to apply only to invitation to contract advertisements. There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from this proposed amendment will be to provide a level of required disclosure commensurate with the “invitation to contract” stage of the process of making a purchasing decision.

The proposed amendments to §21.113(k)(3)(A) delete the reference to "on an individual basis" in order to apply the requirements of the subsections to association group members. The amendments apply the current restriction on the enrollment period during which a particular insurance product may be purchased and the requirement that advertisements must indicate the date by which the applicant must mail the application to include advertising soliciting members of association groups that otherwise would be eligible under specific provisions of the Insurance Code for group,

blanket, or franchise accident or health coverages. This is necessary to reduce the potential for consumers to obtain a false sense of limited opportunity to enroll in association-based group coverages that actually have rolling "back-to-back" enrollment periods. Additionally, proposed §21.113(k)(3)(C) requires that invitation to contract Medicare supplement advertising must either describe all “open enrollment” opportunities or prominently disclose a means of obtaining complete information regarding such opportunities. Although Texas regulation treats association-based group coverage as “group,” the proposed new provision brings association-based group coverages under the same requirements that are applicable in other states that have adopted the NAIC model language regarding open enrollments. There should be no costs to insurers to comply with the new requirement with regard to the advertising content, as the required disclosure is capable of being presented briefly and should not result in increased production costs for the affected advertisement. The anticipated public benefit is more clarity regarding the extent of the enrollment periods and elimination of a false sense of limited opportunity to enroll regarding associations that may have offered rolling “back-to-back” enrollment periods.

The proposed amendments to §21.114(2)(C)(ii) also add language in clause (ii) to require that an advertisement that uses “non-medical,” “no medical examination required,” or similar language where the advertised policy’s issuance is not guaranteed must provide an equally prominent disclosure in close conjunction to such language that issuance of the policy may depend upon the answers to questions set forth in the application. Additionally language that is not necessary for effective regulation is

deleted from clause (ii). There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from these proposed amendments will be to ensure that consumers are fully and fairly informed by advertisements that use the terms “non-medical,” “no medical examination required” so that they are not misled or confused as to the impact of pre-existing conditions or other criteria that may affect their eligibility for coverage.

The proposed amendment to §21.114(3)(B) restricts the requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges, to apply only to invitation to contract advertisements. There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from this proposed amendment will be to provide a level of required disclosure commensurate with the “invitation to contract” stage of the process of making a purchasing decision.

The proposed amendments to §21.120(a) provide more detailed requirements for information that must be contained in transmittal letters that are required to accompany advertising material submitted to the Department for review. The proposed requirements in §21.120(a)(1) clarify that separate identifying form numbers must be provided for each distinct Internet web page and “pop-up,” and in §21.120(a)(3) clarify that the transmittal letter must identify the form number or numbers of the approved policy and/or rider forms advertised. The amendments also propose a new requirement in §21.120(a)(5) to require that the transmittal letter identify the form numbers of all

other advertising material to be used with the advertisements being submitted. A new requirement is proposed in §21.120(a)(6) to require that any variable content in the advertisement be bracketed, and that an explanation of how this material may vary be explained in an attachment to the transmittal letter. The Department anticipates that any costs to insurers to comply will be limited to the minimal cost of producing the explanation of the variable material in a separate document. The Department's experience with insurers that already file in the proposed manner indicates that such explanations typically are contained in two pages or less. Those costs would only accrue to those insurers submitting advertising that contained variable content. The advantage of filing advertisements with clearly explained variable content is that insurers may then introduce described variations of the submitted material without the necessity of filing each different version with the Department for review. The anticipated public benefit from the proposed amendments will be uniform and unambiguous advertising filing instructions that will enable the Department to more efficiently and thoroughly review the filed advertisements to verify that they do meet the regulatory standards.

The proposed amendments to §21.120(d) delete as unnecessary the requirement that advertisements be filed in final printed form following the Department’s acceptance. Additionally, the amendments replace the deleted text in subsection (d) with provisions necessary to implement HB 2251, codified as Insurance Code §541.087. The proposed amendments specify a procedure under which advertisements which are the same or substantially similar to advertisements previously reviewed and accepted

by the Department may be introduced without the necessity of filing the revised advertisements. The amendments define *substantially similar* and provide that to introduce a "substantially similar" advertisement without filing it with the Department, the advertiser must file a signed written statement with the Department's Advertising Unit identifying or illustrating the changes to be introduced. Such written statement must list the previously reviewed forms in which the changes would appear, including the form numbers and the Department's filing number under which the forms were previously reviewed and accepted. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply results directly from the enactment of HB 2251. The anticipated public benefit resulting from these proposed amendments will be to provide an efficient procedure for insurers to notify the Department when they intend to use substantially similar advertising materials that have previously been reviewed and accepted by the Department. This will enable insurers to save filing costs, which costs will vary dependent upon the volume of such forms an insurer may wish to introduce, that can be passed on to policyholders.

Proposed new §21.121 imposes requirements on the use of lead solicitations including new subsection (a) which requires that licensees who receive the benefit of leads generated by unlicensed parties have a responsibility to exercise due diligence to confirm that the lead-generating advertisements are compliant with applicable requirements. New subsection (b) requires that lead solicitations prominently disclose that the recipient of the solicitation may be contacted by an insurer or agent, if such is

the case and further, that any insurer or agent contacting a person after acquiring the person's name through a lead solicitation must disclose that fact upon initially contacting such person. Additionally, new subsection (c) requires that advertisements for group meetings where information regarding insurance products are disseminated, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products would prohibit such advertisements from characterizing the meetings with terms such as *seminar*, *class*, *informational meeting*, *retirement, estate planning*, *financial planning* or *living trust* without including the words *insurance sales presentation* with equal prominence. There are no costs required as a result of this amendment because insurers and agents may choose whether or not to employ marketing strategies relying on lead solicitations or group meetings as defined in new §21.121(c). Therefore any necessary expenses incurred to employ these marketing strategies will be solely at the insurer's or agent's option. If an insurer or agent chooses to rely on such lead solicitation or group meetings, the Department anticipates that any additional cost will be negligible because the required disclosure is brief and can be included in the advertisement with little or no increased production costs. The anticipated public benefit resulting from this new requirement will be that consumers will not be receiving such group meeting advertisements that are deceptive or misleading. As a result, consumers will be less likely to be misled or confused by such advertisements which will enable them to make more informed decisions regarding the purchase of insurance products. Additionally, insurers or agents who make use of

lead solicitations that are procured through deceptive lead generating strategies can be held accountable through appropriate Department enforcement measures.

The proposed amendment to §21.122(a)(1) revises the definition of *advertisement* for the purposes of the section by excluding *institutional advertisements*, and the proposed amendment to subsection (b) extends the requirement that insurers maintain home office oversight of their advertising to all insurers, regardless of the products they offer. Any resultant costs would apply to those insurers and agents advertising coverages other than health, accident, life or annuity products, which are already subject to the requirements of §21.122. The Department anticipates that there will be minimal costs required for such insurers or agents as a result of this amendment because existing §21.116 already requires all insurers to maintain a file including a specimen of each advertisement disseminated in this state, and requires insurers to annually certify to the Department that, to the best of their knowledge, their advertisements comply with applicable requirements. To the extent insurers do not already require their agents or other parties developing advertisements to obtain written home-office approval for an advertisement naming the insurer or advertising its policies, there will be the additional expense of producing a written response to the affected party stating whether or not the advertisement is approved. If the written response is provided via e-mail, the cost would be negligible, involving only the time required by insurer staff to send what could well be designed as a template response. If the written response is sent in hard-copy, in addition to staff time, the costs would also include stationery, estimated to include one or two sheets of paper and a mailing envelope;

printing and postage (e.g., first-class or express mail delivery, at the insurer's option). The anticipated public benefit resulting from this amended section will be that the insurance industry and consumers will benefit by insurers exercising oversight of and assuring accurate representations in all advertisements promoting themselves or their products.

There is no anticipated difference in the cost for compliance between a large and small or micro business as a result of the proposed amendments and new section. Although the Department does not believe that the proposed amendments and new section will have an adverse effect on small and micro businesses, the Department has considered the purpose of the Insurance Code §§541.082-541.087 and other applicable statutes, which is to maintain effective regulation of insurance advertising, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the Department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

4. TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

5. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 29, 2007, to Gene C. 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 simultaneously submitted to Jack Evins, Director of the Advertising Unit, Consumer Protection Division, Mail Code 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

6. STATUTORY AUTHORITY. The new section and amendments are proposed pursuant to the Insurance Code §§541.058, 541.082 - 541.087, 541.401, and 36.001. HB 2252 enacted by the 80th Legislature, Regular Session, amended Chapter 541 to add new §541.058 that concerns certain advertising practices that may be used in the marketing of accident and health insurance that are not considered discrimination or inducement. HB 2251 enacted by the 80th Legislature, Regular Session, amended Chapter 541 to add new Subchapter B-1 §§541.082 - 541.087. Section 541.082 concerns insurance advertising on Internet websites and provides that an insurer must, if it advertises on its website, include all appropriate disclosures and information on its website required by applicable advertising rules if a web page meets the criteria of

invitation to inquire or *invitation to contract* advertisements. However, invitation to inquire or invitation to contract advertisements may be permitted by Commissioner's rule to comply with the applicable rules relating to advertising by including a link to a web page that provides the necessary information to comply with the advertising rules. Section 541.083 allows insurers to advertise to the general public policies or coverages available only to members of an association. Section 541.084 prohibits the use of an advertisement for an insurance product relating to Medicare coverage unless the advertisement includes the prominently displayed language "Not connected with or endorsed by the United States government or the federal Medicare program" or similar language. Section 541.085 allows the term "PPO plan" to be used in advertisements when referring to a preferred provider benefit plan. Section 541.086 requires that an advertisement for a guaranteed renewable accident and health insurance policy must include in a prominent place a statement indicating that the rates may change if the advertisement implies that the rates will not change and the statement must generally identify the manner in which the rates may change. Section 541.087 provides that an advertisement subject to the Department's filing requirements that is the "same as or substantially similar" to an advertisement previously reviewed and accepted by the Department is not required to be filed for review. Section 541.401 provides that the Commissioner of Insurance may adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. 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.

7. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

Rule	Statute
§§21.102 and 21.103	Insurance Code §§541.082 and 541.401
§21.104	Insurance Code §§541.085 and 541.401
§21.106	Insurance Code §541.401
§21.107	Insurance Code §§541.083 and 541.401
§21.108	Insurance Code §541.401
§21.109	Insurance Code §§541.053 and 541.401
§21.113	Insurance Code §§541.058, 541.084, 541.086, and 541.401
§§21.114 - 21.116, and 21.119	Insurance Code §541.401
§21.120	Insurance Code §§541.087 and 541.401
§§21.121 and 21.122	Insurance Code §541.401

8. TEXT.

§21.102. Scope. For the purpose of these sections:

(1) "Advertisement" includes, but is not limited to:

(A) – (E) (No change.)

(F) lead [~~card~~] solicitations which are [~~hereby~~] defined as communications distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing

names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are intended to be used to solicit residents of this state for the purchase of a policy, as defined in paragraph (3) ~~[subsection (c)]~~ of this section; and

(G) (No change.)

(2) (No change.)

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, viatical or life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which these sections can be made legally applicable including, as applicable, Health Maintenance Organizations and Nonprofit Legal Services Corporations, and all insurance companies doing the business of insurance in this state such as capital stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges,

stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies, and viatical and life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, viatical and life settlement brokers and provider representatives.

(6) "Institutional advertisement" is an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or agent. Correspondence and materials used by an insurer only for the purpose of explaining Legislative or Texas Department [~~State Board~~] of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code[~~, Chapter 5,~~] shall be considered institutional advertising for the purpose of §21.104(b) of this title (relating to Requirement of Identification of Policy or Insurer). Web pages on an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote are considered to be institutional advertisements. Advertisements in other media that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. In addition, web pages or navigation aids within an Internet website that provide a link to another web page, the content of which refers to a specific

insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote, but that do not, themselves, otherwise include such content are considered to be institutional advertisements.

(7) "Invitation to inquire" for the purpose of this section is an advertisement that refers to a specific insurance product or provides an opportunity to request a quote or that, except for Internet advertising, provides an opportunity to request other information. An “invitation to inquire” advertisement for accident or health coverage may refer to rates only as permitted under §21.113(b) of this subchapter (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). An “invitation to inquire” is not an "invitation to contract."

(8) "Invitation to contract" is an advertisement that includes an application or enrollment form for insurance or which is presented with an opportunity to apply for the advertised coverage.

§21.103. Required Form and Content of Advertisements.

(a) (No change.)

(b) The format and content of an advertisement of a policy must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive is determined by the commissioner of insurance, or the Texas Department [~~State Board~~]

of Insurance on appeal, from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(c) All information required to be disclosed by these sections will be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. Regarding Internet advertising, the disclosures required by the sections referenced in paragraphs (1) – (5) of this subsection may be provided through a conspicuous and clearly labeled link to a web page, provided that the link must be placed near the relevant information to which it relates, and must connect directly to a web page that prominently displays the information necessary to comply with the applicable requirements:

(1) with respect to “invitation to inquire” advertisements, §21.104(a) of this subchapter (relating to Requirement of Identification of Policy or Insurer);

(2) §21.104(i) of this subchapter if linked to same page satisfying §21.104(a), as permitted in paragraph (1) of this subsection;

(3) §21.108(c) of this subchapter (relating to Use of Statistics and Citations);

(4) §21.113(b)(2) - (4), (c)(1), (d)(1) and (f) of this subchapter (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising); and

(5) §21.114(3)(A) of this subchapter (relating to Rules Pertaining Specifically to Life Insurance and Annuity Advertising).

(d) (No change.)

§21.104. Requirement of Identification of Policy or Insurer.

(a) An advertisement must identify the person or entity responsible for the advertisement [~~The full name of the insurer is required to be stated in each of its advertisements and the portion of the advertisement to be returned to the insurer or agent, if any, provided, that in advertisements of property and casualty insurance it is sufficient to state the name of the agent when such advertisements address coverages in general and do not advertise a specific policy or coverages of a particular insurer. If an application is a part of the advertisement, the name of the insurer is required to be shown on the application and prominently disclosed elsewhere in the advertisement~~].

(1) The full licensed name of the insurer is required to be stated in each of its invitation to inquire and invitation to contract advertisements, including the portion of the advertisement to be returned to the insurer or agent, unless the portion to be returned is delivered as a form detachable from another form containing the insurer's full licensed name. The full licensed name must appear at or before the first appearance of any shortened or substitute name, which shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement.

(2) It is sufficient to state the full licensed name, assumed name registered with the department pursuant to §19.902 of this title (relating to One Agent,

One License) or Texas agent's license number of the agent when advertisements address coverages in general and do not describe a specific policy or coverages of a particular insurer.

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

(d) All advertisements, other than institutional, shall explicitly and conspicuously disclose that the product concerned is [~~either one or more a~~] property,[~~or~~] life or other insurance, an annuity, [~~a~~] HMO coverage, a viatical or life settlement contract, or a prepaid legal services contract [~~coverage~~], on the basis that each of these products are classified or addressed by statute or rule or as the products are filed with the department. It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Insurance Code Chapter 1301.

(e) - (h) (No change.)

(i) Multiple insurers may be represented in one advertisement, provided that an invitation to inquire or invitation to contract advertisement must clearly identify the issuer of each product advertised and the advertisement discloses that each insurer has sole financial responsibility for its own products.

§21.106. Premiums.

(a) - (b) (No change.)

(c) Advertisements referencing optional endorsements, [~~Endorsements or~~] riders or other benefits available at an [~~the request of the insured, but at~~] additional cost, shall

[~~be so advertised to~~] disclose the fact of additional cost. [~~In an "invitation to contract" advertisements of endorsements or riders which may be added to the policy advertised for which premiums are quoted for such policy must disclose the additional premium for the endorsements or riders.~~]

(d) Invitation to contract advertisements which provide specific premiums and advertise an endorsement, rider or other optional benefit which may be added to the policy advertised at an additional cost must separately disclose the additional premium required for each such endorsement, rider or other optional benefit.

(e) [~~(d)~~] Advertisements dealing with the availability of credit card billing of premiums must disclose that such method of billing is clearly optional to the purchaser.

(f) If an invitation to contract advertisement contains the specific or estimated cost of the coverage and the rate charged may legally be changed by the insurer prior to the renewal of the policy, the advertisement must disclose that fact.

§21.107. Testimonials, Appraisals, or Analyses.

(a) A person or entity making a testimonial, recommendation or endorsement shall be deemed a “spokesperson” for an insurer or agent if the person or entity: [~~Testimonials, appraisals, and analyses used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer or agent, in using a testimonial, makes as its own all of the statements contained therein, and such statements are subject to all of the provisions of these sections.~~]

(1) has a proprietary or other financial interest in the insurer or agent or a related entity as a stockholder, director, officer, employee or otherwise;

(2) has been formed by the insurer or agent, or is owned or controlled by the insurer or agent, its employees, or the person or persons who own or control the insurer or agent;

(3) has any person in a policy-making position who is affiliated with the insurer or agent in any of the capacities described in paragraphs (1) and (2) of this subsection; or

(4) is in any way directly or indirectly compensated for making a testimonial, recommendation or endorsement.

(b) An advertisement may not state, imply, or create the impression directly or indirectly that the insurer, its financial condition or status, the payment of its claims, or the agent is recommended or endorsed by any division or agency of this state or the United States government. No advertisement may state that a policy form or kinds or plans of insurance are approved by the Texas Department [~~State Board~~] of Insurance without disclosing that such approval is extended to all such policies, kinds, or forms of insurance legitimately sold in this state; nor may such statement imply recommendation by any agency of this state or the federal government.

(c) (No change.)

(d) An insurer or agent may advertise to the general public policies available only to members of an association described by the Insurance Code §1251.052. If the association's directors are not elected by its members, the advertisement, unless

advertising only long-term care insurance, shall disclose this fact, and also disclose that the directors may approve rate increases. An advertisement may not state or imply that an insurer, agent, or policy has been approved or endorsed by an individual, group of individuals, society, association, or other organization, unless such is a fact and unless any [~~proprietary~~] relationship described in subsection (a) of this section that exists between the entity and the insurer or agent is prominently disclosed. [~~If the entity making the endorsement or testimonial has been formed by the insurer or agent, or is owned or controlled by the insurer or agent, or the person or persons who own or control the insurer, this fact shall be disclosed in the advertisement. If the person making a testimonial, an endorsement, or an appraisal has a financial interest in the insurer or agent or a related entity as a stockholder, director, officer, employee, or otherwise, this fact shall be disclosed in the advertisement.~~]

(e) A testimonial, recommendation, or endorsement made by a person or entity who is not a spokesperson shall represent the current opinion of the author and shall reflect the author's personal opinions of or experiences with the insurer or its products. [~~No advertisement containing either a testimonial, endorsement, or recommendation of the insurer, or an announcement of coverage, by a person other than the insurer or its licensed agent may state or imply that the testimonial, endorsement, recommendation, or announcement of coverage is being made by the insurer, its licensed agent, or the entity making the offer to insure.~~]

(f) A testimonial, recommendation, or endorsement shall be applicable to the policy advertised or to the insurer if no specific policy is being advertised, and shall be

accurately reproduced. [~~Except for a policyholder testimonial, recommendation, or endorsement for which no consideration is paid, a testimonial, recommendation, or endorsement of an insurer shall be limited to a brief description of benefits, statements regarding the insurer and the availability of coverage, but may not contain premiums or other policy provisions.~~]

(g) (No change.)

(h) A testimonial, recommendation, or endorsement by any person or entity other than the issuing insurer or the insurer's agent shall not include representations or promises of future policy outcomes for themselves or others.

§21.108. Use of Statistics and Citations.

(a) An advertisement in respect of the time within which claims are paid, the dollar amounts of claims paid, the number of claims paid, the number of persons insured under a particular policy or policies, or similar statistical information relating to an insurer or policy may not contain irrelevant facts, and shall accurately reflect the relevant facts. The advertisement may not imply that the statistics are derived from the type of product [~~policy~~] advertised unless it is a fact, and when applicable to other types of products [~~policies or plans~~] shall specifically so state.

(b) The source of statistics or citations used in an advertisement shall be identified or made apparent in the advertisement. Such source must include the publication name and date. A source shall not be more than five years old unless the advertiser certifies to the department that the source is the most recent available.

(c) Where “average” costs or savings are referenced in an advertisement, the advertisement must indicate whether such statistics are national or regional and, if regional, must identify the region.

§21.109. Unlawful Inducement.

(a) An advertisement may not state or imply anything offering or tending to offer a good, service, or other guarantee or contractual right of pecuniary value outside of the express terms of the policy [~~contract of insurance~~] offered by the advertisement.

(1) This subsection does not prohibit, in connection with an accident and health insurance policy or health maintenance organization contract, the provision of health-related services or health-related information, or the disclosure in advertising of the availability of such additional services and information, to prospective policy or certificate holders, or prospective enrollees or contract holders. If there is a separate charge required to access such additional services or information, an advertisement referencing the services or information must disclose that fact.

(2) In this subsection:

(A) “Health-related services” are defined in accordance with the Insurance Code §541.058.

(B) “Health-related information” is defined in accordance with the Insurance Code §541.058.

(3) An advertisement referencing noncontractual health-related services or health-related information must disclose that such services or information are not a

part of the policy, may be discontinued at any time and, as appropriate, may be subject to geographic availability.

(b) (No change.)

(c) An advertisement may offer an incentive to inquire about a policy provided that it includes a clear and conspicuous disclosure that no purchase is required in order to receive the good or service comprising the incentive.

(d) [~~(c)~~] No advertisement may state or imply any advantage, right, or preference which if granted or performed would be a violation of the public policy or any law of this state or of the United States of America.

(e) [~~(d)~~] An advertisement may not state or imply any deviation in normal or usual cost that is not in fact legally allowable.

(f) [~~(e)~~] An advertisement may not state or imply an advantage by purchase of insurance to be gained by an organization because of past or prospective donation to be made by an insurer, agent, or representative out of proceeds of purchase.

§21.113. Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising.

(a) Coverage details. An invitation to inquire that specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows: "For specific costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."

[~~"Invitation to inquire" for the purpose of these sections means an advertisement that has as its objective the creation of a desire to inquire further about the product, and that is limited to a brief description of the loss for which the benefit is payable.~~]

[~~(1) An invitation to inquire may contain:~~]

[~~(A) the dollar amount of benefit payable; and/or~~]

[~~(B) the period of time during which the benefit is payable, provided the advertisement does not refer to cost, except as permitted by the Insurance Code, Article 21.20-2 and paragraph (3) of this subsection.~~]

[~~(2) An invitation to inquire that specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows: "For specific costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."~~]

(b) [~~(3)~~] Illustration of rates. Subject to the Insurance Code[~~,~~] Article 21.20-2[~~,~~] §1 [~~Sec. 1,~~] and the Insurance Code Chapter 541 Subchapter B [~~Article 21.21~~], an invitation to inquire concerning a health benefit plan may include rate information without including information about all benefit exclusions and limitations so long as any rate mentioned in any advertisement disseminated under subsection (b) of this section indicates the age, gender, and geographic location on which that rate is based and so long as the advertisement includes prominent disclaimers clearly indicating that:

(1) [~~(A)~~] the rates are illustrative only;

(2) [~~(B)~~] a person should not send money to the issuer of the health benefit plan in response to the advertisement;

(3) [~~(C)~~] a person cannot obtain coverage under the health benefit plan until the person completes an application for coverage; and

(4) [~~(D)~~] benefit exclusions and limitations may apply to the health benefit plan.

[~~(4) Any rate mentioned in any advertisement disseminated under paragraph (3) of this subsection shall indicate the age, gender, and geographic location on which that rate is based.~~]

[~~(b) "Invitation to contract" is an advertisement that is neither an invitation to inquire nor an institutional advertisement.~~]

(c) Identification of policy.

(1) - (2) (No change.)

(3) An advertisement may not use the word "plan" without first identifying the subject as an "insurance plan" or an “HMO plan,” as appropriate.

(d) Description of benefits.

(1) - (3) (No change.)

(4) No advertisement may be used that represents or implies:

(A) (No change.)

(B) [~~when a policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment~~

~~of a claim thereunder. Example: This section prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue."~~] If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.

(5) (No change.)

(6) If any covered benefits are, by the terms of the policy, limited to a certain age group or are reduced at a certain age, an invitation to contract shall clearly and conspicuously disclose such fact. [~~If any insurance coverage of benefits that by the terms of the policy are limited to a certain age group, or that are reduced at a certain age, an invitation to contract shall clearly and conspicuously disclose such fact.~~]

(7) - (8) (No change.)

[~~(9) When a choice of the amount of benefits is referred to in an advertisement, it shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of benefits.~~]

(9) [~~(10)~~] An advertisement offering assistance or information concerning Medicare may not state or imply that an obligation is imposed by the receipt of such information.

(10) [~~(11)~~] An advertisement of benefits payable in conjunction with Medicare shall disclose the Medicare benefits (Part A or B) they are designed to supplement.

(11) [~~(12)~~] A Medicare-related [~~When a Medicare related~~] advertisement [~~is used primarily as a source for leads in the solicitation of insurance, it shall prominently state this fact. The advertisement~~] shall state in a prominent place the following or similar words: "Not connected with or endorsed by the United States government or the federal Medicare program." [~~"This is a commercial message from (insurance company name), a private insurance company which is not an agency of Social Security, Medicare, or any other governmental agency."~~]

(12) [~~(13)~~] References to Medicare may not be used in such a manner in an advertisement so as to be misleading or deceptive.

(13) [~~(14)~~] Advertisements referenced as being "Important Notices" or similar language and directed primarily to Medicare recipients or senior citizens are presumed to be misleading or having the capacity or tendency to mislead unless shown otherwise.

(14) [~~(15)~~] The words, numerals, and phrases "all," "100%," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words, numerals, and phrases may not be used to exaggerate any benefit beyond the terms of the policy, but may be used only in a manner as fairly and accurately describes the benefit.

(15) [~~(16)~~] An advertisement may not contain descriptions of a policy limitation, exclusion, or reduction, worded or stated in a manner to imply that it is a benefit, for example, describing a waiting period as a "benefit builder," or stating "even

pre-existing conditions are covered after two years." Words and phrases used in an advertisement to describe policy limitations, exclusions, and reductions shall accurately describe the negative features of such limitations, exclusions, and reductions of the policy offered.

(16) [~~(17)~~] No advertisement of a benefit, if payment of the benefit is conditioned upon confinement in a hospital or similar extended care facility, or at home, may use words or phrases such as "tax free," "extra cash," "extra income," "extra pay," or similar words or phrases. In those cases such words and phrases have the capacity, tendency, or effect of misleading the public and cause the belief that the policy advertised enables a profit to be made from being hospitalized. This section prohibits the misleading use of the phrase "tax free," but it does not prohibit the use of complete and accurate terminology explaining the Internal Revenue Service rules applicable to the taxation of accident and sickness benefits. [~~The IRS rules provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same rules as loss of time premiums and benefits and are not afforded the same favorable tax treatment as premiums for expense incurred hospital, medical and surgical benefit coverages. (Rev. Rule 68-451 and Rev. Rule 69-154.)~~] Prominence either by caption, lead-in, boldface, or large type shall not be given in any manner to any statements relating to the tax status of such benefits.

(17) [~~(18)~~] Except as permitted under §21.109(a) of this subchapter (relating to Unlawful Inducement), an [~~An~~] advertisement may not list goods and services other than those set out in the policy as possible benefits.

(18) [~~(19)~~] A policy covering only one disease or a list of specific diseases or accidents may not be advertised so as to imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease to imply broader coverage than that provided.

(19) [~~(20)~~] An advertisement that is an invitation to contract for a limited benefit policy, a supplemental coverage policy, or a nonconventional coverage policy, as defined in Chapter 3, Subchapter S of this title (relating to Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies), shall clearly and conspicuously, in prominent type, state in language identical to or substantially similar to whichever of the following is applicable "THIS IS A LIMITED BENEFIT POLICY," "THIS IS A CANCER ONLY POLICY," "THIS IS A SUPPLEMENTAL POLICY," or "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY." The insurer or agent shall use the foregoing statement to clearly advise the public of the nature of the policy.

(e) Exceptions, reductions, and limitations.

(1) (No change.)

[~~(2) If an advertisement contains an application or enrollment form to be completed by the applicant and returned by mail in respect of direct response insurance products, the advertisement shall include within or in close proximity to the application or enrollment form a question or statement substantially as follows: "Do you understand that this policy will not pay benefits for any loss incurred during the first _____ (month)(year(s)) after the issue date on account of disease or physical condition which you now have or have had in the past?" Or substantially the following statement: "I~~

~~understand that the policy applied for will not pay benefits for any loss incurred during the first _____ (month)(year(s)) after the issue date on account of disease or physical condition which I now have or have had in the past."~~]

(2) [~~(3)~~] An advertisement may not use the words "only," "just," "merely," "minimum," or similar words or phrases to unfairly describe the applicability or any exclusions, limitations, or reductions, such as "This policy is subject to the following minimum exclusions and reductions."

(f) Pre-existing condition. [~~An advertisement that is an invitation to contract shall, in accurate terms, disclose the extent to which a loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy. The term "pre-existing condition" shall be defined when used in an advertisement.~~]

(1) An advertisement that states or implies that pre-existing conditions may apply must define the applicable pre-existing conditions.

(2) An advertisement that is an invitation to contract shall, in accurate terms, disclose the extent to which a loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy.

(g) Disclosure of policy provisions relating to renewability, cancellability, and termination.

(1) An advertisement that is an invitation to contract [~~and that refers to renewability, cancellability, or termination of a policy, or that refers to a policy benefit, or that states or illustrates time or age in connection with eligibility of applicants or continuation of the policy,~~] shall disclose the provisions in respect of renewability,

cancellability, and termination, and each modification of benefits, covered losses or premiums either because of age or for other reasons, in a manner that does not minimize or render obscure the qualifying conditions.

(2) An advertisement for a policy stating or implying that the policy is "guaranteed renewable" shall: [~~have a clear and conspicuous statement that the insurer may change premium rates or benefits at a certain age by class or that coverage may terminate at certain ages.~~]

(A) have a clear and conspicuous statement that coverage may terminate at certain ages, if such is a fact; and

(B) include, in a prominent place, a statement indicating that rates for the policy may change if the advertisement suggests or implies that rates for the product will not change. Such statement must generally identify the manner in which rates may change, such as by age, by health status, by class, or through application of other general criteria.

(3) - (5) (No change.)

(h) Description of premiums, cost, and interest.

(1) (No change.)

(2) Consideration paid or to be paid for group insurance, including enrollment fees, dues, administrative fees, membership fees, service fees, and other similar charges paid by the employees, shall be disclosed in an invitation to contract advertisement as a part of the cost and consideration.

(3) - (6) (No change.)

[~~(7) Only the actual interest credited to an endowment or coupon benefit in an accident or health policy shall be characterized as earnings or included with dividends or other earnings in an advertisement.~~]

(7) [~~(8)~~] An insurer or agent may not make a billing of a premium for increased coverage or include the cost of increased coverage in the premium for which a billing is made without first disclosing the premium and details of the increased coverage and obtaining the consent of the insured to such increase in coverage. This does not apply to policies that contain provisions providing for automatic increases in benefits or increases in coverages required by law.

(8) [~~(9)~~] If the cost of home collection results in a higher premium an advertisement shall state that fact.

(i) - (j) (No change.)

(k) Deception or deceptive method as to introductory, initial, or special offers.

(1) - (2) (No change.)

(3) An advertisement may not state or imply that a policy or combination of policies is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless it is a fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

(A) An enrollment period during which "a particular insurance product" may be purchased [~~on an individual basis~~] may not be offered within this state

unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which date may not be less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. (It is emphasized that this section is applicable to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodicals.) This subparagraph is inapplicable to solicitation of employees or members of a particular group, except that this subparagraph shall apply to the solicitation of members of an [~~or~~] association group, which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance. This section applies to all affiliated companies under common management or control. The phrase "a particular insurance product" is used here to describe an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy are not sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(B) (No change.)

(C) An invitation to contract Medicare supplement advertisement must describe complete information regarding all available “open enrollment”

opportunities or prominently disclose a means of obtaining complete information regarding such opportunities.

(l) Acknowledgment of nonduplication; notice to consumer.

(1) Acknowledgment of nonduplication; notice to consumer.

(A) Acknowledgment of nonduplication--The document which contains and is limited to thelanguage whichiset forth in Item [paragraph] (6) Figure: 28 TAC §21.113(1)(5. ~~[of this subsection]~~.

(B) (No change.)

(C) Notice to consumer--The document which contains and islimited to the language which is set forth in Item ~~[paragraph]~~ (7) of Figure: 28 TAC §21.113(1)(5). ~~[of this subsection]~~

(2) All insurers, other than direct response insurers, or their agents or other intermediaries shall obtain an acknowledgment of nonduplication with all applications for health insurance sold to an individual who is 65 years of age or older, other than group health coverage obtained through an employer-sponsored plan, conversion from a group employer-sponsored health plan, short-term travel accident coverage, short-term nonrenewable coverage, Medicare risk contracts, and retired-employee group plans. This acknowledgment shall be obtained at the same time as the application and shall be submitted to the insurer with the application. One copy of the acknowledgment shall be left with the insured and one copy kept on file with the company. The form of such acknowledgment or notice must be printed on a separate piece of paper and must contain the specific language and must be in the format set

forth in item ~~[paragraph]~~ (6) of Figure: 28 TAC §21.113(1)(5) ~~[of this subsection]~~. This form is published by the Texas Department [~~State Board~~] of Insurance, and copies of the form are available from and on file at the Texas Department [~~State Board~~] of Insurance, Market Conduct Division, Mail Code [~~016-7~~] 305-2E, P.O. Box 149104 [~~149091~~], Austin, Texas 78714-9104 [~~78714-9091~~].

(3) (No change.)

(4) Direct response insurers who maket to the consumer without agents or other intermediaries are exempt from the requirement to deliver the acknowledge ment contained in Item ~~[paragraph]~~ (6) of Figure: 28 TAC §21.113(1)(5) ~~[of this subsection]~~, but must deliver the notice to sonsumers set forth in item (7) of Figure: 28 TAC §21.113(1)(5) ~~[of this subsection]~~.

(5) Failure to comply with paragraphs (1) - (4) of this subsection shall be an unfair business practice as defined by the Insurance Code Chapter 541 ~~[, Article 21.21]~~.

FIGURE: 28 TAC §21.113(l)(5):

Item (7)

NOTICE TO CONSUMERS

AGE 65 AND OLDER

The Texas Department [~~State Board~~]of Insurance requires that this Notice be given to you at the time you receive a policy.

State law gives you the right to review this policy and return it for a full premium refund if you are not satisfied. By law you have a minimum 10 days if you buy any individual accident and health insurance policy. The Texas Department ~~[State Board]~~ of Insurance urges you to use this time to verify that this coverage is needed.

The Department [~~Board~~] is concerned that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money.

1. PURCHASING MORE THAN ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY [~~UNNECESSRY~~] AND COSTLY:

SPECIFIED DISEASE (CANCER, STROKE, ETC.)

HOSPITAL INDEMNITY

BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL

EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER ILLNESS)

LONG TERM CARE

THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.

2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURANCE [~~INSURNCE~~] STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.

3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS[~~.~~], REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.

Item (6)

ACKNOWLEDGEMENT OF NONDUPLICATION

PLEASE READ CAREFULLY BEFORE SIGNING

I _____, certify that I (Agent's Name) have done the following: 1. Informed the undersigned applicant of the right to have all existing health insurance policies presently in force reviewed by me to determine whether duplicate coverage will occur with the issuance of this policy. 2. Reviewed the policies listed below and have found that duplication WILL or WILL NOT (circle one) occur with the issuance of the applied for policy. _____	NOTICE TO [~~OF~~] CONSUMERS Age 65 and Older This Notice is required by the Texas Department [~~State Board~~] of Insurance because of its concern that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money. 1. PURCHASING MORE THAN [~~MORETHAN~~] ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY AND COSTLY: SPECIFIED DISEASE (CANCER, STROKE, ETC.)

(Form Number) COMPANY POLICY TYPE OF NUMBER (#) POLICY _____ _____ _____ _____ Check one: a.____ Duplication will not occur because the above listed policy(y)(ies) #_____ will be replaced by the applied-for policy _____ (*form number*). Justification for the replacement is (*explain benefit to consumer*) _____ _____ b.____ No health policies in force at this time. c.____ Applicant has elected not to have the policy(y)(ies) reviewed. _____ _____ DATE AGENT/COMPANY REPRESENTATIVE	HOSPITAL INDEMNITY BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER ILLNESS) LONG TERM CARE THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES. 2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURNCE STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES. 3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS[~~.~~], REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED. 4. THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURANCE STRONGLY URGES YOU TO ALLOW YOUR INSURANCE AGENT OR COMPANY TO REVIEW ALL YOUR CURRENT HEALTH POLICIES PRIOR TO REPLACING EXISTING HEALTH COVERAGE OR PURCHASING ADDITIONAL HEALTH COVERAGE.

I certify that my right to have all of my existing health policies examined has been explained to me by the agent named above.

____ I have been informed that the policy for which I am applying WILL OR WILL NOT (*circle one*) result in duplicate coverage.

____ I have chosen to waive my right to have my policies reviewed to determine if they unnecessarily duplicate each other.

I have read the attached notice. Dated this ____ day of _____ , 20 [~~19~~] ___..

_____

APPLICANT

§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising.

As can be made applicable and as necessary the same or similar test or standard as is stated hereafter within paragraph (1)(B) [~~(3)(B)~~] of this section is to be used as the standard in the interpretation of the provisions of this section.

[~~(1) "Invitation to inquire" for the purpose of this section is an advertisement having as its objective the creation of a desire to inquire further about the product but it is not an "invitation to contract."~~]

[~~(2) "Invitation to contract" is an invitation to inquire that includes an application or enrollment form for insurance.~~]

(1) [~~(3)~~] Identification of policy.

(A) The form number or numbers of the policy advertised shall be clearly identified in an "invitation to contract."

(B) An advertisement in respect of a life policy, endowment, or an annuity may not include the term "savings," "investment," or other similar terms if used in referring to the current, projected, or guaranteed rate of interest paid or credited to such contracts to imply that the product advertised is something other than insurance or an annuity using as a standard how it would appear to or be identified by a reasonably prudent person under the circumstances.

(C) No advertisement may use the term "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," or other similar terms in connection with a policy in a context or under such circumstances or conditions that have the capacity or tendency to mislead purchasers of such policy to believe they will receive or that it is possible that they will receive something other than a policy or some other benefit or advantage that is not available to other persons of the same class and equal

expectation of life nor to that class of persons to whom essentially the same hazards are attributable.

(2) [~~(4)~~] Disclosure requirements.

(A) If an advertisement that is an "invitation to contract" refers to a dollar amount, a period of time for which a benefit is payable, a cost of the policy, a specific policy benefit or the loss for which such benefit is payable, it shall expressly or specifically disclose those exclusions and limitations affecting the payment of benefits under the policy. Without this disclosure it is determined that the advertisement would have the capacity and tendency to mislead or deceive.

(B) No advertisement may refer to a benefit payable under a "family group" policy if the full amount of the benefit is not payable upon the occurrence of the contingency insured against to each member of the family unless a clear and conspicuous disclosure of such fact is made in the advertisement.

(C) No advertisement may be used which represents or implies:

(i) that the condition of the applicant's or insured's health prior to, or at the time of issuance of a policy, or thereafter, will not be considered by the insurer in issuing the policy or in determining its liability or benefits to be furnished or in the settlement of a claim if such is not the fact; or

(ii) that an advertisement that uses “non-medical,” “no medical examination required,” or similar language where the advertised policy’s issuance is not guaranteed must provide an equally prominent disclosure in close conjunction to such language that issuance of the policy may depend upon the answers

to questions set forth in the application.[~~the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder if the policy does not cover losses resulting from pre-existing conditions. This section prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement if it is an "invitation to contract" shall disclose that a medical examination is required.~~]

(D) An "invitation to contract" for a policy that provides coverage for loss due to accident only for a specified period of time from its effective date shall state this fact clearly and conspicuously.

(E) An "invitation to contract" advertisement in respect of insurance coverage or benefits that by the terms of the policy being advertised are limited to a certain age group or that are reduced at a certain age shall clearly and conspicuously disclose such fact.

(F) An "invitation to contract" advertisement that relates to a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall clearly and conspicuously call attention to this fact. If the death benefit during a specified period following the policy date of issue is limited to a return of premiums paid on the policy, with or without interest at a stated rate, and irrespective of whether the premiums are assumed to have always been paid annually, each advertising of the policy by an insurer or agent shall explain that the policy provides a deferred type of life insurance. The death benefit, as referred to in this subparagraph, is

the amount payable if death does not result from accidental causes and if there are no exclusions applicable to the policy on account of suicide, hazardous occupation, or aviation hazard.

(G) If the current or illustrated rate of interest is higher than the guaranteed interest rate, an advertisement may not display the greater rate of interest with such prominence as to render the guaranteed interest rate obscure.

(H) Current interest rates being paid or promised to be paid by an insurer and guaranteed interest rates for specific periods of time, as provided in the policy or annuity advertised, shall be clearly and conspicuously disclosed and sufficiently complete and clear so as not to have the capacity or tendency to mislead or deceive the insured or prospective applicant.

(I) No advertisement may represent a pure endowment benefit as earnings on premiums invested or represent that a pure endowment benefit in a policy is other than a guaranteed benefit for which a specific part or all of the premium is being paid by the policyholder. For the purpose of this provision, coupons or other devices for periodic payment of endowment benefit are included in the phrase "a pure endowment benefit" without limitation on the meaning of such phrase.

(J) An "invitation to contract" advertisement shall clearly and conspicuously disclose any charges or penalties such as administrative fees, surrender charges, and termination fees contained in an annuity or life insurance policy on withdrawals made during early contract or policy years.

(K) Failure of an insurer or agent to disclose the nonforfeiture rights and policy loan rights in an advertisement that compares life insurance policies shall be an omission of a material fact and an incomplete comparison.

(L) Only the actual interest credited to an endowment or coupon benefit in a life or annuity policy shall be characterized as earnings or included with dividends or included with other earnings in an advertisement.

(3) [~~(5)~~] Description of premiums and cost.

(A) Consideration paid or to be paid for individual insurance and annuities including policy fees, shall be described as premium, consideration, cost, payments, annuity consideration, or purchase payment.

(B) Consideration paid or to be paid for group insurance, including enrollment fees, dues, administrative fees, membership fees, service fees, and other similar charges paid by the employees, shall be disclosed in an invitation to contract advertisement as part of the consideration and cost.

(C) An advertisement may not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium. If an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable, the advertisement may not display the amount of the reduced initial premium more prominently than the renewal premium.

(D) A reduced initial or first year premium may not be described by an insurer as constituting free insurance for a period of time.

(E) An advertisement of an insurance product may not imply that it is "a low cost plan" or use other similar words or phrases without a substantial present or past cost record for the policy advertised or for a similar policy that demonstrates or verifies a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public.

(F) The words "deposits," "savings," "investment," or other phrases used to describe premiums may not be so used by an insurer or agent as to hide or unfairly minimize the cost of the hazards insured against.

(G) No part of a premium may be described as a "deposit" if it is not guaranteed to be returned in full on demand of the insured.

(H) An insurer or agent may not make a billing of a premium for increased coverage or include the cost of increased coverage in the premium for which a billing is made without first disclosing the premium and details of the increased coverage and obtaining the consent of the insured to such increase in coverage. This does not apply to policies which contain provisions providing for automatic increases in benefits or increases in coverages which are required by law.

(I) If the cost of home collection results in a higher premium an advertisement shall state that fact.

(4) [~~(6)~~] Dividends.

(A) An advertisement may not utilize or describe dividends in a manner that is misleading or has the capacity or tendency to mislead.

(B) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the illustration must conform to the requirements of Subchapter N of this chapter (relating to Life Insurance Illustrations).

(C) An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at such time and the conditions required for that to occur.

(D) An insurer or agent may not, as an inducement to purchase insurance circulate, publish, or otherwise exhibit to any person who is an insured or prospective insured a form of director resolution, stockholders resolution, or form of company action that states or implies the action an insurer will take in the future as respects a declaration of dividend or other such matter if the insurer, its directors, or its stockholders are not bound to take the action stated or implied or if the insurer does not presently have the earnings or the funds or assets to make payments or to consummate the transaction in accordance with the appropriate statutes and rules if any.

(5) [~~(7)~~] Unlawful inducement. An insurer may not make or include in any advertisement a statement or reference that implies that the purchaser or prospective purchaser by purchasing a policy of insurance will become a member of a limited group of persons who will or may receive special advantages from the company not provided

for in the policy or not authorized by law or state or imply that the prospective insured will receive favored treatment in the payment of dividends especially if the policy advertised is a participating policy not available to persons holding other types of participating or nonparticipating policies issued by the insurer to individuals of the same class and equal expectation of life nor to that class of persons to whom essentially the same hazards are attributable. This is not intended to prohibit and does not prohibit the lawful payment of differing amounts of dividends on different classes of policies. The term "class" relates to the recognized underwriting classifications such as age, health, occupation, sex, hazardous potential, and similar classifications that determine the nature of the risk assumed, and the term "class" as used in this paragraph is not limited to a particular plan or policy form or the date of issue of a policy.

(6) [~~(8)~~] An insurer or agent may not as a "twisting" or other device, inform any policyholder or prospective policyholder that any insurer was required to change a policy or contract form or related material to comply with the provisions of these sections or other rules or statutes. This section is ordered for such reasons as those stated in §21.113(j) of this title (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising).

(7) [~~(9)~~] Deception as to introductory, initial, or special offers.

(A) An advertisement of a particular policy may not state or imply that prospective policyholders become group or quasi-group members that, as such, enjoy special rates or underwriting privileges ordinarily associated with group insurance as recognized in the industry unless such is the fact.

(B) If an insured or prospective insured has been provided a policy or coverage of insurance without first having paid a premium or returned an application to the insurer or its agents or representatives, the insurer, its agents, or representative may not make any billing or attempt to collect a premium on such policy until such time as an application or acknowledgment of acceptance by the insured is received. When coverage is issued prior to such acceptance, it shall be accompanied by a written statement describing it as follows:

(i) giving the facts concerning the delivery of the policy and whether or not the policy was requested by the insured; and

(ii) stating that the insured is under no obligation to pay the insurer if he does not want to initiate or continue the coverage; and

(iii) clearly stating when coverage will be effective.

(C) An advertisement by an insurer may not state or imply, that a policy or combination of policies is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless such is the fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

§21.115. Rules Pertaining Specifically to Property and Casualty Insurance Advertising.

(a) (No change.)

(b) The word "dividends" includes every return of premium and payment to policyholders on a particular policy that is predicated on the financial performance or earnings of the insurer, but does not include the return of premium under a nondiscretionary provision or endorsement in a policy clearly providing for the payment under a rating plan approved or promulgated by the Texas Department [~~State Board~~] of Insurance.

§21.116. Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance.

(a) Advertising file. Each insurer, domestic and foreign, doing an insurance business in Texas shall maintain at its home office or principal (executive) office, a complete file containing a specimen of every institutional advertisement, invitation to inquire advertisement, or invitation to contract advertisement disseminated in this state, with a notation attached to each such advertisement indicating the manner and extent of distribution and the form number of any policy advertised in Texas. Foreign insurers that have established an office in Texas who transact an insurance business in this state may maintain the advertising file at that location. Each insurer shall notify the Texas Department [~~State Board~~] of Insurance where the advertising file is being maintained and that access thereto will be provided, and each insurer shall also notify the Texas Department [~~State Board~~] of Insurance in the event the location of such file is planned to be changed and immediately when changed. The advertising file is subject

to regular and periodic inspection by the Texas Department [~~State Board~~] of Insurance. All advertisements shall be maintained for a period of not less than three years.

(b) Statement of compliance. Each insurer, domestic and foreign, filing an annual statement with the Texas Department [~~State Board~~] of Insurance is subject to the provisions of these sections and shall file with its annual statement a certificate or equivalent executed by an authorized officer of the insurer whose duty it is to deal with or oversee the insurer's advertising stating that to the best of the officer's knowledge, information, and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of these sections and the insurance laws of this state as respects its Texas advertising and as its Texas advertising relates to its insureds in Texas.

§21.119. Savings Clause. Each cause of action, pending litigation, matter in process before the Texas Department [~~State Board~~] of Insurance or commissioner of insurance, or matter hereafter arising from an event occurring prior to the time these sections become effective shall be determined in accordance with and governed by the provisions of statutes, rules, orders, or official interpretations in effect at the time of the occurrence of the subject event, [~~including, but in particular not limited to, those matters arising from existing Rules 059.21.21.001, .009, and .010 herein stated to be repealed upon the date these sections become effective,~~] and this section operates to save from repeal in that circumstance the application of such law and procedure in respect of any such circumstance from the amendment, change, or repeal contemplated by these

sections notwithstanding any provision of these sections to the contrary, if any, or any provision of conflict or ambiguity.

§21.120. Filing for Review.

(a) Any advertisement required to be submitted or submitted voluntarily by an insurer licensed to do business in Texas shall be accompanied by a transmittal letter addressed to the Advertising Unit [~~Section, Policy Approval Division~~], Texas Department [~~State Board~~] of Insurance, 333 Guadalupe [~~1110 San Jacinto Street~~], Mail Code 111-2A, Austin, Texas 78701 [~~78786~~], or P.O. Box 149104, Austin Texas 78714-9104. The transmittal letter [~~and~~] shall contain the following information:

(1) the identifying form number of each form submitted including a separate identifying form number for each distinct Internet page and pop-up;

(2) (No change)

(3) the form number(s) [~~number~~] of the approved policy and/or rider form(s) [~~form or forms~~] advertised; [~~and~~]

(4) the method or media used for dissemination of the advertisement;[~~.~~]

(5) the form number(s) for all other advertising material to be used with the advertisement(s) being submitted; and

(6) an attachment explaining all variable material; the variable material shall be identified with brackets on the advertisement(s).

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

(d) An advertisement subject to requirements regarding filing of the advertisement with the department for review under the Insurance Code or Texas Administrative Code, Title 28, and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department, is not required to be filed for review. For the purposes of this subsection, "substantially similar" means the new advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content satisfying required disclosures or that would render the advertisement noncompliant with §21.112 of this subchapter (relating to General Prohibition). A person or entity wishing to introduce a "substantially similar" advertisement must file a signed written statement with the department at the address identified in subsection (a) of this section. Such statement must identify or illustrate the changes to be introduced, and list the previously reviewed and accepted form(s) in which those changes would appear, including the form number(s) and the department's filing number(s) under which those forms were previously reviewed and accepted. [~~Advertisements shall be filed in final printed form subsequent to acceptance.~~]

(e) The following rules require that advertisements be filed with the department for review at or prior to use:

(1) §3.1707 of this title (relating to Advertising, Sales and Solicitation Materials; Filing Prior to Use), regarding viatical and life settlement contracts;

(2) §3.3313 of this title (relating to Filing Requirements for Advertising), regarding Medicare supplement insurance;

(3) §3.3838 of this title (relating to Filing Requirements for Advertising), regarding long-term care insurance; and

(4) §11.602 of this title (relating to Filings), regarding certain Medicare HMO contracts.

§21.121. Lead Solicitations.

(a) An insurer or agent who obtains a list of potential customers derived from use of a lead solicitation, as defined in §21.102(1)(F) of this subchapter (relating to Scope), is responsible for the content of the lead solicitation used to generate such list.

(b) A lead solicitation shall prominently disclose that an insurer or agent may contact the recipient of the solicitation, if that is a fact. In addition, an insurer or agent who makes contact with a person as a result of acquiring that person's name from a lead solicitation shall disclose that fact in the initial contact with the person.

(c) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event or group meeting where information will be disseminated regarding insurance products, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products, may use the terms "seminar," "class," "informational meeting," "retirement," "estate planning," "financial planning," "living trust," or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words "and

insurance sales presentation" immediately following those terms in the same type size and font as those terms.

§21.122. System of Control and Home Office Approval of Advertising Material Naming an Insurer.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advertisement--As defined in §21.102 of this title (relating to Scope), but, however, limited to those advertisements, excluding institutional advertisements, [~~items or instances only~~] where an insurer or its policy is advertised.

(2) – (4) (No change.)

(b) Scope. This section shall apply to any advertisement for [~~accident and/or health insurance, life insurance, annuities, group hospital services, and HMO~~] policies that are intended for presentation, distribution, or dissemination in this state.

(c) - (e) (No change.)

9. 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 _____, 2007.

_____
Gene C. Jarmon
General Counsel and Chief Clerk