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 Commissioner of Insurance adopts 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. Sections 21.102 - 21.104, 21.106, 21.108, 21.109, 21.113, and 21.120 are adopted with changes to the proposed text published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6730). Sections 21.107, 21.114 - 21.116, 21.119, and 21.122 are adopted without changes.

2. REASONED JUSTIFICATION. The 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 and provides that an insurer must include all appropriate disclosures and information on its website required by applicable advertising rules only if a web page is not classified as an *institutional advertisement*. 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 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 or 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 prohibited discrimination or inducement.

The adopted 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 cross references.

In response to written comments on the published proposal, the Department has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published.

The Department has also made a non-substantive change in proposed §21.102(1)(G) in response to a commenter that noted that, while the Department had not proposed any changes to subparagraph (1)(G), the reference to subsection (c) in this subparagraph was incorrect because the intended reference was to the definition of the defined term *policy* that is defined in paragraph (3). The Department agrees with the commenter and has changed the reference in §21.102(1)(G) to read "paragraph (3)."

One commenter questions whether the term "insurance product" referenced in the definition of *invitation to inquire* means something other than an insurance policy. It is the Department's intent that the definition of *invitation to inquire* refer to an insurance policy and has accordingly changed "product" to "policy" in §21.102(7) as adopted.

The Department has made a change to §21.103(c) as adopted in response to a comment that the proposed language in 21.103(c) would limit the use of widely-used methods of disclosure such as pop-ups that require consumers to confirm they have read the disclosure. Existing §21.103(c) already prescribes that required disclosures must be presented "conspicuously" and that such disclosures not be "minimized [or] rendered obscure." Further, disclosures invoked by certain content appearing within an advertisement must appear "in close conjunction with the statements to which the [disclosure] information relates." Following these existing standards, the Department has not accepted disclosures placed at the bottom of web pages that are so long that they require the reader to scroll to see the disclosures. However, the Department has accepted a web page that includes a clear and conspicuous statement at or near the

top of the web page that clearly directs a reader to footnoted disclosures at the bottom of the page. Required disclosures should be clearly and conspicuously presented. The effectiveness of disclosures is directly related to the proximity of their appearance to the content to which they are related. Disclosures that are not readily presented to the reader do not satisfy these standards. Pop-ups or similar linking mechanisms may be used to satisfy specified disclosure requirements, if the link to the disclosure is conspicuous, clearly labeled and placed near the relevant information to which the disclosure relates. To achieve clarity in the proposed amendment to §21.103(c) regarding pop-ups and similar linking devices, the Department is revising the second sentence in proposed §21.103(c), to delete the phrases "to a web page" and “a web page that prominently displays.” The sentence as adopted reads: “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, provided that the link must be placed near the relevant information to which it relates, and must connect directly to the information necessary to comply with the applicable requirements: . . . .”

One commenter suggests that the requirement that the full licensed name of the insurer appear in the advertisement at or before any shortened or substitute name be clarified to state that the full licensed name of the insurer must be used the first time the insurer is mentioned in the text of the advertisement. The Department agrees and accordingly the last sentence in adopted new §21.104(a)(1) has been revised to read, “The full licensed name must appear at or before the first appearance of any shortened

or substitute name in the body of the text, which shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement."

In response to a comment recommending striking the word "legally" in §21.106(f) because of redundancy, the Department has deleted "legally" from that subsection. In response to another comment on proposed §21.108(b) requesting clarification on why there was no certification procedure specified in this subsection when an insurer references statistical information that is more than five years old, the Department has added language to that subsection providing for a statement in the transmittal letter that is required to be provided pursuant to §21.120(a) that there is no more recent statistical information available.

Commenters recommended revising proposed §21.109(c) to clarify the Department's intent and maintain safeguards against rebating. They recommended adding the language "or obtain a quote" after the phrase "inquire about a policy" and striking the phrase "the good or service comprising." The Department agrees and has changed the language in §21.109(c) to read: "An advertisement may offer an incentive to inquire about a policy or obtain a quote provided that it includes a clear and conspicuous disclosure that no purchase is required in order to receive the incentive." The Department also agrees with a comment that the reference to "subsection (b)" in proposed §21.109(c) is incorrect, and has revised the reference to read: "...so long as any rate mentioned in any advertisement disseminated under this subsection indicates the age, gender, and geographic location on which that rate is based and. . . ."

One commenter recommends revising the phrase in proposed §21.113(f)(1) “define the applicable pre-existing conditions” to read “define the applicable pre-existing condition exclusion.” The Department agrees that some additional clarifying language is appropriate, but that more appropriate phrasing would be, “define the applicable pre-existing condition provisions" and the adopted rule has been revised accordingly.

One commenter recommends that Internet advertisements be added to the listing of applicable media in the parenthetical sentence in existing §21.113(k)(3)(A) that emphasizes that subparagraph (A) “is applicable to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodical.” The Department agrees that for purposes of clarity and internal consistency that “Internet advertisements” need to be included. However, in lieu of the commenter’s recommendation, the Department has changed the parenthetical sentence in existing §21.113(k)(3)(A) referenced by the commenter to read: “It is emphasized that this section is applicable to all advertisements as defined in §21.102(1) of this subchapter (relating to Scope),” and has also added the term “electronic media,” which includes web pages, e-mails, text messages, etc., to the definition of “advertisements” in current §21.102(1)(A). The Department believes that these two changes are the most efficient and comprehensive means to address the commenter’s concern.

In response to a commenter requesting clarification in proposed §21.120(a)(1), on whether the Department will require Internet ads filed for review to include each Internet page and pop-up, the Department has revised that paragraph to add the language “having a distinct URL.” The adopted language reads: “(1) the identifying form

number of each form submitted, including a separate identifying form number for each Internet page and pop-up having a distinct URL." The Department notes that any Internet page, the content of which addresses the lines of coverage specified in §21.120(e), is an advertisement required to be filed for review with the Department at or prior to use. Any pop-ups which can be invoked from the content related to a "required" line of coverage must also be filed, in order to provide a complete representation of the information provided to consumers regarding such line of coverage. Each web page and pop-up with a distinct URL is considered a separate advertising form, and thus must have a unique identifying form number, to comply with §21.120(a)(1).

In addition, the Department has determined that changes to the proposed text in §21.103(b) are necessary to reflect the current procedure for review of an advertisement by the Department staff as a routine matter with an appeal of the Department's decision to the Commissioner. Therefore, §21.103(b) is revised to clarify that whether an advertisement has a capacity or tendency to mislead or deceive is determined by the Department or the Commissioner on appeal.

The following is a section-by-section summary of the adopted amendments and new §21.121.

§21.102 Definitions. The adoption adds the term *electronic media* to §21.102(1)(A) for purposes of clarity and internal consistency. The adopted 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 delete the word *hereby* which is

superfluous. The adopted 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 adoption 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) subjects 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 adopted amendments to the terms *insurer* and *agent* clarify how the requirements of Subchapter B are to be applied to parties advertising such contracts.

The adopted 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 referring 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 adopted amendments incorporate §541.082(e) 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 adopted 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 an obsolete citation as a result of the non-substantive Insurance Code revisions enacted by the Texas Legislature. The deletion of the reference to Chapter 5 also clarifies that insurer communications regarding any line of insurance that are used only for the purpose of explaining 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 adopted amendments add new paragraph (7) to §21.102 to include a new definition of the term *invitation to inquire* that is generally applicable to all advertising. The new definition replaces the existing definitions 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, and in §21.114(1) (relating to Rules

Pertaining Specifically to Life Insurance and Annuity Advertising), which specifically concerns life insurance and annuity advertising.

The adopted amendments further add new paragraph (8) to §21.102 to include a new definition of the term *invitation to contract* that is generally applicable to all advertising. This new definition replaces the existing definitions of *invitation to contract* in §21.113(b), which specifically concerns health and accident insurance advertising, and in §21.114(1) and (2), which specifically concerns life insurance and annuity advertising. The definitions of *invitation to inquire* and *invitation to contract* adopt a single new definition for each term, 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 adoption clarifies in §21.103(b) that whether an advertisement has a capacity or tendency to mislead or deceive is determined by the Department or the Commissioner on appeal.

The adopted 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 adopted 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 adopted 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 adopted amendments to §21.104(a) are necessary to provide that an advertisement must reflect the identity of the person or entity responsible for the advertisement. The adoption also requires that the full licensed name appear at or before the first appearance of any shortened or substitute name in the body of the text, and the shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement. 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 that address coverages in general and do not describe a specific policy or coverages of a particular insurer, the requirement may be satisfied by stating an agent's licensed name, registered assumed name, or Texas license number.

The adopted amendments to §21.104(d) are necessary to clarify that the requirements for identification of the products advertised 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 adopted addition of new §21.104(i) is necessary to regulate advertisements that promote multiple insurers' products, a practice sometimes referred to as *co-branding*. The adopted 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 adopted 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 adopted amendment to §21.106(c) also deletes the existing rule pertaining to invitation to contract advertisements of endorsements or riders because new §21.106(d) addresses such advertisements. New §21.106(d) is adopted to require 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 disclose that such billing is clearly optional, is redesignated as §21.106(e).

The adoption of new subsection (f) of §21.106 is necessary to add the requirement that, if an invitation to contract advertisement provides a premium or range of premiums that is subject to change during the term of the coverage offered, the advertisement must disclose the possibility of such premium change. This requirement is necessary because consumers may be harmed by advertising that may state or imply

that the premium(s) provided in the advertising would be in effect through the offered policy's term.

§21.107. Testimonials, Appraisals or Analyses. The adopted 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 adopted 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 adopted amendments to §21.107(e). The adopted amendment to §21.107(b) corrects the reference to the Texas Department of Insurance to reflect its current name.

The adopted 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 associations' 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 amendment is to provide consumers with notice of the

degree of control they have over rate changes to which an association's directors may agree. Additionally, the adoption includes amendments to §21.107(d), that reference the relationships described in the amendments to subsection (a) defining a *spokesperson*, and that require prominent disclosure in an advertisement when the fact of such a relationship exists. The reason for these amendments 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 deleted because the provision is addressed in the adopted amendments to subsection (a).

The adopted 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 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 adopted 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 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.

Adopted 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 adopted 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 adopted 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 adopted 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 amendments are necessary because consumers should be able to readily identify and access the original source of statistics and citations. Additionally, §21.108(b) clarifies that certification to the Department that a source is more than five years old but is the most recent available must be through a statement in the transmittal letter that is required to be provided pursuant to §21.120(a).

Adopted new §21.108(c) requires that, when 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 adopted 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 adopted 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 adopted 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 adopted 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. 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.

Adopted new §21.109(c) provides that an advertisement may offer an incentive to inquire about a policy or obtain a quote provided that it includes a clear and conspicuous disclosure that no purchase is 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 adopted 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 delete the definition of *invitation to inquire* in existing §21.113(a) because of the new definition added in §21.102(7).

The adopted 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 adopted amendments also delete the definition of *invitation to contract* in existing §21.113(b) because of the new definition of *invitation to contract* added in §21.102(8).

The adopted 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 adopted 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 adopted amendment to §21.113(d)(4)(B) is necessary 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 advertising rule requirements, such as the adopted 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 adopted 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, if applicable, 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 adopted 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 adopted §21.106(c), paragraph (d)(9) is 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 adopted deletion of paragraph (9) of this subsection.

Additionally, the adopted 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 adopted 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 adopted amendments and deletion are necessary to implement the requirements of HB 2251, codified as Insurance Code §541.084.

The adopted 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 adopted amendments to existing §21.113(d)(17), renumbered as paragraph (16), 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 adopted 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 §21.109(a)(1) for consistency with the provisions of HB 2252, codified as Insurance Code §541.058.

The adopted 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 adopted to regulate advertisements of health and accident coverage that contain pre-existing condition provisions. Existing §21.113(e)(3) is renumbered as paragraph (2) due to the deletion of paragraph (2) of this subsection.

The adopted 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 condition provisions. 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.

The adopted 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 adopted provision, 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 adopted amendment to §21.113(h)(2) 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 to apply only to invitation to contract advertisements rather than to all advertisements. The required disclosure is not needed in institutional or invitation to inquire advertisements to adequately protect consumers. The amendments 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 deletion of paragraph (7) of this subsection.

The adopted 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. 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. The adoption also includes a clarification in the parenthetical sentence in §21.113(k)(3)(A) that it is emphasized that this section is applicable to all advertisements as defined in §21.102(1) of the subchapter.

New §21.113(k)(3)(C) is adopted to require that 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 adopted 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 adopted amendments are also necessary to revised references to documents previously identified as §21.113(l)(6) and (7) to Items (6) and (7) of Figure: 28 TAC §21.113(l)(5), respectively, and to correct the references to the Texas Department of Insurance in those documents to reflect its current name. The amendments also correct spelling and punctuation errors in those documents.

§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising. The adopted amendment adding "and Annuity" to the section's caption is necessary to better reflect the scope of application of the section's requirements. The adopted amendment in the opening paragraph of §21.114 corrects an internal reference for consistency with the changes in the paragraphs following that introduction. The adopted amendments delete existing §21.114(1), which defines the term *invitation to inquire,* because the definition of the term *invitation to inquire* has been added in new §21.102(7). The adopted amendments also delete existing §21.114(2), which defines the term *invitation to contract*, because the definition of the term *invitation to contract* has been added in new §21.102(8). Therefore, it is necessary to renumber existing §21.114(3) – (9) as §21.114(1) – (7).

Additionally, the adopted amendments to existing §21.114(4), renumbered as §21.114(2), are 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 when 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 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 deleted text is no longer necessary because the adopted text has a similar effect, but more effectively addresses exceptions to prevailing underwriting practices.

The adopted 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 to apply only to invitation to contract advertisements rather than imposing the requirement on 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 adopted 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 adopted 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 adopted 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 adopted 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 adopt 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 adopted requirements in §21.120(a)(1) clarify that separate identifying form numbers must be provided for each Internet web page and "pop-up" having a distinct URL.

The adopted requirements 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 adopt 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 adopted 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 adopted 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 adopted amendments specify a procedure under which advertisements that are the same as or substantially similar to advertisements previously reviewed and accepted by the Department may be introduced without the necessity of filing the revised advertisements. The adopted 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 adopted subsection (d), 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 numbers under which the forms were previously reviewed and accepted.

Adopted 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. Adopted 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 adopted new §21.121(a). In addition, adopted new §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. Adopted new §21.121(c) addresses advertisements for group meetings where information regarding insurance products is 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 adopted 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 are not 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 in which 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 those products appear in advertisements. Therefore, the adopted 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. HOW THE SECTIONS WILL FUNCTION. The adopted amendment to §21.102(1)(F) changes the defined term *lead card solicitation* to *lead solicitation*. The adopted amendment also revises 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 adopted amendment to §21.102(4) and (5) adds viatical and life settlement providers to the definitions of *insurer* and *agent*. The adopted 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 adopted amendments to §21.102(6) impose new requirements on insurers when advertising on the Internet. The adopted amendments to §21.102 add new paragraph (7) which establishes *invitation to inquire* as a defined term and add new paragraph (8) which establishes *invitation to contract* as a defined term, both of which would be generally applicable to all advertising. Additionally, the adopted amendments harmonize these definitions with the new definition of *institutional advertisement* derived from HB 2251.

The adopted 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 adopted amendments to §21.103(c) establish new requirements for insurers when advertising on the Internet.

The adopted 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. The adopted amendment to §21.104(d) clarifies that the requirements for identification of the products advertised include viatical and life settlement contracts, permit product identification requirements to be satisfied through referring to the product as classified by statute or rule or as filed 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. The adoption of §21.104(i) concerns advertisements that promote multiple insurers' products and the new provision specifies new disclosure requirements regarding the identity of the issuing insurer and the financial responsibility of the multiple insurers represented in the advertisement.

The adopted amendment 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. Additionally, the adopted amendments to §21.106 redesignate subsection (d), which requires that advertisements dealing with the availability of credit card billing must disclose that such billing is optional, as subsection (e) and adds 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. The adopted amendment to §21.107(a) adds 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. The adopted 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. 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 further 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 adopted 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 adopted amendments also add 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, adopted 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. The adopted 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 adopted 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 in the transmittal letter that is required to be provided pursuant to §21.120(a) that the source is the most recent available, that a source may not be more than five years old. Additionally, adopted 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.

The adopted 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 adopted amendments define *health-related services* and *health-related information* in accordance with Insurance Code §541.058. This 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. The adopted amendments to §21.109(a) implement the requirements of HB 2252, codified as Insurance Code §541.058. New §21.109(c) provides that an advertisement may offer an incentive to inquire about a policy or obtain a quote if the advertisement clearly and conspicuously discloses that purchase of the policy is not required in order to receive the incentive.

The adopted 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 delete the definition of *invitation to inquire* in existing §21.113(a) because the new definition of this defined term was added in §21.102(7).

The adopted 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 by the Texas Legislature.

The reference to “subsection (b)” in §21.113(b) has been revised to read as follows: ". . .so long as any rate mentioned in any advertisement disseminated under this subsection indicates the age, gender, and geographic location on which that rate is based and. . . ." The adopted amendments also delete the definition of *invitation to contract* in existing §21.113(b) because of the new definition in §21.102(8).

The adopted 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 adopted 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) deletes the current prohibition on certain advertisements relating to pre-existing conditions and are not necessary because amendments to §21.113(f) protect consumers with regard to the potential effects of pre-existing conditions upon coverage under a policy. The adopted 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, if applicable, 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 adopted deletion of §21.113(d)(9) removes a provision relating to certain disclosure requirements intended to disclose the potential effects upon premium costs when the consumer selects different coverage options because the regulation of this matter is addressed in adopted §21.106(c). Existing §21.113(d)(10) - (20) are renumbered as paragraphs (9) - (19) respectively due to the deletion of paragraph (9) of this subsection.

The adopted amendments to §21.113(d)(11) require 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 adopted amendments also eliminate the requirement for the name of the insurer to appear in the disclosure statement. The adopted amendments to §21.113(d)(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 adopted amendment to §21.113(d)(16) deletes a provision that interprets certain U.S. Internal Revenue Service rules because it is considered to be inappropriate for inclusion in Department rules. The adopted 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. The adopted amendment to §21.113(h)(2) restricts the requirement for disclosure of 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.

The adopted 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. The adoption also includes a clarification in the parenthetical sentence in §21.113(k)(3)(A) that it is emphasized that this section is applicable to all advertisements as defined in §21.102(1) of the subchapter. Additionally, adopted new §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, unlike most other states, Texas regulation treats association-based group coverage as “group coverage,” the new provision brings association-based group coverages under the same requirements that are applicable to such coverage in other states that have adopted the NAIC model language regarding open enrollments.

The adopted amendments to §21.114(2)(C)(ii) add language in clause (ii) to require that an advertisement that uses “non-medical,” “no medical examination required,” or similar language when 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 prohibiting certain advertisements relating to pre-existing conditions is deleted from clause (ii); because of other rule requirements, including §21.113(f), it is not necessary for effective regulation. The adopted amendment to §21.114(3)(B) restricts the requirement for disclosure of 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 adopted 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 new requirements in §21.120(a)(1) clarify that separate identifying form numbers must be provided for each Internet web page and “pop-up” having a distinct URL, 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 adopted amendments also include 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. Adopted new §21.120(a)(6) requires 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 adopted 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 adopted 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 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 will appear, including the form numbers and the Department's filing numbers under which the forms were previously reviewed and accepted.

Adopted 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) prohibits advertisements for group meetings in which information regarding insurance products will be disseminated; insurance products will be offered for sale; or individuals will be enrolled, educated or assisted with the selection of insurance products 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.

The adopted amendment to §21.122(a)(1) revises the definition of *advertisement* for the purposes of the section by excluding *institutional advertisements*, and the adopted 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.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comments

Comment: A commenter expressed general support for the proposed changes to the rules. The commenter noted that the increase in Internet advertising necessitated changes in the Department's regulatory approach and HB 2251 granted the authority to make the proposed changes. Additionally, since HB 2252 allows insurers to promote

and advertise non-insurance products, strong disclosures regarding those benefits are required to protect consumers from misleading marketing practices.

Agency Response: The Department appreciates the expression of support of the proposed rules.

Comment: A commenter notes that, without specifically referencing any particular section, there are references in Subchapter B that apply to advertising relating to “a specific insurance policy” and expresses the opinion that such references are vague and unclear as to whether they refer to a policy that has been issued or to a specific insurance policy form that is being marketed.

Agency Response: The phrase, “a specific insurance policy,” is utilized in HB 2251. That statute uses the phrase to distinguish “institutional” advertisements, that “do not refer to a specific insurance policy,” from other types of advertisements, i.e., invitations to inquire or invitations to contract. The Department’s intent is to similarly employ the term. An advertisement that treats a type of product, such as long-term care insurance, in a general manner that merely serves to promote the concept of such insurance is considered “institutional.” However, an advertisement that contains a description of any characteristics that are distinguishing of a particular product offered by an insurer is considered to refer to “a specific insurance policy.” This is true of advertising relating to a policy that is being marketed as well as to one that has already been issued to an insured; however, a communication directed to the insured that does not urge the purchase, increase, modification or retention of the policy is not considered an

"advertisement," pursuant to §21.102(2)(B). Therefore, further clarification of the phrase, "a specific insurance policy," within the rule is not necessary.

§21.102. Scope

Comment: Commenters recommend revising the reference in §21.102(1)(G) "as defined in subsection (c)" to read "as defined in paragraph (3)" because that is the correct reference for the definition of policy.

Agency Response: The Department agrees and has changed the language in §21.102(1)(G) accordingly."

Comment: One commenter requests clarification with respect to the "as can be made appropriate" language in proposed §21.102(5), the amendment to the definition of the term "agent," which includes the phrase "as can be made appropriate" before the proposed new language "viatical and life settlement brokers and provider representatives."

Agency Response: The Department declines to delete the phrase, "as can be made appropriate." The phrase is also used in existing paragraph (4) of §21.102 in applying the defined term, "insurer," to premium finance companies. Section 3.1710 of this title (relating to Prohibited Practices Relating to Advertising and Solicitation; Applications and Contracts) subjects 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). The use of the phrase is necessary for the recognition that some advertising rules, strictly read, would otherwise be difficult to

apply to advertising by entities regulated by the Department that are not literally "insurers" or "agents." For example, viatical and life settlement registrants and premium finance companies do not market insurance "policies." Nevertheless, application of relevant advertising standards regarding, for example, accurate depiction of costs for purchasing the offered contract, and truthful disclosure of such contracts' provisions, is necessary to promote sound purchasing decisions by consumers.

Comment: A commenter questions whether the term "insurance product," in the definition of "invitation to inquire" in §21.102(7), means something other than an "insurance policy."

Agency Response: The Department's intent in §21.102(7) is to refer to an insurance "policy," as defined in §21.102(3). The Department, therefore, has changed the term "product" to "policy" in paragraph (7) as adopted.

Comment: A commenter suggests that "invitation to inquire," as defined in proposed §21.102(7), would be best applied only when the "opportunity" to request a quote includes the need for a person to submit actual data in order to obtain a quote. The commenter opines that an advertisement that says, for example, "for more information, please contact…," should not be classified as an invitation to inquire.

Agency Response: The Department disagrees that any change is needed in the rule as proposed. The "opportunity" to request a quote exists when a mechanism such as a web page is provided to a consumer and allows the consumer to submit information with the specific intent of obtaining a quote. A generic web page that permits a user to make a nonspecific contact "for more information" is not designed with the specific

intent of providing an opportunity to request a quote. Non-Internet advertising that provides a mechanism, such as a reply card, to permit a consumer to request more information is classified as an invitation to inquire. Classifying these advertisements as such triggers the requirement to disclose the full name of the insurer offering the product advertised. Consumers should be able to confirm the identity of the insurer offering the product before identifying themselves to the insurer as potentially interested in the offering.

§21.103(c). Required Form and Content of Advertisements

Comment: A commenter notes that the proposed language in §21.103(c) concerning the method of providing disclosures in Internet advertising requires insurers to use a "conspicuous and clearly labeled link to a webpage, provided that the link must be placed near the relevant information to which it relates." The commenter states that the language of HB 2251 does not specify the proximity that a link containing a disclosure must have to the relevant information to which it relates and asserts that the proposed language requiring the link containing the disclosure to be near the relevant information exceeds the authority granted by HB 2251.

Agency Response: The Department does not agree that proposed §21.103(c) exceeds the Commissioner's authority. HB 2251 authorizes required disclosures to be made via a link "as permitted by commissioner rule," and states that such link "must be prominently placed" on the affected web page. Proposed §21.103(c) establishes the conditions under which a link may satisfy certain required disclosures. The rule

specifies conspicuousness, clear labeling, and proximity to the related advertising content as factors that are necessary to render the link prominently placed.

Comment: A commenter states that the proposed language in 21.103(c) limits the use of widely-used methods of disclosure such as pop-ups that require consumers to confirm they have read the disclosure.

Agency Response: Existing §21.103(c) already prescribes that required disclosures must be presented “conspicuously” and that such disclosures not be “minimized [or] rendered obscure.” Further, disclosures invoked by certain content in an advertisement must appear “in close conjunction with the statements to which the [disclosure] information relates.” In applying these existing standards, the Department has not accepted disclosures placed at the bottom of web pages that are so long that they require the reader to scroll to see the disclosures. However, a web page may include a statement at or near the top of the web page that clearly directs a reader to the appearance of disclosures at the bottom of the page. Required disclosures should be clearly and conspicuously presented. The effectiveness of disclosures is directly related to the proximity of their appearance to the content to which they are related. Disclosures that are not readily presented to the reader do not satisfy these standards. Pop-ups or similar linking mechanisms may be used to satisfy certain disclosure requirements specified in that subsection, if the link to the disclosure is conspicuous, clearly labeled, and placed near the relevant information to which the disclosure related. However, for clarity and ease of understanding, the Department has revised the second sentence in §21.103(c) as adopted, to delete the phrases, “to a web page” and “a web

page that prominently displays." The sentence in question will read, "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, provided that the link must be placed near the relevant information to which it relates, and must connect directly to the information necessary to comply with the applicable requirements: . . . ."

Comment: Commenters suggest striking the proposed language in §21.103(c) that requires the link to be placed in close proximity to the relevant information and continuing to permit insurers to use the bottom of the web page for disclosures. The commenters state that compliance with the rule, as proposed, will be costly and time-consuming and that most consumers would not see a benefit from its enforcement.

Agency Response: Existing §21.103(c) already prescribes that required disclosures must be presented "conspicuously" and that such disclosures must not be "minimized [or] rendered obscure." Further, disclosures invoked by certain content in an advertisement must appear "in close conjunction with the statements to which the [disclosure] information relates." In applying these existing standards, the Department has not accepted disclosures placed at the bottom of web pages that are so long that they require the reader to scroll to see the disclosures. However, a web page may include a clear and conspicuous statement at or near the top of the web page that clearly directs a reader to the appearance of footnoted disclosures at the bottom of the page. Required disclosures should be clearly and conspicuously presented. The effectiveness of disclosures is directly related to the proximity of their appearance to the

content to which they are related. Disclosures that are not readily presented to the reader do not satisfy these standards. Pop-ups or similar linking mechanisms may be used to satisfy specified disclosure requirements, if the link to the disclosure is conspicuous, clearly labeled and placed near the relevant information to which the disclosure relates. The proposed amendment provides greater clarity to this requirement while also implementing the intent of HB 2251, which authorizes required disclosures to be made via a link "as permitted by commissioner rule," and states that such link "must be prominently placed" on the affected web page, by accommodating the ability to make certain required disclosures via links. The rule does not otherwise enlarge upon the standards that the Department is currently applying to website advertising under the existing rule. Any costs or effort required to modify web pages to comply with the rule are justified to adequately afford consumers with the protections that the disclosures are designed to provide.

Comment: A commenter indicates that §21.103(c) has the potential to apply to too many links, which would make the advertisement's text cluttered and hard to understand. The commenter states that it should be sufficient to provide one link for readers to access.

Agency Response: Links to required disclosures should be clearly labeled to indicate the nature and significance of the information available via the link. A generic link labeled, for example, "Required Disclosures," would not provide sufficient notice to readers of the type or importance of the information available via the link. Further, a single "required disclosures" page may present so many disclosures that it would be

difficult for readers to properly associate a specific disclosure with the content to which it should relate. Therefore, the Department declines to make a change to permit, on a universal basis, a single link for presenting all required disclosures.

§21.104(a). Requirement of Identification of Policy or Insurer

Comment: Commenters state that the requirement in §21.104(a)(1) that the full licensed name of the insurer must appear in the advertisement at of before any shortened or substitute name should be changed to allow insurers to use the full licensed name of the insurer anywhere in the advertisement as long as the identification is clear to the consumer.

Agency Response: Existing §21.104 already requires the full name of insurers to appear on each of its advertisements. The Department recognizes the desire of many in the industry to market the offerings of products, often issued by various member insurers within a group, under a common “brand.” The Department has taken the position that institutional advertisements may reference only an insurer’s group name or similar “brand.” However, where specific insurance policies are offered, it is critical that Texas consumers be able to readily ascertain which specific insurer or insurers would issue the subject policies. Each member of an insurance group is independently financially responsible to its insureds for the policies it issues; it is potentially misleading for consumers to believe some affiliate other than the actual issuer, or the insurance group, generally, has a contractual obligation to the issuer’s insureds. The proposed amendments clarify that the requirement for the appearance of the full name applies

only to invitation to inquire and invitation to contract advertisements. The use of such "brands" in lieu of the issuing insurer's name, i.e., as a shortened or substitute name for the insurers, can be accommodated within the proposed amendments by having the full name of the affected insurer appear in conjunction with the shortened/substitute name at its first use. Invitation to inquire advertisements appearing on the Internet, under the provisions of proposed §21.103(c)(1), would be permitted to disclose the affected insurers via a conspicuous and clearly-labeled link to another web page or "pop-up" which identifies the full names of the insurers that the shortened/substitute name is intended to represent with respect to the types of policies offered. Therefore, the Department declines to make the requested changes to the rule as proposed.

Comment: A commenter disagrees with the proposed requirement in §21.104(a)(1) that the full licensed name of the insurer must appear in the advertisement at or before any shortened or substitute name. However, the commenter recognizes that the Department has long held this position. The commenter suggests, in lieu of eliminating the requirement, that the rule clarify that the full licensed name must be used the first time the insurer is mentioned in the text of the advertisement.

Agency Response: The Department agrees that the suggested change would afford reasonable disclosure of the actual identify of the insurer offering the advertised coverage to consumers. Accordingly, the last sentence in adopted §21.104(a)(1) has been revised to read: "The full licensed name must appear at or before the first appearance of any shortened or substitute name in the body of the text, which

shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement."

Comment: A commenter recommends limiting the requirement in §21.104(a)(2), concerning the identification of the insurer when an advertisement addresses coverages in general, to those situations where a specific policy or coverages of a particular insurer are being discussed in the advertisement.

Agency Response: Paragraph (1) of §21.104(a) limits the requirement of the disclosure of the full name of the insurer to invitation to inquire and invitation to contract advertisements. Institutional advertisements, which do not refer to a specific policy offered by a particular insurer, but which may refer generally to the lines of coverage offered by such insurer, are not subject to this requirement. Paragraph (2) of the section refers to the requirements for identification of an agent, where such advertising does not refer to coverages or a specific policy offered by a particular insurer.

§21.106. Premiums

Comment: A commenter recommends striking the word "legally" in §21.106(f) as being redundant.

Agency Response: The Department agrees and has deleted the word from that subsection as adopted.

§21.107. Testimonials, Appraisals, or Analyses

Comment: A commenter requests clarification as to whether or not the word "stockholder" in §21.107(a)(1) includes a person or entity that has an interest in a mutual fund that owns shares of a publicly traded insurer.

Agency Response: The common understanding is that when an individual purchases a share of a mutual fund that individual does not actually own the assets of the mutual fund and hence does not personally control the insurer's stock owned by the mutual fund. The intent of the rule is to address the situation in which an individual has actual ownership/control of the insurer's stock.

§21.108. Use of Statistics and Citations

Comment: Commenters note that §21.108(b) that pertains to instances in which insurers reference statistical information that is more than five years old in their advertisement requires insurers to certify to the Department that there is no more recent statistical information available. The commenter seeks clarification as to why there is no certification procedure specified that insurers may follow to comply.

Agency Response: The Department agrees and has changed the last sentence in §21.108(b) as adopted to read: "A source shall not be more than five years old unless the advertiser certifies to the department through a statement in the transmittal letter that is required to be provided pursuant to §21.120(a) of this subchapter (relating to Filing for Review) that the source is the most recent available."

§21.109. Unlawful Inducement

Commenters: Commenters recommend amending §21.109(c) by adding the language "or obtain a quote" after the phrase "inquire about a policy" and by striking the phrase "the good or service comprising." The commenters believe these changes will clarify the Department's intent and maintain safeguards against rebating.

Agency Response: The Department agrees and has changed the language in §21.109(c) to read, "An advertisement may offer an incentive to inquire about a policy or obtain a quote provided that it includes a clear and conspicuous disclosure that no purchase is required in order to receive the incentive."

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

Comment: A commenter states that in §21.113(b) the reference to "subsection (b)" is incorrect.

Agency Response: The Department agrees that the reference to "subsection (b)" is incorrect and has revised §21.113(b) to read: ". . . so long as any rate mentioned in any advertisement disseminated under this subsection indicates the age, gender, and geographic location on which that rate is based and. . . ."

Comment: A commenter recommends amending §21.113(c)(3) to add "PPO plan" to the types of plans that an advertisement must identify since HB 2251 has allowed for the use of the acronym "PPO."

Agency Response: The Department declines to make the suggested change. "PPO" plans, as offered by insurers, are in fact "insurance" plans. The Department has been

presented with numerous examples of advertising relating wholly or in part to discount health care programs, which are typically not insured plans, that use the term “PPO plan” in describing their program benefits. It is crucial that consumers not mistake a non-insurance product, such as a discount health care program, with an insurance product. It is in the best interest of both consumers and insurers that insured PPO plans be identified as insurance plans.

Comment: A commenter recommends amending the phrase in §21.113(f)(1) “define the applicable pre-existing conditions” to read “define the applicable pre-existing condition exclusion.”

Agency Response: The Department agrees that some additional clarifying language is necessary, but that the more appropriate change in phrasing is “define the applicable pre-existing condition provisions.” The adopted rule is revised accordingly.

Comment: One commenter recommends that Internet advertisements be added to the listing of applicable media in the parenthetical sentence in existing §21.113(k)(3)(A) that emphasizes that subparagraph (A) “is applicable to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodical.”

Agency Response: The Department agrees that the language in question should be read as applying to the Internet. However, in lieu of the commenter’s recommendation, the Department has changed the parenthetical sentence in existing §21.113(k)(3)(A) referenced by the commenter to read: “It is emphasized that this section is applicable to all advertisements as defined in §21.102(1) of this subchapter (relating to Scope),” and

has also added the term “electronic media,” which includes web pages, e-mails, text messages, and other forms of electronic communications, to the definition of “advertisements” in current §21.102(1)(A). The Department believes that these two changes are necessary for purposes of clarity and internal consistency and are the most efficient and comprehensive means to address the commenter’s concern.

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

Comment: A commenter expresses appreciation that the Department used language from the National Association of Insurance Commissioners (NAIC) model regulation, but is concerned that the proposed rule was incorrectly drafted. The commenter recommends that §21.114(2)(C)(ii) be redrafted and provides a redrafted provision with new formatting and new language for paragraph (2)(C)(ii) which includes changing: the phrase “an advertisement that uses” to read “In the event an invitation to contract advertisement uses” and suggests additional language that is intended to clarify the proposed provision.

Agency Response: The language proposed by the Department reflects the style used in the Texas Administrative Code and the substance of the rule is consistent with the NAIC model rule, on which the Department’s rule is based. The only substantive change the commenter recommends is to restrict the rule to invitation to contract advertisements which is a limitation that is not included the NAIC model rule. Therefore, the Department’s adoption retains the language and structure of the proposed amendment as published.

§21.120. Filing for Review

Comment: A commenter requests clarification on whether the Department will require Internet ads filed for review to include each Internet page and pop-up.

Agency Response: Any Internet page, the content of which addresses the lines of coverage specified in §21.120(e), is an advertisement required to be filed for review with the Department at or prior to use. Any pop-ups which can be invoked from the content related to a "required" line of coverage must also be filed, in order to provide a complete representation of the information provided to consumers regarding such line of coverage. Each web page and pop-up with a distinct URL is considered a separate advertising form, and thus must have a unique identifying form number, to comply with §21.120(a)(1). For clarity, §21.120(a)(1) as adopted is revised to read, "the identifying form number of each form submitted, including a separate identifying form number for each Internet page and pop-up having a distinct URL."

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Office of Public Insurance Counsel.

For with changes: American Insurance Association, Texas Association of Health Plans, and United States Automobile Association.

Received after the close of the public comment period and not addressed in this Order: Texas Association of Life and Health Insurers.

6. STATUTORY AUTHORITY. The new section and amendments are adopted 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. TEXT.

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

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

(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays; and

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(C) prepared sales talks, presentations and materials for use by agents, and those representations recurringly made by agents to members of the public; and

(D) material used to:

(i) solicit additional coverage or policies from existing insureds; or

(ii) modify existing coverage or policies;

(E) material included with a policy when the policy is delivered and materials used in the solicitation of renewals and reinstatements, except those reinstatements provided for in the policy;

(F) lead solicitations which are 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) of this section; and

(G) any other communication directly or indirectly related to a policy, as defined in paragraph (3) of this section, and intended to result in the eventual sale or solicitation of a policy.

(2) "Advertisement" does not include:

(A) communications or materials used within an insurer's own organization, not used as sales aids and not disseminated to the public;

(B) communications with policyholders other than materials urging policyholders to purchase, increase, modify, or retain a policy;

(C) a general announcement by a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage;

(D) material used solely for the recruitment, training, and education of an insurer's personnel, agents, counselors, and solicitors, provided it is not also used to induce the public to purchase, increase, modify, or retain a policy of insurance; and

(E) correspondence between a prospective group or blanket policyholder and an insurer or agent in the course of negotiating a group or blanket contract.

(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 of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code 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 policy 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) It is required that advertisements be truthful and not misleading either in fact or in implication.

(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 department of insurance, or the Commissioner 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, provided that the link must be placed near the relevant information to which it relates, and must connect directly to 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 advertisement may be used which because of words, phrases, statements, or illustrations therein or information omitted therefrom has the capacity and tendency to mislead or deceive purchasers or prospective purchasers. Words or phrases may not be used which are misleading or deceptive because their meaning is not clear, or is clear only to persons familiar with insurance terminology. This section does not prohibit the use of trade or technical terms in advertisements directed exclusively to commercial enterprises familiar with the particular term use.

§21.104. Requirement of Identification of Policy or Insurer.

(a) An advertisement must identify the person or entity responsible for 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 in the body of the text, 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) An advertisement other than institutional, may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive a prospective purchaser as to the true identity of the insurer, or its relation with public or private institutions.

(c) No advertisement may use a combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combinations of words, symbols, or physical material normally or usually used by agencies of the federal government or of this state, or that otherwise appear to be of such a nature that the advertisement or solicitation has the capacity or tendency to

confuse or mislead prospective insureds into believing that such advertisement or solicitation is connected with an agency of the municipal, state, or federal government.

(d) All advertisements, other than institutional, shall explicitly and conspicuously disclose that the product concerned is property, life or other insurance, an annuity, HMO coverage, a viatical or life settlement contract, or a prepaid legal services contract, 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) An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond those limits.

(f) An advertisement may not contain statements that avoid a clear and unequivocal statement that insurance or an annuity or HMO coverage or prepaid legal services coverage is the subject matter of the solicitation.

(g) An advertisement that contains an application and is advertising more than one policy shall be presented in such manner as to clearly reflect that the cost and benefits are applicable to separate policies of insurance.

(h) No advertisement by an insurer or agent may be used that, directly or by implication, has the capacity and tendency to mislead or deceive prospective purchasers with respect to an insurer's assets, corporate structure, financial standing, age or relative position in the insurance business, or in any other material respect.

(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) No advertisement may state a premium for a policy that does not apply to the exact coverage advertised.

(b) If a premium is quoted in an advertisement that does not apply to all classes of risk solicited, the class or classes to which it applies must be identified.

(c) Advertisements referencing optional endorsements, riders or other benefits available at an additional cost, shall disclose the fact of additional cost.

(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) 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 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:

(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 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) Licensing by a public body shall not be presented in any advertisement as an endorsement of an insurer or agent as distinguished from other insurers or agents similarly acted upon.

(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 relationship described in subsection (a) of this section that exists between the entity and the insurer or agent is prominently disclosed.

(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.

(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.

(g) If a person is compensated, directly or indirectly, for making a testimonial, endorsement, or appraisal, this shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement."

(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 advertised unless it is a fact, and when applicable to other types of products 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 through a statement in the transmittal letter that is required to be provided pursuant to §21.120(a) of this subchapter (relating to Filing for Review) 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 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 insurer or agent may state or imply as an inducement to the purchase of insurance a guarantee of return of premium based upon the quality of its policy other

than where such guarantee is required by law or stated within the policy of insurance offered.

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

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

(f) 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."

(b) Illustration of rates. Subject to the Insurance Code Article 21.20-2 §1 and the Insurance Code Chapter 541 Subchapter B, 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 this subsection 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) the rates are illustrative only;

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

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

(4) benefit exclusions and limitations may apply to the health benefit plan.

(c) Identification of policy.

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

(2) If an advertisement refers to various benefits that are contained in two or more policies or riders, but excepting group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies or riders.

(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) An invitation to contract referring to a dollar amount, a period of time for which a benefit is payable, the cost of the policy, or a specific policy benefit or the loss for which such benefit is payable shall also disclose those exclusions, reductions, and limitations affecting the basic provisions of the policy, without which the advertisement would have the capacity and tendency to mislead or deceive.

(2) If a policy pays varying amounts of benefits for the same loss occurring under different conditions or that pays benefits only when a loss occurs under certain conditions, any reference to these benefits in an invitation to contract shall be accompanied by a clear and conspicuous disclosure of the different or limited conditions.

(3) 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 clear and conspicuous disclosure of such fact is made in the advertisement.

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

(A) (No change.)

(B) 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) An invitation to contract for a policy which 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.

(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.

(7) An advertisement may not contain representations of an aggregate amount payable without clear and conspicuous disclosure in close conjunction therewith of any maximum daily benefit and maximum time limit.

(8) No advertisement of a policy providing benefits for which payment is conditioned upon confinement in a hospital, extended care facility, or at home may advertise that the amount of the benefit is payable on a monthly or weekly basis if, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement unless such statements of monthly or weekly benefit amounts are followed immediately by equally prominent statements of the benefit payable on a daily basis. For example, either of the following statements is acceptable: "$1,000 a Month ($33.33 a Day)" or "$33.33 a Day ($1,000 a Month)." If the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

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

(11) A Medicare-related 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.”

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

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

(18) 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) 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) If a policy contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy, or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an invitation to contract shall disclose the existence of such periods.

(2) 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.

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

(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 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:

(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) No advertisement may represent or imply that an insurance policy may be continued in effect indefinitely or for any period of time, if the policy provides that it may not be renewed or may be cancelled by the insurer, or terminated under any circumstances over which the insured has no control, during the period of time represented.

(4) The term "noncancellable" or derivation thereof may not be used by an insurer or agent to describe a policy if the insurer has a right to periodically, by individual or class, revise rates or premiums.

(5) An invitation to contract shall contain a notice stating that the person to whom the policy is issued is permitted to return the policy within 10 days (or more as stated in the policy) of its delivery to that person and to have the premium paid refunded.

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

(1) Consideration paid or to be paid for individual insurance, including policy fees, shall be in all instances described as premium, consideration, cost, or payments.

(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) 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.

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

(5) 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 similar policy, demonstrating a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public.

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

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

(i) Dividends.

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

(2) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the dividends must be based on the insurer's current dividend scale and the illustration must contain a statement to the

effect that the dividends are not to be construed as guarantees or estimates of dividends to be paid in the future.

(3) 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, any form of director resolution, stockholders resolution, or form of company action stating or implying the action an insurer will take on a declaration of dividend or other matter in the future 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 other funds or assets to make the payments, or to consummate the transaction in accordance with the appropriate statutes.

(j) In consideration of the comprehensive content of these sections and, among other reasons, the sections being applicable to substantially all insurers, an insurer or agent may not, particularly if used as a "twisting" device, inform any policyholder or prospective policyholder that an insurer or agent 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.

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

(1) 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.

(2) If an insured or prospective insured is provided a policy or coverage of insurance and the first premium has not been paid, or an application has not been returned to the insurer or its agents or representatives, the insurer, its agents, or representatives may not make any billing or attempt to collect a premium on such policy until such time as an application or acknowledgment of acceptance is received. If coverage is issued prior to such acceptance, it shall be accompanied by a written statement describing it as follows:

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

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

(C) clearly stating when coverage will be effective.

(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 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 advertisements as defined in §21.102(1) of this subchapter (relating to Scope)). 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 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) There may be no statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

(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 the language which is set forth in item (6) Figure: 28 TAC §21.113(1)(5.

(B) Duplication--Policies of the same coverage type according to minimum standard classifications outlined in Chapter 3, Subchapter S and Subchapter Y of this title (relating to Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies and Minimum Standards for Benefits for Long-term Coverage under Individual and Group Policies). For example, two cancer insurance policies or two long-term care policies would be duplicative. Duplication is also present when two policy coverages overlap to the extent that a reasonable person would not consider the ownership of two such policies to be cost efficient in light of the consumer's needs and income level. 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 will not be considered duplication of other coverage.

(C) Notice to consumer--The document which contains and is limited to the language which is set forth in item (7) of Figure: 28 TAC §21.113(1)(5).

(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 (6) of Figure: 28 TAC §21.113(1)(5). This form is published by the Texas Department of Insurance, and copies of the form are available from and on file at the Texas Department of Insurance, Market Conduct Division, Mail Code 305-2E, P.O. Box 149104 , Austin, Texas 78714-9104 .

(3) In order to obtain this acknowledgment, all insurers or their agents or other intermediaries shall offer to examine all health insurance policies and health care coverage owned by a prospective insured and advise the insured as to whether the purchase of the proposed policy will result in any duplication of benefits.

(4) Direct response insurers who market to the consumer without agents or other intermediaries are exempt from the requirement to deliver the

acknowledgement contained in item (6) of Figure: 28 TAC §21.113(1)(5), but must deliver the notice to consumers set forth in item (7) of Figure: 28 TAC §21.113(1)(5).

(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.

FIGURE: 28 TAC §21.113(l)(5):

Item (7)

NOTICE TO CONSUMERS

AGE 65 AND OLDER

The Texas Department 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 of Insurance urges you to use this time to verify that this coverage is needed.

The Department 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 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 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 OF INSURANCE 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.

_____

(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.

NOTICE TO CONSUMERS

Age 65 and Older

This Notice is required by the Texas Department 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 ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY 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 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 OF INSURANCE 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 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

_____ _____ DATE AGENT/COMPANY REPRESENTATIVE	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 ___..

_____

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) of this section is to be used as the standard in the interpretation of the provisions of this section.

(1) 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) 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.

(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) 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) 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) 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) 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) 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 advertisement may use the word "dividends" or similar words or illustrations in such a manner as to state or to imply that future dividends are guaranteed or certain to occur.

(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 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 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 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 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 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 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, 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, Texas Department of Insurance, 333 Guadalupe, Mail Code 111-2A, Austin, Texas 78701, or P.O. Box 149104, Austin Texas 78714-9104. The transmittal letter shall contain the following information:

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

(2) the type of advertisement submitted, i.e., institutional advertisement, invitation to inquire, or invitation to contract;

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

(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) All advertisements shall be submitted in duplicate.

(c) Advertisements may be submitted in printers' proof or as "pasteups."

(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.

(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, where an insurer or its policy is advertised.

(2) Agent--As defined in §21.102(5) of this title (relating to Scope).

(3) Insurer--As defined in §21.102(4) of this title (relating to Scope).

(4) Policy--As defined in §21.102(3) of this title (relating to Scope).

(b) Scope. This section shall apply to any advertisement for policies that are intended for presentation, distribution, or dissemination in this state.

(c) Duty of agent. Before using an advertisement as defined in subsection (a) of this section, an agent must file the advertisement with the home office of the insurer affected by the advertisement for written approval. An agent is not required to file advertisements received from the insurer.

(d) Duty of insurers. Every insurer marketing policies in this state shall establish and maintain a system of control over the content, form, and method of dissemination of all advertisements concerning its policies. A system of control shall include, but is not limited to, requiring the agents, or any other entities who prepare advertisements which name the insurer or advertise its policy, to submit the proposed advertisement to the

insurer's home office for written approval of the home office prior to use. Each insurer shall be responsible for advertisements prepared or approved by it or prepared pursuant to its direction. No insurer may avoid responsibility for advertisements by directing or authorizing anyone else to prepare or approve them.

(e) Other applicable laws. Nothing in this section relieves any agent or insurer from complying with other applicable laws.

CERTIFICATION. This agency hereby certifies that the adopted 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 specified herein, concerning insurance advertising, certain trade practices, and solicitation, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2007.

_____
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that 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 specified herein concerning insurance advertising, certain trade practices, and solicitation, are adopted.

AND IT IS SO ORDERED.

_____
MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

_____
Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO._____