

**SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND
PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS
28 TAC §1.603**

1. INTRODUCTION. The Texas Department of insurance adopts new 28 TAC §1.603, concerning complaint information available through the department's toll-free telephone number. The commissioner adopts the amendments with changes to the proposed text published in the May 25, 2012, issue of the *Texas Register* (37 TexReg 3778).

2. REASONED JUSTIFICATION. The new section is necessary to: (i) notify the public that, pursuant to the Insurance Code §521.052, complaint information available through the department's toll-free telephone number includes information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid; (ii) equate the term "confirmed," for the Consumer Protection Section's use in its complaint handling process, with the statutory term "justified"; and (iii) describe the criteria the department uses to classify a complaint as "confirmed."

The proposal and adoption of §1.603 followed a project to address stakeholder questions and requests for clarification regarding the process and the terminology used by the department's Consumer Protection Section in classifying consumer complaints.

The Insurance Code §521.052 requires the department to provide to the public through its toll-free telephone number information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are "justified, verified as accurate, and documented as valid." The Insurance Code

§521.052 does not specify what constitutes a “justified,” “verified as accurate,” or “documented as valid” complaint. Therefore, the department has interpreted the Insurance Code §521.052 as requiring the department to collect, maintain, and provide to consumers information on complaints that need an action.

In the past, the Consumer Protection Section has referred to a complaint as “justified” after it verified that the complaint presented a reasonable basis for the need for an action, regardless of whether that action was resolving a communication problem or referring a potential violation of law to the Enforcement Section. The Consumer Protection Section has used the term “justified” because of the use of the term in the Insurance Code §521.052. However, use of the term “justified” in communicating with consumers has resulted in a concern by some consumers that the department might judge complaints to be right or wrong and treat complaints differently based on that judgment. The department does not take this approach in addressing complaints.

To avoid an appearance that the department gives more attention to some complaints than others, the Consumer Protection Section is taking steps to change the language it uses to address complaints when working with consumers. It has begun using the term “confirmed” in lieu of “justified.” Section 1.603 complements the steps taken by the Consumer Protection Section by equating the new term “confirmed” with the statutory term “justified” in rule and setting out in rule the factors it uses to determine when a complaint is “confirmed.”

In response to a comment, the department has revised §1.603(a) as adopted to state, “The Texas Department of Insurance (department) will provide to the public

through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.” The department has revised this subsection to clarify that under §1.603 the department will provide the information required by the Insurance Code §521.052.

3. HOW THE SECTION WILL FUNCTION. New §1.603 addresses complaint information available through the department’s toll-free telephone number. Section 1.603(a) says that the department will provide to the public, through its toll-free telephone number, the information specified by the Insurance Code §521.052, including information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid. Section 1.603(b) states that the department considers a complaint justified if the complaint is a confirmed complaint. Section 1.603(c) provides the definition of what constitutes a confirmed complaint.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comments.

Comment: Two commenters express support for the proposed section.

One commenter says that the proposed rule reflects the statutory language found in the Insurance Code §521.052 and asks that it be adopted as proposed.

The other commenter expresses support for the intent of the rule to label complaints as confirmed or unconfirmed as opposed to justified and unjustified. The commenter says that consumers are often frustrated to find their complaint deemed unjustified by the department when they feel that they have a valid complaint, and the commenter says that changing the language to use “unconfirmed” with help alleviate that frustration and would be more accurate in some cases.

The commenter says that retaining proposed §1.603(c)(2) or something like it is critical, because many practices that are bad customer service are not against the law or in violation of the contract, and the department should maintain the ability to deem a complaint as confirmed if the complainant had a valid concern.

Agency Response: The department appreciates the supportive comments. The department agrees that it is important for §1.603 to allow for consideration of complaints based on issues other than just violations of law or contract. The purpose of the section is to clarify the department’s process for addressing and providing to the public information concerning consumer complaints, which do not always relate solely to violations of the law.

Comment: Three commenters say that it is not clear why proposed §1.603 is necessary.

One commenter says that there is no legal reason to define the statutory term “justify” by rule, and that there is no need to use the term “confirmed” in defining

“justify.” The commenter adds that even if there was a need to add a definition, the proposed definition fails to provide any objective basis on how the department will determine if a particular complaint is justified.

The commenter notes that the statute requiring the department to provide complaint information was originally adopted in 1991 and that the department has been providing information pursuant to these statutory requirements for over twenty years without the need for a rule of the type proposed in this section.

A second commenter says it is not clear why it is necessary for §1.603(b) to define a “justified” complaint as a “confirmed” complaint or whether the proposed definition provides clarity. The commenter references the definition for complaint currently available on the department’s website, and says that the proposed language unnecessarily expands the scope and adds confusion to the concept of a justified complaint.

The second commenter notes that, in discussing this issue, a stakeholder group considered the National Association of Insurance Commissioners (NAIC) Complaint Database System definition that includes the term “confirmed complaint” but not “justified complaint.” The commenter says that the Insurance Code §521.052(1) requires the department to provide to the public information based on justified complaints, and that it does not reference “confirmed” or defer to NAIC concepts for qualifying complaints. The commenter says that attempts to merge the NAIC concept of “confirmed complaint” into the current department standard and the statutory language is inconsistent and unnecessary.

A third commenter asks why the department does not just rely on the commonly accepted meaning of “justified,” noting that Webster’s dictionary defines “justified” as “to show to be right or valid.”

Agency Response: As noted in the proposal for §1.603 and the reasoned justification of this adoption order, the new section is necessary to: (i) notify the public that, pursuant to the Insurance Code §521.052, complaint information available through the department’s toll-free telephone number includes information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid; (ii) equate the term “confirmed,” for the Consumer Protection Section’s use in its complaint handling process, with the statutory term “justified”; and (iii) describe the criteria the department uses to classify a complaint as “confirmed.”

Essentially, §1.603 addresses the department’s classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

The proposal and adoption of §1.603 follow a project to address stakeholder questions and requests for clarification regarding the process and the terminology used by the Consumer Protection Section in classifying consumer complaints.

A consumer complaint can arise due to a variety of issues – a complaint could result from a violation of law or department rule that has harmed a consumer, or a complaint could be the result of a consumer’s poor customer service experience with an insurer, such as a long wait on the phone to talk to someone or a bad experience when

talking to an insurer's customer service representative. The Consumer Protection Section takes action to appropriately and effectively resolve all complaints it receives.

As examples, the Consumer Protection Section refers possible violations of law to the Enforcement Section for investigation, it attempts to find a better contact phone number if a consumer is having difficulty reaching the consumer's company, and it notifies a company of the possible need for internal review if a company's representative exercises poor customer-service skills when working with consumers.

In the past, the Consumer Protection Section has referred to a complaint as "justified" after it verified that the complainant provided a reasonable basis for an action, regardless of whether that action was resolving communication problems or referring a potential violation of law to the Enforcement Section. The Consumer Protection Section has used the term "justified" because of the use of the term in the Insurance Code §521.052.

The Insurance Code §521.052 requires the department to provide to the public through its toll-free telephone number information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are "justified, verified as accurate, and documented as valid." The Insurance Code §521.052 does not specify what constitutes a "justified," "verified as accurate," or "documented as valid" complaint. Therefore, the department has interpreted the Insurance Code §521.052 as requiring the department to collect, maintain, and provide to consumers information on complaints that show a reasonable basis for a need for an action.

However, use of the term “justified” in communicating with consumers has resulted in a concern by some consumers that the department might judge complaints to be right or wrong and treat complaints differently based on that judgment. The department does not take this approach in addressing complaints.

To avoid an appearance that the department gives more attention to some complaints than others, the Consumer Protection Section is taking steps to change the language it uses to address complaints when working with consumers. It has begun using the term “confirmed” in lieu of “justified.” Section 1.603 complements the steps taken by the Consumer Protection Section by equating the new term “confirmed” with the statutory term “justified” in rule and setting out in rule the factors the Consumer Protection Section uses to determine when a complaint is confirmed.

In addressing consumer confusion regarding use of the term “justified,” the department determined that the NAIC’s term, “confirmed” complaint, and its approach to determine what constitutes a “confirmed” complaint, accurately reflect the approach taken by the department in interpreting and applying the Insurance Code §521.052. The department declines to adopt the Webster dictionary definition of “justified” as “right or valid” because the definition would not address the factors the department takes into consideration in determining if a complaint is justified.

Comment: A commenter notes that the proposed rule just says that the department will provide confirmed or justified complaints through its toll-free number. The commenter says that it is important that full complaint information is available to consumers and

asks that the department clarify how consumers and consumer advocates can easily get all complaint information, including unjustified or unconfirmed complaints.

Agency Response: The purpose of §1.603 is to address the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052. What the commenter requests goes beyond the scope of what should be within this rule.

There are already other sources of information and data available from the department. Complaint information and data displays can be accessed by the public on the department's website, and the public is able to request public information from the department pursuant to the Public Information Act, which is located in the Government Code Chapter 552.

Comment: A commenter notes that, in the stakeholder meetings that led to the proposal of §1.603, the department described a pilot program to quickly resolve consumer complaints through three-way phone calls with department staff, insurers, and consumers. The commenter states appreciation for a process that produces quicker resolutions, but expresses concern that grievances resolved through the process may not be logged and tracked as justified or confirmed complaints.

The commenter says that a quick resolution does not negate the issue that led to the call, and asks that the department ensure that grievances resolved over the phone are tracked and reported the same as any other complaint, either through a revision to §1.603 or a change in internal policy.

Agency Response: The pilot program referenced by the commenter is geared more toward providing information or facilitating communication between a consumer and an insurer, rather than resolving complaints. As such, most of the issues addressed over the phone would not constitute the type of information to be included as data the department makes available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

If an issue arises during a phone call that the department cannot resolve by providing information or connecting a consumer to an insurer, and which instead should be addressed as a formal complaint, the department asks the consumer to file a complaint in writing. If this happens, the complaint follows the regular complaint process and will be included in the complaint information the department makes available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052 to the same extent as other complaints.

Comment: A commenter requests that the department continue to improve how complaint information is displayed so that consumers can better understand and use it. The commenter says that the numeric complaint index is not intuitive and should be replaced by a more useful and understandable graphic. The commenter says that consumers lack an easy way to compare complaint data when shopping for health insurance and asks that the department continue to work on making complaint data more useful for the public.

Agency Response: The department appreciates the input provided by the commenter. The suggestions made by the commenter go beyond the scope of this rule, but the

department will continue to work with all stakeholders, including consumers, to improve the ways it makes complaint information available to the public.

Comment: A commenter suggests that the department consider including language in the rule to clarify the type and nature of notification provided to insurers regarding justified complaints. The commenter says that while the department provides insurers notification of a complaint being investigated or closed, the commenter is concerned that the department does not notify insurers when it determines a complaint to be justified or give insurers an opportunity to clarify or contest the department's determination.

The commenter says that, given the broad scope and vague nature of the proposed language, an opportunity to respond to the department's determination that a complaint is justified or confirmed is critical to avoid unjust determinations. The commenter concludes by saying that the proposed rule needs clarification and simplification to properly apply the statutory language and provide clarity in determinations on complaint information.

Agency Response: The department disagrees with the commenter and declines to make a change. Section 1.603 only addresses the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052 and does not result in a final finding of fact against a party.

Additionally, complaint data is available online and through request to the department. Anyone, including an insurer, can notify the Consumer Protection Section

if they perceive an error or mistake in the data the Consumer Protection Section has compiled.

Section 1.603(c).

Comment: A commenter says that the proposed definition for “confirmed complaint” in §1.603 is inappropriate for complaints filed against workers’ compensation insurers and may be inappropriate for other lines of insurance as well. The commenter says that the Texas Workers’ Compensation Act and the rules of the Division of Workers’ Compensation provide an elaborate process for processing, investigating, and adjudicating allegations that the workers’ compensation insurer violated an insurance law or regulation, and the commenter references the Labor Code §402.0231, the Labor Code Chapters 414 and 415, and the Division of Workers’ Compensation rules in 28 TAC Chapter 180.

The commenter says that, under the statutes and rules applicable to a workers’ compensation insurer, the department cannot independently determine a complaint to be either “justified” or “confirmed,” and that instead the department must issue a notice of violation and provide the workers’ compensation insurer with an opportunity to respond to the notice and request a contested case hearing before the State Office of Administrative Hearings. The commenter says that a complaint can only be deemed “justified” or “confirmed” if the workers’ compensation insurer admits to a violation or there is a final adjudicated finding.

The commenter recommends that §1.603(c) either be deleted in its entirety or revised to say, “A ‘confirmed complaint’ is a complaint for which the department

receives information indicating that: (1) an insurer committed any violation of: (A) an applicable state insurance law or regulation; (B) a federal requirement the department has authority to enforce; or (C) the term or condition of an insurance policy or certificate; and (2) the violation is confirmed by either the insurer's response to the complaint or a final adjudicated finding of violation.”

Agency Response: The department disagrees with the commenter and declines to make the suggested change because §1.603 does not establish a process for making findings of facts or adjudicating disputes and does not supplant processes that are already in place, such as the Labor Code provisions and Division of Workers' Compensation regulations referenced by the commenter. Section 1.603 addresses the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

Additionally, the commenter's suggested revision is too narrow to serve the purpose addressed by §1.603. Even if a violation of law has not occurred, there might be a valid basis for a complaint, such as a customer service issue that needs to be brought to the attention of and addressed internally by an insurer. In these instances, adjudication may not be necessary or appropriate. If, in working with a consumer complaint, the Consumer Protection Section learns of a possible violation of rule or law by a person or entity regulated by the department, the Consumer Protection Section refers the matter to the appropriate area of the department for investigation and

adjudication in accordance with the relevant provisions of the Insurance Code, the Labor Code, and the Administrative Code.

Comment: Two commenters note that a definition of “justified complaint” is currently provided on the department’s website that states, “A complaint is justified if there is an apparent violation of a policy provision, contract provision, rule, or statute, or there is a valid concern that a prudent layperson would regard as a practice or service that is below customary business or medical practice.”

One of the commenters notes that the definition on the website does not require the department to consider an insurer's response and hopes that the proposed definition does not set a standard that gives less protection to consumers. The commenter asks that if the new language changes how the department evaluates complaints, the department revisit it to ensure that valid complaints are deemed confirmed regardless of an insurer's response.

The second commenter states a preference for the definition on the department’s website over the definition in proposed §1.603.

Agency Response: The definition of “justified complaint” identified by the commenters is contained in a “glossary of common insurance terms” available on the department’s website. This glossary is made available for informational purposes only to assist consumers in understanding their insurance policies.

The terms defined in the online glossary have not necessarily been adopted by rule or statute and are not binding. They are not applicable to the department’s role in tracking complaint data or making that complaint data available to the public through its

toll-free telephone number pursuant to the Insurance Code §521.052, and adoption of §1.603 does not change how the department categorizes complaints.

The definition for “justified complaint” identified by the two commenters is too narrow for the purposes of §1.603 because it would not encompass the range of issues the Consumer Protection Section addresses in assisting consumers. The department declines to incorporate this definition into §1.603 in lieu of the proposed definition.

Section 1.603(c)(1).

Comment: In regard to §1.603(c)(1), two commenters say that the provision is vague in regard to what laws the department will determine are applicable, especially in regard to federal requirements the department has authority to enforce.

One of the commenter asks the following specific questions: What are the current federal “requirements” the department enforces? What happens if this changes in the future? How can an insurer dispute if a particular complaint is classified as justified or confirmed under this?

Agency Response: Applicability of insurance laws is generally addressed within specific Insurance Code chapters. For example, the Insurance Code §541.082, concerning Advertising and Internet Websites, lists the entities included as insurers for purposes of the section. In regard to the specific questions asked by one of the commenters, the department responds:

What are the current federal "requirements" the department enforces? Current federal requirements the department enforces include any federal requirements

incorporated into the Insurance Code, such as those incorporated into the Insurance Code Chapter 1501, concerning the Health Insurance Portability and Availability Act.

What happens if this changes in the future? The department regulates insurance in Texas pursuant to the Insurance Code. When the state legislature amends or revises the Insurance Code, the department updates its procedures to be consistent with the amended or updated Insurance Code. Additionally, in specific instances legislation may direct the department to adopt rules to implement new state or federal law. The department adopts rules as necessary to comply with these requirements.

How can an insurer dispute if a particular complaint is classified as justified or confirmed under this? The classification of complaints pursuant to §1.603 is made for purposes of department tracking and reporting of complaint data. Anyone, including an insurer, can notify the Consumer Protection Section if they perceive an error or mistake in the data the Consumer Protection Section has compiled. The Consumer Protection Section can be reached by email at ConsumerProtection@tdi.state.tx.us or by phone at 1-800-252-3439.

Comment: A commenter says that §1.603(c)(1) refers to information “indicating a violation,” but does not clarify whether the department must determine if an actual violation of law has occurred or what standard of proof is applied to such a determination.

The commenter says that the vagueness of the rule gives the department a great deal of discretion and creates the possibility that invalid complaints will be weighed against an insurer. The commenter notes that the language in §1.603(c)(1) is from the

NAIC definition for "confirmed complaint." The commenter says this is an attempt to add to the term "justified complaint" using a definition that is not Texas specific.

Agency Response: A consumer complaint could result from a violation of law or a department rule that has harmed a consumer, but the Consumer Protection Section is not the area of the department that investigates or adjudicates possible legal violations. The Consumer Protection Section refers all possible violations of law to the appropriate area of the department for investigation and adjudication in accordance with the relevant provisions of the Insurance Code, the Labor Code, and the Administrative Code.

Section 1.603 does not apply to investigation or adjudication of violations of the law. The section only relates to the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

Whether the department classifies a complaint as "confirmed" for the limited purposes of tracking complaint data and providing information will not add weight to or otherwise impact an investigation or legal proceeding.

The department disagrees that the language in §1.603(c)(1) adds anything not Texas-specific to the term "justified complaint." The department equated the term "confirmed complaint" with "justified complaint" in §1.603 to avoid consumer confusion regarding use and meaning of the term "justified." Some consumers have mistakenly thought that the department's past use of the term "justified" meant the department

would judge complaints to be right or wrong and treat complaints differently based on that judgment.

In addressing this consumer confusion regarding use of the term “justified,” the department determined that the NAIC’s term “confirmed complaint” and its approach to determine what constitutes a “confirmed complaint” accurately reflect the approach taken by the department in categorizing and providing information regarding consumer complaints.

Section 1.603(c)(2).

Comment: Two commenters say that proposed §1.603(c)(2) is vague.

One commenter says that proposed §1.603(c)(2) fails to provide an objective basis for confirming a complaint and should be deleted from the rule. That commenter, along with a second commenter, say that allowing a complaint to be confirmed if the situation as a whole “suggests” an insurer is in error or a complaint is valid would make it difficult, if not impossible for an insurer to understand what has been done wrong, unfairly, or in violation of Texas law. The second commenter asks the following questions: What is an error? Is an error the same as a violation of law? What if there is a factual error? How will the reason for a complaint be determined?

Both commenters say that §1.603(c)(2) could lead to inconsistent rulings between different decision makers. The commenters acknowledge that a regulator needs some discretion to make decisions regarding the conduct of an insurer, but one of the commenters says that there should be an objective standard for such decisions, as set out in §1.603(c)(1), and the other commenter says that a regulator’s discretion is

normally exercised through enforcement actions after staff has determined a complaint is justified and enforcement is necessary.

Agency Response: The department disagrees with the commenters and declines to make a change.

The department disagrees with the assertion that allowing a complaint to be “confirmed” if the situation as a whole suggests an insurer is in error or a complaint is valid would make it difficult or impossible for an insurer to understand what has been done wrong, unfairly, or in violation of Texas law.

First, classification of a complaint as “confirmed” pursuant to §1.603(c)(2) simply means, as stated in the rule, that the information gained from the consumer and the insurer indicates the insurer was in error or that the consumer otherwise had a valid reason for the complaint.

Second, §1.603(c)(2) provides for communication between the department and an insurer when the department is processing a complaint it has received. If an insurer does not understand the basis for the complaint, the insurer can address this when the department contacts the insurer.

In regard to the specific questions from the second commenter, the department responds:

What is an error? An error could be anything an insurer inappropriately, under the circumstances, does or fails to do that leads a consumer to make a complaint to the department.

Is an error the same as a violation of law? An error is not always a violation of law. For example, if an insurer's customer service representative ends a telephone call from an insured before resolving the reason for the call, it might not rise to the level of a violation of law, but might still form a reasonable basis for a complaint by an insured. If information indicates that an insurer has violated a law or regulation, the Consumer Protection Section refers the matter to the appropriate area of the department for investigation and adjudication in accordance with the relevant provisions of the Insurance Code, the Labor Code, and the Administrative Code.

How will the reason for a complaint be determined? If the reason for a complaint is not clear, the department asks consumers to clarify the reason for their complaints.

The department disagrees with the commenters' assertions that §1.603(c)(2) could lead to inconsistent rulings between different decision makers, because application of §1.603 does not result in a ruling against an insurer. Section 1.603 merely outlines the process for classification of complaint data received by the department for use in compliance with the Insurance Code §521.052.

If information the department gains from a consumer's complaint indicates that an insurer may have violated a law or regulation, the Consumer Protection Section refers the matter to the appropriate area of the department for investigation and resolution under the rules and statutes that apply to the entity that is the subject of the complaint. In these instances, insurers have every opportunity available under the law to respond to allegations and defend themselves.

Comment: A commenter says that the Texas Insurance Code requires the department to provide to the public through the department's toll-free number “the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.”

The commenter notes that proposed §1.603(a) requires the department to provide information on complaints in a different format than what is required by statute, and that it does not mention the statutory requirement that complaints that are justified, verified as accurate, and documented as valid be expressed as a percentage of policies.

Agency Response: The department disagrees with the commenter, in that neither the Insurance Code §521.052 nor §1.603(a) specify a format for information the department will provide to the public through its toll-free telephone number. The Insurance Code §521.052 lists the types of information the department must provide to the public through its toll-free telephone number, and §1.603(a) provides that the department will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid.

However, the department agrees to make a change to the rule text as proposed for clarity. The Insurance Code §521.052(1) specifies that the department must provide

through its toll-free telephone number “information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, *expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.*” (Emphasis added.) As proposed, §1.603(a) only makes reference to “information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid.”

To clarify that the department will provide the information required by the Insurance Code §521.052, the department revises §1.603(a) as adopted to state, “The Texas Department of Insurance (department) will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.”

Comment: A commenter says that §1.603(c)(2) is vague and ambiguous. The commenter notes that, under §1.603(c)(2), a complaint is confirmed and presumably justified if the complaint and insurer's response "suggest that the insurer was in error" or the "complainant had a valid reason for the complaint." However, says the commenter, it is not clear what is meant by “the insurer was in error.” The commenter says this

implies any error could result in a confirmed or justified complaint, but that the statute does not reference errors and that this unnecessarily broadens its scope.

The commenter asks if insurers will be required to use “magic words” to avoid the suggestion of an error or if it will be up to the department’s discretion to determine what response suggests an error. The commenter concludes by saying that the proposed language will result in inaccurate determinations regarding justified complaints as well as inaccurate or misleading information being provided by the department to consumers regarding complaints against insurers.

Agency Response: Whether an insurer is in error depends on the complaint made by the consumer and the insurer’s response. There are no “magic words” that will prevent the department from classifying a complaint as confirmed. Upon receiving a complaint based on an action or inaction by an insurer, the department will verify the information from the consumer with the insurer and work to resolve the complaint.

The department disagrees that §1.603(c)(2) will result in inaccurate determinations or inaccurate or misleading information. Section §1.603 does not establish a process for making determinations of fact. It outlines a process for classification of complaint data. If someone points out an error in how data is classified, the department will correct it.

Comment: A commenter says that the definition in §1.603(c)(2) is inconsistent with the statutory requirement that a complaint be justified, verified as accurate, and documented as valid. The commenter also expresses concern that the language of the proposed rule could lead to complaints regarding issues outside of the department’s

authority qualifying as “justified” or “confirmed” complaints. To address these concerns, the commenter recommends that the department delete subsection (b) and rely on the statutory language.

Agency Response: The department disagrees that §1.603(c)(2) is inconsistent with the statutory requirement that a complaint be justified, verified as accurate, and documented as valid. The Insurance Code §521.052 requires the department to provide to the public through its toll-free telephone number information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid. The section does not state what constitutes a “justified” complaint, so the department must determine what “justified” means to be able to comply with the Insurance Code §521.052.

The department has explored what “justified” means for purposes of its duty under the Insurance Code §521.052, and determined that the NAIC’s approach to determine what constitutes a “confirmed complaint” accurately reflects the approach taken by the department in interpreting and applying the Insurance Code §521.052.

The department does not agree that the language of the proposed rule would lead to complaints regarding issues outside of the department’s authority qualifying as “justified” or “confirmed” complaints. The provisions under §1.603(c)(1) clearly relate to instances where the department has authority to act, and the provision in §1.603(c)(2) make it clear the department will be acting on information from both the consumer and the insurer, so the insurer would be able to inform the department if the complaint does

not relate to a matter regulated by the department. Further, §1.603(c)(2) does not result in a legal finding, but rather outlines the process for classification of complaint data. If someone points out an error in how data is classified, the department will correct it.

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

For: Office of Public Insurance Counsel.

For with changes: Property Casualty Insurers Association of America, Insurance Council of Texas, Texas Association of Health Plans, Texas Farm Bureau Insurance, Center for Public Policy Priorities.

Against: Texas Association of Life and Health Insurers.

6. STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §§521.051, 521.052, and 36.001.

Section 521.051 requires the department to maintain a toll-free telephone number to provide the information described by the Insurance Code §521.052 and receive and aid in resolving complaints against insurers.

Section 521.052 requires the department to provide to the public through its toll-free telephone number information specified by the section, including information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

7. TEXT.

§1.603. Complaint Information Available through the Texas Department of Insurance's Toll-Free Telephone Number.

(a) The Texas Department of Insurance (department) will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.

(b) The department considers a complaint justified if the complaint is a confirmed complaint.

(c) A "confirmed complaint" is a complaint for which the department receives information indicating that:

(1) an insurer committed any violation of:

(A) an applicable state insurance law or regulation;

(B) a federal requirement the department has authority to enforce;

or

(C) the term or condition of an insurance policy or certificate; or
(2) the complaint and insurer's response, considered together, suggest that the insurer was in error or that the complainant had a valid reason for the complaint.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adopted section and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on October 2, 2012.

The commissioner adopts §1.603.


Sara Waitt, General Counsel
Texas Department of Insurance


Eleanor Kitzman
Commissioner of Insurance

Commissioner's Order No. 12-0786