

**SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY
FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES
28 TAC §3.3053**

**SUBCHAPTER V. GROUP COORDINATION OF BENEFITS
28 TAC §§3.3501 – 3.3511**

1. INTRODUCTION. The Texas Department of Insurance proposes the repeal of §3.3053, concerning non-duplication of benefits provision, and Subchapter V, 28 TAC §§3.3501 – 3.3511, concerning group coordination of benefits. Repeal of §3.3053 and Subchapter V are necessary because the department is proposing a new Subchapter V, 28 TAC §§3.3501 – 3.3510 (relating to Coordination of Benefits), which contains more specific guidelines relating to coordination of benefits (COB). The department adopted §3.3053 to be effective in 1977 and amended it to be effective in 1983 and 1984. Repeal of §3.3053 is necessary because it is outdated and does not address current industry practices and procedures. Repeal of Subchapter V is necessary because the department adopted the current coordination of benefits subchapter in 1994, but it is no longer current with existing practices in the industry. The proposed new Subchapter V, 28 TAC §§3.3501 – 3.3510, is also published in this issue of the *Texas Register*.

2. FISCAL NOTE. Jan Graeber, director and chief actuary, Rate and Form Review Office, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result

of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Graeber has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be the elimination of outdated regulations. There is no economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses. The department has identified estimated costs to implement the proposed new Subchapter V, 28 TAC §§3.3501 – 3.3510, concerning the COB. Those estimates are addressed in that proposal, also published in this issue of the *Texas Register*.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002(c), TDI has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of outdated rules. Under Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or

limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5:00 pm on December 9, 2013. Send your comments to Sara Waitt, general counsel, by email at: chiefclerk@tdi.texas.gov, or by mail at: Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy must be simultaneously submitted to Jan Graeber, director and chief actuary, Rate and Form Review Office, by email at: LHLcomments@tdi.texas.gov, or by mail at: Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of this proposal in a public hearing under Docket No 2756 scheduled for November 21, 2013 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The repeal of §3.3053 and §§3.3501 – 3.3511 is proposed under Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055(b), 1701.060 and §36.001. Section 1201.006 provides that the commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201. Section 1201.101(a) provides that the commissioner must adopt reasonable

rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale. Section 1201.101(b) provides that rules adopted under Section 1201 must establish standards for policy readability and full and fair policy disclosures. Section 1201.101(c)(10) provides that standards established under Section 1201 may include standards that address reductions. Section 1251.008 provides that the commissioner may adopt rules necessary to administer Chapter 1251. Section 1701.055(b) provides that a form filed under Chapter 1701 that contains a COB provision may not be approved for use in this state unless the form provides for the order of benefits determination for insured dependent children, and it further provides that an order of benefits determination provision may not be approved if the provision violates this code, a rule of the commissioner, or any other law; or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701, including, after notice and hearing, rules that establish procedures and criteria under which each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under §1701.005(b); and particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms. Section 1701.060(b) provides that a rule adopted under this chapter may not be repealed or amended until after the anniversary of the date the

rule was adopted unless the commissioner determines that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary as a result of legislative enactment. 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.

8. CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes:

| <u>Rule</u> | <u>Statute</u> |
|---------------------------|---|
| §§3.3053, 3.3501 – 3.3511 | Insurance Code §§1201.006, 1201.101, 1251.008, 1701.055, and 1701.060 |

9. TEXT.

**SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY
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§3.3053. Non-duplication of Benefits Provision.

SUBCHAPTER V. GROUP COORDINATION OF BENEFITS

§3.3501. Purpose and Applicability.

§3.3502. Identification of Form.

§3.3503. Definitions.

§3.3504. Allowable Expenses.

§3.3505. Claim Determination Period.

§3.3506. Use of the Terms “Plan,” “Primary Plan,” “Secondary Plan,” and “This Plan” in Policies, Certificates, and Contracts.

§3.3507. Prototype COB Contract Provisions and Prohibited Provisions.

§3.3508. Rules for Coordination of Benefits and Order of Benefits.

§3.3509. Procedure To Be Followed by Secondary Plan.

§3.3510. Miscellaneous Provisions.

§3.3511. Effective Date; Compliance by Existing Contracts.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposed repeal and found it to be within the agency’s legal authority to adopt.

Issued at Austin, Texas, on October 25, 2013.



Sara Waitt
General Counsel
Texas Department of Insurance