SUBCHAPTER FF. OBLIGATION TO CONTINUE PREMIUM PAYMENT AND COVERAGE AFTER NOTICE OF LOST GROUP ELIGIBILITY
28 TAC §21.4003

1. INTRODUCTION. The Texas Department of Insurance (Department) adopts amendments to §21.4003, concerning requirements regarding employer liability for certain group health benefit plan premiums. The amendments are adopted without changes to the proposed text published in the February 26, 2010 issue of the *Texas Register* (35 TexReg 1629).

2. REASONED JUSTIFICATION. The amendments are necessary to implement SECTIONS 1 and 2 of Senate Bill (SB) 1143, enacted by the 81st Legislature, Regular Session. SB 1143 amended the Insurance Code §843.210 and §1301.006, effective September 1, 2009, to require notification by a health maintenance organization (HMO) or insurer to a contracted group contract holder or a group policyholder of the contract holder's or policyholder's liability for premiums on an individual who is no longer part of the group eligible for coverage under the contract or a preferred provider benefit plan until the HMO or insurer receives notification of termination of the individual's eligibility for that coverage. The amendments are further necessary to make non-substantive changes to existing subsections, including correction of internal rule references. Sections 843.210 and 1301.006 of the Insurance Code apply to a contract between an HMO or an insurer and a group contract holder or policyholder that is entered into or

renewed on or after January 1, 2010. SB 1143, SECTION 4, provides that a contract entered into or renewed before January 1, 2010, is governed by the law in effect immediately before the effective date of SB 1143, and that law is continued in effect for that purpose.

The Insurance Code §843.210(b) and §1301.0061(b) provide that each HMO and insurer that enters into or renews a health benefit plan contract with a group contract holder or group policyholder is required to provide written notice to the group contract holder or group policyholder that the group contract holder or group policyholder is liable for premiums for an individual who is no longer part of the group until the health carrier receives notification of termination of the individual's eligibility for coverage. The Insurance Code §843.210(c) and §1301.0061(c) provide that if the HMO or insurer charges the group contract holder or group policyholder on a monthly basis for the premium, the HMO or insurer is required to send, with its monthly billing statement of premiums, notice that the group contract holder or group policyholder is liable for premiums on an individual until the health carrier receives notification of termination of the individual's eligibility for coverage. Additionally, §843.210(c) and §1301.0061(c) provide that if the HMO or the insurer charges the group contract holder or group policyholder on other than a monthly basis for the premiums, the HMO or the insurer is required to notify the group contract holder or group policyholder periodically in the manner prescribed by the Commissioner by rule. The Insurance Code §843.210(d) and §1301.0061(d) require that the notice of continued liability for premiums from the HMO

or insurer to the group contract holder or group policyholder include a description of methods preferred by the HMO or insurer for notification by a group contract holder or group policyholder of an individual's termination from coverage eligibility.

On August 31, 2009, the Department posted for informal comment a draft rule concerning requirements regarding employer liability for certain group health plan premiums. The Department held a meeting on September 18, 2009, for stakeholder comments. The informal comment period ended on September 8, 2009. The Department received comments on the informal draft rule. The Department considered the comments in preparing the proposal. The proposal was published in the February 26, 2010, issue of the *Texas Register* (35 TexReg 1629). The proposal comment period ended on March 29, 2010.

This adoption amends the structure of existing §21.4003 to include all of the existing provisions in §21.4003 in subsection (a) and adopts a new subsection (b) to address the requirements for the notice of liability for premiums for individuals who are no longer part of the covered group as required by the Insurance Code §843.210 and §1301.0061. New subsection (b) is entitled "Notice of Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group." New §21.4003(b)(1) provides that a health carrier that has entered into or renews a health benefit plan contract with a group policyholder or group contract holder must provide written notice to the group policyholder or group contract holder that the group policyholder or group contract holder is liable for premiums for an individual who is no longer part of the group

until the health carrier receives notification of termination of the individual's eligibility for coverage as follows: (i) in new subparagraph (A), if the health carrier charges the group policyholder or group contract holder on a monthly basis for premiums, the health carrier is required to provide the notice in each monthly statement sent to the group policyholder or group contract holder, as required by the Insurance Code §843.210(c) and §1301.0061(c); and (ii) in new subparagraph (B), if the health carrier charges the group policyholder or group contract holder on other than a monthly basis for premiums, the health carrier is required to provide the written notice at inception or renewal of the policy or contract, as applicable, and, thereafter, at the time of each billing. Under new §21.4003(b)(1)(C), as required by the Insurance Code §843.210(d) and §1301.0061(d), the notice required under subparagraphs (A) and (B) of paragraph (b)(1) must include a description of methods preferred by the health carrier for notification by a group policyholder or group contract holder of an individual's termination from coverage eligibility. Under new §21.4003(b)(1)(B), the health carrier may send the required notice enclosed with other documents (i.e., policy issuance documents, renewal documents, billing statements, etc.) that are already being sent. This, however, is not required; health carriers may send the notice separately from such documents as long as the notice is sent at the same time that other documents relating to the inception or renewal of the policy or contract and the billing statement are sent. New §21.4003(b)(2) provides that a health carrier is not required to send notice of group policyholder or

contract holder liability for premiums more often than monthly notwithstanding the requirements of §21.4003(b)(1).

A new title is adopted for subsection (a), “Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group.” Under this adoption, subsection (a) consists of the existing rule provisions in §21.4003. This adoption amends §21.4003(a) to re-designate these existing provisions as follows: (i) the current §21.4003(a) is re-designated as §21.4003(a)(1); (ii) the current §21.4003(a)(1) is re-designated as §21.4003(a)(1)(A); (iii) the current §21.4003(a)(2) is re-designated as §21.4003(a)(1)(B); (iv) the current §21.4003(b) is re-designated as §21.4003(a)(2); (v) the current §21.4003(c)(1) - (2) are re-designated as §21.4003(a)(3)(A) - (B); and (vi) the current §21.4003(d) - (h)(1) and (2) are re-designated as §21.4003(a)(4) - (8)(A) and (B).

While there are no substantive changes to the existing provisions that are included under subsection (a), several non-substantive amendments are adopted. These amendments are necessary to conform statutory references to agency style and to correct internal rule references. These include: (i) in re-designated §21.4003(a)(1)(A), the addition of the word “the” to precede the reference to the Insurance Code; (ii) in re-designated §21.4003(a)(1)(B), the change in the reference to “paragraph (1) of this subsection” to “subparagraph (A) of this paragraph”; (iii) in re-designated §21.4003(a)(2), the change in the reference to “subsection (a)(1) of this section” to read “paragraph (1)(A) of this subsection; (iv) in re-designated

§21.4003(a)(5), the addition of the word “the” to precede the two references to the Insurance Code; and (v) in re-designated §21.4003(a)(6), the addition of the word “the” to precede the reference to the Insurance Code.

3. HOW THE SECTION WILL FUNCTION.

§21.4003(a). Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group. Section 21.4003(a) adds the title “Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group.” Section 21.4003(a) further redesignates the text in subsection (a) to subsection (a)(1), with the following subdivisions redesignated as appropriate. The redesignated subdivisions conform statutory references to agency style and correct internal rule references.

§21.4003(b). Notice of Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group. Section 21.4003(b) states the requirements concerning notice of liability for premiums for individuals who are no longer part of the covered group. Subsection (b)(1) provides that a health carrier that enters into or renews a health benefit plan contract with a group policyholder or group contract holder shall provide written notice to the group policyholder or group contract holder that the group policyholder or group contract holder is liable for premiums for an individual who is no longer part of the group until the health carrier receives notification of termination of the individual’s eligibility for coverage as follows: (i) as required by the Insurance Code §843.210(c) and §1301.0061(c), if the health carrier charges the group policyholder or

group contract holder on a monthly basis for premiums, the health carrier shall provide the notice in each monthly statement sent to the group policyholder or group contract holder; (ii) if the health carrier charges the group policyholder or group contract holder on other than a monthly basis for premiums, the health carrier shall provide the written notice at inception or renewal of the policy or contract, as applicable, and, thereafter, at the time of each billing; and (iii) as required by the Insurance Code §843.210(d) and §1301.0061(d), the notice required under subparagraphs (A) and (B) of this paragraph must include a description of methods preferred by the health carrier for notification by a group policyholder or group contract holder of an individual's termination from coverage eligibility. Subsection (b)(2) provides that notwithstanding the requirements of paragraph (1) of this subsection, a health carrier is not required to send notice of group policyholder or contract holder liability for premiums more often than monthly.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §§843.210(b) - (d), 1301.0061(b) - (d) and 36.001. Section 843.210(b) provides that each health maintenance organization that enters into a contract described by subsection (a) is required to notify the group contract holder periodically as provided by §843.210 that the contract holder is liable for premiums on an enrollee who

is no longer part of the group eligible for coverage under the contract until the health maintenance organization receives notification of termination of the enrollee's eligibility for that coverage. Section 843.210(c) provides that if the health maintenance organization charges the group contract holder on other than a monthly basis for the premiums, the health maintenance organization shall notify the group contract holder periodically in the manner prescribed by the Commissioner by rule. Section 843.210(d) provides that the notice required by subsection (b) must include a description of methods preferred by the health maintenance organization for notification by a group contract holder of an enrollee's termination from coverage eligibility. Section 1301.0061(b) provides that each insurer that enters into a contract described by subsection (a) is required to notify the group policyholder as provided by §1301.0061 that the policyholder is liable for premiums on an individual who is no longer part of the group eligible for coverage until the insurer receives notification of termination of the individual's eligibility for coverage. Section 1301.0061(c) provides that if the insurer charges the group policyholder on other than a monthly basis for the premiums, the insurer shall notify the group policyholder periodically in the manner prescribed by the Commissioner by rule. Section 1301.0061(d) provides that the notice required by subsection (b) must include a description of methods preferred by the insurer for notification by a group policyholder of an individual's termination from coverage eligibility. Section 36.001 provides that the Commissioner of Insurance may adopt any

rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. TEXT.

§21.4003. Group Policyholder, Group Contract Holder, and Carrier Premium Payment and Coverage Obligations.

(a) Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group.

(1) A contract between a health carrier and a group policyholder or group contract holder under a health benefit plan contract must provide that:

(A) the group policyholder or group contract holder, as described in the Insurance Code Chapter 1251, is liable for an individual insured's or enrollee's premiums from the time the individual is no longer part of the group eligible for coverage under the plan until the end of the month in which the group policyholder or group contract holder notifies the health carrier that the individual is no longer part of the group eligible for coverage under the plan; and

(B) the individual remains covered under the plan until the end of the period specified in subparagraph (A) of this paragraph.

(2) If a health carrier agrees that a group policyholder or group contract holder may tender the notice referenced in paragraph (1)(A) of this subsection by mail, the date the group policyholder or group contract holder tenders the notice to the postal

service is the date the group policyholder or group contract holder notifies the health carrier. Evidence of written notifications may be maintained in a mail log in order to provide proof of submission and establish date of receipt.

(3) If an individual or an enrollee ceases to be a part of the group eligible for coverage within seven calendar days prior to the end of the month, the group policyholder or group contract holder will be deemed to have notified the health carrier in the month in which the individual or enrollee ceases to be part of the group if the health carrier receives notification within the first three days of the subsequent month, not including Saturdays, Sundays, and legal holidays. If the notification is sent during this additional three-day notification period, the policyholder or contract holder must transmit the notification of an individual's loss of eligibility during the previous month by a method:

(A) agreed upon by the group policyholder or group contract holder and the carrier, and

(B) that provides immediate written notification, such as an internet portal, electronic mail, or telefacsimile. Immediate written notification sent via electronic means will be presumed received on the date it is submitted; hand-delivered notification will be presumed received on the date the delivery receipt is signed.

(4) A group policyholder or group contract holder is not liable for an individual insured's or an enrollee's premiums, and a health carrier is not obligated to continue coverage, under subsection (a) of this section if a group policyholder or group

contract holder notifies a health carrier that an individual will no longer be part of the group eligible for coverage at least 30 days prior to the date the individual will no longer be part of the group eligible for coverage.

(5) A group policyholder or group contract holder is not liable for an individual insured's or an enrollee's premiums, and a health carrier is not obligated to continue coverage, under subsection (a) of this section if the individual elects to terminate coverage under the plan and obtains coverage under a successor health benefit plan that takes effect at any time after termination of group eligibility and before the end of the coverage and premium payment period required by the Insurance Code §843.210 and §1301.0061 and subsection (a) of this section. A health carrier may require a group policyholder or group contract holder seeking to avoid payment of additional premium for an individual no longer part of the group eligible for coverage to verify the successor coverage and to agree to be responsible for payment of premium if the individual's successor health benefit plan does not cover the individual from the termination of the health carrier's coverage until the end of the month in which the group policyholder or group contract holder notifies the health carrier that the individual is no longer part of the group eligible for coverage. In addition, the group policyholder or group contract holder and the health carrier remain responsible for compliance with the Insurance Code §843.210 and §1301.0061 if the individual's successor health benefit plan does not cover the individual from the termination of the health carrier's coverage until the end of the month in which the group policyholder or group contract holder

notifies the health carrier that the individual is no longer part of the group eligible for coverage.

(6) A group policyholder or group contract holder is not liable for an individual insured's or an enrollee's premiums, and a health carrier is not obligated to continue coverage, under subsection (a) of this section under coverage a health carrier extends to an individual in compliance with 29 U.S.C. §1161 et seq. (COBRA), the Insurance Code Chapter 1251 Subchapter F, or any other federal or state continuation of coverage requirement that allows an individual insured or enrollee, upon termination of eligibility from a group, to pay premium and extend the period of group health benefit plan coverage after the individual has left employment or otherwise no longer qualifies as a member of the group.

(7) A group policyholder or group contract holder is not liable for an individual insured's or an enrollee's premiums, and a health carrier is not obligated to continue coverage, under subsection (a) of this section if a group policyholder or group contract holder does not contribute to the payment of any individual insured's or enrollee's premium.

(8) A group policyholder or group contract holder is not liable for an individual insured's or an enrollee's premiums, and a health carrier is not obligated to continue coverage, under subsection (a) of this section in the event of the individual insured's or enrollee's death after the later of the date of the individual insured's or enrollee's:

(A) death; or

(B) receipt of the last covered service under the plan.

(b) Notice of Liability for Premiums for Individuals Who Are No Longer Part of the Covered Group.

(1) A health carrier that enters into or renews a health benefit plan contract with a group policyholder or group contract holder shall provide written notice to the group policyholder or group contract holder that the group policyholder or group contract holder is liable for premiums for an individual who is no longer part of the group until the health carrier receives notification of termination of the individual's eligibility for coverage as follows:

(A) as required by the Insurance Code §843.210(c) and §1301.0061(c), if the health carrier charges the group policyholder or group contract holder on a monthly basis for premiums, the health carrier shall provide the notice in each monthly statement sent to the group policyholder or group contract holder;

(B) if the health carrier charges the group policyholder or group contract holder on other than a monthly basis for premiums, the health carrier shall provide the written notice at inception or renewal of the policy or contract, as applicable, and, thereafter, at the time of each billing, and

(C) as required by the Insurance Code §843.210(d) and §1301.0061(d), the notice required under subparagraphs (A) and (B) of this paragraph must include a description of methods preferred by the health carrier for notification by a

group policyholder or group contract holder of an individual's termination from coverage eligibility.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, a health carrier is not required to send notice of group policyholder or contract holder liability for premiums more often than monthly.

CERTIFICATION. This agency hereby certifies that §21.4003 as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on May 21, 2010.

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 §21.4003 specified herein, concerning requirements regarding employer liability for certain group health benefit plan premiums, 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. 10-0465

MAY 24 2010