

SUBCHAPTER NN. Noninsurance Benefits and Features **28 TAC §§21.4801 - 21.4807**

1. INTRODUCTION. The Commissioner of Insurance adopts new Subchapter NN, §§21.4801 – 21.4807, concerning requirements applicable to noninsurance benefits that are provided or disclosed as part of an insurance policy, contract or certificate of insurance and that are reasonably related to the type of policy, contract or certificate being issued. The new sections are adopted without changes to the proposed text published in the September 4, 2009 issue of the *Texas Register* (34 TexReg 6092).

2. REASONED JUSTIFICATION. The sections are necessary to implement House Bill (HB) 1847, 80th Legislature, Regular Session, which amended the Insurance Code Chapter 1701 by adding §1701.061. Section 1701.061 provides for the offering of noninsurance benefits and requires full description and disclosure of the benefit to individuals to whom the benefit is to be offered, as well as explanation of events and/or conditions that will trigger termination of the benefit. Section 1701.061(f) authorizes the Commissioner to adopt rules to implement §1701.061, including rules to (i) determine which noninsurance benefits are reasonably related to the types of insurance subject to this chapter; (ii) ensure that noninsurance benefits included as part of a policy or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement; and (iii) address application of other chapters of the Insurance Code to noninsurance benefits provided as part of a policy or certificate, including Chapters 82 -

84, 222, 257, 463, 541 - 544, 1501, and 1506. The sections implement §1701.061(f)(1) - (3).

3. HOW THE SECTIONS WILL FUNCTION. The sections provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

Section 21.4801 addresses the applicability and scope of the new sections, providing that the subchapter applies to any insurer that provides or discloses a noninsurance benefit as part of a life insurance policy or certificate, annuity contract or certificate, or an accident or health insurance policy, contract or certificate.

Section 21.4802 provides a definition for a noninsurance benefit, stating that it has the meaning provided in the Insurance Code §1701.061(a). Section §1701.061(a) defines the term to mean a good or service provided or disclosed as part of a policy or certificate of insurance that is reasonably related to the type of policy or certificate being issued.

Section 21.4803 states that the purpose of the new sections is to provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

Section 21.4804 sets forth provisions addressing the reasonable relation between noninsurance benefits and the insurance policy, contract or certificate with

which they are associated.

Section 21.4805 sets forth certain disclosure requirements for form filings that include noninsurance benefits, including (i) a description of the noninsurance benefit; (ii) a notice fully disclosing the noninsurance benefit to the policyholder, contract holder or certificate holder; and (iii) a statement explaining any condition on which termination of the noninsurance benefit will occur.

Section 21.4806 specifies additional provisions applicable to noninsurance benefits provided or disclosed as part of a policy, contract or certificate, including (i) a prohibition against provisions that are unfairly deceptive; (ii) the applicability of disciplinary, enforcement and administrative penalty provisions of the Insurance Code Chapters 82 - 84; and (iii) the requirement that if a noninsurance benefit is to be available to in-force business, commitment documentation setting out such availability must be submitted with the form filing.

Section 21.4807 addresses provisions applicable to noninsurance benefits composed of certain discount programs. These provisions recognize and assist in the transition of regulation of discount health care programs and discount health care program operators from the Texas Department of Licensing and Regulation to the Texas Department of Insurance, effective April 1, 2010, as provided in SECTIONS 3 - 6 of House Bill (HB) 4341, 81st Legislature, Regular Session.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter requests that in §21.4804(b) the word “specifically” be deleted from the sentence setting out a general example of a noninsurance benefit that would demonstrate existence of “reasonable relation” of a noninsurance benefit in association with an underlying policy, contract or certificate. The request is based on the premise that since the Insurance Code §1701.061 requires only a reasonable relation between noninsurance benefit and type of insurance with which it is associated, the inclusion of the word “specifically” is inappropriate.

Agency Response: The Department appreciates the comment but does not make the requested change, for the following reasons. First, although §1701.061 requires only a reasonable relation between noninsurance benefit and type of insurance with which it is associated, the sentence in question does not set forth a requirement that a noninsurance benefit be specifically related to the insurance product in order to establish or demonstrate “reasonable relation.” Rather, the referenced sentence is included in subsection (b) to provide assistance and elucidation concerning a general example of a noninsurance benefit exhibiting a strong reasonable relation to the underlying contract. Second, when the referenced sentence is read in conjunction with both the sentence preceding it and the sentence following it, its purpose as a general representative example of strong reasonable relation is apparent. Third, a “reasonable relation” may be general or specific, as indicated in subsection (b) in its entirety. Whether it is general or specific depends on the interrelationship between and among the components of character, purpose and scope of both the underlying contract and the noninsurance benefit. For all these reasons, no change is made to the referenced

sentence in §21.4804(b).

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

For: Office of Public Insurance Counsel.

Against: None.

Neither for nor against, with changes: American Council of Life Insurers.

6. STATUTORY AUTHORITY. The new sections are adopted under the Insurance Code §1701.061 and §36.001. Section 1701.061 authorizes the Commissioner to adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Chapter 1701, relating to life, accident and health insurance Policy Forms, and to ensure that noninsurance benefits included as part of a policy, contract or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement. 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.

SUBCHAPTER NN. Noninsurance Benefits and Features

§21.4801. Applicability and Scope. In accordance with the Insurance Code §1701.061, this subchapter applies to any insurer that provides or discloses a

noninsurance benefit as part of a life insurance policy or certificate, annuity contract or certificate, or an accident or health insurance policy, contract or certificate.

§21.4802. Definition of Noninsurance Benefit. For purposes of this subchapter, the term “noninsurance benefit” has the same meaning as provided in the Insurance Code §1701.061(a).

§21.4803. Purpose. The purpose of this subchapter is to provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

§21.4804. Reasonable Relation to Policy, Contract or Certificate.

(a) In accordance with the Insurance Code §1701.061(a), any noninsurance benefit provided or disclosed as part of an insurance policy, contract or certificate of insurance must be reasonably related to the type of insurance policy, contract or certificate being issued.

(b) For purposes of this subchapter, the standard of “reasonable relation” takes into account the nature, character, purpose and scope of the insurance policy, contract or certificate with which the noninsurance benefit or feature is associated and to be offered. An example representing the existence of “reasonable relation” is a noninsurance benefit which, in form and application, is specifically related to the

purpose and function of the underlying insurance policy, contract or certificate. Determination of "reasonable relation" will include examination of the degree to which the noninsurance benefit is related in its nature, character and purpose to that of the insurance policy, contract or certificate, including, as appropriate, the type and amount of benefit provided.

§21.4805. Disclosure Requirements for Form Filings that Include Noninsurance Benefits. A policy, contract or certificate form filing that includes a noninsurance benefit shall also include the items set out in paragraphs (1) - (3) of this section:

(1) A description of the noninsurance benefit must be provided. The description must be sufficiently specific to provide information about the nature, character, purpose and scope of the benefit.

(2) A notice fully disclosing the noninsurance benefit to the policyholder, contract holder or certificate holder must be provided. Full disclosure includes the following:

(A) an explanation of how the noninsurance benefit may be obtained;

(B) a statement disclosing:

(i) whether acceptance or declination of the noninsurance benefit is optional to the policyholder, contract holder, certificate holder or, as applicable, other individual covered person;

(ii) the identifiable charge and amount, if any, for a

noninsurance benefit that an individual covered person has the option to accept or decline;

(iii) the means by which the policyholder, contract holder, certificate holder or other person entitled to the benefit may obtain the benefit in the event the provider of the benefit, if other than the insurer, fails to provide or to continue to provide the benefit as set out in the policy, contract or certificate; and

(C) a statement providing information about the nature, character and purpose of the benefit, as well as any limitations associated with or applicable to the benefit.

(3) A statement explaining any condition on which termination of the noninsurance benefit will occur must be provided. The statement must include a reasonable notice and pre-termination period in circumstances where the condition triggering termination is the insurer's decision to discontinue offering or providing the benefit.

§21.4806. Additional Provisions Applicable to Noninsurance Benefits.

(a) A noninsurance benefit provided or disclosed as part of a policy, contract or certificate as set out in the Insurance Code §1701.061 may not contain any provision that is unfairly deceptive.

(b) A noninsurance benefit provided or disclosed as part of a policy, contract or certificate as set out in the Insurance Code §1701.061 is subject to the Insurance Code, Chapters 82 - 84.

(c) If a noninsurance benefit is to be available to in-force business, commitment documentation setting out such availability must be submitted with the form filing, specifically identifying all existing in-force business to which the noninsurance benefit is intended to be made available.

§21.4807. Noninsurance Benefits Composed of Certain Discount Programs.

(a) A noninsurance benefit may consist in whole or in part of discount cards for health care programs, vision care programs, dental care programs, prescriptions, physical fitness programs or facilities, or other similar programs.

(b) Noninsurance benefits which include, in whole or in part, discount health care programs and discount health care program operators are subject to the provisions in paragraphs (1) and (2) of this subsection.

(1) Noninsurance benefits offered or provided prior to April 1, 2010, which include, in whole or in part, discount health programs and discount health care program operators as defined in the Health and Safety Code §76.001, are subject to the provisions of the Health and Safety Code Chapter 76, any administrative rules adopted by the Texas Department of Licensing and Regulation implementing that chapter, and any orders entered by the Executive Director or Commission to administer and enforce the chapter.

(2) Noninsurance benefits offered or provided on or after April 1, 2010, which include, in whole or in part, discount health programs and discount health care program operators as defined in the Insurance Code §562.002 and §7001.001, are

subject to the provisions of the Insurance Code Chapters 562 and 7001, any administrative rules adopted by the Commissioner of Insurance, and any orders entered by the commissioner to administer and enforce the chapters.

CERTIFICATION. This agency hereby certifies that §§21.4801 - 21.4807 as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 14, 2009.


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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new §§21.4801 - 21.4807 specified herein, concerning requirements applicable to noninsurance benefits that are provided or disclosed as part of an insurance policy, contract or certificate of insurance and that are reasonably related to the type of policy, contract or certificate being issued, and developed pursuant to applicable provisions of the Insurance Code §1701.061, are adopted.

09-1000

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 21. Trade Practices

Adopted Sections
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AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 09-1000

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