

**SUBCHAPTER RR. STANDARD PROOF OF HEALTH INSURANCE FOR MEDICAL
BENEFITS FOR INJURIES INCURRED AS A RESULT OF A MOTORCYCLE
ACCIDENT**
28 TAC §21.5201

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes new Subchapter RR, §21.5201, concerning standard proof of health insurance for medical benefits for injuries incurred as a result of a motorcycle accident. This proposed new section is necessary to implement SECTION 8(c) and (c-2) of Senate Bill (SB) 1967, 81st Legislature, Regular Session, which amends the Transportation Code §661.003 and directs the Department to prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle.

One of the purposes of SB 1967 is to amend current law relating to the safe operation of motorcycles to provide consistency regarding the enforcement of Transportation Code §661.003 (Offenses Relating to Not Wearing Protective Headgear). Prior to the enactment of SB 1967, it was an offense under Transportation Code §661.003 to drive or ride on a motorcycle without a helmet unless the person was 21 years of age and had completed a motorcycle safety course or had health insurance. However, Texas statutes did not require all motorcyclists or the public to complete any motorcycle safety training. (TEXAS STATE SENATE TRANSPORTATION & HOMELAND SECURITY COMMITTEE, BILL ANALYSIS (ENROLLED), SB 79, 81ST Leg., R.S. (Sept. 2, 2009)). In addition, the Insurance Code did not provide a standard of proof for the health insurance component of the two exceptions to Transportation Code

§661.003. SB 1967 SECTION 8(C-2) requires the Department to prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described by SB 1967 SECTION 8(C). The insurance exception to Transportation Code §661.003 provides that the excepted person must be “covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle” to qualify for the exception.

On April 15, 2010, the Department posted an informal working draft of the proposed new subchapter on the Department’s website and invited public comment. The Department held a meeting on April 29, 2010, for the stakeholder comments. The informal comment period ended on April 30, 2010. The proposal includes input from these comments.

Proposed new §21.5201 is necessary to ensure that a standard proof of health insurance exists to implement an exception to the application of the Transportation Code §661.003(a) or (b), which provides that it is an offense for a person to not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway. Proposed new §21.5201(a)(1) provides that the subchapter is applicable to an individual, group, blanket, or franchise insurance policy, insurance agreement, health maintenance organization evidence of coverage, group hospital services contract, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident while operating or riding a motorcycle. Proposed new §21.5201(a)(2) expressly provides that the subchapter is not applicable to credit-only coverage, disability coverage, specified

disease coverage, long-term care coverage, dental or vision-only coverage, single-service health maintenance organization coverage, accidental death and dismemberment coverage, hospital indemnity coverage, workers' compensation coverage, or medical payments or personal injury protection coverage. Proposed new §21.5201(b) provides that upon request, a health insurance plan shall issue a standard proof of health insurance coverage identifying a person who is at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle, unless the plan already issues customary identifications cards that include the words "MOTORCYCLE HEALTH" on the face of the card. Proposed new §21.5201(c) provides two alternative ways in which a health insurance plan can remain in compliance with the subsection. Proposed new §21.5201(c)(1) provides that a health insurance plan may comply by issuing its customary identification card with the words "MOTORCYCLE HEALTH" in all capital letters, printed in at least 8-point boldface font, and prominently placed on the card. Proposed new §21.5201(c)(2) provides that a health insurance plan may comply by issuing a card, separate from its customary card, titled "Motorcycle Health: Standard Proof of Health Insurance". The separate card must contain the heading "Motorcycle Health: Standard Proof of Health Insurance," the carrier logo, the carrier name, the name of the enrollee, insured, or dependent of the enrollee or insured, the policy number, and a statement that the enrollee, insured, or dependent of the enrollee or insured is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle. All text

printed on the separate card shall appear in upper and lower case, using at least 12-point boldface type for the heading and at least 10-point regular type for the text body.

Additionally, proposed new §21.5201 is not applicable to personal injury protection (PIP) and medical payment (Med Pay) coverages. The Transportation Code §661.003(c) provides that a person covered by a "health insurance plan" providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle is exempted from committing the offense of not wearing protective headgear. Section 661.003(i) defines "health insurance plan" as an "individual, group, blanket, or franchise insurance policy, insurance agreement, evidence of coverage, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident." PIP and Med Pay coverages are not considered health insurance plans under the Insurance Code. For instance, §1952.151 of the Insurance Code states that "personal injury protection" coverage "consists of provisions of an automobile liability insurance policy that provide for payment . . . for expenses that arise from an accident. . . ." Section 2251.202 of the Insurance Code requires the Commissioner to publish a standard rate index of rates "for each of the following coverages under a personal automobile insurance policy," including "personal injury protection" and "medical payments." Finally, a large number of other sections of the Insurance Code distinguish between coverage under a health benefit plan and medical payment insurance coverage under an automobile insurance policy, including §§544.152, 546.003, 846.001, 1274.001, 1352.002, 1357.003, 1357.053, 1358.003, 1360.003, 1366.054, and

1501.002. Since the term "health insurance plan" under the Transportation Code does not specifically include automobile coverages providing for medical benefits, and because the Insurance Code does not treat PIP or Med Pay as falling within the general scope of health insurance, such coverages will not qualify for the exemption from the offense found in the Transportation Code.

2. FISCAL NOTE. Judy Wooten, Project Manager of Regulatory Matters for the Life, Health & Licensing Program, has determined that for each year of the first five years the proposal will be in effect, there will be no measurable fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. 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. Wooten also has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of the proposal is that motorcyclists will have a means of obtaining proof of health insurance coverage required for proof of compliance with the Transportation Code §661.003(c). Section 661.003(c) provides an exception to the offense committed when a person does not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway, if a person is at least 21 years old and is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle. The Department posted the draft rule and an estimate of costs consistent with the costs discussed in the

following paragraphs on April 15, 2010, and requested input on the costs associated with the rule. The Department also held a stakeholder meeting on April 29, 2010. No comments on the potential costs of the rule were received. The Department has drafted the proposed amendments to maximize public benefits while mitigating costs.

The cost to persons required to comply with the proposal are as follows:

1. *Addition of the words "MOTORCYCLE HEALTH" to the customary identification (ID) card provided by the health insurance plan.* The costs associated with this option would include the cost of printing two words on the customary ID cards and the cost of programming. Programming costs may vary depending on the number of hours required, the skill level of the programmer or programmers, the complexity of the health insurance plan's information systems, and whether outside contract programmers will be involved. Each health insurance plan will have the information needed to estimate its individual costs for such programming, but the Department estimates that programming costs will be minimal and require no more than one hour of programming. Based on data from the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission, which derives its wage information from the latest DOL Wage Report, the mean hourly wage for a computer programmer working for an insurance carrier in Texas is \$37.54. The actual number, types, and cost of personnel will be determined by each health insurance plan's existing information systems and staffing. The actual cost of printing the two additional words on an ID card will similarly vary from carrier to carrier, but is expected to be minimal. A health insurance plan could choose to print the words on all of a group's ID cards when the cards are first printed, thus resulting in no additional printing costs from what is already

required.

2. *Use of separate ID cards generated in response to individual requests.* The costs associated with this option would include the cost of programming, printing, and mailing one page: approximately \$.06 - \$.08 for printing and printing material, and approximately \$.44 for postage. Programming may be required to produce the printed cards for mailing, but a health insurance plan could also make the personalized cards available on the internet for an insured or enrollee to print, which would result in a one-time programming cost. The Department estimates that the amount of programming time to be between five and 20 hours for this option at the wage rates discussed above.

All of the analyses in this cost note are equally applicable to and do not vary for small or micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies

that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on approximately 30 to 40 small or micro-businesses that are required to comply with the proposed rules. This estimate is based on an estimated 30 to 40 health insurers and HMOs that qualify as small or micro businesses. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Department's cost analysis and resulting estimated costs for insurers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses.

The Department has considered the purpose of the Transportation Code §661.003(c) and (c-2) and the proposed new subchapter, which is to provide motorcyclists proof of health insurance coverage, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. It is the Department's position that to waive or modify the requirements of the proposal for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the proposal. The Department has also determined that the proposal is consistent with the health, safety, and environmental and economic welfare of the state, because providing a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding

a motorcycle encourages motorcyclist to carry health insurance prior to engaging in the operation of a motorcycle. Therefore, the Department has determined in accordance with §2006.002(c-1) of the Government Code, for the above cited reasons there are no regulatory alternatives to this proposal that would meet the objectives of the proposal and be consistent with the health, safety, and environmental and economic welfare of the state.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though the proposal may have an adverse economic effect on small or micro-businesses that are required to comply with the proposal, the proposal does not require a regulatory flexibility analysis that is mandated by §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires that a state agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

5. TAKINGS IMPACT ASSESSMENT. The Department 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, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 18, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Judy Wooten, Project Manager of Regulatory Matters for the Life, Health & Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new section is proposed under the Transportation Code §661.003(c) and (c-2) and the Insurance Code §36.001. The Transportation Code §661.003(c) provides that it is an exception to the application of §661.003(a) or (b), which provides that it is an offense for a person to not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway, if a person is at least 21 years old and is covered by a health insurance plan providing the

person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. The Transportation Code §661.003(c-2) provides that the Department of Insurance shall prescribe a standard of proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described by §661.003(c). The Insurance Code §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 following statute is affected by this proposal:

Rule	Statute
§21.5201	Transportation Code §661.003(c) and (c-2)

9. TEXT.

§21.5201. Identification Cards - Health Coverage for Motorcycle Injuries.

(a) Applicability.

(1) This subchapter is applicable to an individual, group, blanket, or franchise insurance policy, insurance agreement, health maintenance organization evidence of coverage, group hospital services contract, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident while operating or riding on a motorcycle.

(2) This subchapter is not applicable to:

- (A) credit-only coverage;
- (B) disability coverage;
- (C) specified disease coverage;
- (D) long-term care coverage;
- (E) dental or vision-only coverage;
- (F) single-service health maintenance organization coverage;
- (G) accidental death and dismemberment coverage;
- (H) hospital indemnity coverage;
- (I) workers' compensation coverage; or
- (J) medical payments or personal injury protection coverage

provided under an automobile policy.

(b) Standard Proof of Health Insurance. Upon request, a health insurance plan, as defined by the Transportation Code §661.003(i), shall issue a standard proof of health insurance coverage that satisfies the content requirements under subsection (c) of this section and identifies a person who is at least 21 years of age and covered by the health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. A request can be made by a person who is an enrollee or an insured of the health insurance plan or who is a dependent of an enrollee or insured of the health insurance plan.

(c) Contents of Standard Proof of Health Insurance. A health insurance plan shall issue the standard proof of health insurance coverage described by subsection (b) of this section through one of the methods set forth in either paragraph (1) or paragraph (2) of this subsection:

(1) The health insurance plan may elect to add to its customary identification card the words “MOTORCYCLE HEALTH.” By including the words “MOTORCYCLE HEALTH” on its customary identification card, a health insurance plan affirms that the person named on the card is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, as addressed by the Transportation Code §661.003(c). The words “MOTORCYCLE HEALTH” must be:

- (A) printed in all capital letters;
- (B) printed in at least 8-point boldface font; and
- (C) located in a prominent place on the card.

(2) The health insurance plan may elect to issue a card, separate from its customary identification card, titled “Motorcycle Health: Standard Proof of Health Insurance.”

(A) The separate card must contain at least the following:

(i) a heading that includes only the words “Motorcycle Health: Standard Proof of Health Insurance;”

(ii) the carrier logo;

(iii) the carrier name;

(iv) the name of the enrollee, insured, or dependent of the enrollee or insured;

(v) the policy number; and

(vi) the statement: “[name of enrollee, insured, or dependent of the enrollee or insured] is covered by a health insurance plan that

provides medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, as addressed by the Transportation Code §661.003(c)."

(B) All text printed on the separate card shall appear in upper and lower case as appropriate.

(C) The text body shall appear in at least 10 point regular type.

(D) The heading shall appear in at least 12 point boldface type.