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SUBCHAPTER Q. GENERAL PROPERTY AND CASUALTY RULES **DIVISION 3. MULTIPLE LINES** **28 TAC §§5.9750 – 5.9752**

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §§5.9750 – 5.9752, concerning notice to policyholders and agents of certain changes to property and casualty insurance policies. Sections 5.9750 – 5.9752 implement Senate Bill 417, 85th Legislature, Regular Session (2017). The new sections are adopted without changes to the proposed text published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5548).

REASONED JUSTIFICATION. Sections 5.9750 – 5.9752 clarify what constitutes a material change under SB 417; ensure consistency with the conspicuousness requirements in the Business and Commerce Code; and clarify the requirements for a clear, plain-language notice of a change in coverage from replacement cost to actual cash value.

SB 417 amended the Insurance Code regarding notice to policyholders and agents of certain changes to property and casualty insurance policies. Before SB 417, insurers that wanted to provide less coverage to an existing policyholder were required to cancel or nonrenew the policy and give the policyholder a new offer. SB 417 created an exception that allows insurers to avoid canceling or nonrenewing the policy by providing policyholders and agents with a notice of material change describing the reductions in coverage.

Under SB 417, a "material change" on renewal is not a nonrenewal or cancellation if the insurer provides the policyholder with written notice of any material change in each form of the policy offered to the policyholder on renewal from the form of the policy held immediately before renewal. SB 417 requires that the notice of material change be clear,

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provided in a conspicuous place, and in plain language. It also requires the insurer to provide the notice at least 30 days before the renewal date.

Insurers are only required to provide the notice of material change under SB 417 if they offer a policy that reduces coverage, changes coverage conditions, or changes the duties of the policyholder, but do not provide notice of nonrenewal or cancellation. If the insurer chooses instead to nonrenew or cancel and issue a new policy, the notice requirements in SB 417 would not apply. Instead, the insurer would comply with the notice requirements for cancellation or nonrenewal in Insurance Code Chapter 551.

Informal Draft. TDI received comments on an informal draft posted on TDI's website on January 16, 2019. Although TDI specifically requested comments on anticipated costs of compliance with the rule, no comments addressed costs. Two comments asked that the rule be drafted to clearly not apply to surplus lines policies, as the underlying statute does not apply. One comment supported the draft rule text and made additional suggestions to enhance clarity. One comment requested more insight about what qualifies as a reduction in coverage. TDI made changes in response to those comments. Those changes were included in the proposed rule.

Section 5.9750. Section 5.9750 clarifies the applicability of the rule and provides examples of material changes. It is necessary to prevent confusion about notices of material change subject to the rule, and to clarify the types of changes that require a notice.

Section 5.9751. Section 5.9751 provides requirements for the notice of material change. It harmonizes the conspicuousness requirement in the new sections and Insurance Code §§551.1055(c)(1), 2002.001(b)(2)(A), and 2002.102(c)(1) with the definition of "conspicuous" in Business and Commerce Code §1.201(b)(10). It also clarifies that "material change" includes material changes to the entire policy or to any part of it.

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Section 5.9751 is necessary to ensure a consistent interpretation of "conspicuous" between the Insurance Code, the Business and Commerce Code, and the new sections. It is also necessary to ensure that material changes to one type of risk or coverage—for example, changes to coverage for a roof from replacement cost to actual cash value—are subject to the same notice requirements as material changes to the policy as a whole.

Section 5.9752. Section 5.9752 clarifies that a change from replacement cost coverage to actual cash value coverage is a material change. It also provides requirements for the notice. For a change from replacement cost to actual cash value coverage, §5.9752 requires that a notice of material change explain the terms "replacement cost" and "actual cash value" in plain language; and that if the notice uses the term "depreciation," it must also include a plain-language explanation of that term. Section 5.9752 also requires that a notice of material change that describes a change from replacement cost to actual cash value coverage must include at least one plain-language example that shows the difference in dollar amounts between coverage before and after the material change. Section 5.9752 includes a sample figure to illustrate a possible way to list the amounts a policyholder might receive for a total roof replacement. Insurers are not limited to using the sample figure, and they may use other content and formatting.

Section 5.9752 clarifies that a change in coverage from replacement cost to actual cash value is a material change that requires notice under SB 417. Unlike replacement cost coverage, actual cash value coverage includes a deduction for depreciation, which reduces coverage under a policy. However, the inquiries and complaints TDI has received regarding replacement cost, actual cash value, and depreciation indicate that the differences in coverage are not easy for consumers to understand. As a result, §5.9752 is necessary to ensure that consumers get clear descriptions and illustrations of actual cash value and replacement cost coverage. Without those explanations, consumers are unlikely

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to appreciate the impact of a change in coverage from replacement cost to actual cash value, and they are unlikely to be able to make informed coverage choices.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received three written comments. Commenters in support of the proposal were: the American Property Casualty Insurance Association (APCIA), the Insurance Council of Texas (ICT), and the Office of Public Insurance Counsel (OPIC).

Comment on §§5.9750 – 5.9752.

One commenter supports the proposed rules, particularly the parts that clarify that a material change might be to the entire policy, or to any part of it; require examples; and require plain-language dollar examples to show how a change from replacement cost to actual cash value affects coverage. The commenter states that the rules and examples will help consumers make more informed decisions about their insurance.

Agency Response.

TDI agrees that the rules will help consumers make more informed decisions about their insurance.

Comment on §5.9750.

One commenter notes that a change that expands or broadens coverage is not a material change under §5.9750.

Agency Response.

TDI agrees that a broadening of coverage is not a material change under §5.9750.

Comment on §§5.9752(b) and (c) definitions.

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Two commenters ask whether the definitions of "replacement cost," "actual cash value," and "depreciation" in §§5.9752(b) and (c) are permissible as plain-language definitions for those terms in the notice of material change.

Agency Response.

Yes. The definitions of "replacement cost," "actual cash value," and "depreciation" in §§5.9752(b) and (c) are acceptable as plain-language definitions for those terms in the notice of material change.

Comment on Figure: 28 TAC §5.9752(d)(1).

Two commenters ask whether insurers may use their own examples instead of the example in Figure: 28 TAC §5.9752(d)(1).

Agency Response.

Yes. The example in Figure: 28 TAC §5.9752(d)(1) is one way to comply with the requirement for a plain-language example that shows the difference in dollar amounts between coverage before and after the material change from replacement cost to actual cash value. But insurers may produce and use their own plain-language examples.

Comment on Figure: 28 TAC §5.9752(d)(1).

One commenter asks whether a general example, such as the one in Figure: 28 TAC §5.9752(d)(1), is sufficient to comply with the plain-language example requirement in §5.9752(d), or whether the rule would require the insurer to produce a policy-specific dollar example.

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Yes. A general example, such as the one in Figure: 28 TAC §5.9752(d)(1), is sufficient to comply with the plain-language example requirement in §5.9752(d). The rule does not require insurers to produce individual policy-specific dollar examples.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §§5.9750 – 5.9752 under Insurance Code §§551.103, 551.1055, 2002.001, and 2002.102, as added or amended by SB 417; and Insurance Code §§551.112, 2002.102(e), 36.002(2)(E), and 36.001.

Insurance Code §551.103(3) provides that if an insurer, without the policyholder's consent, reduces or restricts coverage under the policy by endorsement or other means, then the insurer has canceled the policy. SB 417 amended §551.103(3) to provide an exception for changes to the policy on renewal for which the insurer provides a written notice of material change under §551.1055.

SB 417 added definitions of "material change" to Insurance Code §§551.1055, 2002.001, and 2002.102. Under those definitions, a "material change" is a change to a policy that, with respect to a prior or existing policy reduces coverage, changes conditions of coverage, or changes the policyholder's duties.

SB 417 added requirements for notice of material change to policyholders under Insurance Code §§551.1055, 2002.001, and 2002.102. The notice of material change must appear in a conspicuous place, clearly indicate each material change to the policy, be written in plain language, and be provided to the policyholder not later than the 30th day before the renewal or expiration date.

In addition to the notice to the policyholder, under Insurance Code §§551.1055, 2002.001, and 2002.102, the insurer must provide each of its agents with a written notice that clearly indicates each material change being made to the policy form.

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Insurance Code §551.112 allows the Commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §2002.102(e) allows the Commissioner to adopt rules as necessary to implement §2002.102.

Insurance Code §36.002(2)(E) allows the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of a provision of Insurance Code Title 10, Subtitle D, which includes §2002.001 and §2002.102.

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

TEXT.

§5.9750. Notice of Material Change—Applicability and Examples.

(a) A notice of material change is not a notice of cancellation or nonrenewal. Instead, it is a notice provided under:

- (1) Insurance Code §551.1055;
- (2) Insurance Code §2002.001; or
- (3) Insurance Code §2002.102.

(b) This section and §5.9751 and §5.9752 of this title (relating to Notice of Material Change-Requirements and Notice of Material Change-Change from Replacement Cost to Actual Cash Value) apply to policies and insurers that are subject to Insurance Code Chapter 551, Subchapter C; and Chapter 2002.

(c) Examples of material changes include:

- (1) changes from replacement cost to actual cash value;
- (2) reductions in policy limits;

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- (3) increases in deductibles; or
- (4) reductions in coverage, including:
 - (A) limiting the people or entities insured under the policy;
 - (B) removing an item or act that was previously covered under the policy; or
 - (C) limiting the types of coverage under the policy.

§5.9751. Notice of Material Change—Requirements.

(a) A notice of material change must be conspicuous, as that term is defined in Business and Commerce Code §1.201(b)(10).

(b) If the notice of material change is included in a renewal notice, the first page of the renewal notice must include:

- (1) the notice of material change; or
- (2) conspicuous text that clearly indicates the location of the notice of

material change in the renewal offer.

(c) A material change might be to the entire policy, or to any part of it.

§5.9752. Notice of Material Change—Change from Replacement Cost to Actual Cash Value.

(a) A material change includes a change from replacement cost coverage to actual cash value coverage. The change might be to the entire policy, or to any part of it. This section applies only to changes from replacement cost to actual cash value.

(b) A notice of material change must explain the terms "replacement cost" and "actual cash value." Using plain language, the notice must at a minimum explain that:

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(1) for replacement cost, the policy will pay to repair or replace the damaged item based on the current cost of the item; and

(2) for actual cash value, the policy will pay less based on the item's characteristics, such as age or condition.

(c) If the term "depreciation" is in the notice, the notice must use plain language to explain that "depreciation" is the amount of value that an item loses over time, typically through use, wear and tear, or by becoming obsolete.

(d) A notice of material change must include at least one plain-language example that shows the difference in dollar amounts between coverage before and after the material change.

(1) See Figure: 28 TAC §5.9752(d)(1) for one possible way to list the amounts a policyholder might receive for a total roof replacement. Insurers are not limited to using the Figure as the example, and they may use other content and formatting.

Figure: 28 TAC §5.9752(d)(1)

Your policy has changed.

Your policy may now pay less if your home is damaged.

Some items in your policy have changed from replacement cost coverage to actual cash value coverage.

There are two types of coverage for homes and personal items:

- ▶ **Replacement cost coverage:** The policy will pay to replace the damaged items based on current costs.
- ▶ **Actual cash value coverage:** The policy will **pay less** based on the item's characteristics, such as age and condition.

To know what your policy will cover, check your coverage and deductible amounts. The deductible is the amount you must pay before insurance will pay.

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Changing from replacement cost to actual cash value coverage can reduce what your policy will pay.

To see how the payment for a home insured for \$200,000 with a 2 percent (\$4,000) deductible might change, **check out the examples below. Your payment will probably be different.**

Example: Actual cash value coverage			
If it costs \$10,000 to replace the roof and the loss is covered at actual cash value:			
	5-year-old roof	10-year-old roof	20-year-old roof
Actual cash value of roof (example only)	\$8,500	\$7,000	\$4,000
Minus 2 percent deductible	- \$4,000	- \$4,000	- \$4,000
Policy might pay	\$4,500	\$3,000	\$0

Example: Replacement cost coverage	
If the loss is covered at replacement cost, the policy will pay the same amount for any age roof:	
Cost to replace roof	\$10,000
Minus 2 percent deductible	- \$4,000
Policy might pay	\$6,000

(2) If the policy includes a depreciation schedule, the notice of material change must list the form name and page number that contains the depreciation schedule.

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

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/s/ James Person

James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts new 28 TAC §§5.9750 – 5.9752, concerning notice to policyholders and agents of certain changes to property and casualty insurance policies.

/s/ Kent C. Sullivan

Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. **2020-6209**