

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION
28 TAC §§7.25, 7.88, 7.1403, and 7.1909

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§7.25, 7.88, 7.1403, and 7.1909, concerning corporate and financial regulation.

EXPLANATION. Amendments to §§7.25, 7.88, 7.1403, and 7.1909 remove references to "nonprofit legal services corporations" from the definitions of "Eligible insurer" and "Insurer" for regulations regarding examination and financial analysis and remove references to "prepaid legal services" from regulations regarding service of process and multiple-employer welfare arrangements. "Prepaid legal services" are comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, Regular Session (2003) (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, Regular Session (2019) (SB 1623).

In addition, the proposed amendments also include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity, which are described in the following paragraphs. These changes include correcting punctuation, updating citations to Insurance Code provisions that have changed due to the codification Insurance Code articles, removing the word "the" before references to specific provisions in the Insurance Code, and deleting the word "shall" or replacing it with "will."

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Pat Brewer, team lead of the Regulatory Initiatives Office of the Life and Health Division, has determined that, for each year of the first five years the proposed amendments are in effect, there will be

no measurable fiscal impact on state and local governments as a result of the enforcement or administration of the amendments.

Ms. Brewer does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Brewer expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 961 and Occupations Code Chapter 953.

Ms. Brewer expects that the proposed amendments will not impose a cost on stakeholders because they simply recognize that prepaid legal services were removed from TDI's regulation, as required by Insurance Code §961.003 and Occupations Code §953.003. As a result, any unforeseen costs associated with this deregulation are a result of the statute and not the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create a new regulation;
- will not repeal existing regulations;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 11, 2021. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC

112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 11, 2021. If a public hearing is held, TDI will consider comments presented at the hearing.

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.25 and §7.88

STATUTORY AUTHORITY. TDI proposes amendments to §7.25 and §7.88 under Insurance Code §§961.002 - 961.004, as amended by SB 1623, and Insurance Code §36.001.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has removed nonprofit legal services providers from TDI's regulation.

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.

CROSS-REFERENCE TO STATUTE. Section 7.25 and §7.88 implement Insurance Code §961.003, as amended by SB 1623.

TEXT.

§7.25 Out of State Books and Records.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate - As defined in ~~[the]~~ Insurance Code §823.003 ~~[Article 21.49-1, §2(a)]~~.

(2) Domestic insurance company - As defined in ~~[the]~~ Insurance Code §803.001 ~~[Article 1.28, §1(a)]~~.

(3) Eligible insurer - A domestic insurance company that is:

(A) an affiliate of an insurance holding company system; or

(B) a health maintenance organization that is an affiliate of another health maintenance organization or health care provider; ~~[-or]~~

~~[(C) a nonprofit legal services corporation that is an affiliate of an insurance holding company system and whose claims and daily affairs are handled under contract by a foreign insurer licensed to do a similar business in this state.]~~

(4) Health care provider - Is the same as the term "provider" in Insurance Code §843.002 ~~[Article 20A.02(t)]~~.

(5) Insurance holding company system - As defined in ~~[the]~~ Insurance Code §823.006 ~~[Article 21.49-1, §2(i)]~~.

(c) - (l) (No change.)

§7.88. Independent Audits of Insurer and HMO Financial Statements and Insurer and HMO Internal Control over Financial Reporting.

(a) and (b) (No change.)

(c) Definitions. The following words and terms, when used in this section, ~~[shall]~~ have the following meanings, unless the context clearly indicates otherwise.

(1) Accountant--An independent certified public accountant or accounting firm that meets the requirements of ~~[the]~~ Insurance Code §401.011.

(2) Affiliate--Has the meaning assigned by ~~[the]~~ Insurance Code §823.003.

(3) Audit committee--A committee established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or HMO or group of insurers or HMOs and audits of financial statements of the insurer or HMO or group of insurers or HMOs. At the election of the controlling person, the audit committee of an entity that controls a group of insurers or HMOs may be the audit committee for one or more of the controlled insurers or HMOs solely for the purposes of this section. If an audit committee is not designated by the insurer or HMO, the insurer's or HMO's entire board of directors constitutes the audit committee.

(4) Audited financial report--The annual audit report required by [the] Insurance Code Chapter 401, Subchapter A.

(5) Group of insurers or HMOs--Those authorized insurers or HMOs included in the reporting requirements of [the] Insurance Code Chapter 823, or a set of insurers or HMOs as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(6) Health maintenance organization (HMO)--A health maintenance organization authorized to engage in business in this state.

(7) Insurer--An insurer authorized to engage in business in this state, including:

- (A) a life, health, or accident insurance company;
- (B) a fire and marine insurance company;
- (C) a general casualty company;
- (D) a title insurance company;
- (E) a fraternal benefit society;
- (F) a mutual life insurance company;
- (G) a local mutual aid association;
- (H) a statewide mutual assessment company;

(I) a mutual insurance company other than a mutual life insurance company;

(J) a farm mutual insurance company;

(K) a county mutual insurance company;

(L) a Lloyd's plan;

(M) a reciprocal or interinsurance exchange;

(N) a group hospital service corporation; and

(O) a stipulated premium company~~;~~ and

~~[(P) a nonprofit legal services corporation].~~

(8) Internal control over financial reporting--A process implemented by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the entity's financial statements. The term includes policies and procedures that:

(A) relate to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(B) provide reasonable assurance that:

(i) transactions are recorded as necessary to permit preparation of the financial statements; and

(ii) receipts and expenditures are made only in accordance with authorizations of management and directors; and

(C) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements.

(9) Management--The management of an insurer or HMO or group of insurers or HMOs subject to this section.

(10) SEC--The United States Securities and Exchange Commission.

(11) Section 404--Section 404, Sarbanes-Oxley Act of 2002 (15 U.S.C. §7262), and rules adopted under that section.

(12) Section 404 report--Management's report on internal control over financial reporting as determined by the SEC and the related attestation report of an accountant.

(13) SOX-compliant entity--An entity that is required to comply with or voluntarily complies with:

(A) the preapproval requirements provided by 15 U.S.C. §78j-1(i);

(B) the audit committee independence requirements provided by 15 U.S.C. §78j-1(m)(3); and

(C) the internal control over financial reporting requirements provided by 15 U.S.C. §7262(b) and Item 308, SEC Regulation S-K.

(14) Subsidiary--Has the meaning assigned by [the] Insurance Code §823.003.

(d) - (o) (No change.)

SUBCHAPTER N. SERVICES OF PROCESS

28 TAC § 7.1403

STATUTORY AUTHORITY. The department proposes amendments to §7.1403 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has removed nonprofit legal services from TDI's regulation.

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.

CROSS-REFERENCE TO STATUTE. Section 7.1403 implements Occupations Code Chapter 953, as added by SB 597, and Insurance Code §961.003, as amended by SB 1623.

§7.1403. Service on Domestic Insurance Companies Licensed by the State Board of Insurance and on Related Entities Authorized to Conduct Business in Texas.

(a) Person and place for service. Except as provided by subsection (b) and subsection (c) of this section, a domestic insurance carrier, including a casualty, county mutual, farm mutual, fire, fraternal, life, Lloyd's, mutual other than life, reciprocal, stipulated premium, or title insurance company, and any mutual assessment company, carrier providing job protection insurance, risk retention group, ~~third-party~~ ~~[third party]~~ administrators (in accordance with ~~[the]~~ Insurance Code~~[,]~~ Chapter 4151 ~~[Article 21.07-5]~~), group hospital service corporation, health maintenance organization, ~~[prepaid legal services corporation,]~~ and exempt association under ~~[the]~~ Insurance Code~~[,]~~ §887.102 ~~[Article 14.17]~~, authorized to conduct the business of insurance in this state, and any other company domiciled in Texas and engaged in the business of insurance as a principal, may be served with legal process, notice, or demand required or permitted by law by:

(1) serving the president, any active vice-president, secretary, or attorney in fact at the office or principal place of business of that carrier; or

(2) leaving a copy of the process, notice, or demand at the home office or principal business office of the carrier during regular business hours.

(b) - (c) (No change.)

SUBCHAPTER S. MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS
REQUIREMENTS FOR OBTAINING AND MAINTAINING CERTIFICATE OF
AUTHORIZATION
28 TAC § 7.1909

STATUTORY AUTHORITY. The department proposes amendments to §7.1909 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Insurance Code §§961.002 - 961.004, as amended by SB 1623, has removed nonprofit legal services from TDI's regulation. TDI proposes to remove the reference to prepaid legal services from §7.1909 to clarify that those plans are not subject to review by TDI.

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.

CROSS-REFERENCE TO STATUTE. Section 7.1909 implements Occupations Code Chapter 953, as added by SB 597, and Insurance Code §961.003, as amended by SB 1623.

§7.1909. Benefits Allowed to Be Provided by Multiple-Employer Welfare Arrangements.

(a) A multiple-employer welfare arrangement licensed pursuant to the provisions of ~~the~~ Insurance Code~~, Chapter 846 [3, Subchapter 1],~~ and these sections will ~~shall~~ be limited to providing any one or more of the benefits described in paragraphs (1) - (3) ~~[(4)]~~ of this subsection, as follows:

- (1) medical, dental, optical, surgical, or hospital care;
- (2) benefits in the event of sickness, accident, disability, or death; and
- (3) any other benefit authorized for health insurers in this state~~;~~ and
~~[(4) prepaid legal services].~~

(b) (No change.)

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 23, 2020.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance