SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

DIVISION 1. INSURANCE ADVERTISING
28 TAC §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122

DIVISION 2. DISCOUNT HEALTH CARE PROGRAM ADVERTISING
28 TAC §§21.151 - 21.154

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, concerning insurance advertising, certain insurance trade practices, and insurance solicitations, and new §§21.151 - 21.154, concerning discount health care program advertising. The amendments and new sections are adopted without changes to the proposed text published in the June 4, 2010 issue of the *Texas Register* (35 TexReg 4602).

2. REASONED JUSTIFICATION. The amendments and new sections are necessary to implement (i) House Bill (HB) 4341, 81st Legislature, Regular Session, relating to the regulation of discount health care programs by the Texas Department of Insurance (Department); and (ii) Senate Bill (SB) 2423, 81st Legislature, Regular Session, relating to the transfer or sale of patient information or prescription drug history by discount health care programs. The amendments are necessary to: (i) divide subchapter B of this chapter into Division 1 for insurance advertising and Division 2 for discount health care program advertising; (ii) update obsolete statutory citations to the Insurance Code;

(iii) correct rule citation references; and (iv) make nonsubstantive revisions to internal references. New Division 2, consisting of §§21.151 - 21.154, is necessary to implement Chapter 562 of the Insurance Code, enacted by HB 4341, 81st Legislature, Regular Session, which regulates trade practices in the business of discount health care programs by: (1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and (2) prohibiting those unfair or deceptive trade practices.

HB 4341 transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Department effective April 1, 2010. HB 4341 (i) amends the Insurance Code to add new Title 21, Chapter 7001, relating to the regulation of discount health care programs by the Department, effective September 1, 2009; (ii) amends the Insurance Code to add new Chapter 562, relating to unfair methods of competition and unfair or deceptive acts or practices regarding discount health care programs, effective September 1, 2009, with the exception of Subchapter E, relating to the enforcement by the Attorney General, which took effect April 1, 2010; and (iii) repeals Chapter 76 of the Health and Safety Code, relating to the regulation of discount health care programs by the TDLR, effective April 1, 2010.

SB 2423, 81st Legislature, Regular Session, effective September 1, 2009, amends the Insurance Code to add new Chapter 7002, relating to supplemental provisions regarding discount health care operators. Under §7002.001, for purposes of the Insurance Code Chapter 562 and Chapter 7001, consideration provided to a discount health care program

or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. Therefore, for example, such discount health care programs or program operators that do not charge fees for their programs, but that receive consideration in the form of access to patient information that is then transferred or sold, or that receive drug manufacturer rebates, that are then transferred or sold, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs.

This adoption order is a complement to three other Department adoption orders to implement new Insurance Code Chapters 562, 7001 and 7002. The other three adoption orders are: (i) amendments to §§1.501 - 1.503, and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs; (ii) new §19.1601 and §19.1602, relating to discount health care program registration and renewal requirements, and amendments to §19.802, relating to amount of fees; and (iii) new §§24.1 - 24.4, relating to discount health care program principles of regulation. Notice of these three adoption orders are also published in this issue of the *Texas Register*.

On September 14, 2009, the Department posted on its website informal drafts of these four rules for public comment. The Department held a stakeholder meeting on September 18, 2009, to discuss the informal draft rules prior to the informal comment period ending

on September 24, 2009. The Department received comments on all four draft rules, including discount health care program advertising requirements, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4602). The proposal comment period ended on July 5, 2010.

Effective Dates. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that was registered with the TDLR on January 1, 2010, as required by Chapter 76 of the Health and Safety Code, must file an application for renewal of registration with the Department under the Insurance Code Chapter 7001 not later than April 1, 2010. In order for any discount health care program regulated pursuant to the Insurance Code Chapters 7001 and 7002 to lawfully operate in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

Section-by-Section Summary. The following paragraphs provide a brief summary as well as an analysis of the reasons for the amendments and new sections.

Chapter 21, Subchapter B Reorganization. Chapter 21, Subchapter B Reorganization. Amendments to this subchapter add new Division 1, Insurance Advertising, which includes existing §§21.101 - 21.122, and new Division 2, Discount Health Care Program Advertising, which includes new §§21.151 - 21.154. These amendments are necessary to provide the advertising requirements for discount health care programs. “Insurance” is deleted from the title of this subchapter to better reflect the fact that Subchapter B is not limited to insurance advertising requirements. A division of

Subchapter B is necessary to distinguish the advertising requirements for discount health care programs from the advertising requirements for insurance because regulatory requirements governing insurance and discount health care program

advertisements and solicitations differ.

Division 1. The amendments to Division 1, §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122 are necessary to (i) update obsolete statutory citations to the Insurance Code; (ii) correct rule citation references; and (iii) make nonsubstantive revisions to internal references.

Division 2. New Division 2, §§21.151 - 21.154, is necessary to implement the Insurance Code Chapter 562 by establishing advertising requirements to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs. The stated purpose of the Insurance Code Chapter 562, as provided by the Insurance Code §562.001, is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the State of Texas that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those unfair or deceptive trade practices by discount health care programs. Under the Insurance Code §562.052, it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published,

disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program. Further, the Insurance Code §562.005 provides that new Chapter 562 shall be liberally construed and applied to promote the underlying purposes of regulating trade practices in the business of discount health care programs as provided by the Insurance Code §562.001.

New §21.151 is necessary to state the purpose and scope of Division 2 and to provide that an insurer or a health maintenance organization is required to comply with this adoption and the applicable statutes in its capacity as a discount health care program operator pursuant to the Insurance Code §562.004.

New §21.152 is necessary to provide the meaning of the terms “advertisement”, “discount health care program”, and “discount health care program operator” in accordance with meanings assigned by the Insurance Code.

Further, new §21.153 is necessary to provide the requirements for the content of advertisements. New §21.153(a), which requires that an advertisement identify the discount health care program operator offering the discount health care program that is the subject of the advertisement, is necessary for the Department to monitor discount health care program operator compliance with the Insurance Code Chapter 562. The Insurance Code §562.104 requires a discount health care program operator to approve in writing before their use all advertisements, solicitations, or other marketing materials and all discount cards used by marketers to market, promote, sell, or distribute the

discount health care program. In addition, new §21.153(a) is necessary to inform Texas consumers which discount health care program operator is responsible for the particular discount health care program being advertised. The Texas Department of Licensing and Regulation (TDLR), which regulated the discount health care program industry from September 1, 2008 through March 31, 2010, reported that Texas consumers are confused concerning the entity responsible for the discount health care program if the advertisement reveals no name or only the name of the discount health care program marketer.

3. HOW THE SECTIONS WILL FUNCTION.

***Division 1*.** The amendments to Division 1, §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122 (i) update obsolete statutory citations to the Insurance Code; (ii) correct rule citation references; and (iii) make nonsubstantive revisions to internal references.

§21.101. Purpose. Amendments to §21.101 delete "[t]hese sections define and state" to replace it with "[t]his division defines and states"; delete "[t]hese sections prohibit" to replace it with "[t]his division prohibits," delete "prevent" to replace it with "prevents," and delete "[t]hese sections are" to replace it with "[t]his division is."

§21.102. Scope. An amendment to §21.102(4) deletes "these sections" to replace it with "this division." Amendments to §21.102(6) – (7) delete "subchapter" to replace it with "division."

Required Form and Content of Advertisements. An amendment to §21.103(c) deletes "these sections" to replace it with "this division." Amendments to §21.103(c)(1) – (5) delete "subchapter" to replace it with "division."

Use of Statistics and Citations. An amendment to §21.108 deletes "subchapter" to replace it with "division."

General Prohibition. Amendments to §21.112 delete "title" to replace it with "division"; delete "and Certain Trade Practices, and Solicitation" after "Advertising" to reflect the amendment to the title of Subchapter B; and delete "these sections" to replace it with "this division."

Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising. An amendment to §21.113(b) deletes the obsolete statutory reference of "Article 21.20-2 §1" to replace it with the correct statutory reference of "Chapter 1214." The amendment to §21.113(d)(17) deletes "subchapter" to replace it with "division." The amendments to §21.113(j) add a title to the subsection for conformity with *Texas Register* requirements; delete "these sections" to replace it with "this division"; and delete "sections" to replace it

with "division." The amendment to §21.113(k)(3)(A) deletes "subchapter" to replace it with "division."

Rules Pertaining Specifically to Life Insurance and Annuity

Advertising. The amendments to §21.114(6) delete "these sections" to replace it with "this division" and deletes "title" to replace it with "division."

Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance. The amendments to §21.116(b) delete "these sections" in two places to replace it with "this division."

Conflict with and Affect on Other Regulations. The amendment to §21.117 deletes "[t]hese sections are" to replace it with "[t]his division" is." The amendment to §21.117 further deletes the following sentences: "It is intended that these sections become effective at the exact time of the effective date of the repeal of existing Rules 059.21.21.001, .009, and .010. Therefore, the existing sections remain in effect until these sections become effective."

Severability. The amendment to §21.118 deletes "these sections" to replace it with "this division."

Savings Clause. The amendments to §21.119 delete "these sections become" to replace it with "this division becomes." The amendments to §21.119 further deletes "these sections" in two places to replace it with "this division."

Filing for Review. The amendment to §21.120(d) deletes

"subchapter" to replace it with "division." The amendment to §21.120(e)(4) is necessary to update an obsolete citation reference to §11.602 and replace it with §11.603.

Lead Solicitations. The amendment to §21.121 deletes "subchapter" to replace it with "division."

System of Control and Home Office Approval of Advertising Material Naming an Insurer. The amendments to §21.122 delete "title" and replaces it with "division" in §21.122 (a)(1) - (4).

Division 2. New Division 2, §§21.151 - 21.154, implements the Insurance Code Chapter 562 by establishing advertising requirements to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs. The stated purpose of the Insurance Code Chapter 562, as provided by the Insurance Code §562.001, is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the State of Texas that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those unfair or deceptive trade practices by discount health care programs. Under the Insurance Code §562.052, it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the

discount health care program. Further, the Insurance Code §562.005 provides that new Chapter 562 shall be liberally construed and applied to promote the underlying purposes of regulating trade practices in the business of discount health care programs as provided by the Insurance Code §562.001.

§21.151. Purpose and Scope. Section 21.151(a) provides that the purpose of Division 2 is to establish advertising requirements necessary to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs. Section 21.151(b) provides that a discount health care program operator, including the operator of a freestanding discount health care program or a discount health care program operated and marketed by an insurer or a health maintenance organization, is required to comply with Division 2.

§21.152. Definitions. Section 21.152(a) provides that the definition of "advertisement" in Division 2 has the meaning assigned to the term "advertisement, solicitation, or marketing material" by the Insurance Code §562.002. The Insurance Code §562.002(1)(A) - (F) provides that "advertisement, solicitation, or marketing material" means material made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication; in a notice, circular, pamphlet, letter, or poster; over a radio or television station; through the Internet; in a telephone sales script; or in any other manner. Section 21.152(b) provides that the meanings assigned by the Insurance Code §562.002 and §7001.001 define "discount health care program" and "discount health care program operator." The Insurance Code §562.002(2) and

§7001.001(1) provide that “discount health care program” means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product otherwise regulated by the Department or a self-funded or self-insured employee benefit plan. The Insurance Code §562.002(3) and §7001.001(2) provide that a “discount health care program operator” means a person, who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charges to members.

§21.153. Content of Advertisement. Section 21.153(a) provides that an advertisement is required to identify the discount health care program operator offering the discount health care program that is the subject of the advertisement. Section §21.153(a) further provides that it is sufficient to state the full registered name of the discount health care program operator or an assumed name filed with the Department pursuant to §19.1602 of this title (relating to Registration Requirement). Section 21.153(b) states that the format and content of an advertisement of a discount health care program is required to be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive.

§21.154. Severability. Section 21.154 provides that if a court of competent jurisdiction holds that any provision of Division 2 is inconsistent with any statutes of this state, is

unconstitutional, or is invalid for any reason, the remaining provisions of this division shall remain in effect.

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

5. STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Insurance Code §§541.401; 562.001; 562.004; 562.005; 562.051 - 562.052; 562.054; 562.101; 562.104(a) - (c); 562.106; 7002.001; and 36.001. Section 541.401(a) authorizes the Commissioner to adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. Section 562.001 provides that the purpose of the Insurance Code, Chapter 562 is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the state that are unfair methods of competition or unfair or deceptive acts or practices in this state, and prohibiting those unfair or deceptive trade practices.

Section 562.004 provides that except as otherwise provided by Chapter 562, a program operator, including the operator of a free-standing discount health care program or a discount health care program marketed by an insurer or a health maintenance organization, shall comply with Chapter 562. Section 562.005 provides that Chapter 562 shall be liberally construed and applied to promote the underlying purposes as provided

by the Insurance Code §562.001. Section 562.051 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to: (i) misrepresent the price range of discounts offered by the discount health care programs; (ii) misrepresent the size or location of the program's network of providers; (iii) misrepresent the participation of a provider in the program's network; (iv) suggest that a discount card offered through the program is a federally approved Medicare prescription discount card; (v) use the term "insurance," except as a disclaimer of any relationship between the discount health care program and insurance, or a description of an insurance product connected with a discount health care program; or (vi) use the term "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," or "preferred provider organization," or another similar term, in a manner that could reasonably mislead an individual into believing that the discount health care program is health insurance or provides coverage similar to health insurance. Section 562.052 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care program to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material, containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program. Section 562.054 provides that it is an unfair method of competition or an unfair or deceptive act or practice

in the business of discount health care programs to misrepresent a discount health care program by: (i) making an untrue statement of material fact; (ii) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made; (iii) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact; (iv) making a material misstatement of law; or (v) failing to disclose a matter required by law to be disclosed, including failing to make an applicable disclosure required by the Insurance Code.

Section 562.101 provides that a person may not engage in this state in a trade practice that is defined in Chapter 562 as or determined under Chapter 562 to be an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs. Section 562.104(a) provides that a discount health care program operator may market directly or contract with marketers for the distribution of the program operator's discount health care program. Section 562.104(b) provides that a discount health care program operator is required to enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the program operator's discount health care program. The contract must prohibit the marketer from using an advertisement, solicitation, or other marketing material or a discount card that has not been approved in advance and in writing by the program operator. Section 562.104(c) provides that the discount health care program operator must approve in writing before their use all advertisements, solicitations, or other marketing materials and

all discount cards used by marketers to market, promote, sell, or distribute the discount health care program. Section 562.106 provides that if the Commissioner reasonably believes that a program operator or a marketer may not be operating in compliance with this chapter, the Commissioner by order may require the program operator or the marketer to submit to the Commissioner any advertisement, solicitation, or marketing material, disclosure material, discount card, agreement, or other document requested by the Commissioner. Section 7002.001 provides that, for purposes of the Insurance Code Chapters 562 and 7001, “consideration” provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history information provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacture rebates. 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.

SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

DIVISION 1. INSURANCE ADVERTISING

§21.101. Purpose. This division defines and states standards that assure truthful and adequate disclosure of the information considered material and relevant to insurance

advertisements and solicitations or to advertisements that lead to solicitations. This division prohibits in such matters the omission of any material fact, and thus further prevents misrepresentation, deceptive acts, and deceptive methods in the advertising and solicitation of insurance. This division is intended to be supplementary to and cumulative of the standards in other rules and statutes, including those ordered under the authority of Chapter 21 and other chapters of the Insurance Code.

Scope. For the purpose of this division:

(1) "Advertisement" includes, but is not limited to:

(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays; and

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(C) prepared sales talks, presentations and materials for use by agents, and those representations recurringly made by agents to members of the public; and

(D) material used to:

(i) solicit additional coverage or policies from existing

insureds; or

(ii) modify existing coverage or policies;

(E) material included with a policy when the policy is delivered and materials used in the solicitation of renewals and reinstatements, except those reinstatements provided for in the policy;

(F) lead solicitations which are defined as communications

distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are intended to be used to solicit residents of this state for the purchase of a policy, as defined in paragraph (3) of this section; and

(G) any other communication directly or indirectly related to a

policy, as defined in paragraph (3) of this section, and intended to result in the eventual sale or solicitation of a policy.

(2) "Advertisement" does not include:

(A) communications or materials used within an insurer's own

organization, not used as sales aids and not disseminated to the public;

(B) communications with policyholders other than materials urging

policyholders to purchase, increase, modify, or retain a policy;

(C) a general announcement by a group or blanket policyholder to

eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage;

(D) material used solely for the recruitment, training, and education of an insurer's personnel, agents, counselors, and solicitors, provided it is not also used to induce the public to purchase, increase, modify, or retain a policy of insurance; and

(E) correspondence between a prospective group or blanket policyholder and an insurer or agent in the course of negotiating a group or blanket contract.

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, viatical or life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which this division can be made legally applicable including, as applicable, Health Maintenance Organizations and Nonprofit Legal Services Corporations, and all insurance companies doing the business of insurance in this state such as capital

stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies, and viatical and life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, viatical and life settlement brokers and provider representatives.

(6) "Institutional advertisement" is an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or agent. Correspondence and materials used by an insurer only for the purpose of explaining Legislative or Texas Department of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code shall be considered institutional advertising for the purpose of §21.104(b) of this division (relating to Requirement of Identification of Policy or Insurer). Web pages on an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote are considered to be institutional advertisements. Advertisements in other media that do not refer to a specific

insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. In addition, web pages or navigation aids within an Internet website that provide a link to another web page, the content of which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote, but that do not, themselves, otherwise include such content are considered to be institutional advertisements.

(7) "Invitation to inquire" for the purpose of this section is an advertisement that refers to a specific insurance policy or provides an opportunity to request a quote or that, except for Internet advertising, provides an opportunity to request other information. An "invitation to inquire" advertisement for accident or health coverage may refer to rates only as permitted under §21.113(b) of this division (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). An "invitation to inquire" is not an "invitation to contract."

(8) "Invitation to contract" is an advertisement that includes an application or enrollment form for insurance or which is presented with an opportunity to apply for the advertised coverage.

Required Form and Content of Advertisements.

(a) It is required that advertisements be truthful and not misleading either in fact or in implication.

(b) The format and content of an advertisement of a policy must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive is determined by the department of insurance, or the Commissioner of Insurance on appeal, from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(c) All information required to be disclosed by this division will be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. Regarding Internet advertising, the disclosures required by the sections referenced in paragraphs (1) - (5) of this subsection may be provided through a conspicuous and clearly labeled link, provided that the link must be placed near the relevant information to which it relates, and must connect directly to the information necessary to comply with the applicable requirements:

(1) with respect to "invitation to inquire" advertisements, §21.104(a) of this division (relating to Requirement of Identification of Policy or Insurer);

(2) §21.104(i) of this division if linked to same page satisfying §21.104(a) of this division, as permitted in paragraph (1) of this subsection;

(3) §21.108(c) of this division (relating to Use of Statistics and Citations);

(4) §21.113(b)(2) - (4), (c)(1), (d)(1) and (f) of this division (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising); and

(5) §21.114(1)(A) of this division (relating to Rules Pertaining Specifically to Life Insurance and Annuity Advertising).

(d) No advertisement may be used which because of words, phrases, statements, or illustrations therein or information omitted therefrom has the capacity and tendency to mislead or deceive purchasers or prospective purchasers. Words or phrases may not be used which are misleading or deceptive because their meaning is not clear, or is clear only to persons familiar with insurance terminology. This section does not prohibit the use of trade or technical terms in advertisements directed exclusively to commercial enterprises familiar with the particular term use.

Use of Statistics and Citations.

(a) An advertisement in respect of the time within which claims are paid, the dollar amounts of claims paid, the number of claims paid, the number of persons insured under a particular policy or policies, or similar statistical information relating to an insurer or policy may not contain irrelevant facts, and shall accurately reflect the relevant facts. The

advertisement may not imply that the statistics are derived from the type of product advertised unless it is a fact, and when applicable to other types of products shall specifically so state.

(b) The source of statistics or citations used in an advertisement shall be identified or made apparent in the advertisement. Such source must include the publication name and date. A source shall not be more than five years old unless the advertiser certifies to the department through a statement in the transmittal letter that is required to be provided pursuant to §21.120(a) of this division (relating to Filing for Review) that the source is the most recent available.

(c) Where "average" costs or savings are referenced in an advertisement, the advertisement must indicate whether such statistics are national or regional and, if regional, must identify the region.

General Prohibition. Failure to abide by §§21.101 - 21.122 of this division (relating to Insurance Advertising) is prohibited. An omission of information, false implication, or impression which is misleading or deceptive or has the tendency or capacity to be misleading or deceptive is prohibited. The requirements of this division apply to either or both insurers and agents irrespective of whether acts or practices are performed directly or indirectly by the insurers or agents or in conjunction with or through non-insurers or non-agents.

Rules Pertaining Specifically to Accident and Health Insurance

Advertising and Health Maintenance Organization Advertising.

(a) Coverage details. An invitation to inquire that specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows: "For specific costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."

(b) Illustration of rates. Subject to the Insurance Code Chapter 1214 and the Insurance Code Chapter 541 Subchapter B, an invitation to inquire concerning a health benefit plan may include rate information without including information about all benefit exclusions and limitations so long as any rate mentioned in any advertisement disseminated under this subsection indicates the age, gender, and geographic location on which that rate is based and so long as the advertisement includes prominent disclaimers clearly indicating that:

(1) the rates are illustrative only;

(2) a person should not send money to the issuer of the health benefit plan in response to the advertisement;

(3) a person cannot obtain coverage under the health benefit plan until the person completes an application for coverage; and

(4) benefit exclusions and limitations may apply to the health benefit plan.

(c) Identification of policy.

(1) The form number or numbers of the policy advertised shall be clearly

identified in an invitation to contract.

(2) If an advertisement refers to various benefits that are contained in two or more policies or riders, but excepting group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies or riders.

(3) An advertisement may not use the word "plan" without first identifying the subject as an "insurance plan" or an "HMO plan," as appropriate.

(d) Description of benefits.

(1) An invitation to contract referring to a dollar amount, a period of time for which a benefit is payable, the cost of the policy, or a specific policy benefit or the loss for which such benefit is payable shall also disclose those exclusions, reductions, and limitations affecting the basic provisions of the policy, without which the advertisement would have the capacity and tendency to mislead or deceive.

(2) If a policy pays varying amounts of benefits for the same loss occurring under different conditions or that pays benefits only when a loss occurs under certain conditions, any reference to these benefits in an invitation to contract shall be accompanied by a clear and conspicuous disclosure of the different or limited conditions.

(3) No advertisement may refer to a benefit payable under a "family

group" policy if the full amount of the benefit is not payable upon the occurrence of the contingency insured against to each member of the family, unless clear and conspicuous disclosure of such fact is made in the advertisement.

(4) No advertisement may be used that represents or implies:

(A) that the condition of the applicant's or insured's health prior to, or at the time of issuance of a policy, or thereafter, will not be considered by the insurer in issuing the policy or in determining its liability or benefits to be furnished for or in the settlement of a claim if such is not a fact;

(B) If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.

(5) An invitation to contract for a policy which provides coverage for loss due to accident only for a specified period of time from its effective date shall state this fact clearly and conspicuously.

(6) If any covered benefits are, by the terms of the policy, limited to a certain age group or are reduced at a certain age, an invitation to contract shall clearly and conspicuously disclose such fact.

(7) An advertisement may not contain representations of an aggregate amount payable without clear and conspicuous disclosure in close conjunction therewith of any maximum daily benefit and maximum time limit.

(8) No advertisement of a policy providing benefits for which payment is conditioned upon confinement in a hospital, extended care facility, or at home may advertise that the amount of the benefit is payable on a monthly or weekly basis if, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement unless such statements of monthly or weekly benefit amounts are followed immediately by equally prominent statements of the benefit payable on a daily basis. For example, either of the following statements is acceptable: "$1,000 a Month ($33.33 a Day)" or "$33.33 a Day ($1,000 a Month)." If the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

(9) An advertisement offering assistance or information concerning Medicare may not state or imply that an obligation is imposed by the receipt of such information.

(10) An advertisement of benefits payable in conjunction with Medicare shall disclose the Medicare benefits (Part A or B) they are designed to supplement.

(11) A Medicare-related advertisement shall state in a prominent place the following or similar words: "Not connected with or endorsed by the United States government or the federal Medicare program."

(12) References to Medicare may not be used in such a manner in an advertisement so as to be misleading or deceptive.

(13) Advertisements referenced as being "Important Notices" or similar language and directed primarily to Medicare recipients or senior citizens are presumed to be misleading or having the capacity or tendency to mislead unless shown otherwise.

(14) The words, numerals, and phrases "all," "100%," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words, numerals, and phrases may not be used to exaggerate any benefit beyond the terms of the policy, but may be used only in a manner as fairly and accurately describes the benefit.

(15) An advertisement may not contain descriptions of a policy limitation, exclusion, or reduction, worded or stated in a manner to imply that it is a benefit, for example, describing a waiting period as a "benefit builder," or stating "even pre-existing conditions are covered after two years." Words and phrases used in an advertisement to describe policy limitations, exclusions, and reductions shall accurately describe the negative features of such limitations, exclusions, and reductions of the policy offered.

(16) No advertisement of a benefit, if payment of the benefit is conditioned upon confinement in a hospital or similar extended care facility, or at home, may use words or phrases such as "tax free," "extra cash," "extra income," "extra pay," or similar words or phrases. In those cases such words and phrases have the capacity, tendency, or effect of misleading the public and cause the belief that the policy advertised enables a profit to be made from being hospitalized. This section prohibits the misleading

use of the phrase "tax free," but it does not prohibit the use of complete and accurate terminology explaining the Internal Revenue Service rules applicable to the taxation of accident and sickness benefits. Prominence either by caption, lead-in, boldface, or large type shall not be given in any manner to any statements relating to the tax status of such benefits.

(17) Except as permitted under §21.109(a) of this division (relating to Unlawful Inducement), an advertisement may not list goods and services other than those set out in the policy as possible benefits.

(18) A policy covering only one disease or a list of specific diseases or accidents may not be advertised so as to imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease to imply broader coverage than that provided.

(19) An advertisement that is an invitation to contract for a limited benefit policy, a supplemental coverage policy, or a nonconventional coverage policy, as defined in Chapter 3, Subchapter S of this title (relating to Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies), shall clearly and conspicuously, in prominent type, state in language identical to or substantially similar to whichever of the following is applicable "THIS IS A LIMITED BENEFIT POLICY," "THIS

IS A CANCER ONLY POLICY," "THIS IS A SUPPLEMENTAL POLICY," or "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY." The insurer or agent shall use the

foregoing statement to clearly advise the public of the nature of the policy.

(e) Exceptions, reductions, and limitations.

(1) If a policy contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy, or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an invitation to contract shall disclose the existence of such periods.

(2) An advertisement may not use the words "only," "just," "merely," "minimum," or similar words or phrases to unfairly describe the applicability or any exclusions, limitations, or reductions, such as "This policy is subject to the following minimum exclusions and reductions."

(f) Pre-existing condition.

(1) An advertisement that states or implies that pre-existing conditions may apply must define the applicable pre-existing condition provisions.

(2) An advertisement that is an invitation to contract shall, in accurate terms, disclose the extent to which a loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy.

(g) Disclosure of policy provisions relating to renewability, cancellability, and termination.

(1) An advertisement that is an invitation to contract shall disclose the provisions in respect of renewability, cancellability, and termination, and each modification of

benefits, covered losses or premiums either because of age or for other reasons, in a manner that does not minimize or render obscure the qualifying conditions.

(2) An advertisement for a policy stating or implying that the policy is "guaranteed renewable" shall:

(A) have a clear and conspicuous statement that coverage may terminate at certain ages, if such is a fact; and

(B) include, in a prominent place, a statement indicating that rates for the policy may change if the advertisement suggests or implies that rates for the product will not change. Such statement must generally identify the manner in which rates may change, such as by age, by health status, by class, or through application of other general criteria.

(3) No advertisement may represent or imply that an insurance policy may be continued in effect indefinitely or for any period of time, if the policy provides that it may not be renewed or may be cancelled by the insurer, or terminated under any circumstances over which the insured has no control, during the period of time represented.

(4) The term "noncancellable" or derivation thereof may not be used by an insurer or agent to describe a policy if the insurer has a right to periodically, by individual or class, revise rates or premiums.

(5) An invitation to contract shall contain a notice stating that the person to whom the policy is issued is permitted to return the policy within 10 days (or more as stated in the policy) of its delivery to that person and to have the premium paid refunded.

(h) Description of premiums, cost, and interest.

(1) Consideration paid or to be paid for individual insurance, including policy fees, shall be in all instances described as premium, consideration, cost, or payments.

(2) Consideration paid or to be paid for group insurance, including enrollment fees, dues, administrative fees, membership fees, service fees, and other similar charges paid by the employees, shall be disclosed in an invitation to contract advertisement as a part of the cost and consideration.

(3) An advertisement may not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium. If an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable, the advertisement may not display the amount of the reduced initial premium more prominently than the renewal premium. (4) A reduced initial or first-year premium may not be described by an

insurer or agent as constituting free insurance for a period of time.

(5) An advertisement of an insurance product may not imply that it is "a low cost plan" or use other similar words or phrases without a substantial present or past cost record for the policy advertised or similar policy, demonstrating a composite of lower

production, administrative, and claim cost resulting in a low premium rate to the public.

(6) The words "deposits," "savings," "investment," and other phrases used to describe premiums may not be used by an insurer or agent to hide or untruthfully minimize the cost of the hazards insured against.

(7) An insurer or agent may not make a billing of a premium for increased coverage or include the cost of increased coverage in the premium for which a billing is made without first disclosing the premium and details of the increased coverage and obtaining the consent of the insured to such increase in coverage. This does not apply to policies that contain provisions providing for automatic increases in benefits or increases in coverages required by law.

(8) If the cost of home collection results in a higher premium an advertisement shall state that fact.

(i) Dividends.

(1) An advertisement may not utilize or describe dividends in a manner that is misleading or has the capacity or tendency to mislead.

(2) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the dividends must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that the dividends are not to be construed as guarantees or estimates of dividends to be paid in the future.

(3) An insurer or agent may not, as an inducement to purchase insurance, circulate, publish, or otherwise exhibit to any person who is an insured, or prospective insured, any form of director resolution, stockholders resolution, or form of company action stating or implying the action an insurer will take on a declaration of dividend or other matter in the future if the insurer, its directors, or its stockholders are not bound to take the action stated or implied, or if the insurer does not presently have the earnings or other funds or assets to make the payments, or to consummate the transaction in accordance with the appropriate statutes.

(j) Compliance with Statutes or Rules as Grounds for Changing Policy. In consideration of the comprehensive content of this division and, among other reasons, the division being applicable to substantially all insurers, an insurer or agent may not, particularly if used as a "twisting" device, inform any policyholder or prospective policyholder that an insurer or agent was required to change a policy or contract form or related material to comply with the provisions of this division or other rules or statutes.

(k) Deception or deceptive method as to introductory, initial, or special offers.

(1) An advertisement of a particular policy may not state or imply that prospective policyholders become group or quasi-group members that, as such, enjoy special rates or underwriting privileges ordinarily associated with group insurance as recognized in the industry unless such is the fact.

(2) If an insured or prospective insured is provided a policy or coverage of insurance and the first premium has not been paid, or an application has not been returned to the insurer or its agents or representatives, the insurer, its agents, or representatives may not make any billing or attempt to collect a premium on such policy until such time as an application or acknowledgment of acceptance is received. If coverage is issued prior to such acceptance, it shall be accompanied by a written statement describing it as follows:

(A) giving the facts concerning the delivery of the policy and whether or not the policy was requested by insured; and

(B) stating that the insured is under no obligation to pay the insurer if the insured does not want to continue or initiate the coverage; and

(C) clearly stating when coverage will be effective.

(3) An advertisement may not state or imply that a policy or combination of policies is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless it is a fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

(A) An enrollment period during which "a particular insurance product" may be purchased may not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding

enrollment period for the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which date may not be less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. (It is emphasized that this section is applicable to all advertisements as defined in §21.102(1) of this division (relating to Scope)). This subparagraph is inapplicable to solicitation of employees or members of a particular group, except that this subparagraph shall apply to the solicitation of members of an association group, which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance. This section applies to all affiliated companies under common management or control. The phrase "a particular insurance product" is used here to describe an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy are not sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(B) There may be no statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

(C) An invitation to contract Medicare supplement advertisement must describe complete information regarding all available "open enrollment" opportunities or prominently disclose a means of obtaining complete information regarding such opportunities.

(l) Acknowledgment of nonduplication; notice to consumer.

(1) Acknowledgment of nonduplication; notice to consumer.

(A) Acknowledgment of nonduplication--The document which contains and is limited to the language which is set forth in item (6) of Figure: 28 TAC §21.113(1)(5).

(B) Duplication--Policies of the same coverage type according to minimum standard classifications outlined in Chapter 3, Subchapter S and Subchapter Y of this title (relating to Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies and Minimum Standards for Benefits for Long-term Coverage under Individual and Group Policies). For example, two cancer insurance policies or two long-term care policies would be duplicative. Duplication is also present when two policy coverages overlap to the extent that a reasonable person would not consider the ownership of two such policies to be cost efficient in light of the consumer's needs and income level. Group health coverage obtained through an employersponsored plan, conversion from a group employer-sponsored health plan, short-term travel accident coverage, short-term nonrenewable coverage, Medicare risk contracts, and retired-employee group plans will not be considered duplication of other coverage.

(C) Notice to consumer--The document which contains and is limited to the language which is set forth in item (7) of Figure: 28 TAC §21.113(1)(5).

(2) All insurers, other than direct response insurers, or their agents or other intermediaries shall obtain an acknowledgment of nonduplication with all applications for health insurance sold to an individual who is 65 years of age or older, other than group health coverage obtained through an employer-sponsored plan, conversion from a group employer-sponsored health plan, short-term travel accident coverage, short-term nonrenewable coverage, Medicare risk contracts, and retiredemployee group plans. This acknowledgment shall be obtained at the same time as the application and shall be submitted to the insurer with the application. One copy of the acknowledgment shall be left with the insured and one copy kept on file with the company. The form of such acknowledgment or notice must be printed on a separate piece of paper and must contain the specific language and must be in the format set forth in item (6) of Figure: 28 TAC §21.113(1)(5). This form is published by the Texas Department of Insurance, and copies of the form are available from and on file at the Texas Department of Insurance, Market Conduct Division, Mail Code 305-2E, P.O. Box 149104, Austin, Texas 78714-9104.

(3) In order to obtain this acknowledgment, all insurers or their agents or other intermediaries shall offer to examine all health insurance policies and health care coverage owned by a prospective insured and advise the insured as to whether the purchase of the proposed policy will result in any duplication of benefits.

(4) Direct response insurers who market to the consumer without agents or other intermediaries are exempt from the requirement to deliver the acknowledgement contained in item (6) of Figure: 28 TAC §21.113(1)(5), but must deliver the notice to consumers set forth in item (7) of Figure: 28 TAC §21.113(1)(5).

(5) Failure to comply with paragraphs (1) - (4) of this subsection shall be an unfair business practice as defined by the Insurance Code Chapter 541.

Figure: 28 TAC §21.113(l)(5):

Item (7)

NOTICE TO CONSUMERS

AGE 65 AND OLDER

The Texas Department of Insurance requires that this Notice be given to you at the time you receive a policy.

State law gives you the right to review this policy and return it for a full premium refund if you are not satisfied. By law you have a minimum 10 days if you buy any individual accident and health insurance policy. The Texas Department of Insurance urges you to use this time to verify that this coverage is needed.
The Department is concerned that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money.

1. PURCHASING MORE THAN ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY AND COSTLY:

□ SPECIFIED DISEASE (CANCER, STROKE, ETC.)

□ HOSPITAL INDEMNITY
□ BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL

□ EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER

ILLNESS)

□ LONG-TERM CARE

THE TEXAS DEPARTMENT OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.

2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT OF INSURANCE STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.

3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS, REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.

Item (6)

ACKNOWLEDGEMENT OF NONDUPLICATION

PLEASE READ CAREFULLY BEFORE SIGNING

I _____, certify that I (Agent's Name) have done the following: 1. Informed the undersigned applicant of This Notice is required by the Texas the right to have all existing health Department of Insurance because of its insurance policies presently in force concern that some consumers may buy reviewed by me to determine whether unnecessary coverage or may replace duplicate coverage will occur with the their coverage needlessly. Buying too issuance of this policy. much coverage or replacing a policy may be a waste of your money. 2. Reviewed the policies listed below and have found that duplication WILL or WILL 1. PURCHASING MORE THAN ONE NOT (circle one) occur with the issuance of POLICY OF EACH OF THE the applied for policy. FOLLOWING TYPES MAY BE	NOTICE TO CONSUMERS Age 65 and Older

(Form Number)

COMPANY POLICY TYPE OF

NUMBER (#) POLICY

_____

_____

_____

_____

Check one:

a.____ Duplication will not occur because the above listed policy(ies) #_____ will be replaced by the applied-for policy _____ (*form number*). Justification for the replacement is (*explain benefit to consumer*)

_____

_____

b.____ No health policies in force at this time.

c.____ Applicant has elected not to have the policy(ies) reviewed.

_____ _____

DATE AGENT/COMPANY REPRESENTATIVE

UNNECESSARY AND COSTLY:

□ SPECIFIED DISEASE (CANCER, STROKE, ETC.)

□ HOSPITAL INDEMNITY □ BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL □ EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT

PER ILLNESS) □

LONG-TERM CARE

THE TEXAS DEPARTMENT OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.

2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT OF INSURANCE STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.

3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS, REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.

4. THE TEXAS DEPARTMENT OF INSURANCE STRONGLY URGES YOU TO ALLOW YOUR INSURANCE AGENT OR COMPANY TO REVIEW ALL YOUR

	CURRENT HEALTH POLICIES PRIOR TO REPLACING EXISTING HEALTH COVERAGE OR PURCHASING ADDITIONAL HEALTH COVERAGE.

I certify that my right to have all of my existing health policies examined has been explained to me by the agent named above.

____ I have been informed that the policy for which I am applying WILL OR WILL NOT (*circle one*) result in duplicate coverage.

____ I have chosen to waive my right to have my policies reviewed to determine if they unnecessarily duplicate each other.

I have read the attached notice. Dated this ____ day of _____ , 20 ___.

_____
APPLICANT

Rules Pertaining Specifically to Life Insurance and Annuity Advertising.

As can be made applicable and as necessary the same or similar test or standard as is stated hereafter within paragraph (1)(B) of this section is to be used as the standard in the interpretation of the provisions of this section.

(1) Identification of policy.

(A) The form number or numbers of the policy advertised shall be clearly identified in an "invitation to contract."

(B) An advertisement in respect of a life policy, endowment, or an annuity may not include the term "savings," "investment," or other similar terms if used in referring to the current, projected, or guaranteed rate of interest paid or credited to such

contracts to imply that the product advertised is something other than insurance or an annuity using as a standard how it would appear to or be identified by a reasonably prudent person under the circumstances.

(C) No advertisement may use the term "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," or other similar terms in connection with a policy in a context or under such circumstances or conditions that have the capacity or tendency to mislead purchasers of such policy to believe they will receive or that it is possible that they will receive something other than a policy or some other benefit or advantage that is not available to other persons of the same class and equal expectation of life nor to that class of persons to whom essentially the same hazards are attributable.

(2) Disclosure requirements.

(A) If an advertisement that is an "invitation to contract" refers to a dollar amount, a period of time for which a benefit is payable, a cost of the policy, a specific policy benefit or the loss for which such benefit is payable, it shall expressly or specifically disclose those exclusions and limitations affecting the payment of benefits under the policy. Without this disclosure it is determined that the advertisement would have the capacity and tendency to mislead or deceive.

(B) No advertisement may refer to a benefit payable under a

"family group" policy if the full amount of the benefit is not payable upon the occurrence of the contingency insured against to each member of the family unless a clear and conspicuous disclosure of such fact is made in the advertisement.

(C) No advertisement may be used which represents or implies:

(i) that the condition of the applicant's or insured's health prior to, or at the time of issuance of a policy, or thereafter, will not be considered by the insurer in issuing the policy or in determining its liability or benefits to be furnished or in the settlement of a claim if such is not the fact; or

(ii) that an advertisement that uses "non-medical," "no medical examination required," or similar language where the advertised policy's issuance is not guaranteed must provide an equally prominent disclosure in close conjunction to such language that issuance of the policy may depend upon the answers to questions set forth in the application.

(D) An "invitation to contract" for a policy that provides coverage for loss due to accident only for a specified period of time from its effective date shall state this fact clearly and conspicuously.

(E) An "invitation to contract" advertisement in respect of insurance coverage or benefits that by the terms of the policy being advertised are limited to a certain age group or that are reduced at a certain age shall clearly and conspicuously disclose such fact.

(F) An "invitation to contract" advertisement that relates to a life

insurance policy under which the death benefit varies with the length of time the policy has been in force shall clearly and conspicuously call attention to this fact. If the death benefit during a specified period following the policy date of issue is limited to a return of premiums paid on the policy, with or without interest at a stated rate, and irrespective of whether the premiums are assumed to have always been paid annually, each

advertising of the policy by an insurer or agent shall explain that the policy provides a deferred type of life insurance. The death benefit, as referred to in this subparagraph, is the amount payable if death does not result from accidental causes and if there are no exclusions applicable to the policy on account of suicide, hazardous occupation, or aviation hazard.

(G) If the current or illustrated rate of interest is higher than the guaranteed interest rate, an advertisement may not display the greater rate of interest with such prominence as to render the guaranteed interest rate obscure.

(H) Current interest rates being paid or promised to be paid by an insurer and guaranteed interest rates for specific periods of time, as provided in the policy or annuity advertised, shall be clearly and conspicuously disclosed and sufficiently complete and clear so as not to have the capacity or tendency to mislead or deceive the insured or prospective applicant.

(I) No advertisement may represent a pure endowment benefit as

earnings on premiums invested or represent that a pure endowment benefit in a policy is other than a guaranteed benefit for which a specific part or all of the premium is being paid by the policyholder. For the purpose of this provision, coupons or other devices for periodic payment of endowment benefit are included in the phrase "a pure endowment benefit" without limitation on the meaning of such phrase.

(J) An "invitation to contract" advertisement shall clearly and conspicuously disclose any charges or penalties such as administrative fees, surrender charges, and termination fees contained in an annuity or life insurance policy on withdrawals made during early contract or policy years.

(K) Failure of an insurer or agent to disclose the nonforfeiture rights and policy loan rights in an advertisement that compares life insurance policies shall be an omission of a material fact and an incomplete comparison.

(L) Only the actual interest credited to an endowment or coupon benefit in a life or annuity policy shall be characterized as earnings or included with dividends or included with other earnings in an advertisement.

(3) Description of premiums and cost.

(A) Consideration paid or to be paid for individual insurance and annuities including policy fees, shall be described as premium, consideration, cost, payments, annuity consideration, or purchase payment.

(B) Consideration paid or to be paid for group insurance, including enrollment fees, dues, administrative fees, membership fees,

service fees, and other similar charges paid by the employees, shall be disclosed in an invitation to contract advertisement as part of the consideration and cost.

(C) An advertisement may not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium. If an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable, the advertisement may not display the amount of the reduced initial premium more prominently than the renewal premium.

(D) A reduced initial or first year premium may not be described by an insurer as constituting free insurance for a period of time.

(E) An advertisement of an insurance product may not imply that it is "a low cost plan" or use other similar words or phrases without a substantial present or past cost record for the policy advertised or for a similar policy that demonstrates or verifies a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public.

(F) The words "deposits," "savings," "investment," or other phrases used to describe premiums may not be so used by an insurer or agent as to hide or unfairly minimize the cost of the hazards insured against.

(G) No part of a premium may be described as a "deposit" if it is not guaranteed to be returned in full on demand of the insured.

(H) An insurer or agent may not make a billing of a premium for increased coverage or include the cost of increased coverage in the premium for which a billing is made without first disclosing the premium and details of the increased coverage and obtaining the consent of the insured to such increase in coverage. This does not apply to policies which contain provisions providing for automatic increases in benefits or increases in coverages which are required by law.

(I) If the cost of home collection results in a higher premium an advertisement shall state that fact.

(4) Dividends.

(A) An advertisement may not utilize or describe dividends in a manner that is misleading or has the capacity or tendency to mislead.

(B) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the illustration must conform to the requirements of Subchapter N of this chapter (relating to Life Insurance Illustrations).

(C) An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at such time and the conditions required for that to occur.

(D) An insurer or agent may not, as an inducement to purchase insurance circulate, publish, or otherwise exhibit to any person who is an insured or prospective insured a form of director resolution, stockholders resolution, or form of company action that states or implies the action an insurer will take in the future as respects a declaration of dividend or other such matter if the insurer, its directors, or its stockholders are not bound to take the action stated or implied or if the insurer does not presently have the earnings or the funds or assets to make payments or to consummate the transaction in accordance with the appropriate statutes and rules if any.

(5) Unlawful inducement. An insurer may not make or include in any advertisement a statement or reference that implies that the purchaser or prospective purchaser by purchasing a policy of insurance will become a member of a limited group of persons who will or may receive special advantages from the company not provided for in the policy or not authorized by law or state or imply that the prospective insured will receive favored treatment in the payment of dividends especially if the policy advertised is a participating policy not available to persons holding other types of participating or nonparticipating policies issued by the insurer to individuals of the same class and equal expectation of life nor to that class of persons to whom essentially the same hazards are attributable. This is not intended to prohibit and does not prohibit the lawful payment of differing amounts of dividends on different classes of policies. The term "class" relates to the recognized underwriting classifications such as age, health, occupation, sex, hazardous potential, and similar classifications that determine the nature of the risk

assumed, and the term "class" as used in this paragraph is not limited to a particular plan or policy form or the date of issue of a policy.

(6) An insurer or agent may not as a "twisting" or other device, inform any policyholder or prospective policyholder that any insurer was required to change a policy or contract form or related material to comply with the provisions of this division or other rules or statutes. This section is ordered for such reasons as those stated in §21.113(j) of this division (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising).

(7) Deception as to introductory, initial, or special offers.

(A) An advertisement of a particular policy may not state or imply that prospective policyholders become group or quasi-group members that, as such, enjoy special rates or underwriting privileges ordinarily associated with group insurance as recognized in the industry unless such is the fact.

(B) If an insured or prospective insured has been provided a policy or coverage of insurance without first having paid a premium or returned an application to the insurer or its agents or representatives, the insurer, its agents, or representative may not make any billing or attempt to collect a premium on such policy until such time as an application or acknowledgment of acceptance by the insured is received. When coverage is issued prior to such acceptance, it shall be accompanied by a written statement describing it as follows:

(i) giving the facts concerning the delivery of the policy and whether or not the policy was requested by the insured; and

(ii) stating that the insured is under no obligation to pay the insurer if he does not want to initiate or continue the coverage; and

(iii) clearly stating when coverage will be effective.

(C) An advertisement by an insurer may not state or imply, that a policy or combination of policies is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless such is the fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

(i) An enrollment period during which "a particular insurance product" may be purchased on an individual basis may not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same or substantially the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which may not be less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. This section applies to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodicals. It is inapplicable to solicitation of employees or members of

a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance. This section applies to all affiliated companies under common management or control. The phrase "a particular insurance product" as used herein is an insurance policy that provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy are not sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(ii) There may not be a statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance.

(a) Advertising file. Each insurer, domestic and foreign, doing an insurance business in Texas shall maintain at its home office or principal (executive) office, a complete file containing a specimen of every institutional advertisement, invitation to inquire advertisement, or invitation to contract advertisement disseminated in this state, with a notation attached to each such advertisement indicating the manner and extent of

distribution and the form number of any policy advertised in Texas. Foreign insurers that have established an office in Texas who transact an insurance business in this state may maintain the advertising file at that location. Each insurer shall notify the Texas Department of Insurance where the advertising file is being maintained and that access thereto will be provided, and each insurer shall also notify the Texas Department of Insurance in the event the location of such file is planned to be changed and immediately when changed. The advertising file is subject to regular and periodic inspection by the Texas Department of Insurance. All advertisements shall be maintained for a period of not less than three years.

(b) Statement of compliance. Each insurer, domestic and foreign, filing an annual statement with the Texas Department of Insurance is subject to the provisions of this division and shall file with its annual statement a certificate or equivalent executed by an authorized officer of the insurer whose duty it is to deal with or oversee the insurer's advertising stating that to the best of the officer's knowledge, information, and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this division and the insurance laws of this state as respects its Texas advertising and as its Texas advertising relates to its insureds in Texas.

Conflict with and Affect on Other Regulations. This division is not intended to conflict with or supersede and are to be interpreted when possible as not to conflict with any

sections except as stated in this section currently in force or subsequently adopted in this state and including without intending any limitation those rules that govern the specific aspects of the sale of annuities or the sale or replacement of insurance, and including, but not limited to, rules applicable to maximum guaranteed interest rates in the rules dealing with the life insurance cost comparison indices, deceptive practices in the sale of insurance, and other rules that are in effect that treat the replacement of life insurance policies.

Severability. If any provision of this division or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this division which can be given effect without the invalid provisions or application. To this end all provisions of this division are declared to be severable.

Savings Clause. Each cause of action, pending litigation, matter in process before the Texas Department of Insurance or commissioner of insurance, or matter hereafter arising from an event occurring prior to the time this division becomes effective shall be determined in accordance with and governed by the provisions of statutes, rules, orders, or official interpretations in effect at the time of the occurrence of the subject event, and this section operates to save from repeal in that circumstance the application of such law

and procedure in respect of any such circumstance from the amendment, change, or repeal contemplated by this division notwithstanding any

provision of this division to the contrary, if any, or any provision of conflict or ambiguity.

Filing for Review.

(a) Any advertisement required to be submitted or submitted voluntarily by an insurer licensed to do business in Texas shall be accompanied by a transmittal letter addressed to the Advertising Unit, Texas Department of Insurance, 333 Guadalupe, Mail Code 111-2A, Austin, Texas 78701, or P.O. Box 149104, Austin Texas 787149104. The transmittal letter shall contain the following information:

(1) the identifying form number of each form submitted including a

separate identifying form number for each Internet page and pop-up having a distinct URL;

(2) the type of advertisement submitted, i.e., institutional advertisement,

invitation to inquire, or invitation to contract;

(3) the form number(s) of the approved policy and/or rider form(s)

advertised;

(4) the method or media used for dissemination of the advertisement; (5) the form number(s) for all other advertising material to be used with the advertisement(s) being submitted; and

(6) an attachment explaining all variable material; the variable material shall be identified with brackets on the advertisement(s).

(b) All advertisements shall be submitted in duplicate.

(c) Advertisements may be submitted in printers' proof or as "pasteups."

(d) An advertisement subject to requirements regarding filing of the advertisement with the department for review under the Insurance Code or Texas Administrative Code, Title 28, and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department, is not required to be filed for review. For the purposes of this subsection, "substantially similar" means the new advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content satisfying required disclosures or that would render the advertisement noncompliant with §21.112 of this division (relating to General Prohibition). A person or entity wishing to introduce a "substantially similar" advertisement must file a signed written statement with the department at the address identified in subsection (a) of this section. Such statement must identify or illustrate the changes to be introduced, and list the previously reviewed and accepted form(s) in which those changes would appear, including the form number(s) and the department's filing number(s) under which those forms were previously reviewed and accepted. (e) The following rules require that advertisements be filed with the department for review at or prior to use:

(1) §3.1707 of this title (relating to Advertising, Sales and Solicitation Materials; Filing Prior to Use), regarding viatical and life settlement contracts;

(2) §3.3313 of this title (relating to Filing Requirements for Advertising), regarding Medicare supplement insurance;

(3) §3.3838 of this title (relating to Filing Requirements for Advertising), regarding long-term care insurance; and

(4) §11.603 of this title (relating to Filings), regarding certain Medicare HMO contracts.

Lead Solicitations.

(a) An insurer or agent who obtains a list of potential customers derived from use of a lead solicitation, as defined in §21.102(1)(F) of this division (relating to Scope), is responsible for the content of the lead solicitation used to generate such list.

(b) A lead solicitation shall prominently disclose that an insurer or agent may contact the recipient of the solicitation, if that is a fact. In addition, an insurer or agent who makes contact with a person as a result of acquiring that person's name from a lead solicitation shall disclose that fact in the initial contact with the person.

(c) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event or group meeting where information will be disseminated regarding insurance products, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products, may use the terms "seminar," "class," "informational meeting," "retirement," "estate planning," "financial planning," "living trust," or substantially equivalent terms to

characterize the purpose of the public gathering or event unless it adds the words "and insurance sales presentation" immediately following those terms in the same type size and font as those terms.

System of Control and Home Office Approval of Advertising Material Naming an Insurer.

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

(1) Advertisement--As defined in §21.102 of this division (relating to Scope), but, however, limited to those advertisements, excluding institutional advertisements, where an insurer or its policy is advertised.

(2) Agent--As defined in §21.102(5) of this division (relating to Scope).

(3) Insurer--As defined in §21.102(4) of this division (relating to Scope).

(4) Policy--As defined in §21.102(3) of this division (relating to Scope).

(b) Scope. This section shall apply to any advertisement for policies that are intended for presentation, distribution, or dissemination in this state.

(c) Duty of agent. Before using an advertisement as defined in subsection (a) of this section, an agent must file the advertisement with the home office of the insurer affected by the advertisement for written approval. An agent is not required to file advertisements received from the insurer.

(d) Duty of insurers. Every insurer marketing policies in this state shall establish and maintain a system of control over the content, form, and method of dissemination of all advertisements concerning its policies. A system of control shall include, but is not limited to, requiring the agents, or any other entities who prepare advertisements which name the insurer or advertise its policy, to submit the proposed advertisement to the insurer's home office for written approval of the home office prior to use. Each insurer shall be responsible for advertisements prepared or approved by it or prepared pursuant to its direction. No insurer may avoid responsibility for advertisements by directing or authorizing anyone else to prepare or approve them.

(e) Other applicable laws. Nothing in this section relieves any agent or insurer from complying with other applicable laws.

DIVISION 2. DISCOUNT HEALTH CARE PROGRAM ADVERTISING

§21.151. Purpose and Scope.

(a) The purpose of this division is to establish advertising requirements necessary to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs.

(b) A discount health care program operator, including the operator of a freestanding discount health care program or a discount health care program operated and marketed by an insurer or a health maintenance organization, shall comply with this division.

§21.152. Definitions.

(a) In this division, the term “advertisement” has the meaning assigned to the term “advertisement, solicitation, or marketing material” by the Insurance Code §562.002.

(b) In this division, the following terms have the meanings assigned by the Insurance Code §562.002 and §7001.001:

(1) Discount health care program; and

(2) Discount health care program operator.

§21.153. Content of Advertisement.

(a) An advertisement shall identify the discount health care program operator offering the discount health care program that is the subject of the advertisement. It is sufficient to state the full registered name of the discount health care program operator or an assumed name filed with the department pursuant to §19.1602 of this title (relating to Registration Requirement).

or an assumed name filed with the department pursuant to §19.1602 of this title (relati to Registration Requirement).

(b) The format and content of an advertisement of a discount health ca program shall be sufficiently complete and clear to avoid deception or the capacity tendency to mislead or deceive.

§21.154. Severability. If a court of competent jurisdiction holds that any provision this division is inconsistent with any statutes of this state, is unconstitutional, or is inva for any reason, the remaining provisions of this division shall remain in effect.

CERTIFICATION. This agency hereby certifies that the adopted amendments and n sections have been reviewed by legal counsel and found to be a valid exercise of t agency's legal authority.

Issued at Austin, Texas, on August 11, 2010.

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendme to §§21.101 - 21.103, 21.108, 21.112 - 21.114, 21.116 - 21.122 and new §§21.151 21.154 specified herein, concerning insurance advertising, certain insurance tra

practices, and insurance solicitations; and discount health care program advertising, a

adopted.

AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 10-0767

AUG 18 2010