SUBCHAPTER SS. Continuation and Conversion Provisions

Division 1. General Provisions
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1. INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC Chapter 21, Subchapter SS, §§21.5301, 21.5302, 21.5310 - 21.5314, and 21.5320 - 21.5322, concerning Continuation and Conversion Provisions. Sections 21.5310 - 21.5313 are adopted with changes, and §§21.5301, 21.5302, 21.5314, and 21.5320 - 21.532 are adopted without changes, to the proposal published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5086).

2. REASONED JUSTIFICATION. The repeal of 28 TAC Chapter 3, Subchapter F; its replacement by the new 28 TAC Chapter 21, Subchapter SS; and the concurrently adopted amendments to 28 TAC Chapter 11, Subchapter F; are necessary to conform TDI's continuation and conversion rules to statutory changes, including HB 710, 75th Legislature, Regular Session (1997) and SB 1771, 81st Legislature, Regular Session (2009), and to consolidate the rules for insured and HMO products to enhance consistency in the market to the extent possible. The repealed, amended, and new rules

will conserve agency resources by reducing the need for multiple rule projects resulting from future changes in continuation or conversion laws.

To clarify the proposed rule, TDI has added qualifying language to §21.5310(a)(2) to make it clear that the requirements of Insurance Code Chapter 1251, Subchapter G and Insurance Code Chapter 1271, Subchapter G are not affected by general exceptions in the rule for insurers. To allow time to implement any necessary changes in notices, TDI has added §21.5311(f) to allow until January 31, 2015, for implementation of changes required under the adopted rule. In response to comments, TDI eliminated the word "group" from §21.5310(d)(4) because Insurance Code §1251.255(a)(5) and §1271.304(3) do not expressly condition termination of coverage by a group plan or program, and TDI eliminated §21.5311(b)(3)(H) because the availability of the member handbook and materials under Insurance Code §843.205 and §11.1602 of this title should suffice to provide notice of how to contact TDI. TDI has also made several nonsubstantive editorial changes to §§21.5311 - 21.5313.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

In general:

Comment: One commenter voiced support for TDI's proposed application of the rules to small and micro business carriers, and was concerned that any exemption would be in conflict with the statute's intention of making continuous coverage options available

and would leave some consumers, depending solely on the number of employees their carrier has, with fewer coverage options and consumer protections.

Agency Response: TDI appreciates the support for its position.

Comment: One commenter stated that if TDI adopts the proposed rules, the law will be more convoluted and confusing than it ever was.

Agency Response: TDI disagrees. The adopted rules are both necessary and useful, and are likely to result in a regulatory environment that is less convoluted and more transparent because the rules will conform TDI's rules to statutory changes and consolidate continuation and conversion rules for insured and HMO products to enhance consistency in the market to the extent possible.

Comment: One commenter stated that the proposed rules would have a devastating financial impact on its third party administrator practice.

Agency Response: TDI disagrees. The commenter apparently believes that the clarification of notice requirements will damage the business of third party administrators. TDI notes that no other commenter has raised this concern in reaction to either the informal publication of the rule or the publication of the proposed rule in the *Texas Register*. TDI further observes that notice requirements are one of many duties assumed by third party administrators in their business, and notes that the adopted rules comply with most current practice and allow carriers to delegate notice functions to group policyholders who may still contract with third party administrators to perform this

function. The adopted rules do not constitute a substantial change from the requirements of the prior rule and so should not require major adjustments.

Comment: One commenter argued any mention of federal COBRA in the rules is a real reach for TDI, because COBRA is an employer law, not an insurance company law, and asked why TDI delves into something over which it has no authority whatsoever.

Agency Response: TDI disagrees. References to COBRA in the adopted rules are consistent with longstanding references in the rules they replace, and deal with definitional matters, duration of and timing for state continuation coverage, and their interplay with COBRA coverage. The references are necessary and consistent with statutory coordination with COBRA found in Insurance Code §1251.255 and §1271.304, for example. It is important to continue to regulate the interplay of state notices with COBRA coverage, and TDI does not regulate COBRA coverage in these rules.

§21.5310(d)(4)

Comment: One commenter noted that existing rules and Insurance Code §1251.255 do not limit termination of continuation coverage in §21.5310(d)(4) to actual coverage by group plans or programs only, but allow termination based on other types of coverage.

Agency Response: TDI agrees, and notes that Insurance Code §1251.255(a)(5) and §1271.304(3) do not expressly condition termination on coverage by a group plan or program. TDI has made a change to §21.5310(d)(4) by removing the word “group.”

§21.5310(d)(5)

Comment: One commenter said that it was not clear why the proposal included a separate subsection (d)(5), incorporating subsections (d)(1)-(4) by reference (addressing "group continuation"), and separately listing additional bases for termination of continuation coverage "for a person covered under a group policy of accident, health, or accident and health insurance, including a group contract issued by a group hospital service corporation." The commenter did not see a distinction between the applicability of subsections (d)(1)-(4) and subsection (d)(5) and suggested that the conditions listed in (d)(5)(A)-(D) follow and be included in one list with the other bases allowing termination of continuation coverage, as in Insurance Code §1251.255 and the current rule.

Agency Response: TDI disagrees and declines to make the suggested change. The difference between the subsections is that some apply to HMOs but not other carriers. As the rule notes, limits are imposed by Insurance Code §1251.255 and §1271.304. Adopted §21.5310(d)(1)-(4) are derived from Insurance Code §1271.304, which applies to HMOs, and generally requires actual coverage. Adopted §21.5310(d)(5) is derived from Insurance Code §1251.255 and the existing 28 TAC §3.504(b), which apply to other carriers and are more generally couched in terms of eligibility for coverage, rather than actual coverage. Thus, two lists of reasons for termination were needed in the existing rules and are still needed in the adopted rules.

§21.5310(d)(5)(D)

Comment: One commenter voiced support for TDI's construction of §21.5310(d)(5)(D) as not including the availability of guaranteed-issue coverage under the Patient Protection and Affordable Care Act (PPACA) as a basis for termination of continuation coverage, and said that this construction was consistent with past interpretation, which did not allow for the termination of continuation coverage because of the availability of guaranteed issue coverage in the Texas Health Insurance Pool.

Agency Response: TDI appreciates the support for its construction of the rule.

Comment: One commenter objected to TDI's construction of §21.5310(d)(5)(D), noting that it strongly believes that the availability of guaranteed-issue coverage under PPACA would provide a basis for termination of continuation coverage under proposed (d)(5)(D). The commenter argued that such coverage falls squarely within "similar benefits … provided or available to the insured under any state or federal law," thus providing a basis for termination under §21.5310 and Insurance Code §1251.255.

Agency Response: TDI disagrees, and declines to make the suggested change to its construction. The availability of guaranteed-issue individual coverage under PPACA is analogous to the availability of guaranteed issue individual coverage in the Texas Health Insurance Pool under Insurance Code Chapter 1506. Since 1998, guaranteed-issue individual coverage has been available to Texans through the Pool. TDI has never held that this availability was a basis for terminating - indeed, preventing - state continuation coverage. When Texas created and funded the Pool, it could have amended Chapter 1251 to delete continuation requirements that would have been

unnecessary under the commenter's reasoning. Since legislation has not passed to delete those requirements since the enactment of the Pool, the only way to prevent nullification of the provisions of §1251.255 is to continue to construe it as permitting termination when an individual is eligible for a state or federally funded program such as Medicare or Medicaid. Given the statutory language and the importance of this consumer protection, TDI is reluctant to eliminate the protection without legislative clarification. TDI notes that federal regulations do not permit termination of COBRA coverage due to eligibility for other coverage. Despite the existence of guaranteed issue coverage, federal law still requires the offer of COBRA coverage, and TDI is unaware of any state eliminating the continuation of coverage requirements.

§21.5311(a) and §21.5311(d)

Comment: One commenter stated that §21.5311(a) places a difficult and onerous burden on carriers by requiring timely offers of continuation and providing that while carriers may delegate the notice function to a group policyholder, the carrier retains ultimate responsibility. The commenter stated that Insurance Code §1251.260 provides that, "[a]n employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination." The commenter stated that this places the responsibility directly on the group policyholder, and not the carrier, and argued that the statute does not authorize

TDI to transfer this obligation to the carrier. The commenter made the same argument in relation to the termination of COBRA coverage under §21.5311(d).

Agency Response: TDI disagrees, and declines to make the suggested changes. This argument was raised at the original adoption of the predecessor to §23.5311 as §3.504(b) in 1993 (see 18 *TexReg* 9759) and again at its amendment in 1996 as §3.506 (see 21 *TexReg* 5857). In both cases, TDI concluded that the notice function could and should be placed on carriers, noting in 1996 that the statute expressly states that insurers must offer conversion to the insured, and that the agency only regulates insurers, not employers (see 18 *TexReg* at 9760, 21 *TexReg* at 5859). TDI still maintains that position. As with the previous rules, the adopted rule allows notice responsibilities to be satisfied by insurer or employer.

§21.5311(b) and §21.5311(d)

Comment: One commenter noted that §21.5311(b) specifies that timely notice may be presumed if it is given at least 30 days and no more than 60 days prior to the scheduled termination of coverage; and if the employer, group policy or contract holder, or carrier becomes aware less than 30 days before actual termination that coverage will terminate, notification must be given within five business days. The commenter stated that these timelines are unworkable in practice, when placed on the carrier. The commenter maintained that while carriers rely on group policyholders for notice of terminations of coverage and employment; the latter often do not provide such notice until after termination occurs. The commenter stated that requiring 30-60 days'

advance notice from carriers is not reasonable. The commenter stated that requiring that notice not be provided more than 60 days in advance prevents the practice of providing the notice in the certificate or annual notices, as allowed by Insurance Code §1251.307. The commenter stated that while it opposed placing the notice obligation on carriers in contravention of the Insurance Code, if TDI was going to do so, the commenter recommended that the notice date be tied to the carrier's receipt of notice from the policyholder of the termination of coverage or employment that triggers the continuation privilege, since five business days is not reasonably sufficient time to prepare and send such notices. The commenter made essentially the same arguments with regard to the termination of COBRA coverage under §21.5311(d), contending that that §21.5311(d) provides that if an individual is eligible for COBRA, the continuation notice must be given at the initial termination of coverage, and, if COBRA coverage is elected, again 30-60 days prior to termination of COBRA coverage (or if the carrier becomes aware less than 30 days before actual termination that COBRA continuation coverage will terminate, notification must be given within five business days). The commenter stated that for the reasons stated above with regard to the initial notice requirements being placed on the carrier rather than the responsible group policyholder, such a requirement is not authorized, and more practically, is unworkable and not reasonable.

Agency Response: TDI does not agree that the timelines are unreasonable or unworkable in practice, and declines to make the suggested changes. The 30 day requirement is reasonable in light of employees' need for timely notice of termination

and the likelihood of employer and carrier access to the required information. TDI notes that the current §3.506 has required 30 days' notice since it was first adopted in 1993 as §3.504. TDI stated then that "the time limit was a compromise of recommendations made by representatives of interested parties." (See 18 *TexReg* at 9760). Given the lack of complaints through the years about the timelines and the lack of comments from carriers on the informal publication of this rule and stakeholder meeting in March 2014, the timelines appear to have worked for the almost 21 years that the rule has been in effect, and TDI declines to change them at this time. With regard to the requirement that notice be given not more than 60 days in advance, TDI notes that the current §3.506 requires "timely notice." TDI concludes that a notice in the certificate or annual notice more than 60 days in advance of termination is not timely or likely to be of help in advising an employee of the need to secure other coverage. TDI also notes that while Insurance Code §1251.307 requires notice at the time of issuance, it does not preclude other notices, and the rule does not prevent the §1251.307 issuance notices. With regard to the 5-business-day requirement where the employer, group policy or contract holder, or carrier becomes aware less than 30 days from actual termination that coverage will terminate, TDI again notes the lack of complaints and lack of comments; and notes that the adopted rule actually lengthens this period from the requirement that notice be given "immediately" in the former §3.506(b)(1). TDI also notes that requiring five business days' notice where the employer, group policy or contract holder, or carrier becomes aware less than 30 days from actual termination should obviate the requested requirement that the time run from receipt of notice from the policyholder. TDI notes

that where state continuation coverage is not initially elected, requiring a continuation notice under §21.5311(d) at both the initial termination of coverage and again at the termination of COBRA coverage is entirely consistent with ensuring that the employee, member, dependent, or enrollee is advised in a timely manner of the availability of continuation coverage.

§21.5311(b)(3)(C)

Comment: One commenter noted that §21.5311(b)(3)(C) requires that the termination notice include, "the date on which the employer or other group policy or contract holder must receive the employee's, member's, dependent's, or enrollee's written election to continue coverage and the first premium contribution…" The commenter noted that the carrier often does not know this information because of employer decisions about cost sharing; it is not reasonable to require the carrier to provide this information.

Agency Response: TDI disagrees and declines to make the suggested changes. This notice requirement is derived from identical language in the current §3.506(c)(2)(C), amended in 1996, and essentially identical language in the original §3.504(c)(2)(C), adopted in 1993. Again, TDI notes the lack of comments on the informal publication of the rule and during the stakeholder meeting, and the fact that the timelines appear to have worked for the almost 21 years that the rule has been in effect.

§21.5311(b)(3)(G) and §21.5321

Comment: One commenter applauded TDI's inclusion in §21.5311(b)(3)(G) of a link to a specific TDI web page that has consumer information on losing job-based coverage. The commenter recommends: 1) keeping that link in the continuation notice, 2) adding the link to conversion notices required in §21.5321, and 3) updating the information on the linked TDI web page to provide a more complete picture of options available when job-based coverage is lost. The commenter also provided recommendations for information to be added to the TDI website.

Agency Response: TDI appreciates the support for §21.5311(b)(3)(G) and the suggestions for website language, but concludes that additional language is not necessary in conversion notices in §21.5321, as it would be duplicative of the notices regarding continuation coverage that anyone losing employer coverage will also receive. TDI will carefully consider revisions to the website text separately from this rule package.

Comment: One commenter recommended that TDI require that both continuation and conversion notices provide basic, concise information on the marketplace, including its website and toll-free number, as well as a statement about the availability of financial help for eligible consumers to lower monthly premiums, deductibles, and co-pays. The commenter recommended the addition of language to English and Spanish language notices in §21.5311(b)(3)(G) and §21.5321.

Agency Response: TDI disagrees, and declines to make the requested changes. While TDI appreciates the utility of information on the federal marketplace and is making

changes to its website, providing extensive information about the marketplace is not a duty imposed on carriers under the Texas statutes, which are implemented by the rules. The modification to the notice that TDI has proposed and is adopting informs consumers that additional coverage options may be available and refers them to TDI's website. This allows TDI to easily update information on its website in order to accommodate changes in the market.

§21.5311(b)(3)(H)

Comment: One commenter noted that §21.5311(b)(3)(H) adds a requirement that for HMOs with an enrollee population in which 10 percent or more of the enrollees speak a language other than English or Spanish as their primary language, the translation of the required statement about how to contact the carrier or TDI with questions regarding continuation, must be in that other language, in addition to English and Spanish. The commenter stated that this places an additional and unnecessary burden on the carrier and should not be included.

Agency Response: TDI agrees in part, and makes the suggested change. While the wording of the proposed rule was consistent with the requirement for a member handbook and materials relating to the complaint and appeals process in the languages of the major populations of the enrolled population in Insurance Code §843.205 and §11.1602 of this title, the availability of the member handbook and materials should suffice to provide notice of how to contact TDI.

§21.5312

Comment: One commenter stated that it supports the notice requirements for employees, members, and dependents of the election of continuation coverage to the group policyholder.

Agency Response: TDI appreciates the support for its position.

§21.5313

Comment: One commenter stated that §21.5313 extends the deadline for payment of the initial premium from 31 days after the termination of coverage or notice (current rule 3.507) to not later than the 45th day after the date of the initial election for coverage. It also provides that a payment must be considered timely if made on or before the 30th day after the date on which the payment is due. The commenter stated that it is opposed to both changes, as they are extreme changes to the current rules and not supported by the Insurance Code. The commenter argued that extending the initial enrollment period and providing for a new premium “grace period” place expensive new administrative burdens on carriers.

Agency Response: TDI disagrees, and declines to make the suggested changes. TDI is revising the rules to conform them to statutory changes since 1996. This rule is derived in part from Insurance Code §1251.254, amended in 2009, which mandates both the 45 day period for initial payment and the 30 day grace period. Because the standards repeated in the rule have applied to carriers since 2009, TDI believes that carriers are in compliance, and new administrative burdens should not result.

§21.5320

Comment: One commenter stated that it supports §21.5320, which confirms that the offer of a conversion policy is optional and not mandatory for an insurance policy that is delivered, issued for delivery, or renewed on or after July 1, 1997, and for HMO coverage.

Agency Response: TDI appreciates the support for its position.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, with changes: Center for Public Policy Priorities and Texas Association of Health Plans.

Against: TCO Integrated Solutions, Inc.

5. STATUTORY AUTHORITY. TDI adopts the new sections under Insurance Code §§36.001, 843.051(b)(3), 843.151, 1251.008, 1251.251, 1251.253, 1251.258, 1251.260, 1271.301(b), 1271.306(c), and 1701.060(a).

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

Section 843.051(b)(3) states, “(b) A health maintenance organization is subject to (3) Subchapter G, Chapter 1251, and Section 1551.064."

Section 843.151 states, “The commissioner may adopt reasonable rules as necessary and proper to: (1) implement this chapter and Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to: (A) prescribe authorized investments for a health maintenance organization for all investments not otherwise addressed in this chapter; (B) ensure that enrollees have adequate access to health care services; and (C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and (2) meet the requirements of federal law and regulations.”

Section 1251.008 states, “The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201.”

Section 1251.251(a) states, “An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252."

Section 1251.253 states, “An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of: (1) the date the group coverage would

otherwise terminate; or (2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage."

Section 1251.258 states, "The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter."

Section 1251.260 states, "(a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination. (b) The commissioner by rule shall establish minimum standards for the notice required by this section."

Section 1271.301(b) states, "A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter."

Section 1271.306(c) states, "A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts."

Section 1701.060(a) provides that the commissioner may adopt reasonable rules necessary to implement the purposes of Chapter 1701.

6. TEXT.

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28 TAC §§21.5310 - 21.5314

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28 TAC §§21.5320 - 21.5322

DIVISION 1. GENERAL PROVISIONS

§21.5301. Purpose. The purpose of this subchapter is to:

(1) address continuation requirements; and

(2) establish minimum standards for conversion coverage.

§21.5302. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) COBRA--Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (29 U.S.C. Part 6).

(2) COBRA continuation coverage--Coverage that satisfies an applicable COBRA continuation provision.

(3) Carrier--

(A) An insurer or a group hospital service corporation subject to Insurance Code Chapter 842 that issues policies providing hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense-incurred basis; and

(B) An HMO subject to Insurance Code Chapter 1271.

(4) Department--Texas Department of Insurance.

(5) HMO--A health maintenance organization as defined in Insurance Code §843.002(14).

(6) Insurer--A life, health, and accident insurance company; health and accident insurance company; health insurance company; or other company operating under Insurance Code Chapter 841, 842, 884, 885, 982, or 1501 that is authorized to issue, deliver, or issue for delivery health insurance policies in this state.

(7) State continuation coverage--Coverage that satisfies an applicable state continuation requirement under Insurance Code Chapter 1251 or 1271.

DIVISION 2. GROUP CONTINUATION PROVISIONS

§21.5310. Mandatory Group Continuation Privilege.

(a) Applicability.

(1) The provisions of this section apply to:

(A) an insurer or a group hospital service corporation subject to Insurance Code Chapter 842 that issues policies providing hospital, surgical, or major

medical expense insurance coverage or any combination of those coverages on an expense-incurred basis;

(B) an HMO subject to Insurance Code Chapter 1271.

(2) Except as otherwise required by Insurance Code Chapter 1251, Subchapter G, or Insurance Code Chapter 1271, Subchapter G, the provisions of this section do not apply to policies providing benefits for:

(A) a specified disease or diseases only;

(B) accident only;

(C) group Medicare supplement insurance; or

(D) group TRICARE supplement insurance.

(b) Eligibility for continuation of group coverage. Each employee, member, enrollee, or dependent whose group coverage is terminated has the right to continuation of the group coverage provided under and subject to the conditions of Insurance Code §§1251.251, 1251.252, and 1271.301.

(c) Replacement of group coverage. Any person who elects to continue group coverage under applicable state law must be included under any group coverage that replaces the existing group coverage. Coverage under the replacing coverage must be continued until the completion of the state continuation coverage period.

(d) Termination of continued coverage. Under Insurance Code §1251.255 and §1271.304, group continuation coverage may not terminate until the earliest of:

(1) the date the maximum state continuation coverage period provided by law would end, which is:

(A) for any employee, member, dependent, or enrollee not eligible for COBRA continuation coverage, nine months after the date the employee, member, dependent, or enrollee elects to continue the group coverage; or

(B) for any employee, member, enrollee, or dependent, eligible for COBRA continuation coverage, six additional months following any period of COBRA continuation coverage;

(2) the date failure to make timely payments would terminate the group coverage;

(3) the date the group coverage terminates in its entirety;

(4) the date the insured or enrollee is covered for similar benefits by another plan or program, including a hospital, surgical, medical, or major medical expense insurance policy, a hospital or medical service subscriber contract, or a medical practice or other prepayment plan; or

(5) for a person covered under a group policy of accident, health, or accident and health insurance, including a group contract issued by a group hospital service corporation, the earliest of:

(A) any date in paragraph (1) - (4) of this subsection;

(B) the date the insured is or could be covered under Medicare;

(C) the date the insured is eligible for similar benefits, whether or not covered for those benefits, under any arrangement of coverage for people in a group, whether on an insured or uninsured basis; or

(D) the date similar benefits are provided or available to the insured under any state or federal law other than COBRA continuation coverage.

(e) Coverage after COBRA. Any insured person or enrollee who elects to continue group coverage under COBRA may elect state continuation coverage under Insurance Code §§1251.251, 1251.252, and 1271.301 following the period of COBRA continuation coverage, provided the insured or enrollee is otherwise eligible under subsection (b) of this section.

(f) Coverage for Certain Family Members and Dependents. A group policy or contract delivered, issued for delivery, renewed, amended, or extended in this state, including a group contract issued by a group hospital service corporation, that provides insurance for hospital, surgical, or medical expenses incurred as a result of accident or sickness, or an evidence of coverage under Insurance Code Chapter 843, must include the options for continuation of group coverage for certain family members and dependents prescribed in Insurance Code Chapter 1251, Subchapter G.

§21.5311. Notification Requirement of Insurers, Employer and Group Policyholders, and HMOs.

(a) Each carrier to which this subchapter applies is responsible for the timely offer of state continuation coverage options and must provide the notice for that coverage described in subsections (b) - (e) of this section. If the carrier delegates the responsibility of providing continuation notices to an employer or other group policyholder, the carrier remains responsible if the employer or other group policy or

contract holder does not provide notice in compliance with this section. The carrier must provide timely notice of continuation privileges available to each employee, member, dependent, or enrollee whose coverage is terminating.

(b) For purposes of this section, notice is presumed timely if it is given at least 30 days and no more than 60 days prior to the scheduled termination of coverage.

(1) If the employer, group policy or contract holder, or carrier becomes aware, less than 30 days before actual termination, that coverage will terminate, notification must be given to the affected employee, member, dependent, or enrollee within five business days.

(2) The time limits required by this subsection in no way affect or limit notice requirements specified in Insurance Code §1251.307 and §1251.308. When a group policyholder must give notice of continuation under Insurance Code Chapter 1251, Subchapter G, on receipt of written notification of an event triggering the election of a continuation option, the statutory time limits referenced in subsection (e) of this section prevail.

(3) The notice must include:

(A) the time period allocated for making the election to continue coverage prescribed in Insurance Code §§1251.253, 1251.254, and 1271.302;

(B) the premium amount that an employee, member, dependent, or enrollee electing continuation of coverage must pay to the employer or other group policy or contract holder on a monthly basis;

(C) the date on which the employer or other group policy or contract holder must receive the employee's, member's, dependent's, or enrollee's written election to continue coverage and the first premium contribution;

(D) the length of time the eligible employee, member, dependent, or enrollee may continue coverage;

(E) notice of a conversion option, if offered, as required under §21.5321 of this title;

(F) an enrollment/election form and signature line;

(G) the following English and Spanish statement at the end of the notice: "If you have questions regarding your rights for continuation of your health insurance, contact (insert name of insurance company) at (insert company toll-free telephone number, or other telephone number if no toll-free number is available). If you have additional questions about continuation or other coverage options that might be available to you, you may contact the Texas Department of Insurance, toll-free, at (800) 252-3439 or visit this Internet site: http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing." "Si usted tiene preguntas sobre sus derechos para continuar con su seguro de salud, comuníquese con (insert name of insurance company) al (insert company toll-free telephone number, or other telephone number if no toll-free number is available). Si usted tiene preguntas adicionales sobre la continuación del seguro u otras opciones de cobertura que podrían estar disponibles para usted, puede comunicarse con el Departamento de Seguros de

Texas al número de teléfono gratuito (800) 252-3439 o visite este sitio de Internet: http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing. Se habla español."; and

(c) If an employee, member, dependent, or enrollee is eligible for both COBRA continuation coverage and state continuation coverage, as permitted under §21.5310(e) of this title, the carrier may send the notice for state continuation coverage with the COBRA continuation notice. If the carrier sends both notices simultaneously, the carrier must allow the employee, member, dependent, or enrollee to elect both COBRA continuation coverage and state continuation coverage, which will be effective at the expiration of COBRA continuation coverage as described in §21.5310(e) of this title. A person's election of only COBRA continuation coverage does not waive the person's right to elect or waive state continuation coverage at a later date, provided the election is made within the statutory time frame under Insurance Code §1251.253 and §1271.302.

(d) If an employee, member, dependent, or enrollee is eligible for both COBRA and state continuation coverage but only elects COBRA continuation coverage, the carrier must provide a notice of state continuation coverage eligibility at least 30 days and no more than 60 days prior to termination of COBRA continuation coverage. If the employer, group policy or contract holder, or carrier becomes aware less than 30 days before actual termination that COBRA continuation coverage will terminate, notification must be given to the affected employee, member, dependent, or enrollee within five business days.

(e) The written notice of state continuation coverage privileges required by this subsection must also comply with the requirements of Insurance Code Chapter 1251, Subchapter G, and Chapter 1271, Subchapter G.

(f) Except as otherwise provided by this chapter, the requirements of this section apply only on or after February 1, 2015. Before that date, §3.506 of this title as it existed immediately before the effective date of this chapter applies, and is continued in effect through January 31, 2015, for that purpose.

§21.5312 Continuation Election and Effective Dates.

(a) An employee, member, dependent, or enrollee electing state continuation coverage under §21.5310 of this title must make a written election to the employer or group policy or contract holder not later than the 60th day after the later of:

(1) the date of the termination of coverage under the group policy or contract; or

(2) the date the person is given notice of the right to continuation of group coverage.

(b) A dependent under a group insurance policy electing state continuation coverage under Insurance Code Chapter 1251, Subchapter G, must give written notice to the group policyholder or contract holder of the person’s desire to exercise the continuation option not later than the 60th day after the date of the:

(1) severance of the family relationship; or

(2) retirement or death of the group employee, member, or enrollee.

(c) Each eligible employee, member, dependent, or enrollee has the right to elect continuation, and such election is not contingent on an identical election of any other family member.

§21.5313. Continuation Premium.

(a) Under Insurance Code §1251.254 and §1271.303, the premium for state continuation coverage elected under §21.5310 of this title must be the same premium charged for active employees, members, dependents, or enrollees, including any amount contributed by the employer or group policy or contract holder, plus 2 percent.

(b) The employee, member, dependent, or enrollee electing state continuation coverage under §21.5312 of this title must pay the initial premium not later than the 45th day after the date of the initial election for coverage.

(c) After the first payment following the initial election for coverage under §21.5312 of this title, the employee, member, dependent, or enrollee must pay the premium on the due date of each payment. However, a payment under this subsection must be considered timely if made on or before the 30th day after the date on which the payment is due.

(d) The premium for state continuation coverage elected under Insurance Code Chapter 1251, Subchapter G, may not be more than the premium charged under the group policy or contract for the person had the family relationship not been severed, except as provided by Insurance Code §1551.064. Under Insurance Code §1251.306,

the group policyholder or contract holder may require the person to pay a monthly fee of not more than $5 for administrative costs.

(e) A person covered under state continuation coverage elected under Insurance Code Chapter 1251, Subchapter G, must pay the premium for the coverage directly to the group policyholder or contract holder.

§21.5314 Mandatory Group Continuation Provisions. Each group accident and health policy, certificate, contract, and evidence of coverage required to provide state continuation coverage must contain provisions addressing the state continuation coverage options available to an employee, member, dependent, or enrollee.

DIVISION 3. CONVERSION PROVISIONS

§21.5320. Offer of Conversion

(a) An insurer or group hospital service corporation must offer to any employee, member, or dependent whose insurance under a group policy has been terminated for any reason (except involuntary termination for cause), including discontinuance of the group policy in its entirety or with respect to any insured class, and who has been continuously insured under the group policy (and under any policy providing similar benefits that it replaces) for at least three consecutive months immediately prior to termination:

(1) a conversion policy providing the same coverage and benefits as provided under the group policy or plan, for an insurance policy or evidence of coverage that was delivered, issued for delivery, or renewed prior to June 1, 1996;

(2) a conversion policy providing similar coverage and benefits as provided under the group policy or plan, for an insurance policy or evidence of coverage that was delivered, issued for delivery, or renewed on or after June 1, 1996, and before July 1, 1997.

(b) An insurer or group hospital service corporation may offer a conversion policy for an insurance policy that is delivered, issued for delivery, or renewed on or after July 1, 1997.

(c) If an insurer or group hospital service corporation offers a conversion policy under subsection (a) or (b) of this section, the insurer or group hospital service corporation must issue a conversion policy without evidence of insurability if a written application for the policy and payment of the first premium are made not later than the 31st day after the date of termination.

(d) An insurer or group hospital service corporation may provide the conversion coverage on an individual or group basis as authorized under Insurance Code §1251.256.

(e) Under Insurance Code §1271.306, an HMO may offer to each enrollee a conversion contract.

§21.5321. Notice of Conversion Options.

(a) An insurer or group hospital service corporation must provide notice of conversion privileges, if any, available to each employee, member, or dependent whose coverage is terminating, at least 30 days and no more than 60 days prior to actual termination of coverage.

(b) An HMO must provide notice of conversion privileges, if any, available to each enrollee whose COBRA or state continuation period is expiring, at least 30 days and no more than 60 days prior to the expiration of the COBRA or state continuation coverage period.

§21.5322. Coverage for Children. A conversion policy or contract must provide for the addition of newborn children, adopted children, and children for whom a court or administrative order has mandated coverage. The policy or contract may provide that coverage terminates when the converted person's coverage terminates.

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

Issued in Austin, Texas, on October 24, 2014.

Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts the new 28 TAC Chapter 21, Subchapter SS, §§21.5301, 21.5302, 21.5310 - 21.5314, and 21.5320 - 21.5322, concerning Continuation and Conversion Provisions.

Julia Rathgeber
Commissioner of Insurance

Commissioner's Order No. **3612**