

**SUBCHAPTER Q. DISCOUNT HEALTH CARE PROGRAM REGISTRATION AND
RENEWAL REQUIREMENTS
28 TAC §19.1602**

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §19.1602. These amendments are necessary to update department contact information that appears in the section.

EXPLANATION. The department has moved from its previous location in the William P. Hobby Building at 333 Guadalupe Street in Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue in Austin, Texas 78701. Because of this, amendments are necessary to remove address references in §19.1602. The proposal also updates the department's website, phone numbers, and agency division names, and it makes additional nonsubstantive text changes.

The proposed amendments to the section are described in the following paragraph.

Section 19.1602. Registration Requirement. The proposal removes outdated mailing addresses and updates the department's website, fax and phone numbers, and agency division names. There are also nonsubstantive text changes that replace "shall" with "will" or "must," as appropriate; replace "subchapter" and "chapter" with "title," "which" with "that," and "pursuant to" with "under"; and update statutory citations to insert titles of referenced provisions. Multiple unnecessary "the" instances were also removed, "10 percent" was replaced with "10%," "court appointed" was replaced with "court-appointed," and the word "internet" was removed. All such changes were made to follow current department language preferences. In addition, an amendment to paragraph (2)(H) corrects a citation to the Insurance Code.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Randall Evans, deputy commissioner of the Customer Operations Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than those imposed by statute. Mr. Evans made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amendments.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Evans expects that administering them will have the public benefit of ensuring that contact information, email addresses, fax and phone numbers, and other information in §19.1602 is current and accurate.

Mr. Evans does not expect that the proposed amendments will impose new economic costs on persons required to comply with them. Any associated costs are due to the statute or other existing regulatory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this rule proposal does not impose a possible cost on regulated persons.

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

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

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by no later than 5:00 p.m., central time, on February 6, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by no later than 5:00 p.m., central time, on February 6, 2023. If a public hearing is held, the department will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. The department proposes the amendments to §19.1602 under Insurance Code §7001.003 and §36.001.

Insurance Code §7001.003 specifies that the Commissioner may adopt rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A, as necessary to implement Chapter 7001.

Insurance Code §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.

CROSS-REFERENCE TO STATUTE. Section 19.1602 implements Insurance Code §7001.003.

TEXT.

§19.1602. Registration Requirement.

(a) Registration Requirement. An applicant for registration to offer a discount health care program in this state is required to submit all of the following to the department:

(1) the initial registration fee of \$1,000 as provided in ~~[the]~~ Insurance Code §7001.006, concerning Fees, and §19.802 of this title ~~[chapter]~~ (relating to Amount of Fees) that is nonrefundable and nontransferable;

(2) a complete application for registration that ~~[which]~~ contains all the information required by ~~[the]~~ Insurance Code §7001.005, concerning Application for Registration and Renewal of Registration, and this section, including:

(A) the applicant's full legal name and federal employer identification number or social security number; daytime telephone number with extension; toll free telephone number; ~~[internet]~~ website address; physical address, including city, state, and ZIP code; mailing address, including the city, state, and ZIP code; a contact person's name, including the title, telephone number, and email address; the applicant's agent for service of process, including the physical address, city, state, and ZIP code;

(B) identification of whether the applicant is a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity;

(C) any and all assumed names to be used by the applicant in operating a discount health care program. If a filing is required under the Assumed Business or Professional Name Act under ~~[pursuant to]~~ the Texas Business and Commerce Code, or any similar statute, the discount health care program operator applicant for registration must ~~[shall]~~ provide the department with a copy of the assumed name

certificate reflecting the registration of each assumed name used by the discount health care program operator applicant;

(D) a statement generally describing the applicant, its facilities, personnel, and the health care services or products for which a discount will be made available under its discount health care programs;

(E) a copy of the form of all contracts made or to be made between the applicant and any providers or provider networks regarding the provision of health care services or products to members;

(F) a copy of the applicant's charter, certificate of authority, or registration obtained from the Texas Secretary of State's office;

(G) if the applicant is an entity subject to the bank or farm credit administration, a copy of the documentation issued by a federal or Texas state agency authorizing the entity to do business in Texas;

(H) an original surety bond payable to the department for the use and benefit of members in the principal amount of \$50,000, as required by ~~[the]~~ Insurance Code §562.103(f)(1), concerning Program Operator Duties, [§562.1034(f)(1)] and §19.1603 of this ~~title~~ subchapter (relating to Financial Responsibility Requirement), except that an insurer that holds a certificate of authority under ~~[the]~~ Texas Insurance Code Title 6, concerning Organization of Insurers and Related Entities, is not required to maintain the surety bond;

(I) lists of marketers, both entities and individuals, separated as follows:

(i) a list of the marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and

(ii) a list of the marketers, both entities and individuals, authorized to private label the program operator's programs;

(J) a certification in writing to the department that its programs comply with the requirements of ~~[the]~~ Insurance Code Chapter ~~[Chapters]~~ 7001, concerning Registration of Discount Health Care Program Operators, and Chapter 562, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs;

(K) a list of names, addresses, official positions, and biographical information of:

(i) the individuals responsible for conducting the applicant's affairs;

(ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee;

(iii) the officers;

(iv) any contracted management company personnel; and

(v) any person owning or having the right to acquire 10% ~~[10 percent]~~ or more of the voting securities of the applicant;

(L) a complete biographical certificate concerning each individual whose biographical information is required under ~~[the]~~ Insurance Code §7001.005(a)(2) and this section, including:

(i) the identification of the individual's relationship to the applicant;

(ii) the name of the applicant;

(iii) the full name;_[r] title;_[r] social security number;_[r] date of birth;_[r] mailing address, including the city, state, and ZIP code; telephone number;_[r] fax number;_[r] and email address of the individual;

(iv) excluding traffic violations and a first DWI offense, a response to the following questions:

(I) whether the individual has any pending misdemeanor or felony charges by indictment, information, or any other instrument filed in Texas or in any other state or by the federal government;

(II) whether the individual has ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government;

(III) whether the individual has ever had deferred adjudication on any misdemeanor or felony charge or offense in Texas, in any other state, or by the federal government; and

(IV) whether the person has ever served any period of probation for any misdemeanor or felony offense in Texas, in any other state, or by the federal government;

(v) if the response is positive to any question under clause (iv)(I) - (IV) of this subparagraph, the applicant for registration as a discount health care program operator is required to provide to the department original certified copies of the charging document, indictment, information, or any other charging document, any judgment of conviction, deferred adjudication order, or probation order, and any order terminating probation, community supervision certificate, or parole certificate for each offense. If the court does not maintain the record, the submission of a letter on the court's letterhead will be required. If the arrest did not result in a prosecution, the submission of a records search from the appropriate jurisdiction indicating a final disposition will be required. A statement describing the circumstances leading to the offense and the individual's age at the time of the offense will be required. Letters of recommendation from any person aware of a particular criminal history may be provided;

(vi) a response to the question whether the individual whose biographical information is required under ~~[the]~~ Insurance Code §7001.005(a)(2) and this section, or any entity in which the individual served as a director, officer, shareholder, manager, member, or partner, has ever been the subject of an administrative or legal action filed by the department, or any other insurance department, financial regulatory agency, or of an action filed on behalf of the State of Texas or any other state or by the federal government based on alleged violations of state or federal insurance, securities, or financial regulatory laws that the individual has not previously reported to the department. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the administrative or legal action and a copy of any document sent to the individual to commence the administrative or legal action that described the nature of the action;

(vii) a response to the question whether the individual, whose biographical information is required under ~~[the]~~ Insurance Code §7001.005(a)(2) and this section, is indebted to any discount health care program operator, policyholder, insurance or reinsurance company, insurance agency, general agent, managing general agency, premium finance company or court-appointed ~~[court-appointed]~~ liquidator for membership refunds, premiums collected, or commissions retained, or have any claims or judgments filed against the individual for membership refunds, retaining premiums, or commissions. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the indebtedness, including the name and contact information of the person or entity to whom the individual is indebted;

(viii) a response to the question whether the individual whose biographical information is required under ~~[the]~~ Insurance Code §7001.005(a)(2) and this

section[.] has ever had a discount health care program contract cancelled for cause, such as for misrepresentation or misappropriation. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the department a description of the circumstances regarding the cancellation including the name and contact information of the individual or entity that cancelled the contract;

(ix) a copy of a fingerprint receipt from the state authorized fingerprint collection vendor for each individual that uses the electronic fingerprint process;

(x) an acknowledgment from each individual whose biographical information is required under ~~the~~ Insurance Code §7001.005(a)(2) and this section[.] that the fingerprints provided will be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation; and[.]

(xi) compliance with the requirements of Chapter 1, Subchapter D₁ of this title (relating to Effect of Criminal Conduct) relating to fingerprint requirements for a criminal background check under ~~the~~ Insurance Code §7001.008₁, concerning Criminal Background Check.

(b) Registration Application Forms. The discount health care program operator registration application forms are available at [www.tdi.texas.gov/forms/form11dhcpo.html](http://www.tdi.state.tx.us) [~~http://www.tdi.state.tx.us~~] and at the Agent and Adjuster Licensing Office of the Texas Department of Insurance's mailing address. [~~Texas Department of Insurance, Licensing Division, 333 Guadalupe, Austin, Texas 78701.~~]

(c) Submission of Registration Application Forms. The following paragraphs apply to the submission of discount health care program operator registration application forms.

(1) Except for the list of marketers required under ~~the~~ Insurance Code §7001.005(a)(4) and this section, a discount health care program operator must ~~shall~~ submit the registration application forms by:

(A) mail, to the Texas Department of Insurance, Agent and Adjuster Licensing Office's mailing address [~~Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104~~];

(B) fax, to 512-676-6500 [~~(512) 490-1052~~];

(C) email to TDI-DiscountHealth@tdi.texas.gov; [~~e-mail to TDI-DiscountHealth@tdi.state.tx.us; or~~]

(D) in other formats that are acceptable to the department including an electronic format; or [-];

(E) more current mailing addresses, email addresses, and telephone numbers for the Agent and Adjuster Licensing Office of the Texas Department of Insurance as made available on the department's website.

(2) A discount health care program operator must ~~shall~~ submit the list of the marketers in the format found on the department's website via email to TDI-DiscountHealth@tdi.texas.gov [~~TDI-DiscountHealth@tdi.state.tx.us~~].

(3) Assistance with applying for registration as a discount health care program operator is available at the department's Agent and Adjuster Licensing Office [~~Division~~] Customer Service phone line at 512-676-6500 [~~(512) 322-3503~~], email address at license@tdi.texas.gov, [~~License@tdi.state.tx.us~~] and the department's website. [~~web site at www.tdi.state.tx.us~~]

(d) The registration is valid for one year from the date issued by the department and is required to be renewed annually.

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

Issued in Austin, Texas, on December 21, 2022.

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Allison Eberhart, Deputy General Counsel
Texas Department of Insurance