

**SUBCHAPTER RR. STANDARD PROOF OF HEALTH INSURANCE FOR MEDICAL
BENEFITS FOR INJURIES INCURRED AS A RESULT OF A MOTORCYCLE
ACCIDENT**
28 TAC §21.5201

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts new Subchapter RR, §21.5201, concerning standard proof of health insurance for medical benefits for injuries incurred as a result of a motorcycle accident. The new section is adopted with changes to the proposed text published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8469).

2. REASoNED JUSTIFICATION. This new section is necessary to implement SECTION 8(c) and (c-2) of Senate Bill (SB) 1967, 81st Legislature, Regular Session, which amends the Transportation Code §661.003 and directs the Department to prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle. One of the purposes of SB 1967 is to amend current law relating to the safe operation of motorcycles to provide consistency regarding the enforcement of Transportation Code §661.003 (Offenses Relating to Not Wearing Protective Headgear). Prior to the enactment of SB 1967, it was an offense under the Transportation Code §661.003 to drive or ride on a motorcycle without a helmet unless the person was 21 years of age and had completed a motorcycle safety course or had health insurance. However, Texas statutes did not require all motorcyclists or the public to complete any motorcycle safety training. (TEXAS STATE SENATE TRANSPORTATION & HOMELAND SECURITY

COMMITTEE, BILL ANALYSIS (ENROLLED), SB 1967, 81ST Leg., R.S. (Sept. 2, 2009)). In addition, the Insurance Code did not provide a standard of proof for the health insurance component of the two exceptions to the Transportation Code §661.003. SB 1967 SECTION 8(c-2) requires the Department to prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described by SB 1967 SECTION 8(c). The insurance exception to the Transportation Code §661.003 provides that the excepted person must be "covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle" to qualify for the exception.

On April 15, 2010, the Department posted an informal working draft of the proposed new subchapter on the Department's website and invited public comment. The Department held a meeting on April 29, 2010, to discuss the informal working draft with interested parties. The informal comment period ended on April 30, 2010, and the formal proposal included input from comments received regarding the informal working draft of the proposed new rule. The proposed new rule was formally published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8469). The Department did not receive any requests for a public hearing on the rule proposal. The Department did receive one comment regarding the removal of the word "paper" from proposed §21.5201(c)(2), and as a result of the comment, the Department has inserted the word "paper" into the text of §21.5201(c)(2), clarifying that the subsection was designed to allow for paper cards and reinstating the language of the subsection to the language posted in the informal working draft of the proposed new subchapter. None of the

changes to the proposed text, either as a result of comments or as a result of necessary clarification, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Furthermore, none of the changes to the proposed text impose a more stringent requirement for compliance than the proposed version. The changes provide a more lenient and more flexible requirement that is beneficial to both the industry and consumers.

New §21.5201 is not applicable to personal injury protection (PIP) and medical payment (Med Pay) coverages. The Transportation Code §661.003(c) provides that a person covered by a "health insurance plan" providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle is exempted from committing the offense of not wearing protective headgear. Section 661.003(i) defines "health insurance plan" as an "individual, group, blanket, or franchise insurance policy, insurance agreement, evidence of coverage, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident." PIP and Med Pay coverages are not considered health insurance plans under the Insurance Code. For instance, §1952.151 of the Insurance Code states that "personal injury protection" coverage "consists of provisions of an automobile liability insurance policy that provide for payment . . . for expenses that arise from an accident. . . ." Section 2251.202 of the Insurance Code requires the Commissioner to publish a standard rate index of rates "for each of the following coverages under a personal automobile insurance policy," including "personal injury protection" and "medical payments." Finally, a large number of other sections of the

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Insurance Code distinguish between coverage under a health benefit plan and medical payment insurance coverage under an automobile insurance policy, including §§544.152, 546.003, 846.001, 1274.001, 1352.002, 1357.003, 1357.053, 1358.003, 1360.003, 1366.054, and 1501.002. Since the term "health insurance plan" under the Transportation Code does not specifically include automobile coverages providing for medical benefits, and because the Insurance Code does not treat PIP or Med Pay as falling within the general scope of health insurance, such coverages will not qualify for the exemption from the offense found in the Transportation Code.

3. HOW THE SECTION WILL FUNCTION. New §21.5201 ensures that a standard proof of health insurance exists to implement an exception to the application of the Transportation Code §661.003(a) or (b), which provides that it is an offense for a person to not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway. New §21.5201(a)(1) provides that the subchapter is applicable to an individual, group, blanket, or franchise insurance policy, insurance agreement, health maintenance organization evidence of coverage, group hospital services contract, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident while operating or riding a motorcycle. New §21.5201(a)(2) expressly provides that the subchapter is not applicable to credit-only coverage, disability coverage, specified disease coverage, long-term care coverage, dental or vision-only coverage, single-service health maintenance organization coverage, accidental death and dismemberment coverage, hospital indemnity coverage, workers' compensation

coverage, or medical payments or personal injury protection coverage. New §21.5201(b) provides that upon request, a health insurance plan shall issue a standard proof of health insurance coverage identifying a person who is at least 21 years of age and covered by a health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle, unless the plan already issues customary identification cards that include the words “MOTORCYCLE HEALTH” on the face of the card. New §21.5201(c) provides two alternative ways in which a health insurance plan can remain in compliance with the subsection. New §21.5201(c)(1) provides that a health insurance plan may comply by issuing its customary identification card with the words “MOTORCYCLE HEALTH” in all capital letters, printed in at least 8-point boldface font, and prominently placed on the card. New §21.5201(c)(2) provides that a health insurance plan may comply by issuing a paper card, separate from its customary card, titled “Motorcycle Health: Standard Proof of Health Insurance”. The separate paper card must contain the heading “Motorcycle Health: Standard Proof of Health Insurance,” the carrier logo, the carrier name, the name of the enrollee, insured, or dependent of the enrollee or insured, the policy number, and a statement that the enrollee, insured, or dependent of the enrollee or insured is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding a motorcycle. All text printed on the separate paper card shall appear in upper and lower case, using at least 12-point boldface type for the heading and at least 10-point regular type for the text body.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter noted that the published proposed language for §21.5201(c)(2) differed from the language in both the Commissioner's Bulletin B-0037-09, which allows for use of other forms such as a letter on company letterhead, and the TDI informal draft rules, which allowed for use of a "paper card". The proposed language as published omitted the word "paper" and merely provided that a health plan may opt to comply with provisions requiring issuance of a standard proof of health insurance by issuing a "...card, separate from its customary identification card..." This commenter noted that the omission of the word "paper" from the text of the rule eliminates several alternate compliance approaches currently in use by insurers. For example, some health plans are utilizing a method for securing the required information by allowing the insured to call the customer service department to request and receive a "proof of coverage" letter. Others have set up mechanisms to obtain such "proof of coverage" through their member website. These alternative mechanisms offer health plans a less costly option and also allow insureds to attain the standard proof more easily.

Agency Response: The Department agrees and has inserted the word "paper" into the text of § 21.5201(c)(2) by placing the word "paper" in front of all instances of the word "card". These changes will clarify that carriers are permitted to utilize company letterhead in providing the required information in a card format.

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

For with changes: Texas Association of Health Plans.

6. STATUTORY AUTHORITY. The new section is adopted under the Transportation Code §661.003(c) and (c-2) and the Insurance Code §36.001. The Transportation Code §661.003(c) provides that it is an exception to the application of §661.003(a) or (b), which provides that it is an offense for a person to not wear protective headgear while operating or riding as a passenger on a motorcycle on a public street or highway, if a person is at least 21 years old and is covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. The Transportation Code §661.003(c-2) provides that the Department of Insurance shall prescribe a standard of proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described by §661.003(c). The Insurance Code §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.

7. TEXT.

§21.5201. Identification Cards - Health Coverage for Motorcycle Injuries.

(a) Applicability.

(1) This subchapter is applicable to an individual, group, blanket, or franchise insurance policy, insurance agreement, health maintenance organization evidence of coverage, group hospital services contract, or employee benefit plan that

provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident while operating or riding on a motorcycle.

(2) This subchapter is not applicable to:

- (A) credit-only coverage;
- (B) disability coverage;
- (C) specified disease coverage;
- (D) long-term care coverage;
- (E) dental or vision-only coverage;
- (F) single-service health maintenance organization coverage;
- (G) accidental death and dismemberment coverage;
- (H) hospital indemnity coverage;
- (I) workers' compensation coverage; or
- (J) medical payments or personal injury protection coverage

provided under an automobile policy.

(b) Standard Proof of Health Insurance. Upon request, a health insurance plan, as defined by the Transportation Code §661.003(i), shall issue a standard proof of health insurance coverage that satisfies the content requirements under subsection (c) of this section and identifies a person who is at least 21 years of age and covered by the health insurance plan for medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle. A request can be made by a person who is an enrollee or an insured of the health insurance plan or who is a dependent of an enrollee or insured of the health insurance plan.

(c) Contents of Standard Proof of Health Insurance. A health insurance plan shall issue the standard proof of health insurance coverage described by subsection (b) of this section through one of the methods set forth in either paragraph (1) or paragraph (2) of this subsection:

(1) The health insurance plan may elect to add to its customary identification card the words "MOTORCYCLE HEALTH." By including the words "MOTORCYCLE HEALTH" on its customary identification card, a health insurance plan affirms that the person named on the card is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, as addressed by the Transportation Code §661.003(c). The words "MOTORCYCLE HEALTH" must be:

- (A) printed in all capital letters;
- (B) printed in at least 8-point boldface font; and
- (C) located in a prominent place on the card.

(2) The health insurance plan may elect to issue a paper card, separate from its customary identification card, titled "Motorcycle Health: Standard Proof of Health Insurance."

(A) The separate paper card must contain at least the following:

- (i) a heading that includes only the words "Motorcycle Health: Standard Proof of Health Insurance;"
- (ii) the carrier logo;
- (iii) the carrier name;

(iv) the name of the enrollee, insured, or dependent of the enrollee or insured;

(v) the policy number; and

(vi) the statement: “[name of enrollee, insured, or dependent of the enrollee or insured] is covered by a health insurance plan that provides medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, as addressed by the Transportation Code §661.003(c).”

(B) All text printed on the separate paper card shall appear in upper and lower case as appropriate.

(C) The text body shall appear in at least 10 point regular type.

(D) The heading shall appear in at least 12 point boldface type.

CERTIFICATION. This agency hereby certifies that the adopted section has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on November 15, 2010.



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

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IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new Subchapter RR, §21.5201 specified herein, concerning standard proof of health insurance for medical benefits for injuries incurred as a result of a motorcycle accident, is adopted.

AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO.

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