

**SUBCHAPTER D. Effect of Criminal Conduct**  
**28 TAC §§1.501 - 1.503 and 1.507**

**1. INTRODUCTION.** The Commissioner of Insurance (Commissioner) adopts amendments to §§1.501 - 1.503 and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs pursuant to Chapters 7001 and 7002 of the Insurance Code. The amendments are adopted without changes to the proposed text published in the June 4, 2010 issue of the *Texas Register* (35 TexReg 4579).

**2. REASONED JUSTIFICATION.** House Bill (HB) 4341, 81st Legislature, Regular Session, transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Texas Department of Insurance (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; (ii) amends the Insurance Code to add a 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.

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Senate Bill (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 (relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs) and Chapter 7001 (relating to Registration of Discount Health Care Program Operators), 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) 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; (ii) amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, relating to insurance advertising, and new §§21.151 - 21.154, relating to discount health care program operator advertising; and (iii) new §§24.1 - 24.4,

relating to discount health care program principles of regulation. Notice of these three adoption orders is 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 fingerprint requirements for certain individuals involved in operating discount health care programs, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4579). 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.

**Implementation of the Insurance Code Chapters 562, 7001 and 7002 and the Occupations Code Chapter 53.** The amendments to §§1.501 - 1.503 and 1.507 are necessary to implement the Insurance Code Chapters 562, 7001 and 7002 and the Occupations Code Chapter 53. The Occupations Code Chapter 53 generally provides

the procedures a licensing authority must implement when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. The Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the ground that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. Under HB 4341, the Commissioner is required to adopt rules as necessary to implement the Insurance Code Chapter 7001, which regulates the registration of discount health care program operators. Under SB 2423, discount health care programs or program operators that do not charge fees or other consideration for their programs as provided under Chapter 7002 of the Insurance Code, but that receive consideration in the form of access to patient information, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates.

***Statutory Authority for Fingerprinting and Check of Criminal History Information.*** Only those individuals responsible for or involved with the operation of the discount health care programs regulated pursuant to Chapter 7001 of the Insurance Code whose biographical information is required to be filed with the Department and for whom the Commissioner may conduct a criminal background check pursuant to the

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Insurance Code §7001.008 will be subject to the Department's existing fingerprinting and criminal history review process.

The following statutes provide the authority for this requirement. The Insurance Code §801.056(b) provides that the Department may deny an application for authorization, such as a registration, if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the Department. Further, the Occupations Code §53.021 authorizes the Department to disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. Additionally, the Government Code §411.087 and §411.106 authorize the Department to access an applicant's criminal history information from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). Collectively, these statutes authorize the Department to determine an individual's fitness for registration or renewal of registration as a discount health care program operator, or a person's fitness to have the ability to control, direct, or manage the affairs of a registered discount health care program operator under the Insurance Code Chapter 7001 when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. The fitness of an applicant for registration as a discount health care program operator under Chapter 7001 and the fitness of those individuals specified in §7001.008, including the individuals responsible for conducting the program operator's affairs, governing board members, executive committee members, officers of the program operator, contracted management company personnel, and any person

owning or having the right to acquire 10 percent or more interest of the voting securities of the program operator, are especially important because of the unique services offered and performed by discount health care programs. A discount health care program operator, in exchange for fees, dues, charges, or other consideration with its members, 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. As such, discount health care program operators determine the charge for the program services provided to its Texas members. The Insurance Code §7002.001, as enacted by SB 2423, provides that for the purpose of the Insurance Code Chapter 562 (relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs) and Chapter 7001 (relating to Registration of Discount Health Care Program Operators), 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. The nature of the interaction between discount health care program operators, Texas consumers, and the general public requires trust and reliance upon these discount health care program operators. Therefore, the Department considers the determination of the honesty, trustworthiness, and reliability of each individual whose biographical information is required to be filed with the Department and each individual for whom the Commissioner may conduct a criminal background check under Chapter 7001 to be an

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essential regulatory function. Applying the Department's current fingerprinting and criminal history review process to such individuals promotes stability, uniformity, and consistency in Department regulation. Additionally, the amendments to §§1.501 - 1.503 and 1.507 will help maintain effective regulation of the discount health care program industry by ensuring that persons registering to operate such a program and persons having the ability to control, direct, or manage the affairs of a registered discount health care program operator under the Insurance Code Chapter 7001 are honest, trustworthy, and reliable. Under these amendments, and in the manner prescribed by existing rules in Chapter 1, Subchapter D, the Department will consider, in determining an applicant's fitness for registration to operate a discount health care program, and the fitness of each person having the ability to control, direct, or manage the affairs of a registered discount health care program operator, the criminal history information of each such person. The Department has determined, for the following reasons, that fingerprint checks provide the most effective method of identifying an individual's criminal history information. First, fingerprint checks prevent individuals with a criminal history in another state from attempting to evade detection by simply moving to Texas. Second, fingerprint collection by an independent third party vendor allows for independent verification of the identity of the individual being fingerprinted and increases confidence in the review process. Third, improvements in electronic fingerprint technology have increased the accuracy of fingerprint capture and have substantially reduced the time frame for processing the fingerprint to obtain the criminal history information.

***Fingerprint Format and Application Requirements.*** The amendments to §§1.501 - 1.503 and 1.507 are necessary to apply the Department's existing fingerprint rule requirements to certain individuals affiliated with discount health care programs as specified in the Insurance Code §7001.008. Section 7001.008 provides that the Department may conduct a criminal background check on certain statutorily specified individuals who are responsible for or involved with the operation of a discount health care program. The Insurance Code §7001.009(a)(5) and (6) authorize the Department to deny a registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84, if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder, has engaged in fraudulent or dishonest acts or practices or has been convicted of a felony.

These amendments apply to the individuals for whom the Department may conduct a criminal background check as provided in the Insurance Code §7001.008. An applicant for registration or renewal as a discount health care program operator is required to submit biographical information to the Department for these same individuals under the Insurance Code §7001.005(a)(2). These individuals are: (i) the individuals responsible for conducting the discount health care program operator's affairs; (ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee; (iii) the officers of the program operator; (iv) any contracted management company personnel; and (v) any person

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owning or having the right to acquire 10 percent or more of the voting securities of the program operator.

Under the amendments, these individuals will be required to comply with the fingerprint requirements in existing §1.504 and to follow the fingerprint format and application procedure in existing §1.509, unless such individuals are exempt from the fingerprint requirements pursuant to §1.504(b). These exemptions may include an individual, or the entity with which the individual is associated, that is renewing an unexpired license, certification, registration, or authorization. As required in existing §1.509, those individuals who are not exempt pursuant to §1.504(b) will be required to submit an electronic set of fingerprints or a fingerprint card. As provided in existing procedures under §1.509(a), individuals subject to the fingerprint requirement may have a complete set of their fingerprints captured by (i) an electronic fingerprint vendor acceptable to the Texas Department of Public Safety; (ii) the Department's examination vendor; or (iii) a criminal law enforcement agency, including a sheriff's office or police department. Pursuant to §1.509(b), those individuals who opt to have their fingerprints captured by a vendor acceptable to the Texas Department of Public Safety (DPS) will be required to pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor. Existing §1.509(d)(1) requires individuals who choose to have their fingerprints captured by a criminal law enforcement agency to pay that agency any associated charges that may apply to the capture of their fingerprints in a manner acceptable to that agency. Existing §1.509(d)(2) requires that such

individuals submit payment to the Department for all applicable fingerprint processing fees in the amount and in the manner set forth on the Department's application or biographical submission form. Section 1.509(d)(2) further provides that payment to the Department may be made as otherwise posted by the Department if the individual is not using a Department form. Those individuals who will be required to submit their fingerprints will also be allowed to submit, in lieu of electronic fingerprints, a fingerprint card as provided under existing §1.509(e) and (f). Section 1.509(e) provides contact information for obtaining fingerprint cards. Section 1.509(f) requires individuals who submit fingerprint cards to submit legible fingerprint impressions that are suitable for use by the DPS and the Federal Bureau of Investigation (FBI). Under the Department's existing process, the individual's fingerprints will either be submitted directly to DPS, if captured by the DPS electronic vendor, or to the Department, and then to DPS, if captured on paper. Both electronic and paper fingerprint submissions will be processed through the DPS and the FBI. In addition, as provided in existing §1.509(g), individuals will be required to submit their fingerprints within the time frame indicated on the specific application or biographical submission form. These individuals, however, may request an extension by contacting the division of the Department that will process the application or biographical submission.

***Exemptions to the Fingerprint Requirement.*** Under the amendments, each individual whose biographical information under the Insurance Code §7001.005(a)(2) is required to be filed with the Department and each individual for whom the Commissioner may conduct a criminal background check under the Insurance Code

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§7001.008, may qualify for a discretionary exemption to the fingerprint requirement under existing §1.504(b). For example, those individuals who are renewing an unexpired registration for a discount health care program may qualify for an exemption under §1.504(b)(4). Section 1.504(b)(4) provides that the individual is exempt from the fingerprint requirement if the individual, or the entity with which the individual is associated, is renewing an unexpired license, certification, registration, or authorization. HB 4341 provides that a program operator that was registered with the TDLR on January 1, 2010, as required by the Health and Safety Code Chapter 76, shall file an application for renewal of registration with the Department under the Insurance Code Chapter 7001 not later than April 1, 2010. Therefore, the Department has the discretion to exempt from the fingerprinting requirement a program operator that was registered with the TDLR on January 1, 2010, and renewed with the Department not later than April 1, 2010. This exemption may also apply to any individual who is responsible for or involved with the operation of a discount health care program that was registered with the TDLR on January 1, 2010, and renewed with the Department not later than April 1, 2010, and whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) and any individual for whom the Commissioner may conduct a criminal background check under the Insurance Code §7001.008. Such exemption, or any other exemptions allowed under §1.504(b), however, would not extend to individuals who assume such positions after the discount health care program operator registers or renews their registration with the Department. Existing §1.504(e) provides that the Department's fingerprint rules, including §1.504(b)

exemptions, do not limit the Department's authority to require the submission of fingerprints or obtain criminal history information. In addition, under §1.507, the Commissioner has discretionary authority to waive the fingerprint requirement for certain individuals if the individual, or the entity with which the individual is associated, is not domiciled in Texas. For example, the Commissioner has discretion to waive the fingerprint requirement for nonresidents who have been fingerprinted in another state for the purpose of registering a discount health care program in that other state.

*Section-by-Section Summary.* The amendment to §1.501(b) is necessary to add paragraph (6) to include within the purpose and application of existing §1.502, relating to licensing of persons with criminal backgrounds, each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) (relating to Application for Registration and Renewal of Registration) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008 (relating to Criminal Background Check). The amendment to §1.502(a) includes discount health care programs in the existing rules that address the Department's guidelines for licensing persons with criminal backgrounds. The amendment to §1.503, relating to the application of the fingerprint requirement, is necessary to add new paragraph (5) to require that each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008, comply with the Department's fingerprint requirement. The amendment to §1.507 includes within the Commissioner's

discretionary authority the authority to waive the fingerprint requirements for those individuals whose biographical information is otherwise required to be filed with the Department under the Insurance Code §7001.005(a)(2) and for whom the Commissioner may conduct a criminal background check under §7001.008 if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

The amendments are further necessary to update obsolete statutory citations to the Insurance Code in §1.501(b)(2)(A) – (C) as a result of the enactment of the non-substantive revision of the Insurance Code. The Insurance Code Article 5.43-1, which is referenced in §1.501(b)(2)(A); the Insurance Code Article 5.43-2, which is referenced in §1.501(b)(2)(B); and the Insurance Code Article 5.43-3, which is referenced in §1.501(b)(2)(C), were repealed in the non-substantive Insurance Code revision, Acts 2007, 80th Leg., Ch. 730, §1J.001, effective April 1, 2009. The Insurance Code Article 5.43-1 was readopted without substantive change as the Insurance Code Chapter 6001 in the same non-substantive Insurance Code revision. The Insurance Code Article 5.43-2 was readopted without substantive change as the Insurance Code Chapter 6002 in the same non-substantive Insurance Code revision. The Insurance Code Article 5.43-3 was readopted without substantive change as the Insurance Code Chapter 6003 in the same non-substantive Insurance Code revision.

### **3. HOW THE SECTIONS WILL FUNCTION.**

**§1.501. Purpose and Application.** Section 1.501 adds new paragraph (b)(6) to include within the purpose and application of existing §1.502, relating to licensing of

persons with criminal backgrounds, each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) (relating to Application for Registration and Renewal of Registration) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008 (relating to Criminal Background Check). Section 1.501 further updates obsolete statutory citations to the Insurance Code in §1.501(b)(2)(A) - (C) as a result of the enactment of the non-substantive revision of the Insurance Code.

**§1.502. Licensing Persons with Criminal Backgrounds.** Section 1.502(a) states that the special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the Department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance, insurance-related products, and discount health care programs.

**§1.503. Application of Fingerprint Requirement.** Section 1.503 adds new paragraph (5) to require that each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008 to comply with the fingerprint requirement in §1.504(a) of this subchapter (relating to Fingerprint Requirement).

**§1.507. Other Licensees and Registrants.** Section 1.507 states that the Commissioner may waive the requirement in §1.504 of this subchapter (relating to

Fingerprint Requirement) for individuals listed under §1.503(1), (2), (4) and (5) of this subchapter (relating to Application of Fingerprint Requirement) if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

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

**5. STATUTORY AUTHORITY.** The amendments are adopted under the Occupations Code, the Government Code and the Insurance Code. The Occupations Code Chapter 53 generally provides the procedures a licensing authority must implement when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. The Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the ground that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. The Government Code §411.106 permits the Department to obtain criminal history record information from the DPS that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the Department. The Government Code §411.087 permits the Department to obtain through the FBI criminal history record information maintained or indexed by the FBI that pertains to that person or to obtain from any other criminal justice agency in this

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state the criminal history record information maintained by that criminal justice agency that relates to that person. The Insurance Code §801.056(b) provides that the Department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a set of fingerprints on request of the Department. The Insurance Code §7001.003 requires the Commissioner to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this chapter. The Insurance Code §7001.008 provides that the Department may conduct a criminal background check on certain individuals. The Insurance Code §7001.005(a)(2) requires that biographical information be filed with the Department for these same individuals. These individuals are (i) the individuals responsible for conducting the discount health care program operator's affairs; (ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee; (iii) the officers of the program operator; (iv) any contracted management company personnel; and (v) any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator. The Insurance Code §7001.009(a)(5) and (6) provide that the Department may deny a registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84, if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder, has engaged in fraudulent or dishonest acts or practices, or has been convicted of a felony. The Insurance Code §7002.001 provides that, for purposes of Chapters 562 and 7001 of the Insurance Code, 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. 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.

## **6. TEXT.**

### **§1.501. Purpose and Application.**

(a) The purpose of this subchapter is to implement Chapter 53, Occupations Code, and sections and articles of the Insurance Code and Occupations Code that require and authorize the department to determine a person's fitness for holding a license, authorization, certification, permit, or registration, or a person's fitness to have the ability to control licensed, registered, permitted, certificate holding, and authorized entities, when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. This subchapter also establishes the procedure by which the department may obtain criminal history information on persons applying for a license, authorization, certification, permit, or registration, or acquiring the ability to control an entity holding or seeking a license, authorization, certificate, permit, or registration. To effect this implementation the department has developed guidelines in §1.502 of this subchapter (relating to Licensing Persons with Criminal Backgrounds)

identifying the types of criminal offenses that directly relate to the duties and responsibilities of licensed and authorized insurance activities which are of such a serious nature that they are of prime importance in determining the person's fitness for licensure, authorization, certification, permit or registration, or control of a licensed, registered, permitted, certificate holding, or authorized entity.

(b) Section 1.502 of this subchapter applies to the following persons:

(1) applicants for, or holders of, any license, registration, permit, authorization, or certification, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title agents, title escrow officers, title attorneys, utilization review agents, independent review organizations, viatical and life settlement registrants, workers' compensation health care networks, management contractors, and administrators, under the following Insurance Code provisions:

- (A) Chapter 4201;
- (B) Chapter 4202;
- (C) Chapter 981;
- (D) Chapter 1111;
- (E) Chapter 1305;
- (F) Chapter 2552;
- (G) Chapter 2651 Subchapter A;
- (H) Chapter 2652;
- (I) Chapter 4001;

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(J) Chapter 4051;

(K) Chapter 4052;

(L) Chapter 4053;

(M) Chapter 4054;

(N) Chapter 4055;

(O) Chapter 4056;

(P) Chapter 4101;

(Q) Chapter 4102;

(R) Chapter 4151;

(S) Chapter 4152;

(T) Chapter 4153; or

(U) any other provision providing for any type of license, registration, certification, permit, or authorization that the department may deny or revoke because of a criminal offense of the applicant or license holder;

(2) applicants for, or holders of, a license, registration, permit or authorization issued by the State Fire Marshal's Office, including the following provisions:

(A) Insurance Code Chapter 6001;

(B) Insurance Code Chapter 6002;

(C) Insurance Code Chapter 6003;

(D) Occupations Code Chapter 2154; or

(E) any other provision providing for any type of license, registration, or authorization that the State Fire Marshal's Office may deny or revoke because of a criminal offense of the applicant or license holder;

(3) those who are, become, or have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in paragraphs (1) and (2) of this subsection and from whom biographical information is required;

(4) with regard to insurance companies, health maintenance organizations, holding companies, and other related entities, an individual who is required to provide biographical information and who:

(A) is the applicant, if the applicant is an individual, or an officer, director, or controlling shareholder of the applicant seeking an authorization as an insurer as described in Insurance Code Chapter 801 or an authorization under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552;

(B) becomes an officer, director, or controlling shareholder of an entity authorized as an insurer as described in Insurance Code Chapter 801 or an entity authorized under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552; or

(C) is the applicant if such person is an individual, or the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and

controller of the applicant if the applicant is not an individual, for each applicant under §7.209 of this title (relating to Form A);

(5) each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval); and

(6) each individual whose biographical information is required to be filed with the department under the Insurance Code §7001.005(a)(2) (relating to Application for Registration and Renewal of Registration) and each individual for whom the commissioner may conduct a criminal background check under the Insurance Code §7001.008 (relating to Criminal Background Check).

(c) As used in §1.502 of this subchapter, the terms "license holder," "licensee," and "authorization holder" shall include all persons listed in subsection (b) of this section.

(d) As used in §1.502 of this subchapter, the terms "license" and "authorization" shall include all types of licenses, registrations, certificates, permits, or authorizations listed in subsection (b) of this section.

## **§1.502. Licensing Persons with Criminal Backgrounds.**

(a) The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that the public place trust in and reliance upon such persons due to the

complex and varied nature of insurance, insurance-related products, and discount health care programs.

(b) Fire protection systems and equipment are often technically sophisticated beyond the knowledge or understanding of the average consumer. During times of imminent personal danger, the public relies on licensees to have correctly designed, installed and serviced fire protection systems and equipment to operate the first time and each time they are needed. Additionally, licensees are often permitted to service these systems unescorted in nursing homes, schools, day care centers, and commercial facilities where children and those unable to protect themselves are present and valuables are located. Finally, the manufacturing, storing, selling and discharge of fireworks requires numerous special precautions to maintain a safe environment for the licensees and the public. Each of these factors requires the public to place trust in and reliance upon these individuals.

(c) The department considers it very important that license and authorization holders and applicants, including those regulated under the state fire marshal's office, the officers, directors, members, managers, partners and any other persons who have the right to control a license or authorization holder or applicant, and the members of boards of directors of insurance companies, be honest, trustworthy, and reliable.

(d) The department may refuse to issue an original license or authorization and may revoke, suspend or refuse to renew a license or authorization if the department determines that the applicant or holder, or any partner, officer, director, member, manager, or any other person who has the right to control the applicant or holder, has

committed a felony or misdemeanor, or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.

(e) In accordance with the requirements of Texas Occupations Code §53.025, the department has developed guidelines relating to the matters which the department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Those crimes which the department considers to be of such serious nature that they are of prime importance in determining fitness for licensure or authorization include but are not limited to:

(1) any offense for which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Texas Insurance Code or any state or federal insurance or security law regulating or pertaining to the business of insurance;

(3) any felony involving moral turpitude or breach of fiduciary duty; or

(4) an offense with the essential elements of:

(A) a criminal homicide offense, as described by Penal Code, Chapter 19;

(B) a felony offense of assault, as described by Penal Code, Chapter 22;

(C) an arson offense, as described by Penal Code, Chapter 28;

(D) a robbery offense, as described by Penal Code, Chapter 29;

(E) a burglary offense, as described by Penal Code, Chapter 30;

(F) a theft offense, as described by Penal Code, Chapter 31;

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(G) an offense relating to the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance or a dangerous drug; and

(H) an offense against the person as described by Penal Code §§20.03, 20.04, 21.07, 21.08, or 21.11;

(I) an offense against the family as described by Penal Code §§25.02 or 25.07;

(J) a stalking offense as described by Penal Code §42.072; or

(K) an offense against public order and decency as described by Penal Code §§43.25 or 43.26.

(f) The department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.

(g) The department may, after notice and opportunity for hearing, revoke a license or authorization if the holder has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.

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(h) The department will consider the factors specified in Texas Occupations Code §§53.022 and 53.023 in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction.

(1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the department shall consider the following factors:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In addition to the factors listed in paragraph (1) of this subsection, the department shall consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) other evidence of the person's present fitness, including letters of recommendation from:

(i) prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) any other persons in contact with the person.

(G) In addition to the factors and evidence listed in paragraphs (1) and (2) of this subsection, an applicant or license or authorization holder shall also furnish proof that the applicant or holder has:

(i) maintained a record of steady employment;

(ii) supported the applicant's or holder's dependents where applicable;

(iii) otherwise maintained a record of good conduct; and

(iv) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.

(3) It shall be the responsibility of the applicant or holder to the extent possible to secure and provide to the commissioner the information required by paragraph (2) of this subsection.

(i) The department shall consider any specific criteria the legislature has set out for any license or authorization in considering whether to grant, deny, suspend, or revoke such license or authorization.

(j) The department shall revoke a license or authorization on the holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(k) No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license or authorization issued by the department.

**§1.503. Application of Fingerprint Requirement.** The fingerprint requirement in §1.504(a) of this subchapter (relating to Fingerprint Requirement) applies to the following individuals:

(1) applicants for any license, registration, certification, authorization or permit, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title

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agents, title escrow officers, viatical and life settlement registrants, workers' compensation health care networks, management contractors, and administrators, under the following Insurance Code provisions:

- (A) Chapter 4201;
- (B) Chapter 4202;
- (C) Chapter 981;
- (D) Chapter 1111;
- (E) Chapter 1305;
- (F) Chapter 2651, Subchapter A;
- (G) Chapter 2652;
- (H) Chapter 4001;
- (I) Chapter 4051;
- (J) Chapter 4052;
- (K) Chapter 4053;
- (L) Chapter 4054;
- (M) Chapter 4056;
- (N) Chapter 4101;
- (O) Chapter 4102;
- (P) Chapter 4151;
- (Q) Chapter 4152; or
- (R) Chapter 4153.

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(2) with the exception of those individuals associated with licenses issued to corporations and limited liability companies under Insurance Code Chapter 2651 Subchapter A, individuals who are required to provide biographical information and who:

(A) are or have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in paragraph (1) of this section; or

(B) become or will have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification or registration under provisions specified in paragraph (1) of this section.

(3) with regard to insurance companies, health maintenance organizations, holding companies, and other related entities, an individual who is required to provide biographical information and who:

(A) is the applicant, if the applicant is an individual, or an officer, director, or controlling shareholder of the applicant seeking an authorization as an insurer as described in Insurance Code Chapter 801 or an authorization under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552;

(B) becomes an officer, director, or controlling shareholder of an entity authorized as an insurer as described in Insurance Code Chapter 801 or an entity

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authorized under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552; or

(C) is the applicant if such person is an individual, or the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, for each applicant under §7.209 of this title (relating to Form A).

(4) each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval); or

(5) each individual whose biographical information is required to be filed with the department under the Insurance Code §7001.005(a)(2) (relating to Application for Registration and Renewal of Registration) and each individual for whom the commissioner may conduct a criminal background check under the Insurance Code §7001.008 (relating to Criminal Background Check).

**§1.507. Other Licensees and Registrants.** The commissioner may waive the requirement in §1.504 of this subchapter (relating to Fingerprint Requirement) for individuals listed under §1.503(1), (2), (4), and (5) of this subchapter (relating to Application of Fingerprint Requirement) if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

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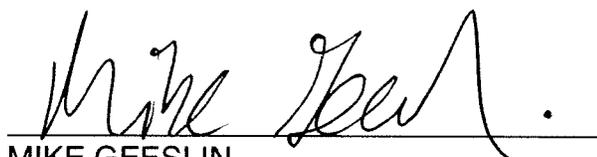
**CERTIFICATION.** This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 amendments to §§1.501 - 1.503 and 1.507 specified herein, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs employer liability for certain group health benefit plan premiums, are adopted.

**AND IT IS SO ORDERED.**

  
MIKE GEESLIN  
COMMISSIONER OF INSURANCE

ATTEST:

  
Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 10-0765  
AUG 18 2010