

SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS
28 TAC §§19.701, 19.708, 19.713

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §§19.701, 19.708, and 19.713, concerning contracts used by licensed public insurance adjusters and rules that govern the professional ethics of public insurance adjusters. These amendments are necessary to clarify the language required in contracts used by licensed public insurance adjusters by specifying how fees or commissions paid by consumers will be calculated.

The proposed amendments contain both substantive and nonsubstantive changes. The nonsubstantive changes correct punctuation, add clarity, and conform the draft proposal to current agency style. The proposed amendments also contain updated citations that conform with Insurance Code disposition tables, renumbered sections to accommodate the proposed amendments, and repetitive recitation of proposed section numbers.

Section 19.701 Definitions

Section 19.701(a) is changed by replacing "Article 21.07 §1A" with "Chapter 4001." Section 19.701(b) is changed by deleting "shall." Section 19.701(b)(1) is added to define the term "commission," and adds that a commission is "any amount received by a public insurance adjuster for service provided under Insurance Code Chapter 4102, consisting of an hourly fee, a flat rate, a percentage of the total amount paid by the insurer to resolve a claim, or another method of compensation, not to exceed 10 percent of the amount of the insurance settlement on the claim, including expenses, direct costs, or any other costs accrued by the public insurance adjuster." Former

paragraph (1) is redesignated as paragraph (2) and defines the term “corporation.”

Former paragraph (2) is redesignated as paragraph (3) and defines the term “partnership.” Former paragraph (3) is redesignated as new paragraph (4) and defines the term “public insurance adjuster.” Section 19.701(b)(4) also replaces “Article 21.07-5 §§5, 5A, 15 or 15A” with “Chapter 4102.”

Section 19.708 Public Insurance Adjuster Contracts

Section 19.708(b)(1) adds the phrase, “with each page of the contract prominently displaying the license number(s).” Section 19.708(b)(10)(A) amendments update existing text for clarification and consistency with agency writing style. Section 19.708(b)(10)(B) amendments make the English and Spanish translations in §19.708(b)(10)(A) and §19.708(b)(10)(B) consistent with one another.

Section 19.708(b)(11)(B) is redesignated as new §19.708(b)(11), and adds, “a statement that under any method of compensation, the total commission payable to the public insurance adjuster must not exceed 10 percent of the amount of the insurance settlement, including expenses, direct costs, or any other costs accrued by the public insurance adjuster.”

Section 19.708(b)(12) adds, “a statement disclosing whether insurance settlement proceeds paid to the insured prior to the date of the contract between the insured and the public insurance adjuster will be included in calculating the amount payable to the public insurance adjuster.”

Section 19.708(b)(11) is redesignated as §19.708(b)(13), and adds the words “and prominent” before existing “statement of the public insurance adjuster’s commission.” Section 19.708(b)(13)(A), formerly §19.708(b)(11)(A), is amended by

replacing the word “compensation” with “the commission,” the word “either” with “whether,” adds the words “an” and “rate,” deletes the word “or,” adds the phrase “or another method of compensation, specifically,” and deletes the word “and.”

Sections 19.708(b)(13)(A)(i) – (iv) add, “if an hourly rate, the contract must state the hourly rate and how it will be applied to hours of service provided by the public insurance adjuster to calculate the amount payable,” “if a flat fee, the contract must state the amount that will be payable to the public insurance adjuster,” “if a percentage, the contract must state the exact percentage that will be applied to the settlement on the claim to calculate the amount payable to the public insurance adjuster,” and “if another method of calculation is chosen, the contract must include a detailed explanation of how the amount payable will be determined based on services provided by the public insurance adjuster.”

Section 19.708(b)(13)(B) adds, “a general description of services the public insurance adjuster will provide under the contract.”

Section 19.708(b)(13)(C) adds, “a description of the claim and property damage, location, and event date.”

Section 19.708(b)(13)(D) adds, “a detailed listing of separate costs payable to the public insurance adjuster as part of the commission based on the claim settlement, including expenses, direct costs, and any other accrued costs, plus sales tax owed to the comptroller.”

Section 19.708(b)(13)(E) adds, “a statement that, upon request, the insured will receive a detailed document listing the following.” Section 19.708(b)(13)(E)(i) – (iv) add “(i) all amounts paid by the insurer before and after the date of the public insurance

adjuster's contract; (ii) the services provided by the public insurance adjuster; (iii) the date of each service; and (iv) the time spent on each service.”

Section 19.708(c) replaces the word “may” with “must.”

Section 19.708(d) adds, “All public insurance adjusters in Texas must use a written contract that is in the form prescribed by the department and that complies with all relevant Insurance Code requirements and department rules.” The section provides that public insurance adjusters must use one of the form options in §19.708(d)(1) – (3), which include: “(1) a standard language contract developed by the Texas Association of Public Insurance Adjusters and approved by the department; (2) a standard language contract developed by the department, identified by FIN 535; or (3) a contract filed and approved by the department prior to use.”

Section 19.708(e) adds, “All contracts must be submitted with an original adjuster license application or an application for renewal to the department's Agent and Adjuster Licensing Office. Contracts also must be submitted to the office upon any modification or amendment of terms or conditions between license renewals.”

Section 19.708(f) adds, “The failure by a public insurance adjuster or other individual to use a properly authorized and approved contract may result in suspension, nonrenewal, revocation, or other administrative penalty.”

Section 19.713 Public Insurance Adjuster Code of Ethics

The proposed rule language also amends the heading of §19.713 by adding the words “Code of” and deleting the words “Rules of Professional Conduct and.” Section 19.713(a) is amended by deleting the word “certain.” The section is further amended by

adding, "This section details requirements similar to the codes of ethics adopted by local and national public insurance adjusters' professional organizations."

Section 19.713(b) is amended by updating statutory references to the Insurance Code. Section 19.713(b) is also amended by updating existing text for clarification and consistency with agency writing style. Section 19.713(b)(11) is added and states, "Licensees must fully disclose the method of calculation for commissions related to any contract with a member of the public."

2. FISCAL NOTE. Jamie Walker, Associate Commissioner of Licensing Services, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Walker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposal will be more market transparency through clearer communication by licensed public insurance adjusters regarding the calculation of fees and expenses, and a more standardized process for filing contracts used in consumer transactions with the department. This revised disclosure methodology is an effort to further ensure that each licensed public insurance adjuster adheres to relevant provisions of the Insurance Code, and provides clear and concise contract language to consumers that fully outlines all costs and expenses associated with the settlement of a

claim. The cost to persons required to comply with the proposal are estimated to be negligible. The costs for compliance will not vary between the smallest and largest businesses because the costs will be the same for each category of individual required to comply with the proposal. Although the department does not believe that the proposed amendments will have an adverse effect on small and micro businesses, the department has considered the purpose of the applicable statutes, which is to clarify language required in public insurance adjuster contracts, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the department has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposed rule does not create any new, incremental costs for licensees that are subject to the existing requirements of §§19.701, 19.708, and 19.713. Although many licensed individuals did not obtain and file copies of contracts with the department as required by Insurance Code §4102.103(a), it is anticipated that most individuals within Texas will utilize the convenience of pre-approved contract forms, and as such, will not experience any

adverse economic effect. In accord with Government Code §2006.002(c), the department has determined that a regulatory flexibility analysis is not required.

5. 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 and, so it does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 20, 2013. The department requires two copies of your comments or hearing request. Send your comments or request for hearing to the Chief Clerk, by email at: *chiefclerk@tdi.texas.gov* or by mail at: Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jamie Walker, Associate Commissioner of Licensing Services, by email at: *Jamie.Walker@tdi.texas.gov* or by mail at: Agent and Adjuster Licensing Office, Mail Code 9999, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§4102.004, 4102.005, 4102.103, 4102.104(a), 4102.104(b), and 36.001. Section 4102.004 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 4102, including rules regarding: the qualification of license holders, in addition to those prescribed by Insurance Code Chapter 4102, that are necessary to promote and protect the public interest; the regulation of the conduct of license holders; the prescription of fees required by §4102.066; and the regulation of advertisements under §4102.113 and the definition of “advertisement” as the term is used in that section. Section 4102.005 provides that the commissioner by rule shall adopt: a code of ethics for public insurance adjusters that fosters the education of public insurance adjusters concerning the ethical, legal, and business principles that should govern their conduct; recommendations regarding the solicitation of the adjustment of losses by public insurance adjusters; and any other principles of conduct or procedures that the commissioner considers necessary and reasonable. Section 4102.103 provides that a license holder may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the license holder and the insured or the insured’s duly authorized representative; and that a license holder may not use any form of contract that is not approved by the commissioner. Section 4102.103 also provides that the contract must contain a provision allowing the client to rescind the contract by written notice to the license holder within 72 hours of signature, and must include a prominently displayed notice in 12-point boldface type that states “WE REPRESENT THE INSURED ONLY;” and that

the commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary. Section 4102.103 also provides that one copy of the contract shall be kept on file in this state by the license holder and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative. Section 4102.104(a) provides that, except as provided by §4102.104(b), a license holder may receive a commission for service provided under Chapter 4102 consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation, and the total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim. Section 4102.104(b) provides that a license holder may not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy in accordance with §862.053. Section 4102.104(b) also provides that the license holder is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the license holder, until the claim is paid or the insured receives a written commitment to pay from the insurer. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

| <u>Rule</u> | <u>Statute</u> |
|-------------|---------------------------------------|
| §19.701 | Insurance Code Chapters 4001 and 4102 |
| §19.713 | Insurance Code Chapter 4102 |

9. TEXT.

SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS

§19.701. Definitions.

(a) Words and terms defined in Insurance Code Chapter 4001 [~~Article 21.07 §1A~~] shall have the same meaning when used in this subchapter.

(b) The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--Any amount received by a public insurance adjuster for service provided under Insurance Code Chapter 4102, consisting of an hourly fee, a flat rate, a percentage of the total amount paid by the insurer to resolve a claim, or another method of compensation, not to exceed 10 percent of the amount of the insurance settlement on the claim, including expenses, direct costs, or any other costs accrued by the public insurance adjuster.

(2) [(4)] Corporation--A legal entity that is organized under the business corporations laws or limited liability company laws of this state, another state, or a territory of the United States. The licensing and regulation of a limited liability company is subject to all provisions of this subchapter that apply to a corporation licensed under this subchapter.

(3) ~~(2)~~ Partnership--An association of two or more persons organized under the partnership laws or limited liability partnership laws of this state, another state, or a territory of the United States. The term includes a general partnership, limited partnership, limited liability partnership, and limited liability limited partnership.

(4) ~~(3)~~ Public Insurance Adjuster--A person licensed under Insurance Code Chapter 4102 ~~[Article 21.07-5 §§5, 5A, 15 or 15A]~~ or §19.704 of this subchapter (relating to Public Insurance Adjuster Licensing). A licensed public insurance adjuster may be otherwise referred to as a "license holder" or "licensee" in this subchapter.

§19.708. Public Insurance Adjuster Contracts.

(a) (No change.)

(b) A public insurance adjuster's written contract with an insured must contain:

(1) the name, address, and license number of the public insurance adjuster negotiating the contract and, if applicable, the name, address, and license number of the public insurance adjuster's employing public insurance adjuster, with each page of the contract prominently displaying the license number(s);

(2) – (9) (No change.)

(10) on the first or second page of the contract, the following English and Spanish notices in 10-point bold ~~[facee]~~ type:

(A) "IMPORTANT NOTICE: You may contact the Texas Department of Insurance to get [obtain] information about [on] public insurance adjusters, your rights as a consumer, or information about how to file a complaint by calling [and complaints at:]1-800-252-3439; or you may write the Texas Department of

Insurance, at PO [P.O.] Box 149104, Austin, Texas 78714-9104, or contact the department via Fax [#] 512- [(512)] 475-1771.”;

(B)"ADVISO IMPORTANTE: Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca ajustadores [ajustores] publicos de seguros, [e] sus derechos como consumidor, o informacion sobre como presentar una queja llamando [informacion quejas al:] 1-800-252-3439; o puede escribir al Departamento de Seguros de Texas, en PO [-P.O.] Box 149104, Austin, Texas 78714-9104, o comuniquese con el departamento a traves de Fax [#] 512- [(512)] 475-1771.”; [and]

(11) a statement that under any method of compensation, the total commission payable to the public insurance adjuster must not exceed 10 percent of the amount of the insurance settlement, including expenses, direct costs, or any other costs accrued by the public insurance adjuster;

(12) a statement disclosing whether insurance settlement proceeds paid to the insured prior to the date of the contract between the insured and the public insurance adjuster will be included in calculating the amount payable to the public insurance adjuster; and

(13)[(14)] a clear and prominent statement of the public insurance adjuster’s commission including:

(A) the method of calculating the commission [compensation] for the public insurance adjuster, whether [either] an hourly rate, flat fee,[or] percentage of settlement, or another method of compensation, specifically: [and]

(i) if an hourly rate, the contract must state the hourly rate and how it will be applied to hours of service provided by the public insurance adjuster to calculate the amount payable;

(ii) if a flat fee, the contract must state the amount that will be payable to the public insurance adjuster;

(iii) if a percentage, the contract must state the exact percentage that will be applied to the settlement on the claim to calculate the amount payable to the public insurance adjuster; or

(iv) if another method of calculation is chosen, the contract must include a detailed explanation of how the amount payable will be determined based on services provided by the public insurance adjuster;

(B) a general description of services the public insurance adjuster will provide under the contract;

~~[(B) a statement that under any method of compensation the total commission payable to the public insurance adjuster may not exceed 10% of the amount of the insurance settlement.]~~

(C) a description of the claim and property damage, location, and event date;

(D) a detailed listing of separate costs payable to the public insurance adjuster as part of the commission based on the claim settlement, including expenses, direct costs, and any other accrued costs, plus sales tax owed to the comptroller; and

(E) a statement that, upon request, the insured will receive a detailed document listing the following:

(i) all amounts paid by the insurer before and after the date of the public insurance adjuster's contract;

(ii) the services provided by the public insurance adjuster;

(iii) the date of each service; and

(iv) the time spent on each service.

(c) The contract must ~~[may]~~ not contain any terms or conditions which have the effect of limiting or nullifying any requirements of the Insurance Code, this subchapter, or other rules of the department.

(d) All public insurance adjusters in Texas must use a written contract that is in the form prescribed by the department and that complies with all relevant Insurance Code requirements and department rules. Public insurance adjusters must select from the following contract form options:

(1) a standard language contract developed by the Texas Association of Public Insurance Adjusters and approved by the department;

(2) a standard language contract developed by the department, identified by FIN 535; or

(3) a contract filed and approved by the department prior to use.

(e) All contracts must be submitted with an original adjuster license application or an application for renewal to the department's Agent and Adjuster Licensing Office. Contracts also must be submitted to the office upon any modification or amendment of terms or conditions between license renewals.

(f) The failure by a public insurance adjuster or other individual to use a properly authorized and approved contract may result in suspension, nonrenewal, revocation, or other administrative penalty.

§19.713. Public Insurance Adjuster Code of [Rules of Professional Conduct and] Ethics.

(a) This section states [~~certain~~] legal and ethical requirements that are of prime importance for public insurance adjusters' professional conduct. This section does not exhaust the legal or ethical requirements that govern public insurance adjusters. This section details requirements similar to the codes of ethics adopted by local and national public insurance adjusters' professional organizations.

(b) All public insurance adjuster licensees must [~~shall~~] comply with the following requirements:

(1) Licensees must [~~shall~~] conduct business fairly with their clients, insurance companies, and the public [~~, in a spirit of fairness and justice~~].

(2) Licensees must [~~shall~~] not employ any improper solicitation which would violate Insurance Code Chapter 4102 and applicable rules [~~Article 21.07-5 or this subchapter~~].

(3) Licensees must [~~shall~~] not make a misrepresentation, in violation of Insurance Code Chapter 4102 [~~Article 21.07-5, §23(m)(1)~~], to an insured or to an insurance company in the conduct of their actions as [~~a~~] public insurance adjusters [~~adjuster~~].

(4) Licensees must ~~[shall]~~ charge only commissions ~~[and fees which]~~ that comply [are in compliance] with the requirements set forth in Insurance Code Chapter 4102 [Article 21.07-5] and applicable rules [this subchapter].

(5) Licensees must ~~[shall]~~ complete continuing education as required by Insurance Code Chapter 4102 [Article 21.07-5] and this subchapter.

(6) Licensees must ~~[shall]~~ have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their area of expertise.

(7) Licensees must ~~[shall]~~ not engage in the unauthorized practice of law.

(8) Licensees must ~~[shall]~~ avoid situations of conflict of interest, including acquiring any interest in salvaged property or participating in any way, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee, except as allowed in Insurance Code Chapter 4102 [Article 21.07-5] and this subchapter.

(9) Licensees must ~~[shall]~~ not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of public insurance adjusting and that does not comply with Insurance Code Chapter 4102 [Article 21.07-5], this subchapter, or other provisions of the Insurance Code.

(10) Licensees must ~~[shall]~~ use only contracts that comply with Insurance Code Chapter 4102 [Article 21.07-5] and this subchapter.

(11) Licensees must fully disclose the method of calculation for commissions related to any contract with a member of the public.

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

Issued at Austin, Texas, on April 2, 2013.



Sara Waitt
General Counsel
Texas Department of Insurance