

**SUBCHAPTER W. MISCELLANEOUS RULES FOR GROUP AND INDIVIDUAL
ACCIDENT AND HEALTH INSURANCE
28 TAC §3.3615**

1. INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC §3.3615, concerning Continuation of Existing Texas Health Insurance Pool Coverage, with minor editorial changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9199). New §3.3615 is necessary to allow the Texas Health Insurance Pool (Pool) to continue existing coverage and avoid a lapse in coverage for its enrollees.

The new section will replace the emergency rule adopted effective December 1, 2013, and published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 8983).

Section 3.3615(a) delays the implementation of Sections 4, 5, and 6(a)-(d) of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, until March 31, 2014, to align with the last day that open enrollment is available in the individual market under federal law. 45 CFR §155.410.

Section 3.3615(b) allows the commissioner, after notice and hearing, to extend the delays described above for a period not to exceed 90 days if:

- (1) the guaranteed issue of health benefit coverage is delayed;
- (2) the operation of a health benefit exchange in this state is delayed; or
- (3) the commissioner determines that health benefit coverage expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage

under Chapter 1506, Insurance Code, immediately before the effective date of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, is not reasonably available to those individuals in this state.

Section 3.3615(c) is a severability clause, to ensure that any invalidity of the rule will not affect parts of the rule that can be given effect without the invalid provision or application.

2. REASONED JUSTIFICATION. TDI adopts §3.3615 under Section 7 of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session; and Insurance Code §36.001 and §1506.005. Delaying implementation of Section 4 of Senate Bill 1367 (the termination of Pool coverage) allows Pool enrollees to retain their current coverage until the date stated in the rule. This will make health benefit coverage that was expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage under Insurance Code Chapter 1506, immediately before the effective date of Senate Bill 1367, reasonably available to those individuals in this state. It will give Pool enrollees the time necessary to select and purchase appropriate replacement coverage before their current insurance expires.

Delaying the implementation of Section 5 (the exercise of the Pool's recovery rights), Section 6(a)-(d) (the transfer of funds and assessment authority from the Pool to TDI), and the Pool dissolution plan are all necessary to allow for extension of Pool coverage, because the Pool will need to retain these recovery rights, funds, and functions until it is no longer insuring Pool enrollees.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter noted that the Pool provides the insurance that the commenter needs as a dialysis patient, and that the closure of the Pool would deny the commenter that insurance on a guaranteed basis. Closure would also result in the commenter no longer receiving staff-assisted home-hemodialysis because that care is not covered by Medicare. The commenter stated that the Patient Protection and Affordable Care Act (PPACA) prohibits the denial of coverage to those with preexisting conditions and that the commenter should be allowed to purchase the insurance under that Act. The commenter suggested that the commenter be allowed to keep Pool insurance.

Agency Response: TDI shares the commenter's concerns, but declines to adopt the suggestion at this time. The rule was proposed to give those with Pool coverage time to secure new coverage. That time has been made available. The Legislature has made clear its intent to close down the Pool by passing Senate Bill 1367. That bill gave the commissioner the authority to continue the Pool's insurance operations for limited reasons, and the commissioner has done so. The commissioner believes that a permanent extension of the Pool on the basis that Medicare plus Medicare supplement coverage is inadequate would be beyond the scope of the authority granted by Senate Bill 1367. The suggestion of continuing Pool insurance would go well beyond the scope of the proposed rule, placing substantial additional costs on insurers through Pool assessments. Because insurers were not given sufficient opportunity to comment on such a proposal, this would most appropriately be made a part of a new rule proposal. TDI and the Pool are working to try to find as many alternatives to Pool coverage as

possible. TDI is separately adopting a rule to provide the commenter and other enrollees in similar circumstances with an opportunity to purchase Medicare supplement coverage, which would have been the main option for supplemental coverage had the Pool coverage not originally been available. TDI has also had discussions with federal regulators on this issue, resulting in an agreement by federal regulators to provide a special Medicare advantage enrollment period for those with Pool coverage who are eligible for that product. State and federal regulators continue to look for other coverage options for the Pool population. TDI will continue to monitor implementation of federal health reform and market developments to see whether additional changes in its Medicare supplement rules are justified. Those losing Pool coverage are encouraged to contact TDI for assistance in finding other coverage.

Comment: One commenter supported the extension of the Pool through March 31, 2014, to provide more time to secure other insurance.

Agency Response: TDI appreciates the commenter's support for the proposed rule.

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

Opposed: One individual

For: Fresenius Medical Care

5. STATUTORY AUTHORITY. The new section is adopted under Section 7 of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session; and Insurance Code §36.001 and §1506.005.

Section 7 of Senate Bill 1367 allows the commissioner to delay by rule the implementation of any part of sections 1 through 6 of the Act or the Pool dissolution plan established under the Act if:

- (1) the guaranteed issue of health benefit coverage is delayed;
- (2) the operation of a health benefit exchange in this state is delayed; or
- (3) the commissioner determines that health benefit coverage expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage under Chapter 1506, Insurance Code, immediately before the effective date of this Act, is not reasonably available to those individuals in this state.

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.

Insurance Code §1506.005 provides that the commissioner may adopt rules necessary and proper to implement Chapter 1506 (relating to the Health Insurance Pool).

6. TEXT.

§3.3615 Continuation of Existing Texas Health Insurance Pool Coverage.

(a) The implementation of Sections 4, 5, and 6(a)-(d) of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, and the pool dissolution plan established under that Act, are delayed until March 31, 2014.

(b) The commissioner may, after notice and hearing, delay the implementation of Sections 4, 5, and 6(a)-(d) of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature,

Regular Session, and the pool dissolution plan established under that Act for a further period not to exceed 90 days if:

- (1) the guaranteed issue of health benefit coverage is delayed;
- (2) the operation of a health benefit exchange in this state is delayed; or
- (3) the commissioner determines that health benefit coverage expected to

be available on a guaranteed issue basis to a class of individuals eligible for coverage under Chapter 1506, Insurance Code, immediately before the effective date of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, is not reasonably available to those individuals in this state.

(c) If a court of competent jurisdiction holds that any part of this rule or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

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

Issued in Austin, Texas, on February 14, 2014.



Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts the new §3.3315.

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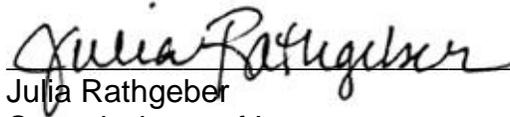
TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Adopted Section

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A handwritten signature in cursive script, reading "Julia Rathgeber", is written over a horizontal line.

Julia Rathgeber

Commissioner of Insurance

Commissioner's Order No. **3020**