

**SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION**  
**DIVISION 1. INSURANCE ADVERTISING**  
**28 TAC §21.102 and §21.104**

**INTRODUCTION.** The Commissioner of Insurance adopts amendments to 28 TAC §21.102 and §21.104, concerning the scope of insurance advertising regulations. The amendments are adopted without changes to the proposed text published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8840).

**REASONED JUSTIFICATION.** Amendments to §21.102 and §21.104 remove references to "nonprofit legal services corporations" from the definition of "insurer" for advertising regulations in Chapter 21 and remove references to "prepaid legal services" from identification requirements for advertisements, respectively. "Prepaid legal services" are comprised of both for-profit legal services, which were removed from TDI's regulation by Senate Bill 597, 78th Legislature, 2003 (SB 597), and nonprofit legal services, which were removed from TDI's regulation by Senate Bill 1623, 86th Legislature, 2019 (SB 1623).

The amendments also include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity, including deleting unnecessary uses of the word "and."

**SUMMARY OF COMMENTS.** TDI did not receive any comments on the proposed amendments.

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**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to §21.102 and §21.104 under Occupations Code Chapter 953, as added by SB 597; Occupations Code §953.003; Insurance Code §§961.002 - 961.004, as amended by SB 1623; and Insurance Code §36.001.

Occupations Code Chapter 953, as added by SB 597, transferred regulation of for-profit legal services from TDI to the Texas Department of Licensing and Regulation.

Occupations Code §953.003 provides that the acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by Occupations Code Chapter 953 are exempt from the Insurance Code and other laws of Texas regulating the business of insurance.

Insurance Code §§961.002 - 961.004 as amended by SB 1623, has nonprofit legal services providers removed from TDI's regulation.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**TEXT.****§21.102. Scope.**

For the purpose of this division:

(1) "Advertisement" includes, but is not limited to:

(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail,

newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays;

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;

(C) prepared sales talks, presentations and materials for use by agents, and those representations recurringly made by agents to members of the public;

(D) material used to:

(i) solicit additional coverage or policies from existing insureds; or

(ii) modify existing coverage or policies;

(E) material included with a policy when the policy is delivered and materials used in the solicitation of renewals and reinstatements, except those reinstatements provided for in the policy;

(F) lead solicitations which are defined as communications distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are intended to be used to solicit residents of this state for the purchase of a policy, as defined in paragraph (3) of this section; and

(G) any other communication directly or indirectly related to a policy, as defined in paragraph (3) of this section, and intended to result in the eventual sale or solicitation of a policy.

(2) "Advertisement" does not include:

(A) communications or materials used within an insurer's own organization, not used as sales aids and not disseminated to the public;

(B) communications with policyholders other than materials urging policyholders to purchase, increase, modify, or retain a policy;

(C) a general announcement by a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage;

(D) material used solely for the recruitment, training, and education of an insurer's personnel, agents, counselors, and solicitors, provided it is not also used to induce the public to purchase, increase, modify, or retain a policy of insurance; and

(E) correspondence between a prospective group or blanket policyholder and an insurer or agent in the course of negotiating a group or blanket contract.

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, viatical or life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which this division can be made legally applicable including, as applicable, Health Maintenance Organizations, and all insurance companies doing the business of

insurance in this state such as capital stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies, and viatical and life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, viatical and life settlement brokers and provider representatives.

(6) "Institutional advertisement" is an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or agent. Correspondence and materials used by an insurer only for the purpose of explaining Legislative or Texas Department of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code shall be considered institutional advertising for the purpose of §21.104(b) of this division (relating to Requirement of Identification of Policy or Insurer). Web pages on an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote are considered to be institutional advertisements. Advertisements in other media that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. In addition, web

pages or navigation aids within an Internet website that provide a link to another web page, the content of which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote, but that do not, themselves, otherwise include such content are considered to be institutional advertisements.

(7) "Invitation to inquire" for the purpose of this section is an advertisement that refers to a specific insurance policy or provides an opportunity to request a quote or that, except for Internet advertising, provides an opportunity to request other information. An "invitation to inquire" advertisement for accident or health coverage may refer to rates only as permitted under §21.113(b) of this division (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). An "invitation to inquire" is not an "invitation to contract."

(8) "Invitation to contract" is an advertisement that includes an application or enrollment form for insurance or which is presented with an opportunity to apply for the advertised coverage.

**§21.104. Requirement of Identification of Policy or Insurer.**

(a) An advertisement must identify the person or entity responsible for the advertisement.

(1) The full licensed name of the insurer is required to be stated in each of its invitation to inquire and invitation to contract advertisements, including the portion of the advertisement to be returned to the insurer or agent, unless the portion to be returned is delivered as a form detachable from another form containing the insurer's full licensed name. The full licensed name must appear at or before the first appearance of any

shortened or substitute name in the body of the text, which shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement.

(2) It is sufficient to state the full licensed name, assumed name registered with the department pursuant to §19.902 of this title (relating to One Agent, One License) or Texas agent's license number of the agent when advertisements address coverages in general and do not describe a specific policy or coverages of a particular insurer.

(b) An advertisement other than institutional, may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive a prospective purchaser as to the true identity of the insurer, or its relation with public or private institutions.

(c) No advertisement may use a combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combinations of words, symbols, or physical material normally or usually used by agencies of the federal government or of this state, or that otherwise appear to be of such a nature that the advertisement or solicitation has the capacity or tendency to confuse or mislead prospective insureds into believing that such advertisement or solicitation is connected with an agency of the municipal, state, or federal government.

(d) All advertisements, other than institutional, shall explicitly and conspicuously disclose that the product concerned is property, life or other insurance, an annuity, HMO coverage, a viatical or life settlement contract, or a prepaid legal services contract, on the basis that each of these products are classified or addressed by statute or rule or as the products are filed with the department. It is sufficient for an insurer to use the term "PPO

plan" in advertisements when referring to a preferred provider benefit plan offered under Insurance Code Chapter 1301.

(e) An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond those limits.

(f) An advertisement may not contain statements that avoid a clear and unequivocal statement that insurance or an annuity or HMO coverage is the subject matter of the solicitation.

(g) An advertisement that contains an application and is advertising more than one policy shall be presented in such manner as to clearly reflect that the cost and benefits are applicable to separate policies of insurance.

(h) No advertisement by an insurer or agent may be used that, directly or by implication, has the capacity and tendency to mislead or deceive prospective purchasers with respect to an insurer's assets, corporate structure, financial standing, age or relative position in the insurance business, or in any other material respect.

(i) Multiple insurers may be represented in one advertisement, provided that an invitation to inquire or invitation to contract advertisement must clearly identify the issuer of each product advertised and the advertisement discloses that each insurer has sole financial responsibility for its own products.

**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 at Austin, Texas, on April 5, 2021.

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*James Person*  
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James Person, General Counsel  
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §21.102 and §21.104.

Commissioner of Insurance

DocuSigned by:  
*Doug Slape*  
By: \_\_\_\_\_  
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Doug Slape  
Chief Deputy Commissioner  
Tex. Gov't Code §601.002  
Commissioner's Order No. 2018-5528